Town of Merrimac Zoning Ordinance

ACKNOWLEDGEMENTS

TOWN BOARD

Roger Spear, Chairman
Roger Shanks, Supervisor
Dennis Beich, Supervisor

PLANNING AND ZONING COMMITTEE

Mary Carol Solum, Chairman
Judy Ashford, Secretary
Lawrence Halweg
Timothy Healy
Douglas Hill
Roger Shanks
Irwin Silchuck
Mary Sullivan
James Koepp, Advisor
Peggy Heidenreich, Secretary

Sauk County Planning and Zoning Department

James Gregorius, Administrator
Mary White, Administrative Secretary
Jim Hanson, Administrative Technical Assistant
Steve Sorenson, Administrative Technical Assistant
Jim Schilling, Draftsperson
Richard Biech, Soils Analyst

Tom Kriegl, County Agricultural Agent
Michael Slavney, AICP Vandewalle and Associates
Sandra Alt,Typist

Town of Merrimac Zoning Ordinance

Table of Contents (Principal Sections) **Page**

1.0 INTRODUCTION

1.01 Authority

The Zoning Ordinance of the Town of Merrimac, Sauk County, Wisconsin is adopted under the authority of Wisconsin Statutes Sections 60.18(12), 60.74(7), 61.35, and 62.23. Therefore, the Town Board of Merrimac, Wisconsin, does ordain as follows:

1.02 Purpose

This Ordinance is declared to be for the purpose of promoting the public health, safety, prosperity, aesthetics and general welfare and for the protection and preservation of agricultural land and wildlife habitat.

1.03 Intent

It is the general intent of this Ordinance to regulate and restrict the use of all structures, lands, and waters; regulate and restrict lot coverage, population distribution and density, and the size and location of all structures so as to: lessen congestion in and promote the safety and efficiency of the streets and highways; help minimize fire, flooding, and other dangers; provide adequate light, air, sanitation, and drainage; facilitate the adequate provision of public facilities and utilities; stabilize and protect property values; further the appropriate use of land and conservation of natural resources; preserve and promote the beauty and community character of the Town. It is further intended to provide for the administration and enforcement of this Ordinance and to provide penalties for its violation.

1.04 Abrogation and Greater Restrictions

It is not intended by this Ordinance to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, ordinances, rules, regulations or permits previously adopted or issued pursuant to laws. However, wherever this ordinance imposes greater restrictions, the provisions of this Ordinance shall govern.

1.05 Supersession

This Ordinance supersedes all inconsistent provisions of any prior Town ordinances.

1.06 Interpretation

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Town and shall not be deemed a limitation or repeal of any other power granted by the

Wisconsin Statues. (Note: The definition section of this Ordinance contains a list of definitions for specific words and phrases found in this Ordinance.)

1.07 Severability

If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

1.08 Title

This Ordinance shall be known as, referred to, or cited as the "ZONING ORDINANCE, TOWN OF MERRIMAC, WISCONSIN".

1.09 Effective Date

This Ordinance shall be effective after adoption by the Merrimac Town Board, publication or posting as provided by law and the approval of the Sauk County Board of Supervisors.

Date of Publication: January 19, 1993.

2.0 GENERAL PROVISIONS

2.01 Jurisdiction

The jurisdiction of this Ordinance shall include all lands and waters within the unincorporated limits of the Town of Merrimac.

2.02 Zoning Administrator

The position of Zoning Administrator is hereby created as the administrative and enforcement office for the provisions of this Ordinance. The duty of the Zoning Administrator shall be to interpret and administer this Ordinance and to issue, after on-site inspection, all permits required by this Ordinance. The Zoning Administrator shall investigate all complaints, give notice of violations, issue orders to comply with the Zoning Ordinance, and assist the Town attorney in the prosecution of ordinance violators. The Zoning Administrator and his/her duly appointed deputies may enter at any reasonable time onto any public or private lands or waters to make a zoning inspection.

2.03 Compliance

No structure, land or water shall hereafter be used and no structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged,

2.0 GENERAL PROVISIONS

2.01 Jurisdiction

The jurisdiction of this Ordinance shall include all lands and waters within the unincorporated limits of the Town of Merrimac.

2.02 Zoning Administrator

The position of Zoning Administrator is hereby created as the administrative and enforcement office for the provisions of this Ordinance. The duty of the Zoning Administrator shall be to interpret and administer this Ordinance and to issue, after on-site inspection, all permits required by this Ordinance. The Zoning Administrator shall investigate all complaints, give notice of violations, issue orders to comply with the Zoning Ordinance, and assist the Town attorney in the prosecution of ordinance violators. The Zoning Administrator and his/her duly appointed deputies may enter at any reasonable time onto any public or private lands or waters to make a zoning inspection.

2.03 Compliance

No structure, land or water shall hereafter be used and no structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted, demolished or structurally altered in conformity with the regulations herein specified for the district in which it is located.

2.04 Land Use/Building Permit Code

The purpose of requiring land use/building permits is to regulate the construction of new structures and additions and alterations to existing structures to ensure that all construction is in compliance with Town ordinances, including, but not limited to, building and zoning requirements. In addition, the purpose is to provide the Town with information regarding all such construction and remodeling as necessary to for the public purposes of land use planning and tax assessment. This section is not intended to provide for Town inspection of any construction under the State of Wisconsin Building Code, and is no intended in any way to limit or supersede any applicable state or county statute, law, rule or requirement.

A. LAND USE/BUILDING PERMIT

1) Permit Required. No person shall commence to construct any structure or an addition or alteration to any structure until and any administrative land use/building permit is obtained from the Town of Merrimac Zoning Administrator and the permit fee paid.
2) Exceptions.
    a) Structure costs of less than $500.00 in one calendar year. No permit is required if the estimated cost of the proposed construction or remodeling is less than $500.00, including the fair market value of the labor of the owners or others.

b) For erecting or placing an addition or accessory structure less than 100 square feet in area.
c) Replacements. No permit is required for replacement mechanicals or fixtures.

3) Applications. Applications for administrative land use/building permits shall be submitted to the Town Zoning Administrator. The application shall include the following and other such information as required by the Town Board by separate resolution.
   a) Name and addresses of the applicant, owner of the site, architect, professional engineer or contractor.
   b) Description of the subject site by lot block and recorded subdivision or by metes and bounds; address of the subject site; number of employees, the zoning district within which the subject lays; indication of whether or not the subject site is located in a floodplain or wetland.
   c) Plot plan showing the location, boundaries, dimensions, elevations, uses and size of the following: subject site; existing and proposed structures; existing and proposed easements, streets and other public ways; off street parking, loading areas and driveways; existing and proposed street, side and rear yards.
   d) Additional information as may be required by the Town Planning and Zoning Administrator.
   e) Land use permit shall be granted or denied in writing by the Zoning Administrator within thirty (30) days of application. The permit shall expire two (2) years from date of issue. If 70% of the project has been completed additional time may be granted under the original permit by the Zoning Administrator in writing for completion.
   f) Any permit issued in conflict with the provisions of the Ordinance shall be null and void.

4) Fee. The schedule of administrative land use/building permit fees to be paid shall be established by the Town Board by Resolution and the Town Board may from time to time adopt a new schedule as required.
5) Issuance of Permit. After reviewing the application the Town Zoning Administrator shall issue the permit if all requirements are met.

B. PENALTY

Any person who shall violate any provision of this Ordinance shall, upon conviction thereof, forfeit not less than $10.00 nor more than $500.00, together with the costs of prosecution. Further, if any project is commenced before a building permit is obtained as required by this ordinance, all of the fees so established shall be tripled. Each violation and each day a violation continues or occurs shall constitute a separate violation.

2.06 County Wide Regulations Applicable to The Town of Merrimac

In addition to this Town of Merrimac Zoning Ordinance, the following Sauk County ordinances shall apply throughout the Town of Merrimac.

1) Sauk County Shoreland Protection Ordinance – Chapter 8
2) Sauk County Private Sewage System Ordinance – Chapter 25
3) Sauk County Flood Plain Ordinance – Chapter 9
4) Any other mandated, county-wide regulations
5) Sauk County Public Nuisance Ordinance – Chapter 29
6) Animal Waste Management Ordinance – Chapter 26

In cases of differing regulations governing a particular use, including the Town of Merrimac Zoning Ordinance, the more restrictive shall apply.

2.07 Zoning District Boundaries

The boundaries of the zoning districts are established as shown upon the map designated as the "Zoning Map, Town of Merrimac, Wisconsin" which accompanies and is a part of this ordinance. All notations, references and other information shown upon the zoning map shall be as much a part of this Ordinance as if the matter and things set forth by the said map were fully described herein.

Unless otherwise indicated on the map, the district boundary lines are the center lines of streets, highways, railroads, section lines, quarter section lines, quarter-quarter section lines or such lines extended. Where not otherwise indicated on the map, it is intended that the district boundary line be measured at right angles to the nearest highway right-of-way line and be not less than 300 feet in depth. The length of each strip shall be as shown on the map.

2.08 Non-Conforming Uses

The existing lawful use of a structure or premises which is not in conformity with the provisions of this Ordinance may be continued subject to the following conditions:

1) No such use shall be expanded or enlarged except in conformity with the provisions of this Ordinance without the granting of a variance by the Board of Appeals.
2) If such use is discontinued for 12 consecutive months, any future use of the building and premises shall conform to this Ordinance, after such use is discontinued for 6 months, the Town Board shall notify the owner of this provision.
3) Existing methods of waste disposal which constitute nuisance under state law or the terms of this Ordinance shall not be permitted to continue as non-conforming.

2.09 Governmental Uses

Except as otherwise provided in this Ordinance, governmental uses may be allowed only as conditional uses in all districts.

2.10 Public Utility Uses

Except as otherwise provided in this Ordinance, telephone and power distribution poles and lines, gas lines, and necessary appurtenant equipment shall be permitted if they meet the conditions set forth in the town Ordinance regarding utility locations. Any other public utility uses, such as transformers, unit substations, structures and equipment housing, may be approved only as conditional uses.

2.11 Temporary Uses

Uses not specifically mentioned in this Ordinance which would last for less than 10 days may be permitted if approved in writing by the Town Board provided that they will not conflict with adjacent uses or the intent of this Ordinance and do not pose any threat to the health or welfare of the public.

2.12 Like Uses

A use not specifically listed in this Ordinance which is similar to and compatible with uses on adjacent land and not contrary to the intent of the district in which the use would be located as determined by the Zoning Administrator may be allowed as a conditional use.

2.13 Accessory Structures

Structures accessory to a residential use shall not be used as a separate dwelling unit. No accessory structure shall be within any required rear yard, side yard, highway or water setbacks.

2.14 Manufactured Homes

1. Manufactured homes will be permitted only in a Manufactured Housing Park or Subdivision approved by the Town Board.
2. Manufactured Housing Subdivisions shall meet all requirements pertaining to a residential subdivision.
3. Manufactured Housing Parks shall meet all requirements of the Conditional Use Permit or Planned Area Development approved by the Town Board.
4. Manufactured homes not located with a Manufactured Housing Park or Subdivision on the effective date of this ordinance are legal non-conforming structures subject to the rules and regulations governing such class of structures.
5. “Manufactured home” has the meaning given in s. 101.91(2) Wis. Stats. and includes any additions, attachments, annexes, foundations, and appurtenances.
6. “Mobile home” has the meaning given in s. 101.91 (10) Wis. Stats. and includes any additions, attachments, annexes, foundations and appurtenances.

2.15 Surface Water Management

All buildings and developments shall be planned with responsible surface water management practices. All gradings, excavations and other land surface disturbances shall be carried out in such a way that erosion and runoff are minimized.

The Planning and Zoning Commission may require erosion control plans and/or storm water management plans to be developed and followed as a contingency for conditional use approval.

2.16 Site Restrictions

No land shall be sued or structure erected where the land is held unsuitable for such use or structure by the Zoning Administrator or Town Planning and Zoning Commission by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, unfavorable topography, low percolation rate or bearing strength, erosion susceptibility, or any other feature likely to be harmful to the health, safety, prosperity, aesthetics, and general character of this community. The Zoning Administrator or Town Planning and Zoning Commission in applying the provisions of this section, shall in wrting recite the particular facts upon which it bases its conclusion that the land is not suitable for certain uses. The applicant shall have an opportunity to present evidence contesting such unsuitability. Thereafter the Zoning Administrator or Town Planning and Zoning Commission may affirm, or modify, or withdraw its determination of unsuitability.

1. For Public Safety reasons, all lots shall have access to a public street with a minimum width of 40 feet.
2. All principle structures shall be located on a lot; and only one principle structure shall be located, erected, or moved onto a lot. Principal structure is one that meets the requirements for human habitation.

2.17 Height Regulation Exemptions

Farm buildings not for human habitation, ornamental structures, radio and television broadcasting and receiving towners, telephone, telegraph and power transmission poles, towers and lines, microwave radio relay structures and necessary mechanical appurtenances, and accessory structures essential to the use or protection of a building or to a manufacturing process carried on therein, may be allowed as a conditional use.

2.18 Required Yards and Setbacks

Every part of required yard or setback area shall be open and unoccupied from the ground upward.

2.19 Highway Setback Lines

All buildings and other structures shall be a minimum of the following distances from the right-of-way line of any public street or highway:

1. State and federal highways – 75 feet
2. County trunk highways – 42 feet
3. Town roads – 30 feet
4. Internal subdivision roads – 30 feet

2.20 Parking Requirements

Adequate off street parking facilities shall be provided for all uses which generate vehicular traffic.

1. Access: Parking facilities shall have adequate access to a public road or street, the minimum width of such access being 10 feet.

2. Size: All parking spaces shall have a minimum area of 200 square feet and shall have a minimum width of 10 feet and a minimum length of 20 feet.

3. All parking spaces shall be graded, drained, and paved with blacktop or concrete so as to prevent the accumulation of surface waters.

4. No building for which off-street parking space is required may be added to, structurally altered or converted in use so as to encroach upon or reduce the parking space below the recommended minimums.

5. Minimum number of spaces required by the Town will be set by using the ITE Parking Standard Guidelines.

Ordinance adopted November 10, 1992
Approved by the Sauk County Board of Supervisors January 19, 1993
Effective January 19, 1993
Amendment recommended for approval by the Zoning Commission November 17, 2010
Amendment approved by the Town Board January 5, 2011
Approved by the Sauk County Board of Supervisors January 18, 2011
Amendment recommended for approval by the Planning & Zoning Commission March 27, 2019
Approved by the Merrimac Town Board on May 1, 2019
Approved by the Sauk County Board of Supervisors May 18, 2019

2.21 Signs

In addition to any zoning district sign regulations found in this Ordinance, the provisions Wisconsin State Statutes 86.19 and 84.30 and Wisconsin Administrative Code rules pertaining to signs, the following sign regulations shall apply:

1) Purpose: The purpose of this Section is to indicate the requirements for signage for all properties within the Town of Merrimac in order to keep them consistent with the overall character of the community.

2) Definitions: The following definitions shall be used by this Section to assist in the establishment of clear cut signage regulations.

3) Sign: Any object, device, display, structure, or part thereof, situated outdoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination, or projected images. Definitions of particular functional, locational, and structural types of signs are listed in this Section.

   a) Advertising sign: A sign which directs attention to a business, commodity, service, or entertainment conducted, sold, or offered elsewhere than upon the premises where the sign is displayed. Advertising signs include billboards.

   b) Auxiliary sign: A sign which provides special information such as price, hours of operation, or warning and which does not include brand names, or information regarding product lines or services. Examples of such signs include directories of tenants in buildings, "no trespassing" signs, and menu boards.

   c) Business sign: A sign which directs attention to a business, commodity, service, or entertainment conducted, sold, offered, or manufactured upon the premises where the sign is located.

   d) Community Information sign: An officially designated sign which is limited to the display of information of interest to the general community regarding scheduled public events and public activities.

   e) Directional sign, Off-Premise: A sign which indicates only the name, direction, and/or distance of a business or activity.

   f) Directional sign, On-Premise: A sign which indicates only the name or direction of a pedestrian or traffic facility, or a particular building within a complex of structures, on the property on which said facility or building is located.

g) Freestanding sign: A self-supporting sign resting on or supported by means of poles, standards, or any other type of base on the ground. This type of sign includes monument signs and pylon signs.

h) Ground level: The average elevation of the ground upon which the sign supports are placed, except when the sign supports rest upon a berm or other area elevated above the surrounding grounds. In such cases, the average elevation of the base of such berm or other area shall be considered as the ground level.

i) Identification sign: A sign indicating the name and/or address of the tenant of the unit or manager of the property located upon the residential premises where the sign is displayed.

j) Marquee: An overhanging sign which advertises represent and scheduled events.

k) Mobile or Portable sign: A sign mounted on a frame or chassis designed to be easily relocated.

1) Monument sign: A freestanding sign whose bottom edge is located within one foot of ground level and whose top edge is located no more than 8 feet from ground level.

m) Projecting sign: A sign, other than a wall sign which is attached to and projects generally perpendicular from a structure or building face.

n) Pylon sign: A freestanding sign erected upon one or more pylon or post.

o) Sign area: Measurement of sign area.

p) Sign face: The surface(s) of a sign used for display purposes.

q) Temporary sign: A sign or advertising display intended to be displayed for a period not exceeding thirty days within any 12 month period. Included in the definition of "temporary signs" are retailers' signs temporarily displayed for the purpose of informing the public of a "sale" or special offer. If a sign display area is permanent but the message displayed is subject to periodic changes, that sign shall not be considered as temporary. A mobile or portable sign shall not be considered a temporary sign or used for such a purpose.

r) Wall sign: A sign mounted parallel to a building facade or other vertical building surface. Wall signs shall not extend beyond the edge of any wall or other surface to which they are mounted, nor shall they project more than 18 inches from its surface.

3) Measurement of Sign Area

Sign area shall be measured in the following manner:

a) In the case of freestanding and marquee signs: sign area consists of the entire surface area of the sign on which copy could be placed. The supporting structure or bracing of a sign shall not be counted as a part of the sign face area unless such structure or bracing is made a part of the sign's message. Where a sign has two display faces back to back, the area of only one face shall be considered the sign face area. Where a sign has more than one display face, the maximum area which can be viewed simultaneously from any point shall be considered the sign face area.

b) In the case of a sign (other than freestanding or marquee) whose message is fabricated together with the background which borders or frames that message, sign face area shall be the total area of the entire background.

c) In the case of a sign (other than freestanding or marquee) whose message is applied to a background which provides no border or frame, sign face area shall be the area of the smallest rectangle which can encompass all words, letters, figures, emblems, and other elements of the sign message.

4) Sign Height Regulations

a) Monument signs shall not exceed 8 feet in height nor shall they be otherwise erected so that they impede visibility or hinder public safety.

b) The height of a wall sign shall be measured from the base of the building below the sign to the top of the sign face. The top of the sign shall be no higher than the building on which it is mounted.

5) General Signage Regulations

The regulations contained in this Section apply to signs in all districts.

a) numerals and identification signs not exceeding one square foot in area; (2) legal notices; (3) on-premise directional signs which bear no advertising; and (4) temporary signs which conform to the requirements as described in definition 2-q.

b) The repainting, changing of parts, and preventive maintenance of signs which completely conform to the requirements of this Article, and result in no change No person shall erect, alter, or relocate within the Town of Merrimac any sign without first obtaining a sign permit with the following exceptions: (1) address in the appearance of the sign from that originally approved, shall not be deemed alterations requiring a sign permit.

c) The owner, lessee, or manager of a sign, and the owner of the land on which

the same is located, shall keep grass or weeds and other growth cut and debris and rubbish cleaned up and removed from the lot on which the sign is located.

d) Any signs which may be, or may hereafter become rotted, unsafe, or in a state which is not properly maintained shall be repaired or removed by the licensee or owner of the sign, or owner of the property upon which the sign stands upon notice of the Zoning Administrator.

e) No sign shall be erected or maintained at any location where by reason of its position, wording, illumination, size, shape, or color it may obstruct, impair, obscure, interfere with the view of, or be confused with, any authorized traffic control sign, signal or device.

f) No sign shall use any word, phrase, symbol, shape, form, or character in such manner as to interfere with moving traffic, including signs which incorporate typical street-type and/or traffic control-type signage designs and colors.

g) No flashing, fluttering, undulating, swinging, rotating, or otherwise moving signs, pennants or other decorations shall be permitted.

h) Private signs shall be allowed within road right-of-way lines only per the regulations of the Town of Merrimac.

i) No sign shall be mounted on a roof.

j) No sign shall be located within a required bufferyard or within a permanently protected green space area.

k) No sign, temporary or otherwise, shall be affixed to a tree or utility pole.

1) No illuminated sign shall be permitted unless the illumination of the sign is so designed that the lighting element is not visible. No internally illuminated signs are allowed. All illuminated signs shall comply with the State Electrical code.

m) No advertising signs shall be permitted in the Town of Merrimac.

n) No mobile or portable signs shall be permitted.

o) Projecting signs may only be permitted at commercial establishments as a conditional use if they are unobtrusive and consistent with the community character. The bottom edge of such sign shall be located a minimum of eight feet from the ground level directly under the sign. Such sign shall be mounted directly to a building. In no instance shall such sign be located directly over a public or private street, drive, or parking area.

p) Permanent subdivision or P.A.D. identification signs are authorized if approved as part of an approved site plan. Detailed plans of proposed signs must be submitted at the time of subdivision review. Such sign shall not exceed 100 square feet in area. Such sign shall comply with the visibility standards of this Section.

q) Off-premise directional signs shall not exceed 6 square feet in area.

r) Pylon signs are not permitted.

s) The base or support(s) of any and all monument signs shall be securely anchored to a concrete base or footing which has a minimum height of one foot.

t) All signs shall be constructed and mounted so as to withstand a wind pressure of 30 pounds per square foot.

u) Maximum total sign area per sign for a business is 32 square feet. Maximum number of signs is 2. Maximum total of all signs on a single property is 50 square feet.

v) Outdoor vending machines are not considered signs for the purpose of this Ordinance.

6) Maintenance of Signage

a) All signage within the jurisdiction of this Ordinance shall remain in a state of proper maintenance. (See Subsection (b), below.)

b) Proper maintenance shall be the absence of loose materials (including peeling paint, paper or other material), the lack of excessive rust, the lack of excessive vibration or shaking, and the presence of the original structural integrity of the sign, its frame and other supports, its mounting, and all components thereof.

c) Signage found to be in violation of this provision of this Ordinance shall be removed within 30 days of receipt of notice of Zoning Administrator.

7) Nonconformance

a) Nonconforming Signs

1) Signs existing as of the effective date of this Ordinance which do not conform to the provisions of this Ordinance, shall be nonconforming signs and shall be subject to the following provisions. No nonconforming sign shall be moved to a new location without being brought into compliance with the requirements of this Ordinance.

2) Business signs on the premises of a nonconforming use or building may be continued, but such signs shall not expand in number, area, height, or illumination. New signs, not to exceed the maximum allowable aggregate sign area may be erected only upon the complete removal of all other signs existing at the time of adoption of this Ordinance.

3) Nonconforming signs shall be removed when the principal structure located on the premises undergoes a change of use. Closing businesses must remove their signs within 60 days of closing.

4) Signage not in compliance with the provisions of this Ordinance shall be subject to the provisions for the removal of nonconforming signs (Section 2).

b) Removal of Nonconforming Signs

1) Altering Signs

a) For the purpose of this Ordinance, altering a sign is considered to be any change to its exterior appearance or support structure.

b) This includes: changing the color of the support structure, changing the materials of the support structure, changing the face of the sign, changing the colors of the sign face, changing the message of the sign (except for changeable copy signs), changing the height of a sign, and changing the location of the sign on the subject property.

c) Altering a sign does not include replacing the sign face or the supporting structure with identical materials, colors, and messages.

2) Advertising signs in existence at the adoption of this Ordinance shall be removed upon expiration of the lease between the advertising company or advertiser and the land owner or 5 years, whichever comes first

3) Temporary signs shall be removed within 5 days after the completion of the event for which they are posted. Name and address must be on the sign. Permanent signs shall be removed upon closure of business.

4) All signs must be kept in good repair.

5) Any person who shall violate any provision of this section shall upon conviction be punished by a forfeiture of not less than $25.00 or more than $100.00 for each day of violation from the date of notification to the

day of conviction.

2.23 Fees

Fees for land use permits, sign permits, conditional use hearings, Board of Appeals hearings, and zoning amendment hearings shall be as set by a resolution of the Town Board and shall be subject to periodic review and change.

2.24 Enforcement and Penalties

1) Any building or structure hereafter erected, moved or structurally altered or any use hereafter established in violation of the provisions of this Ordinance by any person, firm, association, corporation (including building contractors or their agents) shall be deemed an unlawful structure or use.

2) The Town of Merrimac attorney may bring an action to enjoin, remove or vacate any use, erection, moving or structural alteration of any building or use in violation of this Ordinance.

3) The provisions of this Ordinance shall be enforced under the direction of the Town Board. Any person, firm, company or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be subject to a forfeiture of not less than ten ($10.00) dollars nor more than two hundred ($200.00) dollars per day as long as the violation shall exist, together with the costs of action, and in default of payment thereof, to imprisonment in the county jail for a period of not less than one day nor more than six months, or until such fine and costs are paid. Compliance therewith may be enforced by injunctional order at the suit of the Town or the owner of land within the district affected by the regulations of this Ordinance.

2.25 Wetlands

The Town of Merrimac adopts the Federal Wetland Map dated June 1, 1984 as the designated wetlands within the town.

Ordinance adopted November 10, 1992
Approved by the Sauk County Board of Supervisors January 19, 1993
Effective January 19, 1993
Amendment recommended for approval by the Planning & Zoning Commission March 27, 2019
Approved by the Merrimac Town Board on May 1, 2019
Approved by the Sauk County Board of Supervisors May 18, 2019

2.26 Planned Area Development (PAD) Overlay

I. INTRODUCTION

A. Purpose

The Planned Area Development (PAD) Overlay is designed to provide uniform criteria for Town approval of PAD's within the boundaries of the Town of Merrimac. The criteria will allow for development densities greater than the minimum lot sizes provided in other sections of the Town of Merrimac Zoning Ordinance. These criteria apply to new PAD's, commercial, residential, or mixed usage on undeveloped lands, redevelopment of previously built sites, or conversions of existing buildings and land uses.

The PAD designation is intended to provide for medium and large-scale residential and/or mixed use development. It is especially applicable to a development in which a number of different land uses, for example, residential, commercial, open space, etc., are combined in a design which provides for

desirable and convenient living conditions and which minimizes conflicts between the various land uses involved.

PAD's must be designed and operated to be compatible and harmonious with surrounding properties and land uses, and must be in compliance with the Town Zoning Ordinance as determined by the Plan and Zoning Commission and Town Board. It is the intent of the Town of Merrimac Ordinance to provide the Town the flexibility to review, modify, and approve developments and to optimize and standardize development opportunities for potential developers within the framework of appropriate Town of Merrimac ordinances.

B. Definition

Planned Area Developments (PAD's) are defined as multiple residential or commercial dwelling units including but not limited to townhouses, condominiums, apartments, motels, hotels, resorts, and related commercial and recreational facilities. PAD's shall have a density limit of 5 units per acre with a maximum average overall density of 1 unit per acre. PAD's shall consist of developments which contain 3 or more residential uses on a single property or any nonresidential use.

1) Bluffline: A line connecting the points along a contour at the top of a slope where the gradient becomes more than twelve percent with the horizontal interval of measurement landwards from the bluff face not exceeding fifty feet. The location of the bluffline shall be certified by a registered land surveyor, soil scientist, or landscape architect.

2) Common Open Space: Open space which is held in joint use and trust by certain members of a property owner's association, development, or portion of a development. Common open space includes designated green spaces, blufflines, shoreline, and shared yards. The character of all common open space as approved of in the development plan must be prepared and protected by legally binding means. (See open space and public open space.)

3) Dwelling Unit: A building or portion of a building having living space arranged, designed, used, or intended for one family or household. Examples of dwelling units include single family detached home and individual apartment, townhouse, or condominium living spaces.

4) Lot: A parcel, piece, or portion of land, defined by metes and bounds, certified survey, or recorded land subdivision plat and separated from other lots, parcels, or similar land units by such definition.

5) Open Space: That area extending from the ground surface to an indefinite altitude above which is unimpeded by a structure, or man-made

surface incapable of supporting vegetative growth. All open space must be preserved and protected by public dedication and acceptance, deed restrictions, restrictive covenants, or other legally binding means. (See common open space and public open space.)

6) Public Open Space: Open space made available for use by all members of a property owner's association or development, as well as the general public. Public open space includes school yards, play grounds, parks, and recreation areas. The character of all public open space as approved in the development plan must be preserved and protected by legally binding means. (See open space and common open space.)

7) Shoreline: Frontage on the Wisconsin River (Lake Wisconsin). Development must conform to the State of Wisconsin Shoreline Protection Act.

8) Yard Wastes: Vegetative residue from gardening and lawn maintenance activities. Yard wastes shall not be contaminated by garbage, refuse, woody material, or other wastes. Examples of yard wastes include leaves, grass clippings, and garden trimmings.

C. Location

Planned Area Developments are permitted as uses in all zoning districts except Agricultural Conservation District. Plans for a proposed development shall be submitted to the Planning and Zoning Commission in the manner outlined in Section II below.

D. Densities

Residential dwelling units shall be restricted to a maximum of five (5) units per gross acre with an average overall density of one (1) unit per acre. Residential dwelling units shall include townhomes, condominiums, apartments, temporary commercial lodging facilities, e.g., motels or hotels.

E. PAD General Review Criteria

The following criteria shall be applied to every proposed planned area development as a basis for determining its consistency with the letter and spirit of this Ordinance, as determined by the Planning and Zoning Commission and Town Board.

1) Its compatibility with the site, with particular emphasis on the preservation of natural features and the use of open space.

2) Its overall compatibility with existing land uses in the vicinity and with probable future land uses in the vicinity.

3) The internal compatibility of the various land uses proposed to be included within the development.

4) Its compatibility with existing and probable future transportation facilities in the vicinity, and its tendency to increase the demand upon those facilities.

5) The provision of adequate internal, circulation facilities, including streets and parking facilities within the development.

6) Its compatibility with existing and probable future provisions of public utility services such as sewer and water facilities and its tendency to increase the demand upon those facilities.

7). Its compatibility with existing and probable other public services, such as schools, police protection, fire protection, street maintenance, etc. and its tendency to increase the demand upon those services.

8) The provision of adequate open space, the preservation of existing public access to streams and bodies of water, the preservation of environmental and aesthetic values, and the provision of adequate and appropriate arrangements for the continuing preservation of the aforesaid features, including legal restrictions and other legal devices, and the provision of adequate and appropriate institutional arrangements for continued maintenance.

9) The long-term economic stability of the proposed development, and its economic impact on other properties in the vicinity.

10) The presentation of an adequate and practicable implementation schedule for completion of the development, whether by stages or all in one period, in order to ensure that the adverse results of failure to complete the development may be effectively avoided.

11) Its conformance with provisions of the Sauk County Zoning Ordinance.

12) The Planning and Zoning Commission may waive, delay or modify the application of the specific requirements of this Ordinance or the Town of Merrimac Zoning Ordinance which would otherwise apply to the proposed development upon a showing by the applicant that the requested waiver is essential to the development and does not materially alter the character of the development and intent of this Ordinance. The Town Board may attach conditions to any waiver, delay or modification.

F. Planned Area Development Design Criteria

1) Structures, roads, parking areas, and supporting facilities such as wastewater treatment plants shall be designed and placed so as to be visually unobtrusive to the natural environment and surrounding properties.

2) Dwelling units, recreational facilities, and commercial uses must be clustered into one or more groups and located on suitable areas of the development site.

3) At least 50% of the total PAD development area must be designated as open space for the users and residents of the development. Such open space may include common open space, public open space as well as yards associated with private dwellings. Road rights-of-way, land covered by road surfaces, parking areas, units, and structures are considered development areas and shall not be included in the computation of minimum open space.

4) The appearance of open space areas, including topography, vegetation, and allowable uses must be preserved by the use of restrictive deed covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means.

5) Areas with physical characteristics unsuitable for development in their natural state, such as wetlands or areas containing significant historic sites shall be considered open spaces.

6) Residential dwelling units shall be restricted to a maximum of five (5) units per gross acre with an average overall density of one (1) unit per acre. Residential dwelling units shall include town-homes, condominiums, apartments, temporary commercial lodging facilities, e.g., motels or hotels.

7) The development must provide access to all established public roadways that bound it.

G. Specific Design Requirements

1) Sewage Disposal Standards: All wastewater treatment facilities shall be designed, installed, and operated to meet or exceed applicable standards or regulations of the Department of Natural Resources or the Department of Industry, Labor, and Human Relations, as well as local units of government.

Public water and wastewater services must be used where available. If public water and wastewater facilities are not available, centralized facilities servicing as many connections as possible shall be used where feasible.

All new construction must utilize water conserving plumbing fixtures such as low volume flush toilets and restricted flow shower heads. Water use meters shall be installed for the monitoring of water usage and wastewater disposal.

All septic systems shall be identified in the Project Development Plan. All dwelling units and facilities must be located on sites suitable for the construction of septic systems as set forth in DILHR 83.

No occupancy of any unit or use of any structure shall be allowed until the approved sewage disposal system is in place and fully operational.

Holding tanks shall not be allowed in any PAD development.

2) Solid Waste Disposal Standards: PAD developers shall make provisions for the efficient storage, collection, transportation, and disposal of solid waste in an environmentally acceptable manner.

The developer of a PAD shall provide for source separation of recyclable materials including glass, metals, paper, and plastic from residential units, commercial facilities, and recreational facilities and other uses within the development. Source separated recyclables shall be clean and prepared as appropriate. Provisions must be made for the collection and transportation of source separated recyclables to an approved market of recycling center on a regular schedule.

Yard wastes shall be prohibited from being disposed of with solid waste. Provisions shall be made for the collection and transportation of yard wastes to an approved composting site on a regular schedule.

3) Surface Water Run-Off: In each land use classification within a Planned Area Development, coverage by impervious surfaces shall not exceed 30%, unless a surface water run-off plan certified by a registered professional engineer is submitted and approved by the Town Board and the Soil Conservation Service or Land Conservation District. The surface water run-off plan shall contain, provisions for sediment entrapment and erosion control. Off-site run-off will be limited to predevelopment rates based on 100 year storm event as per certified by professional engineers.

4) Public Utilities: Service lines for telephone and electric service shall be installed underground wherever possible. Utility lines carried on poles shall be placed in rear lot lines easements if deemed necessary.

Where telephone, electric and gas service lines are to be placed underground, they shall be located in easements or dedicated public ways, in such a manner so as to not conflict with other underground

services such as water supply and wastewater disposal. Such utilities shall not be installed underneath the road surface unless approved by the Planning and Zoning Commission.

5) Floodplain Restrictions: All development within a PAD shall adhere to appropriate federal, state, and local floodplain regulations.

6) Roadways: The full width of the right of way shall be constructed in accordance with standards set forth by the Town. All road surfacing of such roadways shall adhere to standards set forth by Wisconsin Department of Transportation and Sauk County Highway Department and the Town of Merrimac.

   Except for designated cul-de-sacs and private drives, the Development Plan shall provide that roadways shall connect with roadways already dedicated in adjoining properties. The arrangement and construction of roadways shall be determined in relation to expected traffic patterns and densities, topographical conditions, storm water run-off, public convenience and safety.

   Each tract, lot, or unit use within a PAD shall be arranged to permit the orderly and efficient location of future roadways, access roadways, and driveways, with consideration for future utility services.

   Public roads shall be designed to intersect at right angles, except where topography or other conditions prohibit right angle intersections. The minimal angle of intersection of roads shall be 80 degrees. Road intersections with offsets of less than 150 feet shall be prohibited.

   Wherever the proposed planned area development contains or is adjacent to a State or Federal highway, provisions shall be made for an access street or road approximately parallel to and adjacent to the highway.

   Minor roadway access to State and Federal highways shall be at intervals greater than 1,000 feet.

   All private roadways must have specific and detailed plans for maintenance including repairs, right-of-way grooming, and snow removal, parking restrictions, fire lanes, and warnings.

   The Planning and Zoning Commission may approve of a private roadway for a designated period of time prior to the County or the Town assuming maintenance responsibilities. The County or Town shall not be required to assume maintenance responsibilities.

   Road signs of standard design shall be installed where appropriate.

7) Scenic Impact: The reviewing body shall consider the impact that each phase will have on vistas and views. Both aesthetic and environmental concerns shall be considered.

H. Discrimination Against Condominium Forms of Ownership

It is not the intent of this Ordinance to discriminate against condominium forms of ownership in any manner which conflicts with Wisconsin Statutes 703.27. As such, the provisions of this Ordinance are designed to ensure that condominium forms of ownership are subject to the same standards and procedures of review as other physically identical forms of development. As such, condominium projects shall be subject to the provisions of the Land Division Ordinance as though they are a physically identical form of development which is subject to the Land Development Ordinance.

II. PROCEDURE FOR OBTAINING APPROVAL FOR A PLANNED AREA DEVELOPMENT

A. General Concept Plan Approval

1) Concept Plan: The purpose of the Concept Plan Approval is to provide the Applicant with an opportunity to submit a concept plan to the Town for review. The plan will show the basic intent and the general nature of the development in schematic plans and sketches containing the information outlined in Section 3 below.

2) Review and Approval of Concept Plan: Following conferences with the Town Zoning Administrator and the Town Planning and Zoning Commission, the Concept Plan shall be submitted to the Town of Merrimac Planning and Zoning Commission. The Planning and Zoning Commission shall schedule a hearing within 45 days of receipt of the Concept Plan for the purpose of reviewing the proposed Concept Plan. The primary purpose of the hearings will be to provide the Applicant with an opportunity to obtain guidance as to the general suitability of the proposal for the area which it is proposed and to provide the Town with a broad overview of the project. The Concept Plan process is designed to provide an opportunity to the applicant to have the proposed development reviewed without incurring substantial costs.

The Open Meeting Law applies to all application review procedures established in this Ordinance.

3) Contents of Concept Plan: The following information must be included in the Concept Plan submittals.

a) Proposed new zoning (if any);

b) Proposed densities;

c) General location of major streets and pedestrian ways;

d) General location and extent of public and common open space;

e) General location of residential and nonresidential land uses and approximate type and development intensities;

f) Staging and time schedule of development (phasing schedule); and

g) Other special criteria for development.

h) (a-e) for all surrounding properties within 1500 feet.

4) Effect of General Concept Plan Approval: Approval of the General Concept Plan shall not prevent the Town from denying Development Plan approval. The General Concept Approval does not establish any right to a PAD approval. General Concept Approval indicates that the applicant may proceed with the PAD application process. The Planning and Zoning Commission may request additional information in the General Concept stage and delay General Concept Plan approval until such information is provided.

B. Planned Area Development Application and Development Plan Submission.

1) Application: The developer shall complete a PAD application form and submit it along with all required supporting data in the Development Plan, to the Planning and Zoning Commission.

2) Fee: The Town Board or Planning and Zoning Commission may retain the services of professional consultants (including planners, engineers, architects, attorneys, environmental specialists, recreation specialists, and other experts) to assist in the Town's review of a proposal coming before the Planning and Zoning Commission. The Town may apply the charges for these services to the Petitioner. The Town may delay acceptance of the application or petition as complete, or may delay final approval of the proposal, until such fees are paid by the Petitioner. The submittal of a development proposal application or petition by a petitioner shall be construed as an agreement to pay for such professional review services applicable to the proposal.

3) Public Hearing: Upon receipt of such application, the Planning Commission shall call a public hearing within 60 days. Notice of the time and place of such hearing shall be given by publication in the county of a class two notice under Wisconsin Statutes Chapter 985. Property owners

within a quarter mile of the proposed PAD district shall receive notice of the public hearing by U.S. mail.

4) Application Contents - Development Plan: Eight copies of the PAD application and the Development Plan shall be submitted to the Planning and Zoning Commission.

The Development Plan must explain every phase of the PAD, how and when each phase will be implemented, and the relationships between each phase. The Development Plan must be a comprehensive document that adequately details phases of construction and the impacts of each phase as well as the impact of the project when all phases have been completed. Any material or substantial change from the Development Plan which would alter the character of the development or the intent of the PAD Ordinance or other Town Ordinance will require the re-application and public hearing with Class 2 notice. Minor changes will require Planning and Zoning Commission approval. The developer must therefore undertake a complete planning process in order to prepare an adequate Development Plan for submittal.

Each copy of the Development Plan shall be suitably bound and contain, at minimum, the following elements:

a) An introductory section describing the project in general terms;

b) Each affected landowner's name and address and the interest in the subjects' property;

c) Developer's name and address if different from the landowner;

d) The names and addresses of all professional consultants who have contributed to the development of the PAD plan being submitted, including attorney, land planner, engineer and surveyor;

e) Evidence that the applicant has sufficient control over the subject property to effectuate the proposed PAD including a statement of all legal, beneficial, tenancy and contractual interests held in or affecting the subject property and including an up-to-date certified abstract of title;

f) The legal description of the property;

g) The existing zoning classification and present use of the subject property and all lands within contiguous 40 acre section of the property;

h) A map depicting the existing development of the property and all land within a quarter mile thereof and indicating the location of existing streets, property lines, easements and improvements;

i) A description of the proposed development and the market which it is intended to serve and how the proposed development is to be designed, arranged and operated in order to permit the development and use of neighboring property in accordance with any applicable regulations;

j) Existing conditions: Graphic reproductions of the existing site conditions at a scale of one inch equals 100 feet:

   1) Contours; minimum of 2 foot intervals;

   2) Location, type and extent of tree cover;

   3) Slope analysis;

   4) Location and extent of water bodies, wetlands and streams and flood plains within 300 feet of the property;

   5) Rock outcroppings;

   6) Drainage patterns; and

   7) Vistas and significant views.

k) Developed conditions: Schematic drawings of the proposed development, including but not limited to the general location of major circulation elements, public and common open space, single-family, multi-family, commercial, and all other proposed land uses. A narrative account detailing changes or development which would have an impact on existing site conditions identified in B(4)(j) shall also be included.

l) A schedule for the development of each phase shall be submitted stating the approximate beginning and completion date for each such phase. The proportion of the total PAD public or common open space and the number of dwelling units to be provided or constructed during each phase and overall chronology of development to be followed from phase to phase shall also be provided.

m) Schematic grading, drainage, erosion control, and surface water runoff control plans for the developed PAD. Such plans will require the review and approval by the Soil Conservation Service.

n) Schematic utilities plans indicating placement of electrical lines, water lines, sanitary sewer, and storm sewers.

o) Statements delineating the following topics shall be included in the Development Plan:

1) Location, description and total area devoted to residential uses;

2) Location, description and total area devoted to residential use by building type;

3) Location, description and total area devoted to common space, which shall include open space designed for the exclusive use of townhouse and condominium occupants;

4) Location, description and total area proposed to be made available for public open space, including parks, playgrounds, school sites, and recreational facilities;

5) Location, description and total area devoted to streets and roadways;

6) Area devoted to, and number of, off-street parking and loading spaces and related access;

7) Location, description and floor area, devoted to commercial uses;

8) Location, description and floor area, devoted to commercial or office use;

9) Proposed name of the development;

10) Property boundary lines and dimensions of the property and any significant topographical or physical features of the property;

11) Estimated residential population during each phase of the project;

12) Estimated traffic counts on project's roadways and on Town and County roadways leading to the project;

13) Proposed fire protection measures;

14) Facility plans for the treatment of all combined wastewater sources;

15) Evidence that all applicable state and federal permits have been obtained or applied for.

16) Evidence of the availability of the necessary public utilities;

17) A tabulation of the allocation of land use classifications expressed in acres and as a percentage of the total project area;

18) Plans for how the project will be operated and maintained during each phase of construction and when final construction is completed;

19) Nature of proposed ownership after completion;

20) Preliminary building plans indicating uses and proposed exterior wall finishes;

21) Proposals for financial arrangements that will be made to protect local units of government from financial liability; and

22) Indian mounds and their protection.

p) Ten copies of a preliminary plat adhering to requirements of Wisconsin Statutes, Chapter 236, shall also be submitted with the Development Plan, which shall receive concurrent review and consideration.

C. Development Plan Approval

1) Approval With Conditions:

a) Review by Planning and Zoning Commission

The Planning and Zoning Commission shall review the PAD application, the Development Plan, the preliminary plat, any recommendations from the Zoning Administrator and expert consultants, and comments from the public hearing. After this review the Planning and Zoning Commission shall recommend that the Town Board approve or disapprove the application. The Planning and Zoning Commission may recommend approval with conditions.

b) Town Board Approval

After reviewing the Planning Commission's recommendation, the Town Board shall approve or disapprove the application. The Town Board may attach additional conditions to any approval. If approval is granted subject to conditions, the applicant shall notify the Planning and Zoning Commission in writing of its acceptance or rejection of the conditions. Refusal by the applicant to accept all the

conditions constitutes denial of the plan. Failure of the applicant to provide notification of acceptance or denial constitutes acceptance of the conditions.

2) Effect of Development Plan Approval: Approval of the Develop-ment Plan shall authorize the issuance of a Planned Area Development Permit and shall establish the applicant's basic right of use for the area. Such approval and use shall be conditional upon conformity to the approved Development Plan as determined by final approvals of each phase of development. Any material or substantial change from the Development Plan which would alter the character of the development or the intent of the PAD Ordinance or other Town Ordinance will require re-application and public hearing with Class 2 notice. Minor changes will require Planning and Zoning Commission approval.

3) Development Agreement: As an element of the approval of the Development Plan, a Development Agreement between the Town of Merrimac and the developers shall be signed by both parties. Terms of the binding Development Agreement shall state obligations of both parties and may contain provisions considered necessary by the Planning and Zoning Commission in order to ensure compliance with the approved Development Plan and preliminary plat.

D. Final Development Approval: Development Stage

1) Submittals for Development Stage: Prior to commencing construction or development of each phase, the applicant will request approval of a development stage submittal which will detail the proposed implementations of the Concept Plan and Development Plan in the phase to be developed. Ten copies of the Development Stage Plan shall be submitted to the Planning and Zoning Commission which shall include:

a) A final plat containing:

1) Proposed name of the development;

2) Property boundary lines and dimensions of the property and any significant topographical or physical features of the property;

3) The location, size, use and arrangement including height in stories and feet and total square feet of ground area coverage and floor area of proposed buildings, and existing buildings which will remain, if any;

4) Location and dimensions of all driveways, entrances, curb cuts, parking stalls, loading spaces and access aisles, and all other

circulation elements including snowmobile, bike and pedestrian; and the total site coverage of all circulation elements;

5) Location, description and total area of all common open space;

6) Location, description and total area proposed for public open space, including parks, playgrounds, and recreational facilities;

7) Proposed lots and blocks, if any, and numbering system, which shall conform to the Sauk County numbering system;

8) The location, use and size of structures and other land uses on adjacent properties;

9) Detailed sketches and provisions of proposed landscaping; and

10) Easements, rights of way, and utility lines and facilities;

11) The final plat shall adhere to all requirements of Wisconsin Statutes, Chapter 236 and Town of Merrimac Ordinances.

b) An accurate legal description of the entire phase within the PAD for which final development approval is sought.

c) A tabulation indicating the number of residential dwelling units and expected population.

d) A tabulation indicating the gross square footage, if any, of commercial floor space by type of activity.

e) Final architectural plans and drawings indicating use, floor plan, elevations and exterior wall finishes of proposed buildings.

f) Detailed grading and site alteration plans illustrating changes to existing topography and natural site vegetation. The plans should clearly reflect the site treatment and its conformance with the approved concept plan. The grading and site alteration plans must be reviewed and approved by the Soil Conservation Service.

g) A detailed erosion and storm water run-off control plan clearly illustrating control measures to be used during construction and as permanent measures.

h) Restrictive covenants or other mechanisms that are to be recorded with respect to the property in the phase to be developed to assure compliance with provisions in the Development Plan. Copies of

Homeowner Association agreements, where applicable, shall also be submitted.

i) Details for performance bonds, escrow agreements or other financial arrangements to be implemented to protect local units of government from financial liability for site restoration, landscaping, erosion control measures, sewage disposal facilities, and other features of the development deemed by the Planning and Zoning Commission as presenting unacceptable risks for local units of government.

2) Approval of Development Stage Submittals: Following receipt of the Development Stage submittals, the Planning and Zoning Commission shall review the submittals to determine if the proposed phase of development is in compliance with the Development Plan previously approved and to determine if all of the necessary State and Federal permits have been obtained. The Planning and Zoning Commission may recommend that the Town Board approve or disapprove the Development Stage submittals. The Planning and Zoning Commission may recommend approval with conditions. If the Town Board approval is granted subject to conditions, the applicant shall notify the Planning and Zoning Commission in writing of its acceptance or rejection of the conditions. No development or construction may commence until the Development Stage submittals are approved by the Planning and Zoning Commission.

3) Commencement of Construction: The Town Zoning Administrator and Town Clerk shall receive written notification when construction of each phase shall begin. Construction of each phase shall adhere to the approved Development Plan. Any material or substantial change from the Development Plan which would alter the character of the development or the intent of the PAD Ordinance or other county or Town ordinances will require reapplication and public hearing with Class 2 notice. Minor changes will require Planning and Zoning Commission approval. The Planning and Zoning Commission may or may not approve the revised Development Plan, or may approve it with conditions.

The developer shall apply for a Town building permit and pay the required fee for each phase of construction. The Zoning Administrator will issue the building permits if construction plans adhere to the approved Development Plan.

4) Completion of Construction: The Town Zoning Administrator and the Town Clerk shall be notified in writing by the developer or the developer's contractors when construction of each phase is near completion. The Town Zoning Administrator shall then inspect the completed construction and issue a Certificate of Compliance if construction is in compliance with the approved Development Plan.

Items not in compliance shall be corrected by the developer within 90 days. No structure or use shall be occupied unless a Certificate of Compliance has been issued.

5) Annual Report and Review: The developers shall submit an annual report to the Planning and Zoning Commission on or before January 31st for the preceding calendar year. The annual report shall document progress made in planning and construction, as well as any problems encountered. The annual Report shall then be reviewed by the Planning and Zoning Commission. Failure by the developers to submit an annual report or to gain approval of an annual report will block the granting of further permits until such annual report is submitted and approved.

III. SUBMITTAL AND CONSTRUCTION TIME FRAMES

A. After obtaining Concept Plan approval, the developer shall submit a complete application for a PAD approval and the accompanying Development Plan within 12 months.

B. The Planning and Zoning Commission shall have up to 120 days to review the PAD District application, Development Plan, hold the necessary hearings, and issue a decision on the application. When additional information is required by the Planning and Zoning Commission from the applicant or from experts hired by the Town, the deadline for issuing a decision shall be extended until 30 days after receipt of all such information.

C. After Development Plan approval has been granted by the Planning and Zoning Commission, the developer shall have 12 months to start construction or start construction of the first phase if the project incorporates phased construction.

D. After the developer notifies the Zoning Administrator and Town Clerk in writing that construction of a phase is nearing completion, the Zoning Administrator shall have seven days to make compliance inspections and issue or deny a Certificate of Compliance. A Certificate of Compliance shall be denied if construction has not proceeded to a point where compliance with the Development Plan can be determined. Approvals or denials will be submitted to the developer in writing.

E. Construction of each use approved in each Development Stage shall be completed within five years of Development Plan approval.

F. Any construction contemplated ten years after Development Plan approval will require a new application.

IV. ENFORCEMENT

A. Bonds: The Planning and Zoning Commission may require a performance bond, certificate of deposit, letter of credit, or other form of financial assurance must be filed with the Town, so as to ensure compliance with the terms of this Ordinance, conditions imposed on the approval of the development plan or specific development phase, or on any other terms required by the Planning and Zoning Commission. In determining the need for any financial assurance and in setting the amount, the Planning and Zoning Commission shall consider:

1) The purpose of the financial assurance;

2) The use to which any forfeited funds shall be applied;

3) The time when the financial assurance must be applied; and

4) Any increased costs based on inflation or other factors that may be incurred by the Town in the event of noncompliance with this Ordinance, terms of the approved development plan, or the terms of any permit.

The amount and terms of the financial assurance may be subject to additional consideration at the time of the annual progress review. Failure to obtain or maintain a required financial assurance shall invalidate any approvals or permits.

B. Return to Original Land Use Status: Should the PAD project fail to secure a minimum of 10% occupancy in 2 years and 50% occupancy in 5 years after development plan approval or development stage approval, or should a PAD project fail to adhere to the approved development plan and any zoning permits issued, the Planning and Zoning Commission may declare the Development Agreement null and void. Lands, plats, lots, and areas not developed may revert back to the original status at the discretion of the Planning and Zoning Commission after review by the Planning and Zoning Commission.

C. Violation, Injection, Abatement and Removal: It shall be unlawful to construct, develop, or use any structure, or develop or use any land, water, or air in violation of the provisions of this Ordinance or order of the Planning and Zoning Commission. In the event of a violation, the Planning and Zoning Commission or any owner of real estate within the district affected who would be specifically damaged by such a violation may institute appropriate legal action or proceedings to enjoin a violation of this Ordinance, or seek abatement or removal. In addition, actions commenced on behalf of the Town of Merrimac may seek a forfeiture or penalty.

D. Proceedings:

1) Civil Proceedings: Pursuant to Section 66.12 of the Wisconsin Statutes, an action for a violation of this Ordinance is deemed a civil action. Accordingly, Chapters 801 to 847 of the Wisconsin Statutes shall apply where applicable to violations of this Ordinance.

2) Town Attorney: The Town of Merrimac Attorney may enforce this Ordinance by any means authorized by law.

3) Liens: In addition to all other remedies available by law, Wisconsin Statutes, Section 59.97(11) authorized the filing of a forfeiture or penalty with the Sauk County Register of Deeds. The filing shall constitute a lien on the property involved in the violation and shall be removed only upon payment of such forfeiture or penalty. Notice of the imposition of such a lien shall be given to the defendant and prior to the filing of the lien, the defendant shall have ten days to appeal to the courts. Any judgment so filed with the Sauk County Register of Deeds shall note thereon the amount of the forfeiture or penalty and the legal description of the affected property. Upon satisfaction or partial satisfaction of such judgement, notice of such satisfaction or partial satisfaction shall be filed with the Sauk County Register of Deeds.

Zoning Amendments
Town of Merrimac

2.26 Planned Area Development

IV. PERFORMANCE GUARANTEE, ENFORCEMENT OF PLANNED AREA DEVELOPMENT, AND PENALTIES

1) To ensure compliance with the Zoning Ordinance and conditions imposed at the time of issuance of the Planned Area Development, the Town Board shall require that a cash deposit, certified check, irrevocable bank letter of credit or surety bond acceptable to the Town Board, equivalent to one hundred fifteen percent (115%) of the total cost of improvements, be deposited with the Town Clerk to ensure faithful completion of the improvements. The Town Board shall, upon evidence presented by the applicant and/or appropriate Township officials authorize the Town Clerk to release the funds upon completion of all improvements. If any improvements are not constructed within the time limit established as part of the site plan approval or within any extension thereof, then the Planning Commission shall, by resolution, request the Town Board to take appropriate legal steps to ensure completion using so much of the security deposit as is necessary for such purpose. As used herein, "improvements" means those features and actions associated with a project which are considered necessary by the Town Board to protect natural resources, or the health, safety and welfare of the residents of the Township and future users or inhabitants of the proposed project or project area, including, but not limited to, roadways, lighting, utilities, sidewalks, screening and drainage. Improvements do not include the entire project, which is the subject of zoning approval.
2) The occurrence of either of the following events shall be considered violations of this ordinance and subject the developer of any property which is subject to an approved Planned Area Development, or any agent, lessee, employee, representative, successor or assign thereof, to the enforcement remedies contained in this Ordinance:
    a. Failure to comply with any terms, conditions or limitations contained on a site plan, or other approved documents pertaining to a Planned Area Development which has received final approval from the town, whether under the provisions of this ordinance or under the provisions of prior law.
    b. Failure to comply with any order of record imposed by the Town upon its approval of a Planned Area Development, whether under the provisions of this ordinance or under the provisions of prior law.
3) Should an order to remove any alleged violation be served upon the developer, or any other person who commits or assists in any alleged violation, and such person fails to comply with such order within fifteen days, shall be considered to be in violation of this ordinance.
4) Each day that such a violation occurs shall constitute a separate offense.
5) In addition to any of the foregoing remedies, the town's attorney, acting in behalf of the Town Board may maintain an action for an injunction to restrain any violation of this ordinance.
6) Any person, firm or corporation violating any provisions of this Ordinance, upon conviction therefore, shall be fined not more than five hundred dollars ($500.00) per violation and/or may face additional penalties as subject to Sauk County or State of Wisconsin law.

Section IV Adopted and published December 2, 2004

1) Civil Proceedings: Pursuant to Section 66.12 of the Wisconsin Statutes, an action for a violation of this Ordinance is deemed a civil action. Accordingly, Chapters 801 to 847 of the Wisconsin Statutes shall apply where applicable to violations of this Ordinance.

2) Town Attorney: The Town of Merrimac Attorney may enforce this Ordinance by any means authorized by law.

3) Liens: In addition to all other remedies available by law, Wisconsin Statutes, Section 59.97(11) authorized the filing of a forfeiture or penalty with the Sauk County Register of Deeds. The filing shall constitute a lien on the property involved in the violation and shall be removed only upon payment of such forfeiture or penalty. Notice of the imposition of such a lien shall be given to the defendant and prior to the filing of the lien, the defendant shall have ten days to appeal to the courts. Any judgment so filed with the Sauk County Register of Deeds shall note thereon the amount of the forfeiture or penalty and the legal description of the affected property. Upon satisfaction or partial satisfaction of such judgement, notice of such satisfaction or partial satisfaction shall be filed with the Sauk County Register of Deeds.

2.27 Subdivisions

1) Authority

These regulations are adopted under the authority granted by Section 236.45 of the Wisconsin Statutes, and pursuant to 59.97(3), 144.26(2) and 144.26(8) of the Wisconsin Statutes.

2) Purpose and Intent

The purpose of this ordinance is to promote the public health, safety and general welfare of the Town, and to lessen congestion in the streets and highways; to further the orderly layout and use of land; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision for transportation, water, sewerage, energy and communications facilities, surface drainage, schools, parks, playgrounds and other public requirements; to facilitate the further re-subdivision of larger parcels into smaller parcels of land.

3) Severability

If any section, provision or portion of this ordinance is adjudged invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

4) Repeal

All other ordinances or parts of ordinances of the Town of Merrimac or in conflict with this Ordinance, to the extent of inconsistency or conflict only, are hereby repealed.

5) Definitions

For the purposes of this ordinance, the following definitions shall be used. Words used in the present tense include the future; the singular number includes the plural number; and the plural number includes the singular number. The word "shall" is mandatory and not directory.

a) Agency: Town of Merrimac Planning and Zoning Commission

b) Certified Survey Map: A map of land division, not a subdivision, prepared in accordance with Section 236.34, Wisconsin Statutes, and in full compliance with the applicable provisions of this ordinance. A certified survey map has the same legal force and effect as a subdivision plat.

c) Development Plan: A general site analysis for a subdivision and its environs identifying and analyzing the natural and cultural features of the area. A development plan is required for Class III subdivisions, and is recommended for all other subdivisions.

d) Extraterritorial Plat Approval Jurisdiction: The unincorporated area within three (3) miles of the city limits of a city of the first, second or third class, if said city has a subdivision ordinance or official map, or within one and one-half (1 1/2) miles of the corporate limits of a city of the fourth class or a village, if said city or village has a subdivision ordinance or official map.

e) Land Division: Any division of a parcel of land where the act of division creates a lot, parcel or building site of less than thirty-five (35) contiguous acres.

f) Lot: A land area of ten (10) acres or less under one (1) ownership, and undivided by street or railroad rights-of-way. Lots identified only for property tax and related purposes shall not be considered individual lots. All calculations of lot area shall be exclusive of any dedications, rights-of-way easements, or reservations.

g) Town of Merrimac Development Plan: A plan for guiding and shaping the growth or development of the Town of Merrimac.

h) Navigable Waters: Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under s. 144.26(2)(d), Wisconsin Statutes, not withstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.971, Wisconsin Statutes, and Chapter NR 115, Wisconsin Administrative Code, do not apply to lands adjacent to farm drainage ditches if:

1) Such lands are not adjacent to a natural navigable stream or river.

2) Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and

3) Such lands are maintained in nonstructural agricultural use.

4) Wisconsin's Supreme Court has declared navigable bodies of water that have a bed differentiated from adjacent uplands and levels of flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis (Muench v. Public Service Commission, 261 Wis. 492 Wis. (1952) and DeGayner and Co., Inc., v. Department of Natural Resources, 70 Wis. 2d 936 (1974). For example, a stream which is navigable by skiff or canoe during normal spring high water is navigable, in fact, under the laws of this state though it may be dry during other seasons.

i) Official Map: A map indicating the location, width, extent of existing and proposed streets, highways, parks and playgrounds adopted by a municipality in Sauk County in accordance with Section 62.23 of the Wisconsin Statutes.

j) Parcel: Contiguous lands under the control of a subdivider(s) not separated by streets, highways or railroad rights-of-way.

k) Plat: A map of a subdivision.

l) Shoreland Area: All lands lying within one thousand (1,000) feet of the normal, high-water elevation of navigable lakes, ponds, or flowages, or within one thousand (1,000) feet of the high-water mark of glacial potholes; all lands lying within three hundred (300) feet of the normal, high-water mark of navigable streams, or within the flood plain thereof, whichever distance is greater. For the purposes of this ordinance, the term "navigable waters" applies to all non-intermittent streams and bodies of water indicated on the 7.5 minute series of the

United States Geological Survey Quadrangles, and any other rivers, streams, lakes, ponds or flowages designated as navigable by the Wisconsin Department of Natural Resources.

m) Street: A public way or right-of-way for vehicular or pedestrian and vehicular traffic.

1) Interstate Highways: U.S. Interstate Highway 90/94.

2) Arterial Streets and Highways: Streets which provide for rapid movement of concentrated volumes of traffic over relatively long distances between activity areas. Includes all Federal highways other than the Interstate highway, all state and county highways, and designated township roads.

3) Collector Streets: Streets which provide for moderate speed movement within large areas. They are basically local streets which usually, because of more directness of routing and higher capacity than other local streets, receive higher volumes of traffic to be distributed from or collected toward nearby arterial streets.

4) Local Streets: Streets designed for low speeds and volumes which provide access from low traffic generating areas to collector and arterial streets.

5) Marginal Access Streets: Streets which are parallel and adjacent to arterial streets and which provide access to abutting properties.

6) Alleys: Streets which provide secondary means of access for vehicular services to the back or side or property otherwise abutting a street.

7) Cul-de-sac Streets: Streets closed at one (1) end with turn-arounds.

8) Dead-end Streets: Streets closed at one (1) end without turn-arounds.

n) Subdivider: A person, firm, corporation and/or their designated agent initiating the creation of a land division or subdivision.

o) Subdivision: The division of a lot, parcel, tract or one-quarter (1/4) of one-quarter (1/4) section by the owner thereof or his agent, for the purpose of transfer of ownership or building development, where the act or division creates four (4) or more lots, or where the act of division creates four (4) or more lots by successive division within a

five-year period; or proposed, potential or actual public streets are created.

1) Class I Subdivision: A subdivision which consists of fewer than ten (10) lots and includes all contiguous lands under one (1) ownership.

2) Class II Subdivision: A subdivision which consists of fewer than twenty-five (25) or more lots.

3) Class III Subdivision: A subdivision which consists of twenty-five (25) or more lots.

p) Zoning Administrator: The Town of Merrimac Zoning Administrator.

6) Compliance With Ordinances, Statutes, Regulations and Plans

Any person, firm or corporation dividing land which results in a subdivision or a land division shall prepare a subdivision plat or a certified survey map in accordance with the requirements of this ordinance and;

a) The provisions of Chapter 236, and Section 80.08, Wisconsin Statutes.

b) The rules of the Department of Industry, Labor and Human Relations contained in D.I.L.H.R. 83, Wisconsin Administrative Code for subdivisions not served by public sewer.

c) The rules of the Division of Highways, Wisconsin State Department of Transportation contained in Hy 33, Wisconsin Administrative Code for subdivisions which abut a state trunk highway or connecting street.

d) The rules of the Wisconsin Department of Natural Resources contained in N.R. 116, Wisconsin Administrative Code for Flood Plain Management Programs.

e) County ordinances and regulations.

f) Master plan or master plan component.

g) The official map of any municipality or governmental unit having jurisdiction.

h) The rues and by-laws of the State of Wisconsin Department of Regulation and Licensing.

7) Access

No lot, land division or parcel shall be created or sold unless it is accessible to a street. Every lot within a subdivision shall front on a publicly dedicated and improved street for a distance of at least forty (40) feet, provided that the lot width at the building setback line complies with the county zoning regulations. Every lot, parcel or tract not located within a subdivision shall front on a publicly dedicated street for at least forty (40) feet, unless a lesser frontage is approved in writing by the Agency. Lot frontage of less than forth (40) feet may be approved only where existing and potential ownership patterns make a larger frontage impractical or unnecessary.

8) Dedication of Lands for Streets and Public Ways

Whenever a parcel of land to be divided or sold as a subdivision or as a land division contains all or in part, a street, drainageway, or other public way, which has been designated in a master plan defined in this ordinance, or an official map adopted under Section 623.23 of the Wisconsin Statutes, said street or public way may be required to be platted and dedicated in the location and width indicated unless otherwise provided herein. Any street created for the purposes of this Section or Section 22.14 shall be made a part of a plat or certified survey, and dedicated to the public for street purposes. However, the dedication of street right-of-way shall not create a commitment on the part of any public agency to construct, improve or maintain any roadbed placed upon said right-of-way. Acceptance of any street, road or highway for maintenance purposes shall require compliance with the design and construction standards of this ordinance and those of the applicable highway maintenance authority. The width of any dedicated street shall be sixty-six (66) feet, unless a wider right-of-way is requested by the appropriate highway authority, in which case, the wider right-of-way shall be dedicated. Rights-of-way less than sixty-six (66) feet wide are prohibited, except as approved in writing by the Agency and the town upon their finding that a wider right-of-way is unnecessary or impractical to achieve.

9) Dedication of Lands for Parks, Playgrounds or Natural Areas

Whenever a lot is to be created a dedication of lands for park, playground or natural area purposes shall be made, or at the Agency's option a payment in lieu of dedication shall be made. Dedications and payments in lieu of dedication shall be made according to the following procedure:

a) Dedications: The subdivider shall dedicate an area equal to five percent (5%) of the area shown on any new preliminary plat, final plat or certified survey map for park, playground or natural area purposes, provided that said dedication is acceptable to the Agency. Ownership of lands to be dedicated shall be transferred to Sauk County, or the township or incorporated municipality in which the subdivision is located at the time of approval of the first, final plat of the subdivision by means of a warranty deed free and clear of all encumbrances and restrictions. The unit of government to receive title shall be designated by the Agency.

b) Payment in lieu of dedication: Where the Agency determines that a dedication of land is inappropriate, they shall require a payment of twenty-five dollars ($25.00) per lot, payable at the time of approval of all final plats and certified survey maps. Said payments are in addition to any other fees collected, and shall be deposited into a non-lapsing account to be used only for the purposes of land acquisition or improvements to parks, playgrounds or natural areas in Sauk County.

c) Waiver of dedication and payments in lieu of dedication: The Agency may waive the aforementioned dedication and payment requirements for lots created solely for purposes of transfer of ownership where a residence or farmstead exists at the time the lot is created. the lot is certified as unbuildable on the plat or certified survey map and is to be used only for agricultural or other open space purposes, or the property is to be developed for public transportation or utility purposes.

10) Reservation Of Lands For Parks, Playgrounds, School Sites Or Public Sites

Whenever a lot is to be created which contains all or in part a site for a park, playground, school or other public use designated in an adopted public plan, and the area designated is in excess of the amount of land required to be dedicated in Section 9, the excess amount of land shall be reserved for public acquisition for a period of three (3) years from the date of approval of the final plat, unless extended by mutual agreement between the Agency and the subdivider.

11) Land Suitability

No land shall be divided or subdivided for a use which is held unsuitable by the Agency for reason of flooding or potential flooding, soil limitations, inadequate drainage, incompatible surrounding land use, or any other condition likely to be harmful to the health, safety or welfare of the future residents or users of the area, or to the residents of Sauk County.

a) Except as provided herein, the Agency shall determine land suitability at the time the preliminary plat, or first required submission, is considered for approval. The subdivider shall furnish such maps, data and information as may be necessary to make a determination of land suitability. In addition to the data required to be submitted with the preliminary plat or first required submission, the subdivider shall be required to submit some or all of the following additional information for development located in an area where flooding or potential flooding may be a hazard:

   1) Two (2) copies of an aerial photograph, or two (2) maps prepared by a registered land surveyor or engineer, which accurately locates the proposed development with respect to flood plain zoning district limits if present, channel or stream fill limits and elevations, and flood proofing measures taken or proposed to be taken.

   2) Two (2) copies of a typical valley cross-section showing the channel of the stream, the flood plain adjoining each side of the channel, cross-sectional area to be occupied by the proposed development, and high water information.

   3) Two (2) copies of a profile showing the slope of the bottom of the channel or flow line of the stream.

   4) Such other data as may be required.

b) When a proposed subdivision is located in an area where flooding or potential flooding may be a hazard, the Agency shall transmit to the Division of Water Regulation and Zoning, Wisconsin Department of Natural Resources, one (1) set of the information required and shall request that agency to provide technical assistance in determining whether the land is suitable or unsuitable for the use and development proposed, or whether certain modifications, limitations, improvements, or other conditions of the development can overcome the land unsuitability.

c) In applying the provisions of this section, the Agency shall, in writing, recite the particular facts upon which it bases its conclusion that the land is unsuitable for the intended use or development and afford the subdivider an opportunity to present evidence and the means of overcoming such unsuitability, if he so desires. Thereafter, the Agency may affirm, modify or withdraw its determination of unsuitability.

d) Where a proposed subdivision is located wholly or partly in an area where flooding or potential flooding may be a hazard, the Agency shall apply the following standards in addition to all other requirements in the approval of plats and certified survey maps.

1) The development shall be in accordance with flood plain management standards of the Division of Water Regulation and Zoning, Wisconsin Department of Natural Resources.

2) Building sites must be filled to a height and area sufficient to provide protection from the regional flood as defined by and according to the standards of said Division of Water Regulation and Zoning.

3) Development shall be carried out or assured so as to not have an adverse effect on flood flows or storage capacity standards of said Division of Water Regulation and Zoning.

e) Unless specifically exempted from this requirement elsewhere in this ordinance, all subdivision proposals where private water and/or sewage disposal systems are to be used shall be accompanied by certifications and/or reports:

1) Describing the probable depth, cost and yield of private wells. This report shall be based on competent scientific investigation and shall include the sources of all data used in the preparation of the report.

2) Describing the soil conditions existing on the site as applicable to on-site waste disposal. A soils report shall accompany all subdivision proposals.

f) The subdivider may, as a part of the pre-application procedures, request a determination of land suitability, providing that he shall provide all necessary maps, data and information for such a determination to be made.

12) Exceptions

The provisions of this ordinance shall not apply to transfer of interests in land by will or pursuant to court order; leases for a term not to exceed ten (10) years, mortgages or easements; 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 reduced below the minimum sizes required by this ordinance, the county zoning ordinance or other applicable laws or ordinances.

PROCEDURE

13) Pre-Application Procedure

Prior to filing an application for approval of a certified survey or subdivision plat, the subdivider and/or his agent shall consult with the staff of the Agency for advice and assistance for the purpose of reviewing the procedures and requirements of this ordinance and other ordinances, and any plans or data which may Plan affect the proposed development.

14) Development Procedure

a) A development plan is to be used for the purpose of generating information and to allow analysis of major developmental proposals. The general physical and cultural characteristics of the land on which development is proposed should be ascertained by the subdivider and the Agency before major resource commitments are made.

b) A Development Plan, Preliminary Final Plat and Final Plat are required for Class I, II, and II Subdivisions and must be submitted to the Town Planning and Zoning Commission for approval.

c) A required development plan shall be submitted at least thirty (30) days prior to the submission of a preliminary or final plat. Within the first ten (10) days after submission of the development plan, the Zoning Administrator may request additional relevant information or clarification of the submitted information. The aforementioned thirty (30) day period may, at the Zoning Administrator's option, be extended from the date of receipt of the requested supplemental information. A reproducible developmental plan, together with seven (7) copies, shall be submitted to the Town of Merrimac Zoning Office. A development plan review fee, as established by the Sauk County Board of Supervisors shall also be submitted at the time of submission of the development plan. At a minimum, the review and comment procedure shall consist of:

1) Preparation of a written report by the Zoning Administrator addressing any issues relevant to the development proposal and including any recommendations deemed appropriate. Copies of the Administrator's report shall be forwarded to the subdivider, the Agency, and the Town Board.

2) All parties notified and any other interested parties may review and comment, in writing, or orally, on any development plan submitted and/or the Zoning Administrator's report. All written comments shall be forwarded to the Agency, and all parties who received the Zoning Administrator's report and any other parties

commenting on said report shall be notified in writing of any public meeting at which the Agency will consider or discuss the proposed development plan.

3) The Agency shall consider any development plan submitted to it at a minimum of one (1) public meeting. The Agency, after reviewing the development proposal and the resulting reports and comments, shall report their findings concerning the suitability and appropriateness of the development proposal to the subdivider and the Town Board, and include a summary of the report in the minutes of the first regular meeting of the Agency following completion of the report. The Agency report shall not constitute approval or denial of a subdivision plat, nor shall it preclude submission of preliminary or final plats by the subdivider. However, the Agency shall consider the development plan and the comments generated when acting on any subsequent preliminary or final plat.

15. Preliminary Plat Procedure

a) A preliminary plat shall be required for all Class I, Class II and Class III subdivisions. No final plat shall be approved prior to the approval of required preliminary plat. The application for approval of a preliminary plat shall include all data required by this ordinance accompanied by one (1) reproducible and seven (7) copies of the proposed preliminary plat.

b) The preliminary plat shall include the entire contiguous area owned or controlled by the subdivider unless a development plan has been filed, in which case, only that portion of the area designated for development in the development plan need be included.

c) The Agency shall forward copies of each preliminary plat submitted to all units of general purpose local government within one thousand (1,000) feet of the area shown in the preliminary plat; and within sixty (60) days from the date submitted, approve, approve conditionally or reject, the preliminary plat, based on its determination or conformance with the provisions of this ordinance.

16) Final Plat Procedure

Provided that all preliminary procedures have been completed, the subdivider may submit one (1) reproducible and ten (10) copies of the final plat. If the final plat meets the requirements of this ordinance, and other applicable statutes and ordinances, the Agency shall approve the final plat of the subdivision within forty (40) days from the date

submitted. Town agency approval shall be required prior to final county approval, where applicable.

17) Certified Survey Map Procedure

No person, firm or corporation shall divide any land located within unincorporated Sauk County which shall result in a land division, as defined under 22.07(5) of this ordinance without first filing for approval by the Sauk County Planning and Zoning Office and subsequently recording with the Sauk County Register of Deeds a certified survey map which complies fully with Section 236.34 of the Wisconsin Statutes and with all applicable requirements contained within this ordinance.

A certified survey map shall include all lots, parcels or building sites created by the land division and all remnants of the original parcel which are ten (10) acres or less in size.

Sauk County Planning and Zoning shall, within forty (40) calendar days approve, approve conditionally, or reject the certified survey map, based on a determination of conformance with the provisions of this ordinance. Authority to approve certified survey maps is hereby delegated by Sauk County to the Zoning Administrator. The decision of the Zoning Administrator may be appealed to Sauk County, in which case, the forty (40) calendar day approval period shall be extended. The Zoning Administrator shall ensure that any town board having jurisdiction over the land involved has had a copy of the certified survey map for at least ten (10) days. The County Zoning Administrator shall review all comments made by the town agency within said ten (10) day period; failure to so comment shall indicate approval by the town agency.

The certified survey map shall be prepared by a registered land surveyor at a scale of not more than four hundred (400) feet to one (1) inch. The certified survey map shall include:

a) The name and address of the individual dividing the lands.

b) The date of the survey.

c) A metes and bounds description referenced to a line and a corner of the U.S. Public Land Survey, or referenced to an adjoining recorded plat.

d) The locations, rights-of-way widths and names of existing or proposed streets, alleys or other public ways; easements, and railroad and utility rights-of-way included within or adjacent to the proposed land division.

e) The area(s) of the parcel(s) being created.

f) The locations of existing property lines, buildings, drives. streams and water courses, lakes, marshes, and other significant features within the parcel(s) being created shall be shown.

g) Utility easements and access restrictions, where applicable.

h) The location of an existing on-site sewage disposal system.

i) The certified survey map shall include the statement on the face of the certified survey map that the parcel(s) created are considered unbuildable until a soil certificate as required by the Department of Industry, Labor and Human Relations is filed in the Planning and Zoning Office. If the parcel has access to a public sanitary sewage system, the surveyor shall note on the face of the certified survey map that the parcel(s) are unbuildable unless a hookup is made to the public sanitary sewer.

j) When dedication of lands is required, an owner's certification of dedication prepared in accordance with Section 236.34, Wisconsin Statutes; and a governmental jurisdiction certificate of acceptance of the dedication, approved by the full governing body of the accepting jurisdiction.

k) A certificate of approval for recording in accordance with Agency action.

DATA SUBMISSION REQUIREMENTS

18) Development Plan

A development plan, when required, shall address the broader issues of development and land use in and around any proposed subdivision. The data used to prepare the development plan may be obtained from readily available sources (i.e., U.S.G.S., S.C.S., A.T.C.P., D.N.R., Sauk County Planning and Zoning Office, etc.), rather than from detailed field investigations. However, the developer is expected to prepare a comprehensive presentation of the information required. At a minimum, the area to be included in a development plan shall include all contiguous lands owned, leased, optioned or otherwise under the control of the developer, plus those adjacent areas specified in this section. The following data shall be presented and analyzed in a development plan:

a) Geographical information: Boundaries of the developer's property, and boundaries of the proposed subdivision, if different; ownership and location of all adjacent properties (excluding public rights-of-ways

and streams less than three hundred (300) feet wide); location and name of all public rights-of-way and publicly owned lands within one thousand (1,000) feet of any property boundary; location, size and ownership of all public utilities within three hundred (300) feet of the property.

b) Natural features: Soil conditions, including wet areas and rock outcrops; general topography and delineation of all areas with slopes over twelve percent (12%); geology, including approximate depth to bedrock, and ground water resources (depth, quality and quantity); location and names of all streams, lakes and flood plains within one thousand (1,000) feet of the property; vegetative cover on the property and all contiguous properties.

c) Cultural features: Existing zoning of the property and all contiguous properties; all existing easements on the property; the boundary of any unit of government within one thousand (1,000) feet of the property: location of any airport, solid waste disposal site, sewage treatment facility, water treatment plant, school, cemetery, or other significant cultural feature within one thousand (1,000) feet of the property

d) Development proposal: Approximate density and type of development; proposed land use(s); approximate lot sizes (minimum, maximum and average); approximate location and size of all streets, public dedications and utilities proposed; proposed filling, grading, lagooning, dredging and/or flood proofing; anticipated timing of the development; where appropriate, the developer may wish to obtain and attach the comments of affected agencies, groups and/or individuals.

e) Form of presentation: The methods used by the developer to prepare and present the development plan shall be governed by the Agency's need for a clear, concise description of the proposed development.

19. Preliminary Plat

The preliminary plat shall be based upon a survey by a registered land surveyor or engineer and shall be drawn at a scale of one hundred (100) feet to one (1) inch, and shall show correctly on its face:

a) Date, graphic scale and north point.

b) Name of the proposed subdivision.

c) Name, address and telephone number of the landowner, subdivider and person to be contacted regarding the plat.

d) Location of the proposed subdivision by legal description and indication on township map(s).

e) A scaled drawing of the exterior boundaries of the proposed subdivision referenced to a corner established in the U.S. Public Land Survey, and the total acreage encompassed thereby.

f) Location and names of adjacent subdivisions. parks and cemeteries.

g) Location, dimensions and names of all existing easements and rights-of-way within or adjacent to the proposed subdivision.

h) Location, dimensions and names of all proposed streets, rights-of-way and easements within or adjacent to the proposed subdivision.

i) Location of existing property lines, buildings, drives, rock outcrops, wooded areas, and other similar significant features within the parcel being subdivided.

j) Location and approximate high water elevations of all streams and water courses, lakes, marshes and flowages within one thousand (1,000) feet of the proposed subdivision

k) Delineation of flood plain and zoning boundaries within and adjacent to the proposed subdivision.

l) Contours at vertical intervals of not more than two (2) feet for a slope less than five percent (5%) and five (5) feet for a slope of five percent (5%) or more.

m) On-site sewage disposal suitability, including soil suitability, depth to ground water and bedrock, and slope.

n) Source and availability of potable water supplies.

o) Location and approximate dimensions of any sites to be reserved for or dedicated to the public.

p) Approximate dimensions of all lots, and proposed lot and block numbers.

q) A draft of any proposed covenants or deed restrictions.

20) Final Plat

The final plat of the proposed subdivision shall comply with the requirements of Chapter 236 of the Wisconsin Statutes, and the provisions of this ordinance.

21) Certified Survey Map

The certified survey map shall comply with the provisions of Section 236.34 of the Wisconsin Statutes and the provisions of this ordinance.

DESIGN STANDARDS

22) Streets

a) The arrangement, character, extent, width, grade, location and construction of all streets shall conform to the standards of the unit of government having jurisdiction over said street, and the provisions of this ordinance.

b) The arrangement of streets in a subdivision shall provide, where possible, for the continuation on appropriate projection of existing or proposed collector and arterial streets.

c) Local streets shall be laid out so as to discourage their use by through traffic. The Town shall require two access roads and connecting roads between subdivisions.

d) Where a subdivision abuts or contains an existing or proposed arterial street, the Agency may require marginal access streets, reverse frontage lots with screen planting contained in a non-access reservation along the rear of the property line, or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.

e) The number of intersections along arterial streets shall be held to a minimum. Wherever practicable, the distance between such intersections shall be not less than one thousand two hundred (1,200) feet.

f) Where a subdivision borders on or contains a railroad right-of-way, the Agency may require a street approximately parallel to and on each side of such right-of-way, at a distance suitable for the appropriate use of the intervening land.

g) Street jogs with centerline offsets of less than one hundred fifty (150) feet shall be avoided.

h) Reserve strips controlling access to streets shall be prohibited, except where their control is definitely placed in the Agency, under conditions approved by said Agency.

i) Cul-de-sacs shall provide a turn-around with a minimum right-of-way radius of sixty (60) feet. The traveled way within the cul-de-sac shall provide a minimum radius of forty (40) feet.

j) Dead-end streets shall not be permitted without a suitable turn-around.

k) In commercial and industrial districts, alleys or other definite and assured provisions shall be made for off-street parking, loading and service access consistent with and adequate for the uses proposed.

l) Half streets shall be prohibited, except where necessary for continuity of the street system.

m) Street names:

1) The Agency may disapprove of the name of any street shown on the plat which has already been used elsewhere in the county, or which, because of similarity, may cause confusion.

2) Where a street maintains the same general direction, except for curvilinear changes for short distances, the same name shall continue for the entire length of the street.

3) A name which is assigned to a street which is not presently a through street due to intervening land over which the street extension is planned, shall be continued for the separate portions of the planned through street.

4) Access roads and highways served by them shall have the same street names and designation.

5) Approval of street names on a preliminary plat will not reserve street name, nor shall it be mandatory for the Agency to accept it at the time of final platting.

23) Utility Easements

a) Easements across lots or along rear or side lot lines shall be provided for utilities where necessary and shall be at least six (6) feet wide on each side of lot lines, and shall be designated as "Utility Easement" on the plat or certified survey map.

b) Prior to approval of any final plat, the subdivider shall provide the Agency with written statements from the utility companies which will serve the proposed subdivision. The statements shall address the adequacy and location of all utility easements.

24) Drainageway Easements

Where a subdivision is traversed by a water course, drainageway, channel or stream, there shall be provided an adequate drainageway easement as required by the Agency. The location, width, alignment and grading of such easements shall be of such a width and design to accommodate the anticipated discharge from the property being subdivided and also the anticipated runoff that will occur when property at a higher elevation in the drainage basin is developed.

25) Setbacks

Where the lots abut navigable waters, building setback lines for all building and structures, except piers, marinas, boathouses and similar uses, shall be shown on the plat and shall not be less than seventy-five (75) feet from the normal high water line.

26) Blocks

a) The length, width, and shape of blocks shall be suited to the planned use of the land, zoning requirements, needs for convenient access, control and safety of street traffic, and limitations and opportunities of topography. Block lengths in residential areas shall not, as a general rule, be less than six hundred (600) feet in length between street lines, unless dictated by exceptional topography or other limiting factors of good design.

b) Blocks shall have sufficient widths to provide two (2) tiers of lots of appropriate depth, except where otherwise required to separate residential development from through traffic.

c) Pedestrian ways or cross walks may be required, as deemed appropriate by the Agency.

27. Lots

a) The size, shape, and orientation of lots shall be appropriate for the location of the subdivision and for the type of development and use contemplated. The number of lots in a subdivision shall not exceed, on average, one lot per acre.

b) Every lot or parcel shall front or abut a public street. A minimum frontage of forty (40) feet shall be maintained for all lots, and the lot width measured at the highway setback line shall conform to the requirements of the Sauk County Zoning Ordinance.

c) Additional width may be required on corner lots to permit adequate building setbacks from side streets.

d) The use of long, narrow strips of land to provide access to buildable lot areas shall be avoided.

REQUIRED IMPROVEMENTS

28) Survey Monuments

The subdivider shall install survey monuments in accordance with the requirements of Section 236.15, Wisconsin Statutes, and the standards of the Sauk County Surveyor.

29) Public Water and Sewage Disposal System

a) Public water supplies and sewage disposal systems shall be utilized whenever possible.

b) Water and sewage disposal facilities shall be installed and financed according to the requirements of the owner of the utility and applicable state regulations.

30) Private Water and Sewage Disposal Facilities

a) The subdivider shall assure the suitability and availability of private water and sewage disposal facilities on all lots at the time of subdivision.

b) Private water and sewage disposal facilities shall comply with all applicable state statutes and Sauk County ordinances.

31) Grading and Surfacing

All streets shall be graded and surfaced in accordance with the plans, specifications and requirements of the Sauk County Highway Department and the Town of Merrimac.

32) Storm Water Drainage Facilities

Storm water drainage facilities of a size and design that will adequately accommodate design volumes of flow and that will present no hazard to

life or property shall be installed in accordance with plans and specifications approved by the Agency.

33) Erosion Control

The subdivider shall cause all gradings, excavations, open cuts, side slopes, and other land surface disturbances to be mulched, seeded, sodded or otherwise protected so that erosion, siltation, sedimentation and washing are prevented. The Agency may request the subdivider to submit an erosion control plan that specifies measures that will be taken to assure the minimization of erosion problems. The erosion control plan shall be reviewed by the Soil and Water Conservation District to determine the adequacy of the proposed measures. The guidelines, standards and specifications contained within "Minimizing Erosion in Urbanizing Areas" by the U.S. Department of Agriculture, Soil Conservation Service, will provide a framework for the development, review and implementation of the erosion control plan.

34) Installation of Improvements

The improvements specified herein shall be installed and approval of the final plat shall be given only after the work has been completed, or one of the following has been filed, with the appropriate governmental jurisdiction:

a) A duly completed and executed, continuing surety bond in an amount sufficient to complete the work with surety satisfaction to the appropriate governmental jurisdiction or the Agency.

b) A certified check, in the amount sufficient to complete the work, drawn on an approved bank and available to the appropriate governmental jurisdiction or the Agency. As the work progresses, the governmental jurisdiction or the Agency may permit the exchange of said check for another check of sufficient amount to complete the remaining improvements agreed upon. If the improvements are not completed within the specified time. the governmental jurisdiction or Agency may use the bond or the certified check to complete the remaining specified work.

c) Other collateral satisfactory to the appropriate governmental jurisdiction or the Agency in an amount sufficient to complete the work.

VARIANCES AND FEES

35) Variances

a) Where the Agency finds that unnecessary hardship may result from strict compliance with these regulations, it may vary the regulations so that substantial justice may be done; provided that public interest is secured and that such variation will not have the effect of nullifying the intent and purpose of these regulations.

b) Any modifications or variance thus granted shall be entered in the minutes of the Agency, setting forth the reasons which, in the judgement of the Agency, justified the modification or variance.

36) Fees

The subdivider shall pay such fees as shall be periodically established by the Town Board.

37) Violations and Penalties

Any person, firm or corporation who fails to comply with the provisions of these regulations shall, upon conviction thereof, be subject to penalties and forfeitures as provided in Sections 236.30, 236.31, 236.32, 236.335 and 236.35 of the Wisconsin Statutes.

2.28 Occupancy

No person(s) shall reside in a dwelling that does not have running water, a septic system and electrical services all hooked up and functioning.

2.29 Public Access To Lake Wisconsin

Definition: A Public Access is a parcel of land with frontage on Lake Wisconsin which has been dedicated to the Town for use by the general public.

1) Permitted uses

a) General passive recreation and picnicing by the public.

b) Swimming and fishing from the shore.

c) Erection of one pier per public access site for the use of boats by the public subject to current Town Board Policy.

VARIANCES AND FEES

35) Variances

a) Where the Agency finds that unnecessary hardship may result from strict compliance with these regulations, it may vary the regulations so that substantial justice may be done; provided that public interest is secured and that such variation will not have the effect of nullifying the intent and purpose of these regulations.

b) Any modifications or variance thus granted shall be entered in the minutes of the Agency, setting forth the reasons which, in the judgement of the Agency, justified the modification or variance.

36) Fees

The subdivider shall pay such fees as shall be periodically established by the Town Board.

37) Violations and Penalties

Any person, firm or corporation who fails to comply with the provisions of these regulations shall, upon conviction thereof, be subject to penalties and forfeitures as provided in Sections 236.30, 236.31, 236.32, 236.335 and 236.35 of the Wisconsin Statutes.

2.28 Occupancy

No person(s) shall reside in a dwelling that does not have running water, a septic system and electrical services all hooked up and functioning.

2.29 Public Access To Lake Wisconsin

Definition: A Public Access is a parcel of land with frontage on Lake Wisconsin which has been dedicated to the Town for use by the general public.

1) Permitted uses

a) General passive recreation and picnicing by the public.

b) Swimming and fishing from the shore.

c) Erection of one pier per public access site for the use of boats by the public subject to current Town Board Policy.

d) Placement of benches and picnic tables for the summer season, provided they are in good condition and available for use by anyone.

e) Mowing of grass.

2) Restrictions

a) Piers and the boats moored at them must be removed by October 31.

b) All activities must be such that they do not create excessive noise or litter or other public nuisance.

c) Portable grills and open fires are subject to fire restrictions in effect at such time period in the Town.

d) Property owners desiring to undertake DNR-approved shoreline protection work on the public access may do so at their own expense with the approval of the Town Board and Sauk County Planning and Zoning Department and DNR.

3) Not permitted

a) Overnight camping or parking

b) Storage of personal property

c) Out of season storage of boats and/or pier sections

d) Any structural enhancement or landscaping

e) Changing of landscape or cutting trees

f) All other land uses and site activities not otherwise approved in above

3.0 TOWN PLANNING AND ZONING COMMISSION

3.01 Establishment

A Town Planning and Zoning Commission is hereby created to carry out the intent of the Town of Merrimac Zoning Ordinance. The membership and duties shall be prescribed by Chapter 62.23 of the Wisconsin Statutes.

3.02 Membership

1) Commission

a) The council of any city may by ordinance create "City Plan Commission," to consist of the mayor, who shall be its presiding officer, the city engineer, the president of the park board, an alderman, and 3 citizens. In case the city has no engineer or no park board, an additional citizen member shall be appointed so that the board has at all times 7 members. Citizen members shall be persons of recognized experience and qualifications. The council may by ordinance provide that the membership of the commission shall be as provided thereunder.

b) The alderman member of the commission shall be elected by a two-thirds vote of the council, upon the creation of the commission, and during each April thereafter.

c) The three citizen members shall be appointed by the mayor, upon the creation of the commission, to hold office for a period ending one, two and three years, respectively, from the succeeding first day of May, and thereafter annually during April one such member shall be appointed for a term of three years.

d) The additional citizen members, if any, shall be first appointed to hold office for a period ending one year from the succeeding May first, and thereafter annually during the month of April. Whenever a park board is created, or a city engineer appointed, the president of such board or such engineer shall succeed to a place on the commission when the term of an additional citizen member expires.

e) The city plan commission shall have power and authority to employ experts and a staff, and to pay for their services and such other expenses as may be necessary and proper, not exceeding, in all, the appropriation that may be made for such commission by the legislative body, or placed at its disposal through gift, and subject to any ordinance or resolution enacted by the governing body.

f) Any city may by ordinance increase the number of members of the city plan commission so as to provide that the building commissioner or building inspector shall serve as a member thereof.

2) Zoning Administrator shall attend all meetings when requested by the commission for the purpose of provide technical assistance.

3) Terms of the Town Planning Commission shall be staggered as prescribed by 62.23(1)(b)(c)(d) of the Wisconsin Statutes.

4) At all public hearings the secretary shall be the Town Clerk or an appointed deputy.

5. Vacancies shall be filled for the unexpired term in the same manner as appointments for a full term.

3.03 Powers

The Town Planning and Zoning Commission shall have the following powers:

1). Review and act upon application for Planned Area Developments.

2) To review and recommend to the Town Board changes and amendments to the Town Zoning Ordinance.

3) Other matters as prescribed by Chapter 62.23 of the Wisconsin Statutes.

4) Annually review and recommend any necessary amendments to the Town of Merrimac Development Plan, Zoning Ordinance and Zoning Map.

5) Recommendations - the Town Planning and Zoning Commission shall review all proposed changes and amendments within the Town limits, conduct a public hearing (with Class 2 Notice) and shall recommend that the petition be granted as requested, modified, or denied.

6) Town Board's Action - following such hearing and after careful consideration of the Town Planning Commission's recommendations, the Town Board shall vote on the passage of the proposed change or amendment.

7) Protest - in the event of a protest against such district change or amendment to the regulations of this Ordinance, duly signed and acknowledged by the owners of twenty (20) percent or more either of the areas of the land included in such proposed change, or by the owners of twenty (20) percent or more of the land immediately adjacent extending one hundred (100) feet therefrom, or by the owners of twenty (20) percent or more of the land directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite land, such changes or amendments shall not become effective except by the favorable vote of the full Town Board membership (3 of 3). Protest must be filed within 60 days from original vote of passage by Town Board.

2.30 Vacation Rental Establishments

1. Subject to the provisions of subsection 2.30 (2), vacation rental establishments may be permitted only by conditional use in the following districts:

    a) Agricultural District
    b) Agricultural Conservation District
    c) Single Family Residential District

2. Conditional use status shall not be granted to vacation rental establishments unless all of the following conditions are met:

    a) The petitioner must provide to the Town Clerk a copy of the State Tourist Rooming House License for the subject property, prior to the conditional use order being granted; and evidence of each renewal of such license shall be filed by the Petitioner with the Town Clerk, such as evidence that a current license is always on file for the duration of the vacation rental establishment conditional use permit.
    b) Transfer of a conditional use permit issued in accordance with this section shall not be permitted. Should the subject property be sold or transferred, then the conditional use permit shall become void and a new conditional use permit must be issued for use as a vacation rental establishment to continue. The town is not obligated or required to issue a conditional use permit to the new property owner.
    c) All vacation rental establishments shall be subject to and comply with Wis. Stats. Chapter 254, subchapter VII as required by Wis. Stats. 254.69 (2), which sections are incorporated herein by reference.
    d) All vacation rental establishments shall be subject to and comply with Wisconsin Administrative Code HS 195 which is hereby incorporated herein by reference.
    e) A minimum of one off-street parking stall shall be provided for every guest bedroom. All off-street parking shall be established outside of the town highway (road) right-of-way. All guest parking for vehicles and trailers shall be within a parking space designated on the site plan, on an area paved with concrete or asphalt.
    f) Sleeping quarters related to a vacation rental establishment use shall only be located within the principal residential structure on the property. Accessory buildings cannot be used for sleeping quarters.
    g) All refuse containers shall be screened from view and instructions for recycling shall be posted.
    h) Unless the property is connected to a municipal sewer system, the property owner must provide proof that the septic system is property sized for the proposed use and shall be properly maintained.
    i) Property that is used for a vacation rental establishment must have clearly delineated property lines, by approved fences, vegetation or other means to the satisfaction of the Town Planning & Zoning Commission. Such clear delineation must be maintained for the duration of the conditional use permit to ensure that all users of the property are clearly aware of the boundaries of the property and confine their use to the applicable parcel.

j) The Planning and Zoning Commission and the Town Board shall consider the potential impact to the surrounding neighborhood and proximity to any existing lodging place as defined by Wis. Stat. 254.61 when reviewing a request for a vacation rental establishment conditional use permit.

k) The Town Board may revoke the conditional use permit if the property has been declared a public nuisance affecting the peace and safety affecting the public. Public nuisances shall include, but are not limited to all loud and unnecessary noises, including those produced by animals and the unlawful use of fireworks, particularly before 6:00am and after 9:00pm; unlawful or unauthorized use of any town highway (road) which causes large crowds to gather or obstructs traffic; illegal or unlawful activity; and failure to remove all snow and ice from sidewalks, parking areas, and driveways.

l) The Town Board shall not renew the conditional use permit if the property owner has failed to remit room tax. Upon remittance of the delinquent room tax, the conditional use permit may be reinstated by the Town Board.

m) Room tax shall be collected by the property owner from the lessee to whom the Agreement has been made. The room tax shall be remitted to the Town Clerk on a quarterly basis. Should the property owner fail to remit the room tax, the property shall be subject to the forfeiture provisions of Town Ordinance 1-78 and the conditional use permit shall be automatically revoked. Upon remittance of delinquent room tax, the conditional use permit may be reinstated.

n) Every conditional use permit for a vacation rental establishment expires on June 30 of each year and shall be eligible to apply for one (1) year renewal periods unless the conditional use permit is revoked by the town or voluntarily surrendered by the property owner. The Town Clerk shall prepare a renewal application for vacation rental establishments and collect a $15.00 application fee plus costs for legal publications. All renewals shall be subject to the following:

    1. The clerk shall post and publish a Class I legal notice 15 days prior to the granting of the conditional use permit renewal.
    2. The Town Board may renew a conditional use permit if the property owner has demonstrated it has met all of the same conditions established when the conditional use permit was initially issued unless a condition has been specifically waived by the Planning and Zoning Commission.
    3. The Town Board may deny renewal of the conditional use permit if the property is deemed to be a nuisance or has failed to meet any of the conditions established.
    4. The Town Board shall not renew the conditional use permit if the property owner has failed to remit room tax. Upon remittance of the delinquent room tax, the conditional use permit may be reinstated by the Town Board.

o) If the town finds that any statement made on the conditional use permit, or the renewal application, is incorrect, the Town Board may, at any time, immediately and summarily revoke the conditional use permit.

p) The property owner shall provide a copy of this ordinance along with a current copy of the conditional use permit to any person using the

property for vacation rental purposes prior to the commencement of each use.

q) The property owner is required to have owned the property at least two years.
r) There shall be no outdoor storage of any kind allowed on the subject property, with the exception of trailers, watercraft, snowmobiles, or ATV's on trailers.
s) No recreational vehicle or tent may be used for living or sleeping purposes.
t) The property owner shall post at the main entrance contact information for the owner and the contact information of a local property manager who resides within 25 miles of the property and can be reached twenty-four (24) hours a day, seven (7) days a week. This information shall be on file with the town clerk.
u) The property shall not be leased for a period of less than a 7 days stay.
v) Any conditional use may not be leased for more than 180 days total.
w) A current floor plan for the vacation property shall be provided at a minimum of one-inch equals four feet, and a site plan of the property at a minimum scale of one-inch equals 10 feet, showing on-site parking spaces and trash storage.
x) Proof of valid property and liability insurance for the property.
y) The maximum number of occupants shall not exceed the total number licensed by the State of Wisconsin or two per bedroom plus two additional occupants, whichever is less.
z) No exterior signage or outdoor advertising related to the vacation rental home is permitted, other than the property address.

3. Description: A dwelling unit available for overnight, weekend or weekly stays by paying guests, which may or may not be owner-occupied for parts of the year. These uses are often referred to as vacation rentals and include timeshare units. This land use category is distinct from Bed and Breakfast, Commercial Indoor Lodging, and Boarding House land uses.

4. All leases 29 days or less are prohibited unless a conditional use permit has been granted in accordance with Section 2.30 of this ordinance. Leases over 29 days are not subject to the requirements of this Section.

Ordinance 2017-14 Adopted by the Town Board March 5, 2014
Approved by Sauk County Board of Supervisors April 15, 2014
Amended and approved by the Town Board December 12, 2017 (Ordinance 2017-22)
Amended approved by the Sauk County Board of Supervisors December 19, 2017
Recommended for approval by the Planning & Zoning Commission March 27, 2019
Approved by the Merrimac Town Board on May 1, 2019
Approved by the Sauk County Board of Supervisors May 21, 2019

TOWN OF MERRIMAC ORDINANCE 2015-17
Mobile tower siting permits

Chapter 2 of the Town of Merrimac Zoning ordinance entitled "General Provisions", Section 2.33 entitled "Mobile Tower Siting Permits" is hereby created as follows:

2.33 Mobile Tower Siting Permits.

1) The purpose of this ordinance is to regulate by zoning permit (1) the siting and construction of any new mobile service support structure and facilities; (2) with regard to a class 1 collocation, the substantial modification of an existing support structure and mobile service facilities; and (3) with regard to a class 2 collocation, collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities. The town board has the specific authority under ss. 60.61 and 66.0404, Wis. Stats., to adopt and enforce this ordinance.
2) This ordinance, adopted by a majority of the town board on a roll call vote with a quorum present and voting and proper notice having been given, provides for the regulation by zoning permit (1) the siting and construction of any new mobile service support structure and facilities; (2) with regard to a class 1 collocation, the substantial modification of an existing support structure and mobile service facilities; and (3) with regard to a class 2 collocation, collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.
3) Definitions: All definitions contained in s. 66.0404(1) are hereby incorporated by reference.
4) SITING AND CONSTRUCTION OF ANY NEW MOBILE SERVICE SUPPORT STRUCTURE AND FACILITIES:
    a. Application Process
        i. A town zoning permit is required for the siting and construction of any new mobile service support structure and facilities. The siting and construction of any new mobile service support structure and facilities is a conditional use in the town obtainable with this permit.
        ii. A written permit application must be completed by any applicant and submitted to the town. The application must contain the following information:
            1. The name and business address of, and the contact individual for, the applicant.
            2. The location of the proposed or affected support structure.
            3. The location of the proposed mobile service facility.
            4. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
            5. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
            6. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service

functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.

iii. A permit application will be provided by the town upon request to any applicant.

iv. If an applicant submits to the town an application for a permit to engage in an activity described in this ordinance, which contains all of the information required under this ordinance, the town shall consider the application complete. If the town does not believe that the application is complete, the town shall notify the applicant in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

v. Within 90 days of its receipt of a complete application, the town shall complete all of the following or the applicant may consider the application approved, except that the applicant and the town may agree in writing to an extension of the 90 day period:

1. Review the application to determine whether it complies with all applicable aspects of the political subdivision's building code and, subject to the limitations in this section, zoning ordinances.
2. Make a final decision whether to approve or disapprove the application.
3. Notify the applicant, in writing, of its final decision.
4. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

vi. The town may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under Section 2.31, Part 4, Paragraph ii; 6.

5) The fall zone for all mobile towers shall not encroach any town setback as established in Sections 2.18 and 2.19 of this ordinance. If an applicant provides the town with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the set back or fall zone area required in the zoning ordinance, that zoning ordinance does not apply to such a structure unless the town provides the applicant with substantial evidence that the engineering certification is flawed.

6) The fee for the permit is $3,000.00.

7) SECTION VIII – CLASS 1 COLLOCATION

a. Application Process

i. A town zoning permit is required for a class 1 collocation. A class 1 collocation is a conditional use in the town obtainable with this permit.

ii. A written permit application must be completed by any applicant and submitted to the town. The application must contain the following information:

1. The name and business address of, and the contact individual for, the applicant.
2. The location of the proposed or affected support structure.
3. The location of the proposed mobile service facility.
4. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
5. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including

antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.

6. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.

iii. A permit application will be provided by the town upon request to any applicant.

iv. If an applicant submits to the town an application for a permit to engage in an activity described in this ordinance, which contains all of the information required under this ordinance, the town shall consider the application complete. If the town does not believe that the application is complete, the town shall notify the applicant in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

v. Within 90 days of its receipt of a complete application, the town shall complete all of the following or the applicant may consider the application approved, except that the applicant and the town may agree in writing to an extension of the 90 day period:

1. Review the application to determine whether it complies with all applicable aspects of the political subdivision's building code and, subject to the limitations in this section, zoning ordinances.
2. Make a final decision whether to approve or disapprove the application.
3. Notify the applicant, in writing, of its final decision.
4. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

vi. The town may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under Section 2.31, Part 7, Paragraph ii; 6.

b. If an applicant provides the town with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the set back or fall zone area required in the zoning ordinance, that zoning ordinance does not apply to such a structure unless the town provides the applicant with substantial evidence that the engineering certification is flawed.

c. The fee for the permit is $3,000.00

8) CLASS 2 COLLOCATION

a. Application Process:

i. A town zoning permit is required for a class 2 collocation. A class 2 collocation is a permitted use in the town but still requires the issuance of the town permit.

ii. A written permit application must be completed by any applicant and submitted to the town. The application must contain the following information:

1. The name and business address of, and the contact individual for, the applicant.
2. The location of the proposed or affected support structure.
3. The location of the proposed mobile service facility.

4. A permit application will be provided by the town upon request to any applicant.

b. A class 2 collocation is subject to the same requirements for the issuance of a building permit to which any other type of commercial development or land use development is subject per this ordinance.

c. If an applicant submits to the town an application for a permit to engage in an activity described in this ordinance, which contains all of the information required under this ordinance, the town shall consider the application complete. If any of the required information is not in the application, the town shall notify the applicant in writing, within 5 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

d. Within 45 days of its receipt of a complete application, the town shall complete all of the following or the applicant may consider the application approved, except that the applicant and the town may agree in writing to an extension of the 45 day period:
   i. Make a final decision whether to approve or disapprove the application.
   ii. Notify the applicant, in writing, of its final decision.
   iii. If the application is approved, issue the applicant the relevant permit.
   iv. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

e. The fee for the permit is $500.00

Additionally, Section 2.31 of the Town of Merrimac Zoning ordinance entitled "Vacation Rental Establishments" is hereby renumerated to Section 2.32 and restoring Section 2.30 entitled "Camping" as originally adopted on December 2, 2004.

This ordinance is effective on the day following publication per s. 60.80, or upon approval of the Sauk County Board, whichever date is latter. The town clerk shall properly publish this ordinance as required per s. 60.80.

Adopted this 1st day of July, 2015

Steve Peetz, Town Chair

ABSENT
Charlie Hall, Supervisor

John Gaedke, Supervisor

Attest: _____
Tim McCumber, Town Administrator & Clerk - Treasurer

Adopted by the Town Board -
Approved by Sauk County Board of Supervisors -

S6911 State Road 113
P.O. Box 115
Merrimac, WI 53561

Telephone: (608) 493-2588
Fax: (608) 493-2238
Website: TownOfMerrimac.net

NOTICE

Notice is hereby given that at a regular meeting of the Town Board of the Town of Merrimac on March 3, 2021 the Town Board approved Ordinance #2021-38 amending Section 2.08 of the Town of Merrimac Zoning Ordinance as it relates to Non-Conforming Uses in the Sauk County Shoreland Protection District. The amendment will allow for a legally non-conforming primary residential structure that was lawfully placed when constructed in the shoreland district to be reconstructed in the same footprint as conditioned by the county ordinance even if it encroaches into town setbacks.

The entire ordinance is available for review at Town Hall, the posting locations of Charlie's Lakeside, and Palmer Manufacturing, as well as online at https://www.townofmerrimac.net/zoning.html.

Dated this 4th day of March, 2021.
Tim McCumber, Town Administrator and Clerk-Treasurer

TOWN OF MERRIMAC ORDINANCE 2021-38
Amending the Town of Merrimac Zoning Ordinance

The Town Board of the Town of Merrimac, Sauk County, Wisconsin, ordain that the Town of Merrimac Zoning Ordinance be amended as follows (new language is underlined):

2.08 Non-Conforming Uses

The existing lawful use of a structure or premises which is not in conformity with the provisions of this Ordinance may be continued subject to the following conditions:

1) No such use shall be expanded or enlarged except in conformity with the provisions of this Ordinance without the granting of a variance by the Board of Appeals. An existing primary residential structure, that was lawfully placed when constructed may be vertically expanded unless the vertical expansion would extend more than 35 feet above grade level as defined by the Town of Merrimac Zoning ordinance.

2) No structural alteration or repair to any non-conforming building, as long as such use continues, shall increase by more than 50% of its assessed value, except upon the granting of a variance by the Board of Appeals. Should a nonconforming structure be destroyed by fire, wind, or other disaster beyond 50% of its current fair market value, or voluntarily moved or torn down, it cannot be rebuilt unless it conforms to the provisions of this ordinance.

   a) An existing primary residential structure subject to the Sauk County Chapter 8 Shoreland Protection Ordinance that was lawfully placed when constructed but that does not comply with the required shoreland setback may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the nonconforming structure even when it encroaches in town setbacks. Further, an existing primary use structure that was lawfully placed in this district when constructed, but that does not comply with the required shoreland setback, may be vertically expanded unless the vertical expansion would extend more than 35 feet above grade level as defined by the Town of Merrimac Zoning ordinance.

The Town Board further ordain that the above amendments of the Zoning Ordinance shall be effective immediately upon adoption and publication of this ordinance as provided by law, subject to approval by the Sauk County Board of Supervisors. The town clerk shall properly publish this ordinance as required under s. 60.80, Wis. Statutes.

The foregoing ordinance was adopted by the Town Board of the Town of Merrimac at a meeting held on March 3rd, 2021.

APPROVED:

Charlie Hall, Interim-Town Chair

Tim Healy, Interim-Supervisor

John Gaedke, Supervisor

ATTEST:

Tim McCumber
Town Administrator & Clerk – Treasurer

d) Placement of benches and picnic tables for the summer season, provided they are in good condition and available for use by anyone.

e) Mowing of grass.

2) Restrictions

a) Piers and the boats moored at them must be removed by October 31.

b) All activities must be such that they do not create excessive noise or litter or other public nuisance.

c) Portable grills and open fires are subject to fire restrictions in effect at such time period in the Town.

d) Property owners desiring to undertake DNR-approved shoreline protection work on the public access may do so at their own expense with the approval of the Town Board and Sauk County Planning and Zoning Department and DNR.

3) Not permitted

a) Overnight camping or parking

b) Storage of personal property

c) Out of season storage of boats and/or pier sections

d) Any structural enhancement or landscaping

e) Changing of landscape or cutting trees

f) All other land uses and site activities not otherwise approved in above

3.0 TOWN PLANNING AND ZONING COMMISSION

3.01 Establishment

A Town Planning and Zoning Commission is hereby created to carry out the intent of the Town of Merrimac Zoning Ordinance. The membership and duties shall be prescribed by Chapter 62.23 of the Wisconsin Statutes.

3.02 Membership

1) Commission

a) The council of any city may by ordinance create "City Plan Commission," to consist of the mayor, who shall be its presiding officer, the city engineer, the president of the park board, an alderman, and 3 citizens. In case the city has no engineer or no park board, an additional citizen member shall be appointed so that the board has at all times 7 members. Citizen members shall be persons of recognized experience and qualifications. The council may by ordinance provide that the membership of the commission shall be as provided thereunder.

b) The alderman member of the commission shall be elected by a two-thirds vote of the council, upon the creation of the commission, and during each April thereafter.

c) The three citizen members shall be appointed by the mayor, upon the creation of the commission, to hold office for a period ending one, two and three years, respectively, from the succeeding first day of May, and thereafter annually during April one such member shall be appointed for a term of three years.

d) The additional citizen members, if any, shall be first appointed to hold office for a period ending one year from the succeeding May first, and thereafter annually during the month of April. Whenever a park board is created, or a city engineer appointed, the president of such board or such engineer shall succeed to a place on the commission when the term of an additional citizen member expires.

e) The city plan commission shall have power and authority to employ experts and a staff, and to pay for their services and such other expenses as may be necessary and proper, not exceeding, in all, the appropriation that may be made for such commission by the legislative body, or placed at its disposal through gift, and subject to any ordinance or resolution enacted by the governing body.

f) Any city may by ordinance increase the number of members of the city plan commission so as to provide that the building commissioner or building inspector shall serve as a member thereof.

2) Zoning Administrator shall attend all meetings when requested by the commission for the purpose of provide technical assistance.

3) Terms of the Town Planning Commission shall be staggered as prescribed by 62.23(1)(b)(c)(d) of the Wisconsin Statutes.

4) At all public hearings the secretary shall be the Town Clerk or an appointed deputy.

5. Vacancies shall be filled for the unexpired term in the same manner as appointments for a full term.

3.03 Powers

The Town Planning and Zoning Commission shall have the following powers:

1). Review and act upon application for Planned Area Developments.

2) To review and recommend to the Town Board changes and amendments to the Town Zoning Ordinance.

3) Other matters as prescribed by Chapter 62.23 of the Wisconsin Statutes.

4) Annually review and recommend any necessary amendments to the Town of Merrimac Development Plan, Zoning Ordinance and Zoning Map.

5) Recommendations - the Town Planning and Zoning Commission shall review all proposed changes and amendments within the Town limits, conduct a public hearing (with Class 2 Notice) and shall recommend that the petition be granted as requested, modified, or denied.

6) Town Board's Action - following such hearing and after careful consideration of the Town Planning Commission's recommendations, the Town Board shall vote on the passage of the proposed change or amendment.

7) Protest - in the event of a protest against such district change or amendment to the regulations of this Ordinance, duly signed and acknowledged by the owners of twenty (20) percent or more either of the areas of the land included in such proposed change, or by the owners of twenty (20) percent or more of the land immediately adjacent extending one hundred (100) feet therefrom, or by the owners of twenty (20) percent or more of the land directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite land, such changes or amendments shall not become effective except by the favorable vote of the full Town Board membership (3 of 3). Protest must be filed within 60 days from original vote of passage by Town Board.

4.0 BOARD OF APPEALS

4.01 Establishment

There is hereby established a Board of Appeals for the Town of Merrimac for the purpose of hearing appeals and granting variances and exceptions to the provisions of this Zoning Ordinance in harmony with the purpose and intent of this Zoning Ordinance.

1) Meetings shall be held at the call of the Chairman of the Board of Appeals and shall be open to the public.

2) Minutes of the proceedings and a record of all actions shall be kept by the secretary, showing the vote of each member upon each question, the reasons for the Board's determination, and its finding of facts. These records shall be immediately filed in the office of the Board and shall be a public record.

3) The concurring vote of four (4) members of the Board shall be necessary to correct an error, grant a variance, grant a conditional use, or make an interpretation.

4.02 Membership

The Board of Appeals shall consist of five (5) members, four citizens and one Town Board Member, appointed by the Town Chairman and confirmed by the Town Board.

1) Terms shall be for staggered three-year periods.

2). Chairman of the Board of Appeals shall be designated by the Town Chairman.

3) An alternate member may be appointed by the Town Chairman for a term of three (3) years and shall act only when a regular member is absent or declines to vote because of conflict of interest.

4) At all public hearings the secretary shall be the Town Clerk or an appointed deputy.

5) Zoning Administrator shall attend all meetings when requested by the Board for the purpose of providing technical assistance.

6) Official oaths shall be taken by all members in accordance with section 19.01 of the Wisconsin Statutes within ten (10) days of receiving notice of this appointment.

7) Vacancies shall be filled for the unexpired term in the same manner as appointments for a full term.

4.03 Organization

The Board of Appeals shall organize and adopt rules of procedure for its own government in accordance with the provisions of this Ordinance.

1) Meetings shall be held at the call of the Chairman of the Board of Appeals and shall be open to the public.

2) Minutes of the proceedings and a record of all actions shall be kept by the secretary, showing the vote of each member upon each question, the reasons for the Board's determination, and its finding of facts. These records shall be immediately filed in the office of the Board and shall be a public record.

3) The concurring vote of four (4) members of the Board shall be necessary to correct an error, grant a variance, grant a conditional use, or make an interpretation.

4.04 Powers

The Board of Appeals shall have the following powers:

1) Errors - to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or body in the course of enforcing this Ordinance.

2) Variance - to hear and grant appeals for variances as will not be contrary to the public interest where, owing to special conditions, a literal enforcement will result impractical difficulty or unnecessary hardship, so that the spirit and purposes of this Ordinance shall be observed and the public safety, welfare, and justice secured.

4.05 Appeals and Applications for Variances

Appeals may be made by any person aggrieved or by an officer, Board, or commission of the Town. Such appeals shall be filed with the secretary within thirty (30) days after the date of written notice of the decision or order of the Zoning Administrator. Applications may be made by the owner or lessee of the structure, land, or water to be affected at any time and shall be filed with the secretary. Such appeals and application shall include the following:

1) Name and address of the appellant or applicant and all abutting and opposite property owners or record.

2) Plot plan showing all of the information required under Section 2.04 of the General Provisions section of this Ordinance.

3) Additional information as may be required by the Board of Appeals and Zoning Administrator.

4) Hearings - the Board of Appeals shall fix a reasonable time and place for the hearing, give Class 2 notice thereof. At the hearing, the appellant or applicant may appear in person, by agent, or by attorney with written proof of agency.

5) Findings - no variance to the provisions of this Ordinance shall be granted by the Board of Appeals unless it finds beyond a reasonable doubt that all the following facts and conditions exist and so indicates in the minutes of its proceedings.

   a) Exceptional circumstances: there must be exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Ordinance should be changed.

   b) Preservation of property rights: that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.

   c) Absence of detriment: that the variance will not create substantial detriment to adjacent property and will not materially impair or be contrary to the purpose and spirit of this Ordinance or the public interest.

6) Decision - the Board of Appeals shall decide all appeals and applications within thirty (30) days after the final hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant, Zoning Administrator, and Town Planning and Zoning Commission.

   a) Conditions may be placed upon any land use permit ordered or authorized by this Board. Approvals granted by the Board shall expire within two (2) years unless work has commenced pursuant to such grant.

7) Review by Court of Record - any person or persons aggrieved by any decision of the Board of Appeals may present to the court of record a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented

to the court within thirty (30) days after the filing of the decision in the office of the Board of Appeals.

4.06 Conditional Uses

1) Permits - the Board of Appeals may authorize the Zoning Administrator to issue a land use permit for conditional uses after review and a public hearing, provided that such conditional uses and structures are in accordance with the purpose and intent of this Ordinance and are found to be not hazardous, harmful, offensive, or otherwise adverse to the environment or the value of the neighborhood or the community.

2) Application - applications for zoning permits for conditional uses shall be made to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following:

   a) Name and addresses of the applicant, owner of the site, architect, professional engineer, contractor, and all opposite and abutting property owners of record.

   b) Description of the subject site by lot, block and recorded subdivision or by metes and bounds; address of the subject site, type of structure; proposed operation or use of the structure or site; number of employees; the zoning district within which the subject site is located; and indication of whether or not the subject site is located in a floodplain.

   c) Plot plan showing all of the information required under Section 2.04 of the General Provisions section of this Ordinance.

   d) Additional information as may be required by the Board of Appeals or Zoning Administrator.

3) Hearings - the Board of Appeals shall hold a public hearing on each conditional use application giving Class 2 Notice.

4) Review and Approval - the Board of Appeals shall use the standards for conditional uses which are delineated within each zoning district of this Ordinance when reviewing applications for a conditional use.

   a) Compliance with all other provisions of this Ordinance, such as lot width and area, yards, height, parking, traffic, and highway access shall be required of all conditional uses. Variances shall only be granted as provided in Section 4.05(5).

5.0 AGRICULTURAL DISTRICT

5.01 Purpose

This district provides for the preservation, maintenance and enhancement of quality agricultural, forestry and natural areas for the benefit of farm operators and the general public in terms of production of food and fiber and environmental quality. Except for continuation of existing uses, this district will allow few non-agricultural uses. This policy is intended to avoid conflicts which occur when farm and non-farm uses are mixed and to reduce the adverse pressures upon farming caused by speculative land values and consequent increases in property taxes on farmlands.

5.02 Permitted Uses

1) General farming, including dairying, livestock raising, grazing, and poultry raising when the operation involves fewer than 1,000 birds

2) Raising of grain, grass, seed crops, nuts, root crops, mint, berries, and herbs

3) Greenhouses, nurseries, orchards, floriculture, viticulture, sodfarming

4). Beekeeping

5) Forest and game management; nature trails and walks

6) Roadside stands to sell produce

7) One single-family dwelling per farm operation, except that there may be up to two (2) per farm operation for the farm operator, parents or children of the farm operator or hired persons all deriving at least 51 percent of their income from the farm operation. A farm operation may be comprised of one or more parcels, as defined by this Ordinance.

8) Farm dwellings and related structures which remain after farm consolidation may be separated from the farm lot onto a parcel of not less than one acre

9) Garages and other similar structures or uses accessory to housing uses

5.03 Standards

1) Dimensional rules and standards for all uses in this district

   a) Residential lot and yard sizes

1) Where a dwelling is to be established according to the provisions of this district on a parcel which is separate from that of the farm tract or of the parcel on which another dwelling unit exists, the parcel shall comply with the dimensional rules and standards of the Single Family Residential district (R-1).

2) Where such a dwelling is to be established without creation of a separate parcel, such unit shall be located no closer than 50 feet from any other dwelling.

b) Setbacks: All structures shall meet highway and water setbacks.

c) Height

1) Buildings for human habitation shall not exceed 40 feet in height.

2) The height of other permitted structures shall not exceed 100 feet.

d) Floor area: No dwelling shall contain less than 1,000 square feet of living area with a minimum width of 20 feet.

2) Dimensional rules and standards for conditional uses

a) The minimum lot size, height and yard requirements for conditional uses shall be as specified in the conditional use permit, but in no case shall any structure be less than 20 feet from a lot line and any structure shall meet all highway and water setbacks.

b) Conditional uses must be determined

1) Not to cause unusual or unique public service needs.

2) Not to produce traffic which will result in a major slowing of highway traffic

3) Not to cause unreasonable air or water pollution, soil erosion, or adverse effects on rare or irreplaceable natural areas

c) Applicants shall submit plot plans showing principal and accessory structures, parking areas, storage areas, and general design and land use, and any other pertinent information needed to satisfy the Board of Appeals that the site and plot plan as indicated can provide adequate and functional spacing and operations, and responsible surface water management.

d) The Board of Appeals shall consider whether other locations, less threatening to continued farming of productive agricultural lands,

might be available for the proposed use and the strength of the reasons offered by the applicant in support of the site in question. In considering the conditional use, the Board of Appeals shall also consider the effects upon and possible conflicts with agricultural uses on surrounding land. Impacts which would be harmful to agriculture in the area may be the basis for rejection of the proposed conditional use or may be the basis for conditions attached to the use.

5.04 Standards for Rezoning

1) Rezonings out of the Agricultural District to a Single Family Residential district shall not be permitted. This limitation may be waived when consistent with the overall character of the community.

Such rezoning must consider the need for preservation of agricultural land and wildlife habitat, the fact that there is presently sufficient area in the Town for residential uses and the fact that public services costs are high for residential developments, especially those not located near incorporated areas.

2) The Planning and Zoning Commission may approve petitions for rezoning lands out of the Agricultural District only upon finding that such a rezoning is in the public interest after consideration of the following factors:

a) Adequate public facilities exist or will be provided to serve the development.

b) Provision of these facilities and services will not be an unreasonable burden to local government.

c) Land is suitable for development

d) The development will not cause unreasonable air or water pollution, soil erosion or adverse effects on rare or irreplaceable natural areas.

e) Potential conflict with remaining agricultural lands and uses in the area

f) Need for the proposed development in the location specified

g) Availability of alternative locations

h) Productivity of the agricultural lands that are involved or affected

i) Whether the development as proposed is located to minimize the amount of agricultural land converted.

6.0 AGRICULTURE CONSERVATION

6.01 Purpose

The purpose of this district is to preserve, protect, enhance, and where feasible, restore all significant woodlands, scenic areas, significant natural areas and farmlands within the Town of Merrimac. Regulation of these areas will serve to control erosion and sedimentation and will promote and maintain the natural beauty and character of the Town, while seeking to assure the preservation and protection of areas of significant topography, natural watersheds, ground and surface water, potential recreation sites, wildlife habitat, and other natural resource characteristics that contribute to the environmental quality of the Town. This ordinance shall provide a mechanism for the Town to reasonably regulate the design, placement and buffering or screening of buildings, other structures, roads and driveways in the process of site plan application review, in such a way as to best preserve the rural and scenic qualities of the Town's landscape, in order to: (1) eliminate the siting of new construction on or near the crest of prominent bluffs, hilltops and ridges, particularly seen from public ways, (2) fit development into the landscape to minimize significant landscape alterations, (3) buffer or screen development with native vegetation, (4) preserve and protect woodlands, forestlands, wetlands, and agriculture, and (5) protect productive agricultural land.

6.02 Land Uses

In order to protect and preserve significant wildlife habitat, geologic features, natural features, scenic features, scenic features and natural vegetation, no land shall be used and no building shall hereafter be erected or moved except in accordance with the regulations below:

1) Permitted Uses.

   a) General farming, cultivation of crops, including dairying, livestock raising, poultry raising, and grazing when conducted in accordance with the county conservation standards.

   b) Forest preservation, nature trails and walks, forest and game management, and hunting and fishing as permitted by landowners and state regulations.

   c) One single-family dwelling on parcels (as defined by this Ordinance) which are lots of record at the time of adoption of this ordinance on January 11, 1993. All standards for the Single Family Residential District (R-1) shall apply to such dwellings as a minimum standard and:

      1. All new dwellings and structures shall be reviewed by the Planning and Zoning Commission and subject to approval by the Town Board.

      2. A driveway construction plan shall be prepared by a licensed civil engineer when construction of a driveway or segment of a driveway requires disturbing land with a grade of 10 percent or more.

      3. All driveways in this district shall have a firm surface capable of supporting emergency vehicles under all weather conditions. A clear space of 14 feet

high and 16 feet wide shall be maintained at all times for emergency vehicle access. Appropriate signage shall be placed at the entrance to a driveway servicing a residence so emergency personnel can accurately and expediently locate the driveway. The sign shall conform to Sauk County regulations.

3. The maximum length of a driveway is 400 feet. Any driveway longer than 400 feet may be approved as a Conditional Use when the landowner shows satisfactory evidence that the same is necessary because of natural barriers or some special condition of the land. The Town Board may consult with the Fire Department.

d) Pre-existing dwellings located in areas subject to zoning under this district may be continued in residential use. Such pre-existing residences and other structures may be altered, repaired or rebuilt if destroyed, and ~~garages,~~ porches, room additions, and other remodeling may be permitted, but shall be subject to the setback, height, and other dimensional requirements of the R-1 District.

e) Home occupations conducted within and accessory structures to a permitted residential use, subject to the requirements for such occupational uses in the R-1 District.

6.03 FOREST MANAGEMENT AND CONSERVATION

In order to protect and preserve wildlife habitat, geologic features, natural features, scenic features, scenic features and natural vegetation, any removal of timber is subject to review of the Planning and Zoning Commission and Town Board approval with the following exceptions:

1) Cutting of timber for personal use or firewood that will not be marketed for sale or resale outside of the Town.

2) Salvage cuttings including the cutting of timber damaged by storm, fire, insect infestation, or disease.

3) The cutting of any timber on lands participating in the Wisconsin Managed Forest Law program.

4) Any property owner who provides to the Zoning Administrator a written statement from the Sauk County Forester or the Wisconsin Department of Natural Resources that the cutting of timber is being harvested in compliance with best forest management practices.

5) Clearcutting for the purpose of wetland restoration south of the Baraboo Bluff Range on any property subject to paying property tax.

6) Any property owned by the Wisconsin Department of Natural Resources that is not being clearcut of all timber.

7.0 SINGLE FAMILY RESIDENTIAL DISTRICT (R-1)

7.01 Purpose

This district is created to provide for attractive, quality residential development, to identify areas that have previously been developed for single family residences, and to protect residences from incompatible uses. This district is intended to cluster residences in order to make it more reasonable and economical to provide public services.

7.02 Permitted Uses

1) Single-family dwellings

2) Home occupations, professional home offices

3) Accessory structures including, but not limited to, private garages, carports and boathouses, clearly incidental to the residential use of the property and provided that:

   a) No accessory structure may be used as a separate dwelling unit or constructed on a site without a primary residential structure.

   b) For the purpose of protecting viewing corridors any accessory building greater than 24 feet by 30 feet in area or greater than 14 feet in height shall not be permitted within 1,000 feet of Lake Wisconsin.

   c) Any accessory structure that is not immediately and contiguously incorporated into the footprint of the principal structure, if not completely detached from the principal structure, shall only be attached to the principal structure by an all-weather enclosed connection that is no less than 4 feet in width, cannot exceed 25 feet in length, and no more than 14' in height. The enclosed connection shall include a finished floor, side walls, and a roof.

4) Household pets, including animals or fowl ordinarily permitted in the house or kept for pleasure, such as dogs, cats, canaries, rabbits and the like.

5) Animals and fowl other than household pets shall be permitted with the following limitations:

   a) Keeping of chickens on lots that are a minimum of 1.15 acres up to no more than 4.99 acres may be permitted with the following limitations:

      1) Keeping of roosters is prohibited.
      2) A maximum of 20 chickens may be kept on any property.
      3) Coop and run required.

         a) Chickens shall be provided with a coop (i.e. a covered roosting area) and an adjacent run (i.e. enclosed area in which chickens are allowed to walk and run

about).

b) The coop shall not exceed 100 square feet in area or 12 feet in height.
c) The coop and run shall be located in the rear yard at least 25 feet from all property lines and at least 10 feet from the principal structure.
d) The coop and run shall be set back a minimum of 75 feet from any ordinary high water mark, wetland, floodplain, and perennial or intermittent drainage way (as depicted on USGS 7.5-minute quadrangle maps).
e) The run shall be surrounded by a fence that is between 36 and 96 inches in height.
f) Chickens shall not be permitted in any other structure on the lot, including garages, basements, and attics, nor outside of the coop or run.
g) The sale of live chickens, meat, eggs, or other by-products is prohibited without the approval of the Wisconsin Department of Agriculture, Trade, and Consumer Protection.
h) The property owner shall register with the Wisconsin Department of Agriculture, Trade, and Consumer Protection in accordance with WI Administrative Code DATCP 17.02.

4. A permitted use to keep chickens may be suspended or revoked by the Zoning Administrator where there is a risk to public health or safety, or for any violation of or failure to comply with any of the provisions of this ordinance, including encroachments onto other properties, or with the provisions of any other applicable ordinance or law. The property owner may appeal the Administrator's decision to the Town Board of Appeals.

b) Lots or parcels on which such animals or fowl (described in Subsection 5), above) are maintained shall contain a minimum of 5 acres. In addition:

1. Any building housing such animals or fowl shall be not less than 100 feet from any lot line; and,
2. Appropriate confinement must be provided.

6) Signs – only those meeting the standards of this Ordinance.

7) Fenced swimming pools shall comply with all State codes.

7.03 Conditional Uses

1) Two-family dwellings

2) Churches

3) Schools

4) Tennis courts and other similar recreational facilities developed in conjunction with and intended for the sole use of the residents of an individual development.

5) Parks and playgrounds.

6) Institutional Residential Developments:

a) No individual lots are required, although the development shall contain a minimum of 800 square feet of gross site area for each occupant of the development.

b) Shall be located with primary vehicular access onto a State Highway, County Highway, or Town Road with a right-of-way no less than 66' feet.

b) All Parking, loading, and unloading areas shall be off-street.

7) Any accessory building not subject to Town of Merrimac Ordinance 7.01 (3) (b) and great than 24 feet by 30 feet in area or greater than 14 feet in height shall require a conditional use permit.

7.04 Standards

1) Dimensional Rules and Standards for All Uses in this District

a) Lot area: All lots or parcels shall be sufficient in size and shape to satisfy highway setbacks, water setback, rear and side yard setbacks, off-street parking and sanitary requirements, and all lots or parcels shall meet the following minimum area and width requirements:

1) Those lots provided with public sewer shall have a minimum area of 10,000 square feet and a minimum width of 100 feet.

2) Those lots not provided with public sewer shall have a minimum lot area 0f 20,000 square feet and a minimum width in accordance with Department of Safety and Professional Services provisions for a Private Onsite Wastewater Treatment System.

b) Side yard: Nothing shall be built within 10 feet of any side lot line.

c) Rear yard: Nothing shall be built within 10 feet of any rear lot line.

d) Height: No building shall exceed 35 feet in height above grade.

e) Floor area: No residence shall contain less than 1,000 square feet of living area with and a building footprint with a minimum width of 20 feet. The total building footprint of all structures, including accessory structures and any enclosed connections, on a single lot shall not exceed 5,000 sq. ft. unless authorized by a conditional use permit.

f) Home occupation and professional home offices shall be incidental to the principal

residential use, situated in the same building, carried on by the residential occupant, and subject to the following conditions:

1) Such use shall not occupy more than 20 percent of the floor area of the residence in which it is located.

2) Such use shall not employ on the premises more than 2 full-time people not residents of the premises.

3) Any off-street parking area provided shall be paved, maintained and adequately screened from adjoining residential properties.

4) Such use shall not include the outside storage of materials or other operational activity which would create a nuisance or be otherwise incompatible with the surrounding residential uses.

g) Signs: Only those signs listed below shall be permitted and all signs shall meet the standards of this Ordinance governing signs in addition to those below:

1) Signs to advertise a home occupation or professional home office, provided that such sign shall not exceed 6 square feet in gross area.

2) Temporary signs to advertise the sale, rent, lease or trade of the property on which the sign is placed, provided that such sign shall not exceed 6 square feet in area, except in subdivisions or unplatted lands newly opened for sale, such sign shall not exceed 32 square feet in area.

h) Setbacks: Refer to the requirements set forth in Section 2.19.

i) All lots shall have a limit of one dwelling unit per lot, except as permitted through a Planned Area Development (PAD).

2) Dimensional rules and Standards for Conditional Uses

a) Conditional uses must be determined:

1) Not to cause unusual public service needs

2) Not to produce traffic which results in a major slowing of highway traffic, i.e. volume, ingress, egress

3) To be compatible with residential use in this district

4) Not to adversely affect property values in the area

5) Not to cause population densities which would unreasonably overburden the land or required public services

6) Not to endanger public health or safety or create a public nuisance

Effective January 19, 1993
Amended October 3, 2006
Amended September 5, 2012
Amended December 12, 2017
Amended May 1, 2019

TOWN OF MERRIMAC ORDINANCE 2012-09

AN ORDINANCE AMENDING SECTIONS OF THE TOWN OF MERRIMAC ZONING ORDINANCE

The Town Board of the Town of Merrimac, Sauk County, Wisconsin, do ordain as follows:

Repeal Section 7.02 (5) (a), (b) and (c) and replace with the following new section (**new language is in bold**):

5) Animals and fowl other than household pets shall be permitted with the following limitations:

a) Keeping of chickens on lots that are a minimum of 1.15 acres up to no more than 4.99 acres may be permitted with the following limitations:

1. **Keeping of roosters is prohibited.**
2. **A maximum of 20 chickens may be kept on any property.**
3. **Coop and run required.**
   - **a) Chickens shall be provided with a coop (i.e. a covered roosting area) and an adjacent run (i.e. enclosed area in which chickens are allowed to walk and run about).**
   - **b) The coop shall not exceed 100 square feet in area or 12 feet in height.**
   - **c) The coop and run shall be located in the rear yard at least 25 feet from all property lines and at least 10 feet from the principal structure.**
   - **d) The coop and run shall be set back a minimum of 75 feet from any ordinary high water mark, wetland, floodplain, and perennial or intermittent drainage way (as depicted on USGS 7.5-minute quadrangle maps).**
   - **e) The run shall be surrounded by a fence that is between 36 and 96 inches in height.**
   - **f) Chickens shall not be permitted in any other structure on the lot, including garages, basements, and attics, nor outside of the coop or run.**
   - **g) The sale of live chickens, meat, eggs, or other by-products is prohibited without the approval of the Wisconsin Department of Agriculture, Trade, and Consumer Protection.**
   - **h) The property owner shall register with the Wisconsin Department of Agriculture, Trade, and Consumer Protection in accordance with WI Administrative Code DATCP 17.02.**
4. **A permitted use to keep chickens may be suspended or revoked by the Zoning Administrator where there is a risk to public health or safety, or for any violation of or failure to comply with any of the provisions of this ordinance, including encroachments onto other properties, or with the**

provisions of any other applicable ordinance or law. The property owner may appeal the Administrator's decision to the Town Board of Appeals.

b) Lots or parcels on which such animals or fowl **(described in Subsection 5), above)** are maintained shall contain a minimum of 5 acres. **In addition:**

1. Any building housing such animals or fowl shall be not less than 100 feet from any lot line**; and,**

2. Appropriate confinement must be provided.

c) Signs – only those meeting the standards of this Ordinance.

Recommended for Approval by the Planning & Zoning Commission – August 15, 2012
Approved by the Town Board – September 5, 2012
Approved by the Sauk County Board – November 8, 2012

8.0 CROSSROADS COMMERCIAL DISTRICT

8.01 Purpose

Most commercial uses should be located in or near the incorporated area where a full range of needed services can be afforded to such uses, and where conflicts with agricultural, recreational residential uses are less likely. The Crossroads Commercial District is created to provide locations for establishments principally engaged in indoor retail sales of merchandise and/or services, as well as establishments and areas to serve the recreational needs of the community.

8.02 Approval

Commercial development proposed to be located in this district must be approved by the Planning and Zoning Commission using the Planned Area Development (PAD) process.

8.03 Buildings, structures and land shall be used, and buildings and structures shall hereafter be erected, structurally altered or enlarged only for the following uses, plus such other uses as the commission and town board may deem similar and not more obnoxious or detrimental to the public health, safety and welfare. Allowable Commercial Uses include:

1. Retail Sales
2. Repair Services
3. Banks and financial institutions
4. Clinics or medical offices
5. Gym or health club
6. Professional Offices

8.04: The following uses may be permitted subject to a conditional use permit:

1. Public buildings.
2. Restaurants (except drive-ins).
3. Taverns.
4. Commercial daycare center

8.05: The following uses are expressly prohibited in the Crossroads Commercial District:

1. Residential uses;
2. Any combination of residential or nonresidential uses in any building or structure or on any lot;
3. Trailer parks;
4. Industrial uses;
5. Adult bookstore, adult mini-motion picture theater, adult motion picture arcade, adult motion picture theater and massage establishment:

    a. Located within 500 feet of any area zoned for residential use;
    b. Located within 500 feet of the property line of any of the following uses or facilities:

        1. Church or other facility used primarily for worship or other religious purposes,

2. City, county, state, federal or other governmental public buildings, including, but not limited to: city halls, schools, libraries, police and fire stations and post offices,
3. Hospitals and convalescent facilities,
4. Parks and playgrounds,
5. Senior, youth or similar centers.

Amended December 7, 2017

9.0 RECREATIONAL/COMMERCIAL

9.01 Recreational Commercial District Purpose

It is the intent of the Town of Merrimac that some recreational commercial development be allowed provided that:

1) It is not inconsistent with the preservation of the character of the community
2) It does not have a detrimental effect on the environmental features and surrounding land uses.

9.02 Recreational Commercial Development

Recreational commercial development will be required to receive approval through the Planned Area Development Process.

9.03 Buildings, structures and land shall be used, and buildings and structures shall hereafter be erected, structurally altered or enlarged only for the following uses, plus such other uses as the commission and town board may deem similar and not more obnoxious or detrimental to the public health, safety and welfare.

A. Recreational Uses:

1. Archery range;
2. Batting cages;
3. Billiard parlor;
4. Bowling alleys;
5. Community Gardens;
6. Cross country skiing;
7. Nursery school or day nursery; provided it is operated in conjunction with the recreation facilities;
8. Picnic and barbecue facilities;
9. Playground;
10. Skating rinks;
11. Swim parks, natatoriums;
12. Tennis courts.
13. Professional offices
14. Commercial daycare center

B. Related commercial uses including, but not limited to, the following, when operated in connection with those uses listed in subsection (A) of this section:

1. Brew Pub or Micro-Brewery;
2. Off-street parking lot;
3. Restaurants;
4. Sporting goods stores;
5. Sports equipment rental and incidental maintenance.

9.04 The following uses may be permitted subject to a conditional use permit:

1. Clubs and lodges;
2. Conversion of residential buildings to nonresidential uses.
3. Fishing and fly-casting ponds;
4. Education or health activities including private schools, trade schools and health spas;
5. Liquor, on-sale;
6. Public riding stable;
7. Bed & Breakfasts, Hotels, or Motels.
8. Taverns
9. Downhill Skiing
10. Golf driving range
11. Golf pitch and putt courses
12. Lawn and court games
13. Miniature golf courses

9.05 The following uses are expressly prohibited in the Recreational Commercial District:

1. Residential uses;
2. Any combination of residential or nonresidential uses in any building or structure or on any lot;
3. Trailer parks;
4. Industrial uses;
5. Adult bookstore, adult mini-motion picture theater, adult motion picture arcade, adult motion picture theater and massage establishment:
    a. Located within 500 feet of any area zoned for residential use;
    b. Located within 500 feet of the property line of any of the following uses or facilities:
        1. Church or other facility used primarily for worship or other religious purposes,
        2. City, county, state, federal or other governmental public buildings, including, but not limited to: city halls, schools, libraries, police and fire stations and post offices,
        3. Hospitals and convalescent facilities,
        4. Parks and playgrounds,
        5. Senior, youth or similar centers.

Amended December 7, 2017

Section 10.0 MINING:

Section 10.01. **Findings, Purpose and Authority**

(1) Findings. Mining constitutes a permissible activity in the State's economy and has the potential to both beneficially or adversely impact Town residents, environments and economies. Mining may provide employment opportunities, needed industrial materials and significant economic benefits to local communities. Mining operations, however, have the potential to create nuisance conditions, negatively impact property values and present health and safety impacts to Town residents if not properly designed and operated. While many aspects of mining operations are subject to state or federal regulation, some are not.

(2) Purpose. The purpose of this Ordinance is to establish local minimum standards for Mining Operations conducted within the Town, and a process by which to systematically consider mineral licenses in a manner that promotes the health, safety, welfare, and convenience of the Town and its residents. The general intent of this Ordinance is to minimize or prevent any adverse on- or off-site impacts flowing from and as a result of mining operations. The objectives of this Ordinance are to set forth rules and procedures to govern mining within the Town, establish procedures for the administration and enforcement of this Ordinance, and provide penalties for its violation.

(3) Authority. This Ordinance is adopted by the powers granted to the Town of Merrimac by the Town's adoption of village powers under Wis. Stat. §§ 60.10, 60.22(3) and 61.34, its authority under § 66.0415, and other authority granted to it under the statutes.

Section 10.02. **Definitions**

(1) Any term not expressly defined in this Ordinance shall have the meaning set forth in Wis. Stat. Ch. 293 and if not defined therein then as defined in Wisconsin Administrative Code Ch. NR 132, and if not defined therein then as defined in Wisconsin Administrative Code Ch. Chapter 182.

(2) "Buffer" means an undisturbed vegetated area measured from the property line of the Mining Site into the Mining Site, in which no Mining Operations, structures or roads can occur or be constructed except for the construction and maintenance of a vegetated berm.

(3) "Dwelling" means a structure or part of a structure that is used or intended to be used and occupied for human habitation as a home or residence by one or more persons.

(4) "Mining" or "Mining Operation" means all or part of the process involved in the mining of nonferrous minerals, other than for exploration, bulk sampling, or prospecting, including, but not limited to, commercial extraction, agglomeration, beneficiation, construction of roads, removal of overburden and the production of refuse.

(5) "Mining License" means a license issued by the Town which is required of all Mining Operations as a condition precedent to commencing Mining at a Mining Site.

(6) "Mining Site" means the surface area disturbed by a mining operation, including, but not limited to, the surface area from which the nonferrous minerals or refuse or both have been removed, the surface area covered by the refuse, all lands disturbed by the construction or improvement of haulageways, and any surface areas in which processing facilities, structures, equipment, materials and any other things used in the Mining Operation are situated, operated,

conducted or otherwise utilized.

(7) "Person" means any person, individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.

(8) "Operator" means any person who is engaged in, or who has applied for and been granted a Mining License to engage in Mining, whether individually, jointly or through subsidiaries, agents, employees or contractors.

(9) "Ordinance" means this mining ordinance.

(10) "Retained expert" means professional consultants, including, but not limited to, engineers, attorneys, planners, environmental specialists, and other consultants with skills relevant to reviewing, processing and acting upon applications for an Mining License or to issues associated with the inspection, monitoring and enforcing of approvals arising under this Ordinance.

(11) "Town" means the Town of Merrimac.

(12) "Town Board" means the Town Board of the Town of Merrimac.

Section 10.03. **Applicability, Exemptions, Interpretation, and Effective Date**

(1) Applicability. This Ordinance shall apply to the use and proposed use of land within the Town for the purpose of mining and any proposed Mining Operation regardless of when such use is commenced and regardless of where such use is proposed within the Town.

(2) Exemptions. This Ordinance does not apply to:

(a) Exploration, bulk sampling or prospecting activities as defined under Wis. Stat. § 293.01.

(b) The lawful use of a building, structure or lot for Mining Operations which existed at the time this Ordinance, or an applicable amendment to this Ordinance that took effect and which is not in conformity with the provisions of this Ordinance, subject to the following conditions: (1) if a preexisting use is discontinued for 12 consecutive months, any future use of the building, structure or property shall conform to this Ordinance; (2) uses which are nuisances shall not be permitted to continue.

(c) Mining Operations where the Town has entered into a local agreement with the Operator under Wis. Stat. § 293.41, and the local agreement specifically states that this Ordinance, or any portion of this Ordinance, is inapplicable to that particular Mining Operation.

(3) Interpretation. The provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Town. This Ordinance is not intended to repeal, abrogate, annul, impair or interfere with any existing laws, regulations, ordinances, rules, standards or permits that are not specific to mining previously adopted pursuant to other Wisconsin law.[1]

(4) Effective Date. Following passage by the Town Board, this Ordinance shall take effect the day after the date of publication as provided by Wis. Stat. § 60.80.

Section 10.04. **Mining License Required**

(1) License Requirement. No person may commence construction of a Mining Site or engage in any Mining Operations in the Town except in conformance with a valid Mining License issued by the Town pursuant to this Ordinance or as otherwise authorized by a mining agreement as set forth in the Ordinance in accordance with Wis. Stat. §295.47, or a local agreement under Wis. Stat. § 293.41, whichever is applicable.

(2) Compliance. Conditions established by any Mining License pursuant to this Ordinance must be met at all times or the Operator may be found in violation and subject to enforcement, fines, penalties and Mining License revocation as provided in this Ordinance.

(3) Effective Date. Except as provided in this Ordinance, a Mining License issued pursuant to this Ordinance shall become valid on the date the Operator is awarded a State of Wisconsin Mineral Mining Permit for the same mining site.

(4) Duration of License. The Mining License issued in accordance with this Ordinance shall last through operation and reclamation of the Mining Site provided the Operator complies with all conditions of the Mining License, all provisions of this Ordinance, all required state and local licenses, permits, approvals and financial assurances are maintained, and suspension or revocation of the Mining License does not occur pursuant to this Ordinance.

(5) Major License Modifications. If a Mining License has been issued, both the Town and the Operator may pursue an amendment to that Mining License during the Mining License term pursuant to this section.

(a) The Town reserves the right to reopen and modify any Mining License if it is determined by the Town Board, upon the basis of newly discovered evidence, including, but not limited to, evidence presented by governmental or other regulatory bodies for the same Mining Operation, such mining activity pursuant to the Mining License would, without further conditions placed on the Mining License, substantially endanger the environment, public health, safety or welfare of the community. Any action to reopen a Mining License shall be done by hearing with at least 30 days' notice to the Operator. In order to reopen the Mining License and modify any terms and conditions, the Town Board must determine that there is reasonable cause to believe that the newly discovered evidence demonstrates a substantial threat to the environment, public health, safety or welfare.

(b) The Town reserves the right to reopen and modify any Mining License if newly discovered evidence shows that there is new science or technology that would substantially decrease the impact of the Mining Operations on human health, safety, welfare or the environment or would substantially and cost-effectively allow the required outcome of the planned reclamation to be accomplished in less time or with greater certainty. Any action to reopen a Mining License shall be done by hearing with at least 30 days' notice to the Operator. In order to reopen the Mining License and modify any terms and conditions under this section, the Town Board must determine that there is reasonable cause to believe that the newly discovered science or technology

substantially decreases the impact of the Mining Operations on human health, safety, welfare or the environment or would substantially and cost-effectively allow the planned reclamation to be accomplished in significantly less time or with greater certainty.

(c) For the Town to reopen a Mining License, the Town Board shall identify the specific terms of the Mining License subject to reopening and shall hold a public hearing and issue a report that considers the specific reason(s) for reopening the license before voting on the proposed modification. The Town Board shall consider the report's findings and vote to either reopen or not to reopen the Mining License based on the report's findings and in accordance with the procedures established by this Ordinance. A decision to reopen and modify a Mining License must be adopted by a vote of two-thirds of the entire membership of the Town Board.

(d) Should the Operator desire to modify the Mining License in any way, it may request modification by submitting a written application and evidence supporting such modification to the Town Clerk. Such application shall be in substantially the same form as the original application for the Mining License, with the same level and substance of information required, although it shall be permissible to incorporate by reference any portions of the original Mining License application that still pertain to the re-opening request. Upon receipt of the application to modify the Mining License, the Town Clerk and Town Board shall follow the procedures outlined in this Ordinance for review of an application for a Mining License.

(6) Minor License Modifications. The Town Board has the discretion to determine that a proposed Mining License modification is so inconsequential in scope or limited in proposed duration that the Mining License modification procedures outlined under Section 1.04(5) of this Ordinance are unnecessary and therefore inapplicable. If such a determination is made, the Town Board may act on the proposed minor Mining License modification at a properly noticed Town Board meeting following the procedure set forth in (b) below. If a modification is approved, the Town Clerk shall issue written notice of the modification to the Operator within 30 days of approval.

(a) If the Operator is requesting a Mining License modification that it believes is minor in nature, the Operator may file a written request describing the proposed minor Mining License modification with the Town Clerk. Within 45 days of receipt of such a written request, the Town Board shall grant the request in whole or in part, deny the request in whole or in part, or notify the Operator in writing that, in its determination, the requested modification is not minor in nature and the procedures to be used for requesting a major Mining License modification as outlined under Section 1.04(5) must be followed.

(b) If the Town is proposing the minor Mining License modification, the Town Clerk shall provide the Operator with the following at least 30 days prior to the Town Board meeting at which the modification will be considered: (1) a written explanation of the proposed modification which shall include a description of the Town Board's rationale for determining that the proposed modification is warranted; and (2) written notice of the time, date, and location of the Town Board meeting at which the modification will be considered.

(7) Transfer of License. When one entity succeeds to the interest of another in a Mining Site, the Town shall release the current Operator of the responsibilities imposed by the Mining License

only if the following conditions are met, pursuant to the Town's reasonable discretion:

(a) Both the Operator and the successor Operator are in compliance with the requirements and standards of this Ordinance and all other applicable State, Federal and local laws, requirements, regulations, permits, and licenses.

(b) The successor Operator assumes the responsibility of the current Operator in writing and agrees to operate, complete, and reclaim the Mining Operations in accordance with the Mining License and all other applicable laws, requirements, regulations, permits, and approvals.

(c) The successor Operator shows proof of financial responsibility in substantially the same manner and amount as the current Operator and the successor Operator agrees to maintain any instrument of financial assurance at the same level as the current Operator.

(d) The Town Board makes a written finding that all conditions of the existing Mining License will be complied with by the successor Operator.

Section 10.05. **Procedures For Applying For a Mining License**

(1) Application. An application for a Town of Merrimac License shall be filed with the Town Clerk and shall include an electronic copy and 15 paper copies of the Mining License application requirements. The Application shall include the information set forth in Section 1.06 and as otherwise reasonably required by the Town.

(2) Reimbursement of Fees and Costs.

(a) At the time an application for approval of a Mining License is filed with the Town, the applicant shall execute for the benefit of the Town an agreement agreeing to pay and provide adequate security guaranteeing payment of the cost of the investigation, review and processing of the application, including, but not limited to, any Retained Experts and Town staff administrative costs. The agreement and the security shall be in form and substance acceptable to the Town. The Town shall not begin processing the application until the preliminary cost reimbursement agreement is approved and signed and until the required security is provided to the Town. The Town may accept an initial deposit to begin license processing and to provide an estimate to the applicant of anticipated costs, but it shall not be required to incur any processing costs beyond that for which a deposit or other security has been approved.

(b) The fees provided by an applicant when submitting a Mining License application, and for deposit upon being granted a Mining License and other administrative fee deposits received from the applicant or Operator shall be placed by the Town in an assigned account, for which statements shall be issued at least annually, and shall be used as necessary to pay the Town's reasonable administrative expenses associated with the evaluation of the Mining License application, including, but not limited to, Retained Expert fees, legal fees and administrative costs and expenses for holding required hearings, and other matters compelled by the need to review and respond to the application for Mining License as provided by this Ordinance, including environmental monitoring. At the request of an applicant or Operator that is attempting to transfer its interest in any application or Mining License, upon any such transfer any monies on deposit in the assigned account shall be held and applied for the benefit of the

transferee, provided the transferee meets all requirements of this Ordinance and further provided that if Town approval is required for the applicant or Operator to transfer such interest then such transfer must first meet with the Town's approval and satisfaction.

(3) Preliminary Review by Plan Commission.

(a) Notice and Preliminary Review. Within fifteen (15) days after receiving a complete Mining License application, the Town Clerk shall forward the Mining License application to the Plan Commission for initial review to determine if additional information or expertise is necessary to properly evaluate the application. Within 30 days of receipt of the application, the Town Clerk shall also publish or post a class 2 notice under Chapter 985 of the Wisconsin Statutes indicating that a mining application has been filed and transmitted to the Plan Commission. A copy of the application shall be made available for public review.

(b) Additional Information. The Plan Commission may request the applicant to submit additional information if the Plan Commission determines that the application is incomplete, or if the Plan Commission determines that additional information is needed to determine whether the proposed Mining Operation will meet the standards of this Ordinance. The Plan Commission may also retain the services of Retained Experts to review the application and report to the Plan Commission whether additional information is required for review of the application and to determine whether the application meets the standards of this Ordinance. The Plan Commission shall make a determination regarding the need for additional information or expertise within 90 days after receiving the initial application. If no additional information or expertise is deemed necessary the Plan Commission shall proceed to schedule a final review.

(c) Retained Expert Reports. Any Retained Experts shall report to the Plan Commission on whether the application meets the requirements of this Ordinance within 90 days of the Retained Expert's receipt of a complete Mining License application. A complete Mining License application shall include the following:

(1) the initial application which shall contain all of the information required by Section 11.06;
(2) any applicable fees; and
(3) any additional information that is provided by the Operator during the application process to assist the Retained Experts with reviewing the application.

(d) Recommendation to the Town Board. Within 45 days of receipt of any Retained Expert reports, of if there are no such reports, within 120 days of receipt of the complete Mining License application, applicable fees and any additional information, the Plan Commission shall make findings of fact and either recommend that the Town Board grant the applicant a license to operate a mine with or without conditions, or recommend that the Town Board deny the application.

(4) Decision by the Town Board.

(a) Notice and Hearing. Upon Recommendation by the Town Plan Commission, the Town Clerk shall place the Plan Commission's recommendation on the agenda for the next regular meeting of the Town Board, provided it can be practically done. At that

meeting, the Town Board shall set a date for a public hearing. At least 15 days prior to the public hearing, the Town Clerk shall publish or post a class 1 notice under Chapter 985 of the Wisconsin Statutes and shall provide written notice of the hearing via U.S. Mail to all landowners immediately adjacent to the proposed Mining Site. At the public hearing, the Town Board shall take public comment on the proposed Mining Operation and Mining License.

(b) Town Board Decision. Within 30 days following the public hearing, the Town Chairperson shall set a date for a Town Board meeting to consider a final decision on the Mining License application. At that meeting, the Town Board shall review the complete application, any Retained Experts' reports, and public comments made and information provided at the public hearing. The Town Board shall grant the Mining License if it determines that the Operator and Mining Operation will adhere to and comply with the minimum standards and purposes of this Ordinance and with all conditions, requirements and terms set forth in the Mining License.

(c) Remedies on Denial. If the Town Board denies the Mining License request, the applicant may request a hearing before the Town Board by filing a written request for a hearing with the Town Clerk within 30 days of denial. Following the hearing, the Town Board may, in its discretion, reconsider its previous decision on the application. In addition, the applicant may re-submit its Mining License application in accordance with this Ordinance, and re-submittal shall constitute a new application in conformance with all provisions of this Ordinance, provided that any differences between the original Mining License application and the new Mining License application shall be summarized by the applicant in a document entitled "Explanation of Reasons for Re-Submittal." A Mining License application received by re-submittal may be denied for any reason that any original Mining License application may be denied.

Section 10.06. **Mining License Application Requirements**

(1) General Requirements. All applicants for a Mining License shall submit the information required in this Section 11.06. The applicant may provide this information by reference to other documents submitted to other governmental agencies, but in such cases shall provide a copy of the referenced document and a specific cross reference identifying where the information required by this Section 11.06 is located in any referenced material.

(2) Ownership Information.

(a) The name, address, phone number, and email address of the Operator.

(b) The name, address, phone number, and email address of all owners or lessors of the land on which the Mining Operation will occur.

(c) If the Operator does not own the proposed mine Site, a copy of a fully executed lease and/or agreement between the landowner and the Operator who will engage in Mining Operations on the proposed Mining Site.

(d) Proof that all local taxes, special charges, special assessments, fees, and forfeitures (and any interest or penalties thereon) owed by the landowner and/or Operator of the proposed Mining Site are current.

(3) Site Information and Maps.

(a) Survey maps and parcel identification numbers of all contiguous parcels owned by the same landowner/lessor on which the Mining Operation will be located and any additional contiguous parcels on which the landowner/lessor has secured a right of first refusal.

(b) An aerial photo of the proposed site at a scale of not less than 1 inch equals 660 feet.

(c) A topographic map of the Mining Site extending one mile beyond the site boundaries at contour intervals no wider than 10 feet showing the boundaries of the site, the location and total acreage of the site, and the name of all roads within one mile of the site.

(d) A site plan for the Mining Site showing the location of all existing and proposed buildings and other structures, equipment, stockpiles, storage and parking areas, road access points, driveways, and buffer areas along bordering properties and public roads.

(e) A plan for staking or marking the borders of the entire Mining Site and for securing the site by appropriate measures, which may include fencing or alternative measures consistent with mine safety and security and in accordance with all applicable laws and regulations.

(f) A map on which all residential, agricultural and municipal wells within one mile of the boundaries of the Mining Site in all directions are marked and given a numerical identification of the location.

(g) The location and name of all surface waters, including, but not limited to, lakes, private or public ponds, streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns, and other water features on the site and within one mile of the Mining Site.

(h) The applicant shall place sufficient test wells to verify the groundwater elevations, gradient and depth of the groundwater on the Mining Site. In addition, the applicant shall install sufficient wells to conduct adequate pump tests to determine the amount of drawdown estimated to occur from the mining operation. Results of any testing described in this paragraph shall be provided to the Town Board within 30 days.

(i) A description of the distribution, depth and type of topsoil for the Mining Site. The description shall include the geological composition, depth and width of the deposit and the location of slopes greater than 20% and highly erodible soils.

(j) A map identifying the location of all other non-contiguous sites within the Town or adjacent towns, cities, or villages, if any, that will contribute material to the Mining Operation for which the applicant seeks a Mining License.

(4) Operation Plan.

(a) Dates of the planned commencement and cessation of the operation of the mine.

(b) Description of hours of operation of the Mining Site, including all times when any vehicles will enter or leave any portion of the Mine Site.

(c) Description of mining methods, machinery and equipment to be used for extraction and processing of the extracted material, and the sequence of operations.

(d) Estimated volume of material to be extracted over the life of the mine and for the next calendar year.

(e) Identification of all proposed off-site trucking routes, if any, together with the frequency of traffic and the common schedule of travel to be used for transporting extracted materials or products to or from the Mining Site; a description of the types of vehicles to be used on town roads and their respective weights, lengths, widths, axle numbers and spacing, and ESAL ratings both when empty and legally loaded; an assessment, which shall include core sampling, of the adequacy of roads within proposed off-site trucking routes and a description of any proposed alterations or improvements to such roads, and a description of any traffic control or other measures needed to protect public safety.

(f) A water budget, including an estimate of the amount of daily water use, water sources, and methods for disposing of water used or falling on the Mining Site, including, but not limited to, methods used for infiltration and control of run-off.

(g) A listing of any hazardous materials, including, but not limited to, stored or operational fuel supplies that will be used or located on the Mining Site and a description of measures to be used for securing and storing these materials. The operation plan shall also include a written plan for the use of any hazardous materials at the Mining Site and procedures for responding to spills of these materials and fuels on the site and the frequency of regular drills for responding to spills on the site.

(5) Town Impact Summary. The Mining License application shall include a Town impact summary report, which shall include a thorough narrative description of the Mining project in sufficient detail to allow the Town to assess probable physical, environmental and developmental impacts of the proposed mine and assess and summarize the potential and estimated impacts on the human health, safety and welfare of residents of the Town, based on the potential environmental, socioeconomic and other impacts of the proposed Mining Operation. The report shall include, but shall not be limited to, the likely and potential impacts of the proposed Mining Operations with respect to each of the following baselines:

(a) A life-of-Mine analysis of impacts upon social and environmental baseline parameters through completion of reclamation, including any impact market conditions may have on the operation of the Mine.

(b) A traffic impact analysis that discusses all reasonably foreseeable roadway construction and maintenance needs arising in the Town from the proposed Mining Operation and reasonably

foreseeable secondary impacts of the Mining Operation that may result in the demand for additional roadway or other infrastructure improvements, repairs or additional maintenance needed as a result of the Mining Operations, including a description of the anticipated needs for roadway modifications resulting from the likely Mine-related traffic impacts, both primary and secondary, and shall fully describe the existing reasonably foreseeable Mine-related changes to traffic patterns, traffic volume, the class of roadways associated with those patterns, and any load-related needs and restrictions.

(c) The impacts of the mine on employment, economic activity and tax base within the Town.

(d) The impacts of the mine on the Town's population and housing stock, including the availability of such housing stock.

(e) The impacts of the mine on the need for additional government services, including, but not limited to, infrastructure, utilities, schools, fire protection, emergency medical services, and sheriff.

(f) The expected changes in land use within the Town, including the percentage of lands devoted to each use currently and in the future.

(g) The impacts of the mine on air quality within the Town.

(h) A description of the current environmental characteristics of the Mining Site, including wildlife, vegetation and physical parameters of groundwater quality and quantity, and surface water quality and quantity, including wetlands as compared to the same environmental characteristics after the mine becomes operational.

(i) A description of the environmental characteristics within the Town, including, but not limited to, air, groundwater, surface water and acres of disposal facilities for any waste as compared to the same environmental characteristics after the mine becomes operational.

(j) A description of the topographical and aesthetic features of the proposed Mining Site, including other geographical vegetative conditions.

(k) A description of the cultural features of the proposed Mining Site, including, but not limited to, an inventory and analysis of all historical and cultural sites and landmarks.

(l) A description and analysis of the ambient noise audible in half-mile increments within a five (5) mile radius of the proposed mining site.

(6) Information Demonstrating Compliance with Minimum Standards. The Operator shall provide such additional information the Town deems necessary to determine whether the mining operation will comply with the minimum standards in Section 11.07.

(7) Compliance with all Applicable Laws and Regulations. The Mining License application shall include a description of all other governmental or other regulatory permits, licenses, approvals, or other approvals necessary for the Mining Operation. The Mining License application shall also include a timeline of dates when such approvals were granted, or the expected date of approvals.

Section 10.07. **Minimum Operational Standards**

(1) General Standards.

(a) The borders of the entire Mining Site will be appropriately staked or marked, and the Mining Site will be secured by appropriate measures which may include fencing or other alternative measures consistent with mine safety and security as set forth by governmental or other regulatory authorities.

(b) The Mining Operation will comply with all applicable Town Ordinances.

(c) The Operator shall demonstrate, to the sole satisfaction of the Town, that all other applicable and required federal, state and local permits and approvals required for the Mining Operation have been or will be obtained prior to commencement of any Mining Operation. The applicant shall further demonstrate compliance with this sub-section by submitting a copy of all permits, approvals, or waivers of permits to the Town prior to commencing operations.

(d) The Operator shall provide proof that it has provided the financial assurances as required under Wis. Stat. Chapter 293 or any other applicable codes or regulations.

(e) The Operator shall agree to comply with all other applicable federal, state and local permits and approvals once issued.

(2) Buffer Areas. The Operator shall provide a buffer area from the boundaries of the Mining Site, to protect bordering properties from noise, dust, lighting, odors, blasting, and other adverse impacts of the operation, along bordering property lines and public roadways.

(a) The buffer area shall provide a setback of ¼ mile from the mining site to the property line of an adjacent property owner unless the landowner consents to a lesser distance, but not less than 50 feet. If consent is provided for a lesser distance, a copy of such consent agreement shall be recorded against the property at the register of deeds office for the county in which the land is located and a copy of the agreement shall be provided to the Town Clerk.

(b) The buffer area shall provide a setback of ½ mile from the Mining Site to any school, medical facility, nursing home, or community based residential facility.

(c) The Operator shall screen the mining operations from public view to the maximum extent practicable. Screening may be achieved through the use of berms, additional setbacks or other measures deemed adequate by the Town Board. Screening activities, such as construction of a vegetated berm or installation of a fence, may occur in the buffer area.

(3) Hours of Operation. The Operator shall limit normal hours of operations at the Mining Site to 12 hours a day Monday through Friday not earlier than 6:00 a.m. and not later than 9:00 p.m. and on Saturday not earlier than 6:00 a.m. and not later than noon, to avoid substantial or undue impacts on neighboring properties and town residents.[2] Operations on-site shall not occur on Sundays or legal holidays.

(4) Control of Light. The Operator shall limit night lighting on the Mining Site, to that which is minimally necessary for security and worker safety. Every effort consistent with the legal

requirements for safety shall be made to minimize illumination of the night sky and neighboring properties. At a minimum, such measures shall include the following:

(a) The use of full cutoff shrouds on all lights.

(b) Portable lighting shall be used only as necessary to illuminate temporary work areas.

(c) The use of berms of sufficient height coupled with other methods of visual screening to block light from the Mining Site to neighboring properties.

(d) The design and location of access roads, driveways and other access points to the Mining Site to minimize lights from traffic and operations to neighboring properties.

(e) Lighting from any and all sources within the mining property shall not be designed nor maintained to exceed 0.5 footcandles when measured at ground level. A lighting photometric plan shall be prepared for any and all exterior lighting fixtures, which depicting lighting candles (in footcandles) assuming all exterior fixtures are illuminated. Spot levels shall be provided every ten feet, and the 0.5 candles isometric line shall be depicted wherever present on the subject property.

(5) Control of Noise.

(a) The Operator shall control off-site noise levels to the maximum extent practicable to avoid adverse impacts to neighboring landowners. The noise levels at the boundaries of the mining or processing site shall not exceed 65 dB. The noise levels at the boundaries of any school, medical facility, nursing home, or community based residential facility shall not exceed 60 dB. Decibels shall be based on dbA. which is the unit of sound level expressed in decibels (db) and A-weighted as described in ANSI § 1.4. 1983 and shall be measured in accordance with accepted protocols.

(b) Noise levels shall be monitored at the Mining Site's property boundary by an independent testing company. The tests shall occur for a 10-day period at least once per quarter. The results shall be reported to the Town within 30 days of the last test result.

(6) Well Monitoring and Impact on Groundwater Quality. For a period of one year prior to commencement of construction of any portion of the Mining Site or commencement of any Mining Operation, and during the period of the Mining Operation, and continuing for no less than three years after the completion of the Mine reclamation, the Operator shall monitor all private and public wells (to the extent access can be secured), at the Operator's sole cost and expense, located within two miles of the perimeter of the Mining Site in order to provide baseline data concerning quantity and quality of water. The wells shall be monitored quarterly for lead, arsenic, turbidity, total dissolved solids, chlorides, nitrates, specific conductivity and any toxic substance that may reasonably be believed to be present in the ore deposit proposed to be mined. Well monitoring required under this Ordinance shall be performed by an independent consultant agreeable to both the Town and the Operator. All test and monitoring results shall be reported to the Town within 30 days of completion. Mining Operations shall not cause an exceedance of groundwater quality standards in Wis. Admin. Code Ch. NR 140 or as otherwise may be set forth in applicable law.

(7) Fugitive Dust Control.

(a) In addition to any ambient air monitoring required by the Wisconsin Department of Natural Resources, the Operator shall be required to comply with best management practices for control of off-site fugitive dust, including, but not limited to, use of truck covers, watering roads and equipment, and stabilizing stock piles.

Section 10.08. **Reporting**

(1) Ongoing Reporting Requirements.

(a) The Operator shall provide notice to the Town of any notices of violations, citations, or other enforcement actions taken by any other governmental or regulatory authority against the mining operation. The Operator shall provide notice to the Town of such actions within 15 days after receiving such notice from the governmental or regulatory authority.

(b) All monitoring data, sampling results and any other test results required by this Ordinance shall be undertaken at the Operator's expense and provided to the Town Clerk. Unless otherwise specified in this Ordinance, all monitoring data, sampling results and any other test results shall be provided to the Town Clerk within 30 days of receipt of the results by the Operator.

(2) Annual Report.

(a) No later than October 1 of each calendar year, the Operator shall submit an annual report to the Town Board for all active and intermittent Mining Sites and Mining Operations for which the Operator has a Mining License in the Town of Merrimac. At its own discretion, the Town Board may also require that the Operator appear at a Town Board meeting to present the annual report and answer questions from the Town Board. The reporting period shall be from the date of the issuance of the first Operator's Mining License to August 31, and thereafter from September 1 to August 31.

(b) The annual report shall include the following information:

1. An identification of the Operator and location of the Mining Site.

2. A map or drawing accurately showing the area of excavation, the unclaimed area and the reclaimed area, including a calculation of the number of acres for each type.

3. A description of activities, including ore extraction and waste material production and operations on the Mining Site for the previous calendar year, including the cubic yards each of material extracted, processed, and waste material produced.

4. A description of activities and operations on the Mining Site, including ore extraction and waste material production or processing anticipated for the following calendar year.

5. A written report demonstrating how the Operator has been in compliance with all terms and conditions of its Mining License and this Ordinance. The report

shall include all groundwater, surface water and other monitoring results, as well as a copy of all annual reports submitted to all other governmental or other regulatory authorities.

6. A summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.

7. A signed certification by the Operator to the effect that: "I certify that this information is true and accurate, and except as expressly set forth herein the mineral mining site and operations described herein and for which the town issued the mining license dated_____complies with all conditions of the applicable Town license, the Ordinance, all other Town ordinances and codes, and all other governmental or other regulatory authority requirements, laws, regulations, and requirements and is in compliance with any applicable permits, licenses and approvals required for operation of the mineral mining site and operations described herein and for which the town issued the mining license dated_____."

(c) Quarterly Inspection Summary. The Operator shall submit to the Town Clerk, within 30 days following the close of each calendar quarter, a report summarizing the results of the following inspections.

1. Daily Inspections. The Operator shall inspect any tailings ponds and any other waste lagoons on a daily basis for evidence and indications of any phenomenon, activity or process which might affect the integrity of any tailings pond or dike.

2. Monthly Inspections. The Operator shall designate one or more qualified senior personnel to inspect any tailings ponds and any other waste lagoons on a monthly basis and prepare, sign and date a report. If the person or persons making the monthly inspections is not a Wisconsin registered professional engineer, then the Operator shall also provide for quarterly inspections as required herein by a registered professional engineer.

3. Natural Event Inspections. The Operator shall inspect any tailings ponds and any other waste lagoons after any unusual natural occurrence, including, but not limited to, the following: earthquake, tornado, flood, storm event exceeding the 100-year storm threshold or any other natural event which the Operator should reasonably expect could affect the integrity of the tailings pond, dike, or other areas of the Mining Site.

(d) Inspection Logs. All daily, monthly and quarterly inspection observations shall be recorded in a log and maintained on the premises of the Mining Site and be made available for inspection by Town officials during regular business hours. The Operator shall submit copies of inspection logs to the Town upon request.

Section 10.09. **Changes in Operation**

(1) Expansion. Expansion of the Mining Site or any Mining Operation that is not specifically allowed by or is inconsistent with any limitation or parameters of the Mining License is prohibited and is a violation of this Ordinance. Performance of activities not described in, or activities not

expressly allowed by, the Mining License application or the Mining License shall be considered an unlawful expansion and a violation of this Ordinance. The movement of any waste, ore or concentrate to a Mining Site from a location outside the boundary of that Mining Site shall be deemed an unlawful expansion of Mining Operation unless such movement is specifically and expressly authorized in a Mining License issued pursuant to this Ordinance.

(2) Suspension or Termination of Mining.

(a) An Operator must provide notice to the Town as soon as possible of any temporary halt of mining operations lasting more than 180 days, including, but not limited to, a statement showing projected loss of employment. Notice shall include the reason for the temporary suspension as well as plans to ensure continued compliance of all applicable laws and regulations throughout the suspension period.

(b) The Operator must provide notice of its intent to permanently terminate any or all activity at the Mining Site no later than one year before the proposed Mining Operation, or any portion of the Mining Operation, is terminated. The Operator must provide notice by the end of each calendar year of any significant change in the anticipated timing of each major phase of the Mining Operation as originally detailed in the plan of operation submitted as part of the Mining License application pursuant to this Ordinance, and explain any reasonably foreseeable changes to the overall Mining Operation lifetime based on such changes.

(c) Upon receipt of a notice of temporary halt in mining or upon a cessation lasting more than 180 days, whichever is sooner, the Town Board may require that the Operator take additional measures to ensure that public health, safety and welfare are protected during the temporary cessation of mining operations, including, but not limited to, a temporary cap on tailing facilities, additional security measures, additional erosion control measures, and other site stabilization measures.

(d) A suspension longer than two years shall be considered a permanent abandonment and require the Operator to commence closure and reclamation. The Operator may request the Town Board re-evaluate this requirement based on exceptional circumstances. The Town Board shall not be obligated to grant the request for re- evaluation. The Town Board's determination of the Operator's request for re- evaluation is not subject to appeal or other additional review.

(e) Any action ordered by the Town Board pursuant to Section 11.09(2) shall not be deemed a Mining License Modification pursuant to Section 11.04(5).

(3) Commencement of Reclamation. Reclamation of any mine shall begin within one year after cessation of mining activities, whether temporary or permanent, in accordance with the Reclamation Plan as set forth in Wis. Stat. Chapter 293 or Wis. Stat. 295, whichever is applicable.

Section 10.10. **Inspection, Enforcement, and Penalties**

(1) Inspection.

(a) Compliance Inspections. Upon issuance of a Mining License, the Operator is deemed as a condition of licensure to have consented to allow inspections of the

mining site and all mining operations by the Town Board or its designee(s) for the purpose of determining compliance with the provisions of this Ordinance and the terms and conditions of the Mining License. Inspections may occur pursuant to

this section upon showing of proper identification, with or without advance notice to the Operator.

(b) Records Review. All required records to demonstrate lawful operation of the Mining Operation shall be maintained by the Operator at the Mining Site and made available within a reasonable time to the Town Board or its designee(s) to assist the Town Board to determine compliance with the provisions of this Ordinance.

(c) Investigation of Complaints. The Operator shall provide access to the Mining Site to allow the Town Board or its designee(s) to inspect for the purpose of investigating any complaint against the Operator alleging a condition that negatively impacts the public health, safety or welfare.

(d) Retained Experts. If, as a result of any inspections or investigations, the Town Board determines that a Retained Expert should undertake any further inspections or investigations, the Town may hire a Retained Expert, the expense of which shall be paid by the Operator. If the Operator fails to provide access for the inspections or investigations, or provide payment of the Town's expenses, the Town may take enforcement action under Section 11.10(1).

(2) Violations. In addition to failure to comply with any provision of this Ordinance, the following are specific violations under this Ordinance:

(a) Engaging in any mining or any activities associated with mining, without a Mining License granted by the Town Board pursuant to this Ordinance.

(b) Failure to comply with the applicable minimum standards and other terms of this Ordinance, all other Town ordinances and codes, and all other governmental or other regulatory authority requirements, laws, regulations, and requirements, or failure to comply with any applicable permits, licenses and approvals required for Mining Operation.

(c) Making an incorrect or false statement in the information and documentation submitted during the Mining License application process or during inspection of the Mining Operation by the Town or its designees or other duly appointed representative.

(d) Failure to timely file the annual operational report under Section 1.08 of this Ordinance.

(e) Failure to comply with any conditions of approving the Mining License application, or any agreements entered into as a condition of approving the Mining License application.

(f) Failure to provide or maintain any financial assurance required as a condition of approving the Mining License application.

(g) Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance or other order issued by the Town.

(3) Remedies. The Town Board may take any appropriate action or proceeding against any person in violation of this Ordinance or in violation of the terms of the Mining License, including, but not limited to, the following:

(a) Issue a stop work order for all Mining Operations. Any Operator issued a stop work order shall be provided with a notice of violation under Section 11.10(4) by the Town Clerk within 10 days.

(b) Issue a notice of violation and order that specifies the action to be taken to remedy a violation under Section 11.10(4).

(c) Issue a citation in accordance with the Town's citation ordinance or pursuant to other Town authority.

(d) Refer the matter to legal counsel for consideration and commencement of legal action, including, but not limited to, the assessment of forfeitures under Section 11.10(6) and injunctive relief.

(e) Suspend or terminate the Mining License under Section 11.10(5).

(4) Notice of Violation. The Town Board or its designee may issue a notice of violation and order for curing the violation upon a violation of any term of this Ordinance or upon a violation of any agreement entered into between the Town and the Operator for the Mining Operations pursuant to the following provisions.

(a) The Town shall serve a notice of violation upon the Operator within thirty days of the Town's obtaining knowledge of the violation. The notice of violation may include a proposed work plan or other remediating steps to cure the violation. The

(b) Operator shall have thirty days from the Operator's receipt of the notice of violation and order to complete all necessary work to cure the violations to the Town's satisfaction.

(c) Any person affected by a notice and order issued in connection with the enforcement of this Ordinance under Section 11.10(4) may request and shall be granted a hearing on the notice of violation and order before the Town Board, provided such person shall file with the Town Clerk a written petition requesting the hearing and setting forth the person's name, address, telephone number and a brief statement of the grounds for the hearing, the requested relief, or for the mitigation of the order. Such petition shall be filed within thirty days of the date the notice and order are served upon the Operator. Upon receipt of the petition for hearing, the Town Clerk shall set a time and place for a hearing before the Town Board and shall give the petitioner written notice thereof. In the event the petitioner is not the Operator, the Town shall provide notice of the hearing to the Operator.

(d) After the hearing, the Town Board by a majority vote, shall sustain, modify or withdraw the notice under Section 11.10(3), or modify the order, depending on the Town Board's findings, as to whether the provisions of this Ordinance have been complied with. The petitioner shall be notified within ten days of the Town Board's issuance of its findings and any modification of the order. In the event the petitioner is not the Operator, the Town shall provide a copy of the Town Board's findings of fact and any modification of the Town's order to the Operator.

(e) The proceedings of the hearing, including the findings and decision of the Town Board and the reasons therefore, shall be summarized in writing and entered as a matter of public record in the office of the Town Clerk. Such record shall also include a copy of every notice and order issued in connection with the case.

(5) Mining License Suspension or Revocation.

(a) After service of any notice of violation on an Operator and after any requested hearing has been held on such notice pursuant to Section 11.10(4), the Town Board may consider suspension or revocation of a Mining License for any violation of this Ordinance or the terms of the Mining License. A Mining License may also be revoked if it is determined that there has been an abandonment of mining as defined under Wis. Stat. § 293.61, or under Wis. Stat. § 295.97, whichever is applicable.

(b) The Town Board shall provide the Operator with a hearing on any proposed Mining License suspension or revocation. The Town Clerk shall provide the Operator with notice of the hearing at least 15 days in advance. Following the hearing, if the Town Board determines there is reasonable cause to conclude that the Operator has failed to correct or cure a violation it may suspend or revoke the license.

(c) Revocation of any Mining License awarded pursuant to this Ordinance shall terminate the Operator's right and authority to continue Mining Operations pursuant to this Ordinance, but shall not affect the Operator's obligation to comply with any continuing obligations of the Operator under the terms of the Mining License or any agreement to which the Town is a party.

(d) In the event of any violation that is not corrected pursuant to any conditions of correction established by the Town Board and to the satisfaction of the Town Board the Town Board shall, at one or more open meetings, establish and levy an appropriate forfeiture and order an appropriate compliance schedule consistent with the intent of this Ordinance, the violation of which shall constitute a separate violation of this Ordinance.

(6) Penalties. Any person or Operator who violates this Ordinance or any of the provisions contained herein shall forfeit not less than $10 nor more than $10,000 for each violation. Each day of violation is a separate offense.

(a) The Town Board shall, promptly after verifying any violation of any provision of a Mining License or agreement to which the Town is a party, notify the Operator in writing of such violation and require the Operator to report to the Town Clerk within 10 days.

(b) The Town shall be entitled to recover from the violator the reasonable and necessary

expenses associated with prosecution of the violation.

(c) All funds recovered pursuant to this section will be placed in an assigned account established by the Town and used at the Town Board's sole discretion consistent with achieving the intent of this Ordinance.

(d) The remedies provided herein shall not be exclusive of other remedies.

(7) Non-Waiver. A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any present or future violation(s).

Section 10.11. **Setbacks**

(8) No person shall establish, construct, operate or maintain the use of property for any mining related buildings, roads, ponds, or other construction within the residential district, or areas designated for residential development in the town's development plan, or any of the following areas:

(a) Within 1,000 feet of any navigable or non-navigable lake, pond or flowage;
(b) Within 1,000 feet of any navigable or non-navigable waterbody or wetland;
(c) Within 100 feet of adjoining property lines;
(d) Within 100 feet from the base, or top, of a bluff, which means the line delineating the bottom or top of a slope connecting the points at which the slope becomes 18 percent or greater;
(e) Within 1,000 feet of any existing occupied structures not owned by the operator or owner;
(f) Within 500 feet of any contiguous property subdivided into residential lots;
(g) Within a floodplain; or
(h) Within 1,000 feet of the nearest edge of the right-of-way of any of the following: any state trunk highway, interstate or federal primary highway; the boundary of a state public park; the boundary of a scenic easement purchased by the department of transportation; the boundary of a designated scenic or wild river; a scenic overlook designated by the department by rule; or a bike or hiking trail designated by the United States Congress or state legislature.

Section 10.12. **Severability**

Should any section, clause, provision or portion of this Ordinance be adjudged unconstitutional, invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction, including, but not limited to, all applicable appeals, the remainder of this Ordinance shall remain in full force and effect.

Ordinance adopted November 10, 1992
Approved by the Sauk County Board of Supervisors January 19, 1993
Effective January 19, 1993

Section 10 Repealed and Replaced; Approved by the Merrimac Town Board on May 1, 2019
Approved by the Sauk County Board of Supervisors May 18, 2019

TOWN OF MERRIMAC
Planning & Zoning Ordinance Section 11 for the allowance of Manufactured (Mobile) Home Parks and Subdivisions.

11.0 MANUFACTURED HOME PARKS and SUBDIVISIONS

11.01 Manufactured Home Parks or Subdivisions, also referred herein as Mobile Home Parks, shall be permitted as a Conditional Use Permit or Planned Area Development in the Single Family Residential District only upon approval by the Town Board only after such proposal has been recommended for approval by the Town of Merrimac Planning & Zoning Commission, after a public hearing.

11.02 In approving such location, the Board shall view the proposed site or sites and shall consider such evidence as may be presented at the hearing, bearing upon the general purpose and intent of this ordinance to promote the public health, safety and general welfare and the specific purpose of this paragraph to prevent the overcrowding of land and the development of housing blight in rural areas. In addition, such mobile home parks shall meet the following requirements:

1) All mobile homes shall be placed on a foundation provided with anchors sufficient to meet or exceed the number and design required by the State of Wisconsin (Manufactured Home Construction and Safety Standards).
2) Each mobile home shall be provided with a foundation around its entire perimeter.
3) There shall be two off-street parking spaces for automotive vehicles on each mobile home space or lot paved with asphalt or concrete.
4) Each automobile parking space shall be not less than nine (9) feet wide and 18 feet deep, exclusive of maneuvering and access space.
5) There shall be a system of asphalt or concrete public or private streets as approved by the Town and providing access from each and every mobile home, space or lot and automobile parking space within such mobile home park
6) Each mobile home space or lot shall meet or exceed the same lot size or area and setback standards as other single family dwelling units, as described in Section 7.04 of the Town of Merrimac Zoning Ordinance and as specified in the approved Conditional Use Permit or Planned Area Development.
7) In addition to all other required yards and open spaces, each mobile home park shall be completely surrounded, except for permitted entrances and exits, by a vegetated buffer, which shall be not less than twenty five (25) feet wide. Within such buffer there shall be established within six (6) months after issue of the permit for the location of a permanent evergreen planting, such as White, Green and/or Blue Spruce. The plantings should have a minimum height at planting of eight (8) feet and not be located more than ten (10) feet from the nearest planting. The plantings should be arranged that within ten (10) years they will have formed a screen equivalent in opacity to a solid fence or wall. Such permanent planting shall be grown or maintained to a height of not less than fifteen (15) feet.
8) It shall be a condition of the granting of a permit for the establishment of any such mobile home park, and a continuing condition for the operation of the same, that:
    a. All parking spaces, walks and driveways be constructed and maintained so as to prevent the accumulation of surface water and the formation of substantial muddy areas.
    b. That the planting screen required by subsection 6 be established and continuously maintained.
    c. That sanitary facilities at least equal to the requirements of the State Board of Health be established and maintained.

d. There shall be a weekly solid waste disposal collection service for each space.
e. Each mobile home park shall set aside a contiguous area of at least five percent (5%) of the total site area for a private recreation area. This shall be in addition to yard open spaces. This area shall be maintained by the mobile home park owner.
f. Mobile homes sales office or other business or commercial uses, with the exception of a central laundry building, shall be prohibited from locating in the park unless otherwise approved in the Conditional Use Permit or Planned Area Development.
g. Storage areas shall be located within the mobile home units, private garages, or in a central storage area approved as part of the Conditional Use Permit or Planned Area Development, and shall be limited to use by only current Mobile Home Park residents.
h. All mobile homes shall meet the construction standards of the State of Wisconsin Manufactured Home Construction and Safety Standards and all other applicable federal, state and local codes.
i. No mobile home park operator may require that only mobile homes purchased from the Park operator or owner be placed in the park, or sold to the Park operator or owner when the mobile home owner moves out of the park.
j. Each mobile home park shall have a minimum area of five (5) acres.

Adopted by the Town Board: October 2, 2007
Approved by Sauk County: November 20, 2007
Effective: November 21, 2007

operation are being complied with. If such inspections yield information showing that all such conditions have been met, the applicant shall be entitled to renewal of the permit unless such renewal would be contrary to state law.

14) A termination of mineral extraction activities on a site which is the subject of an approved conditional use permit for a period of one year or more shall disentitle the permit holder to a right of renewal at the end of the permit period, despite compliance of former operations with all conditions of the original permit, unless:

    a) Such a discontinuance was specified as part of the original operations plan; or

    b) The operator has submitted and had Board of Appeals approval of an amendment to the original permit placing the operation of inactive status with accompanying conditions as to interim or partial reclamation.

15) Such other standards that will permit the Board of Appeals to evaluate and make a determination of conditional uses for this purpose.

DEFINITIONS

For the purposes of this Ordinance, the following definitions shall be used. Words used in the present tense include the future; the singular number includes the plural number; and the plural number includes the singular number. the word "shall" is mandatory, the world "should" is advisory and the word "may" is permissive. Any words not defined in this section shall be presumed to have the customary dictionary definitions.

1) ACCESSORY STRUCTURE OR USE - a use or detached structure subordinate and incidental to the principal structure or use of the premises.

2) BED AND BREAKFAST ESTABLISHMENT - any place of lodging that provides six (6) or fewer rooms for rent for more than ten (10) nights in a twelve (12) month period, is the owner's personal residence, is occupied by the owner at the time of rental and in which the only meal served to guests is breakfast.

3) BOATHOUSE - an accessory building, on the same lot as a principal building, designed for the protection and storage of boats, which shall not be used for either temporary or permanent dwelling purposes.

4) BOAT LIVERY - establishments offering the rental of boats and other watercraft and fishing equipment.

5) BUILDING - any structure having a roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals or property of any kind.

6) CAMPGROUND - a parcel or tract of land, maintained, intended or used for the purpose of supplying temporary or overnight living accommodations to the public by providing designated areas for the placement of trailers, tents, buses, automobiles or sleeping bags, and may include buildings to provide services to the patrons such as restrooms, bathing, laundry and commissary facilities.

7) CONDITIONAL USE - a land use which requires a conditional use permit in order to develop.

8) CONFORMING USE - any lawful use of a building or lot which complies with the provisions of this Ordinance.

9) DISTRICT - a portion or portions of the Town of Merrimac for which the regulations governing the use of land and buildings are uniform.

10) DWELLING -

   a) single family dwelling - a building designed for and occupied exclusively as a residence for one family.

   b) two family dwelling - a building designed to be occupied by two families living independently of each other.

   c) multiple family dwelling - a building designed to be occupied by 3 or more families living independently of each other.

11) FAMILY - any number of persons related by blood, adoption or marriage, or not to exceed five (5) persons not so related, living together in one dwelling as a single housekeeping entity.

12) FARM - an area of land devoted to the production of field or truck crops, livestock or livestock products for sale or consumption primarily off the premises.

13) FLOOR AREA - the area within the outer lines of the exterior walls of a building, at the top of the foundation or basement wall; provided that the floor area of a dwelling shall not include space not usable for living quarters, such as attics, utility or unfinished basement rooms, garages, breezeways or porches or terraces.

14) GARAGE - an accessory building or accessory portion of the main building, used or designed or intended to be used for the storage of private motor vehicles; including carports.

15) HEIGHT (BUILDING) - the vertical distance measured from the mean elevation of the finished lot grade along the street-facing side of the structure to the highest point of the structure, excluding chimneys, vents or antennae.

16) HOME OCCUPATION - any occupation for gain or support conducted entirely within a residential building by resident occupants which is incidental to the residential use of the premises, does not occupy more than 20% of the floor area, does not employ on the premises more than 2 full-time people not residents of the premises, and does not involve the outside storage of materials or other operational activity which would create a nuisance or be otherwise incompatible with surrounding uses.

17) HOTEL - a building in which board and lodging are provided to the transient public for compensation.

18) LOT - a parcel (as defined by this Ordinance) of land having frontage on a street or road occupied or intended to be occupied by a principal structure or use and sufficient in size to meet the lot width, yards, setbacks, parking area and other open space provisions of this Ordinance. Lots identified only for property tax and related purposes shall not be considered individual lots.

19) LOT LINES AND AREA - the peripheral boundaries of a parcel of land and the total area lying within such boundaries, except all calculations of lot area shall be exclusive of any dedications, right-of-way easements, or reservations.

20) LOT WIDTH - the width of a parcel of land measured at the rear of the required street/highway setback.

21) MANUFACTURED HOME - means both of the following:

a) a structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site is 1000 or more square feet, not including basement, porches, or annexes, which is built on a permanent chassis with a permanent foundation and connected to the required utilities.

b) a structure which meets all the requirements of par. (a) for which the manufacturer has filed a certification required by the Secretary of

Housing and Urban Development and complies with the standards established under 42 USC 540l to 5425. (History: 1973c. 116, 132; 1983a 27, 192.)

22) MARINA - a commercial dock providing secure moorings for watercraft and often offering supply, repair and related facilities.

23) MINERAL EXTRACTION/PROCESSING OPERATION - includes the excavation, mining or removal of metallic or non-metallic minerals, clay, ceramic or refractor minerals, quarrying of dirt, sand, gravel, crushed or broken stone, but not the extraction of top soil.

24) MOTEL - a series of attached, semiattached or detached sleeping units for the accommodation of transient guests.

25) NON-CONFORMING USE - any structure, land or water lawfully used, occupied or erected at the time of the effective date of this Ordinance or amendments thereto, which does not conform to the regulations of the district it is located in, this Ordinance or amendments thereto.

26) PARCEL - contiguous lands under the ownership or control of a subdivider(s) or individual(s) not separated by streets, highways, or railroad right-of-way. Parcels identified only for property tax and related purposes shall not be considered individual lots.

27) PARKING LOT/FACILITIES - an area where automobiles are temporarily stored, primarily for the convenience of employees, residents or patrons, but not for the purpose of storing vehicles to be junked, salvaged or sold.

28) PERMITTED USE - a use which may be lawfully established in a particular district, provided it conforms with all requirements and regulations of such district.

29) PERSON - except where otherwise indicated by the context, the word person shall include the plural, or a company, firm, corporation, partnership or agency.

30) PLOT PLAN - a plan of the area in which a proposed use is to be located showing principal and accessory structures, parking areas, storage areas, open areas, setback distances, sewage disposal areas, and general land use.

31) PRINCIPAL USE - a use which is the main or primary use of land or buildings as distinguished from a subordinate or accessory use.

32) PROFESSIONAL OFFICE -

a) professional home office - residence of a doctor, dentist, clergyman, realtor, engineer, lawyer, author, musician or other recognized professional person used to conduct their business where the office is within the residence and incidental to the residential use, does not occupy more than 20% of the floor area, and does not employ on the premises more than 2 full time people not residents of the premises.

b) professional office - a building in which is provided space for professional offices such as doctors, practitioners, dentists, realtors, engineers, lawyers, authors, architects, musicians and other recognized professional occupations.

33) PUBLIC HEARING - a public meeting whose time and place is published according to a Class 2 Notice as specified in Chapter 985 of the Wisconsin Statutes.

34) RECREATION CAMP - an area containing one or more permanent buildings used occasionally or periodically for the accommodation of members of associations or groups for recreational purposes.

35) RESIDENCE - see DWELLING.

36) RESORT - an area containing one or more permanent buildings utilized principally for the accommodation of the public for recreational purposes.

37) ROADSIDE STAND - a structure used solely by the owner or tenant of the farm on which such structure is located for the sale of farm products produced on that farm.

38) SERVICE STATION - any building or premises which sells gasoline, oil and related products for vehicles. This shall include repairs, washing and lubrication, but shall not include auto body repair or dismantling.

39) SETBACK - the minimum horizontal distance from the front line of the lot or from the center line of the highway to the nearest building, exclusive of permitted projects, measured at right angles to the highway or the front lot line.

40) SETBACK LINES - lines established adjacent to highways for the purpose of defining limits within which no building or structure or any part thereof shall be erected or permanently maintained, except as shown herein. "Within a setback line" means between the setback line and the highway right-of-way.

41) SHOOTING RANGE - an area designed and constructed for the discharge of firearms that is open for club members or public use.

42) SIGN - any object, device, display, structure, or part thereof, situated outdoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination, or projected images.

43) STRUCTURAL ALTERATIONS - any change in the supporting members of a structure such as bearing walls, columns, beams or girders, footings and piles.

44) STRUCTURE - anything that has shape, form and utility constructed or erected, the use of which requires a more or less permanent location on the ground, or attachment of something having a permanent location on the ground. This includes the mounding or excavating of earth.

45) TEMPORARY LAND USE - a land use which is present on a property for a limited and specified period of time.

46) TENT - a portable lodge of canvas, strong cloth, or synthetic material stretched and sustained by poles, or any similar portable lodge designed for transient recreational use.

47) VARIANCE - a departure from the terms of this Ordinance as applied to a specific building, structure or parcel of land, which the Board of Appeals may permit, contrary to the regulations of this Ordinance for the district in which such building structure or parcel of land is located, when the Board finds that literal application of such regulation will effect a limitation on the use of the property which does not generally apply to other properties in the same district, and for which there is no compensating gain to the public health, safety or welfare.

48) VISION CLEARANCE - an unoccupied triangular space at the intersection of highways or streets with other highways, streets, or roads, or at the intersection of highways or streets with railroads. Such vision clearance triangle shall be bounded by the intersecting highway, street, road or railroad right-of-way lines and a setback line connecting points located on such right-of-way lines by measurement from their intersection as specified in this Ordinance.

49) YARD - an open space on a lot, on which a building is situated, unoccupied except as otherwise provided in this Ordinance, open an unobstructed from the ground to the sky by structures.

50) YARD, FRONT - a yard extending across the full width of the lot and measured between the front line of the lot and the front line of the building.

51) YARD, SIDE - a yard on each side of the main building extending from the side wall of the building to the side lot line, and from the front yard to the rear yard. When an accessory building is constructed as part of the main building or constructed on one side of the main building, the side yard requirements shall be the same for the accessory building as required for the main building.

Zoning Amendments
Town of Merrimac

DEFINITION AMENDMENTS:

FAMILY –one person; two unrelated persons who regularly and customarily reside together as a single housekeeping unit; or three or more persons who customarily reside together as a single housekeeping unit wherein no more than one such person is not related to any or all other such persons by blood, marriage, or legal guardianship.

DEFINITION ADDITIONS:

CAMPING UNIT**.** A camping unit is a sleeping unit, such as a tent or recreational vehicle or part thereof, which is used to house person(s) on a temporary basis and shall not be considered a structure as defined in this ordinance.

FIXTURE – a fixture is defined as a feature that is a permanent attachment to a structure and include, but may not be limited to: interior and exterior paint, wallpaper, lights, ceiling fans, cabinets, countertops, siding, shingles, carpet, linoleum, tile, windows and doors.

MECHANICAL – a mechanical is defined as an operational feature of a structure and include, but may not be limited to: wiring, sinks, faucets, water and sewage pipes, water softeners, water heaters, heating and cooling systems.

ORDINANCE ADDITIONS:

2.30 Park Fees.
A park fee shall be paid to the Town Clerk at the time of first application for approval of a final plat of a Planned Area Development, or subdivision plat or replat, in the amount of four hundred eighty five dollars ($485.00) for each proposed dwelling unit within the plat. Park fees collected by the Town Clerk under the provisions of this code shall be deposited in a non-lapsing special fund for Town parks and open spaces within the Township and shall be separate from the General Fund of the Town, and said special fund shall be used exclusively for the improvement of existing parks, acquisition and development of parks, recreation, and other open space areas within each specifically designated area of the Town.

2.31 Camping
No persons shall establish a camping unit outside a designated campground. A designated campground shall be established pursuant to Section 9.02 of this Ordinance.

2.27 Planned Area Development

IV. PERFORMANCE GUARANTEE, ENFORCEMENT OF PLANNED AREA DEVELOPMENT, AND PENALTIES

1) To ensure compliance with the Zoning Ordinance and conditions imposed at the time of issuance of the Planned Area Development, the Town Board shall require that a cash deposit, certified check, irrevocable bank letter of credit or surety bond acceptable to the Town Board, equivalent to one hundred fifteen

percent (115%) of the total cost of improvements, be deposited with the Town Clerk to ensure faithful completion of the improvements. The Town Board shall, upon evidence presented by the applicant and/or appropriate Township officials authorize the Town Clerk to release the funds upon completion of all improvements. If any improvements are not constructed within the time limit established as part of the site plan approval or within any extension thereof, then the Planning Commission shall, by resolution, request the Town Board to take appropriate legal steps to ensure completion using so much of the security deposit as is necessary for such purpose. As used herein, "improvements" means those features and actions associated with a project which are considered necessary by the Town Board to protect natural resources, or the health, safety and welfare of the residents of the Township and future users or inhabitants of the proposed project or project area, including, but not limited to, roadways, lighting, utilities, sidewalks, screening and drainage. Improvements do not include the entire project, which is the subject of zoning approval.

2) The occurrence of either of the following events shall be considered violations of this ordinance and subject the developer of any property which is subject to an approved Planned Area Development, or any agent, lessee, employee, representative, successor or assign thereof, to the enforcement remedies contained in this Ordinance:
    a. Failure to comply with any terms, conditions or limitations contained on a site plan, or other approved documents pertaining to a Planned Area Development which has received final approval from the town, whether under the provisions of this ordinance or under the provisions of prior law.
    b. Failure to comply with any order of record imposed by the Town upon its approval of a Planned Area Development, whether under the provisions of this ordinance or under the provisions of prior law.
3) Should an order to remove any alleged violation be served upon the developer, or any other person who commits or assists in any alleged violation, and such person fails to comply with such order within fifteen days, shall be considered to be in violation of this ordinance.
4) Each day that such a violation occurs shall constitute a separate offense.
5) In addition to any of the foregoing remedies, the town's attorney, acting in behalf of the Town Board may maintain an action for an injunction to restrain any violation of this ordinance.
6) Any person, firm or corporation violating any provisions of this Ordinance, upon conviction therefore, shall be fined not more than five hundred dollars ($500.00) per violation and/or may face additional penalties as subject to Sauk County or State of Wisconsin law.

ORDINANCE AMENDMENTS:

2.08 Non-Conforming Uses

The existing lawful use of a structure or premises which is not in conformity with the provisions of this Ordinance may be continued subject to the following conditions:

2) No structural alteration or repair to any non-conforming building, as long as such use continues, shall increase by more than 50% of its assessed value, except upon the granting of a variance by the Board of Appeals. Should a nonconforming structure be destroyed by fire, wind, or other disaster beyond 50% of its current fair market value, or voluntarily moved or torn down, it cannot be rebuilt unless it conforms to the provisions of this ordinance.

2.27 9 Dedication of Natural Areas

Whenever a lot is to be created a dedication for natural area purposes shall be made, or at the Town's option a payment in lieu of dedication shall be made. Dedications and payments in lieu of dedication shall be made according to the following procedure:

a) Dedications: The subdivider shall dedicate an area equal to five percent (5%) of the area shown on any new preliminary plat, final plat or certified survey map for natural area purposes, provided that said dedication is acceptable to the Town Board. Ownership of lands to be dedicated may be transferred to Sauk County, or the township, or incorporated municipality in which the subdivision is located at the time of approval of the first, final plat of the subdivision by means of a warranty deed free and clear of all encumbrances and restrictions. The unit of government to receive title shall be designated by the Town Board.

b) Payment in lieu of dedication: Where the Town determines that a dedication of land is inappropriate, they shall require a payment of four hundred eighty five dollars ($485.00) per lot, payable at the time of approval of all final plats and certified survey maps. Said payments are in addition to any other fees collected, and shall be deposited into a non-lapsing special fund to be used exclusively for the improvement of existing parks, acquisition and development of parks, recreation, and other open space areas within each specifically designated area of the Town.

c) Waiver of dedication and payments in lieu of dedication: The Agency may waive the aforementioned dedication and payment requirements for lots created solely for purposes of transfer of ownership where a residence or farmstead exists at the time the lot is created, the lot is certified as unbuildable on the plat or certified survey map and is to be used only for agricultural or other open space purposes, or the property is to be developed for public transportation or utility purposes.

Adopted and published December 2, 2004

NEW DEFINITIONS:

Building Footprint: The area of a building measured from the exterior surface of the exterior walls at grade level, exclusive of cantilevered portions of buildings and temporary structures. Where a building is elevated above grade level, the building footprint is the area the building would cover if it were located at ground level.

Dwelling Unit: A room or group of rooms forming a habitable unit for one (1) family with facilities for living, sleeping, cooking and eating.

Grade: The average original grade of the land surface area as determined by the building footprint. Where the original grade steeply slopes to the extent that the building face along the lake frontage will be located below the elevation of the road, grade shall be determined by the average original grade of the land as established by the longest building face of the building footprint along the road frontage.

Institutional Residential Development: A form of residential development of which any part of its use, or at any time during its use, accommodates institutional residential land uses, such as senior housing, retirement homes, assisted living facility, nursing homes, hospices, group homes, convents, monasteries, dormitories, retreat centers, nursing homes, convalescent homes, limited care facilities, rehabilitation centers, and similar land uses not considered to be community living arrangements under the provisions of Wisconsin Statutes 62.23.

Principal Structure: A structure which is the main or primary structure as designated by the main or principal use of the land and distinguished from subordinate or accessory structures.

AMENDED DEFINITIONS:

10) DWELLING -
   a) single family dwelling – a structure containing one (1) dwelling unit.
   b) two family dwelling – a structure containing two (2) dwelling units.
   c) multiple family dwelling – a structure containing three (3) or more dwelling units.

7.02 (3): Accessory structures, including private garages, carports and boathouses, clearly incidental to the residential use of the property and provided that:

7.04 (1) (e): Floor area: No residence shall contain less than 1,000 square feet of living area and a building footprint with a minimum width of 20 feet. The total building footprint of all structures, including accessory structures and any enclosed connections, on a single lot shall not exceed 5,000 sq. ft. unless authorized by a conditional use permit.

NEW ORDINANCES:
7.02 (3) (c): Any accessory structure that is not immediately and contiguously incorporated into the footprint of the principal structure, if not completely detached from the principal structure, shall only be attached to the principal structure by an all-weather enclosed connection that is no less than

4 feet in width, cannot exceed 25 feet in length, and no more than 14’ in height. The enclosed connection shall include a finished floor, side walls, and a roof.

7.03 (8): Institutional Residential Developments.

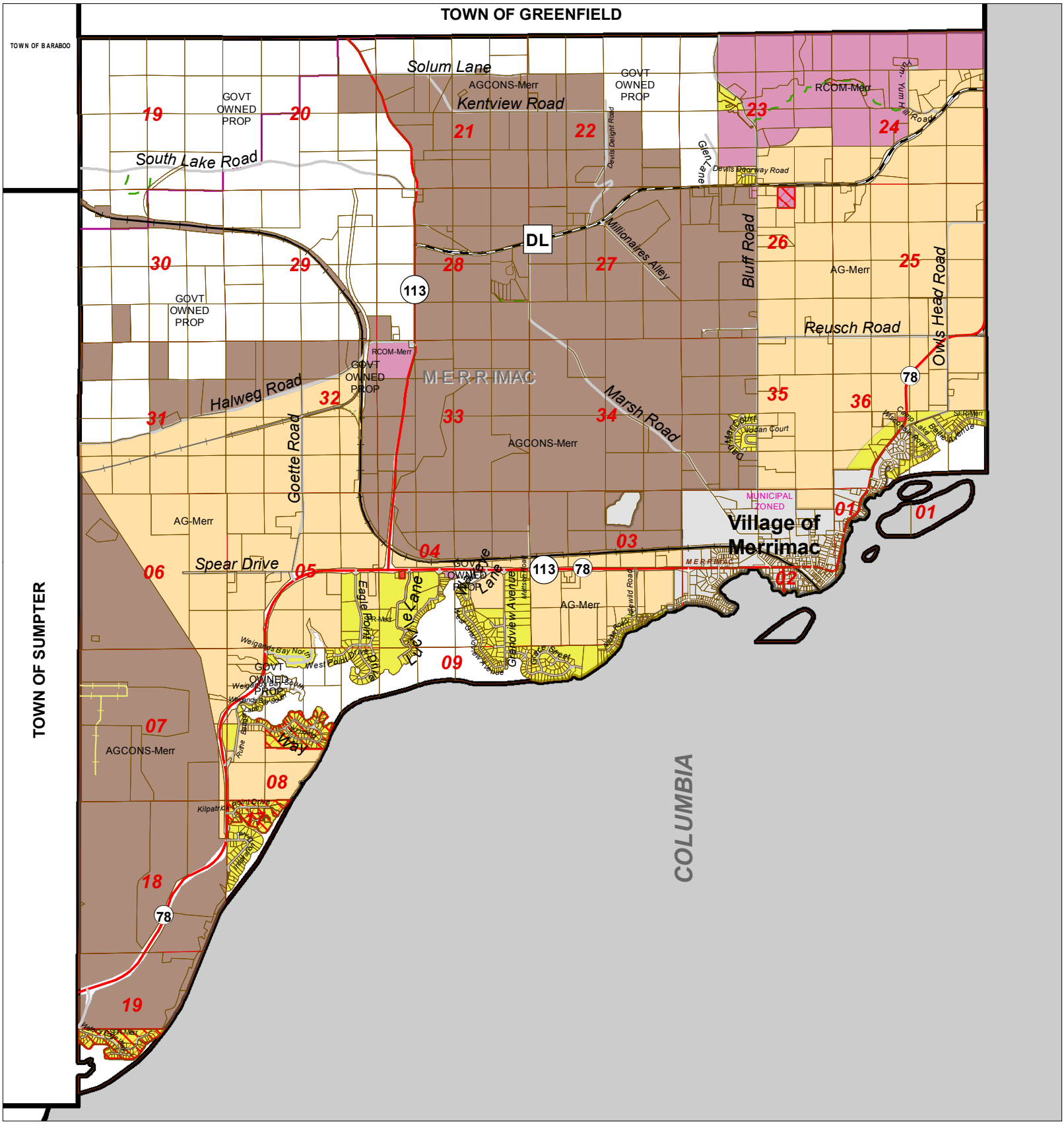
a) No individual lots are required, although the development shall contain a minimum of 800 square feet of gross site area for each occupant of the development.

b) Shall be located with primary vehicular access onto a State Highway, County Highway, or Town Road with a right-of-way no less than 66’ feet.

c) All Parking, loading, and unloading areas shall be off-street.

Adopted by the Town Board: October 3, 2006
Approved by Sauk County: October 17, 2006
Effective: November 3, 2006

ZONING TOWN OF MERRIMAC



Sauk County Zoning Plan

Legend

Road Centerlines

Layer Type

- Interstate
- Federal
- State
- County
- Town
- Muni
- Alley
- Private-Named
- Private
- Ramp

- PLSS Sections
- Planned Urban Development

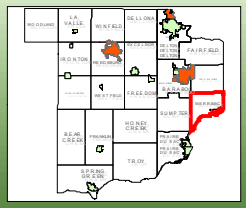
Municipal Boundaries

Municipal Type

- City
- Town
- Village

Zoning Districts

- Agriculture Conservanc-Merr
- Agriculture-Merrimac
- Commercial-Merr
- Institutional-Merr
- Recreational-Commercial-Merrimac
- Single Family Residential-Merrimac



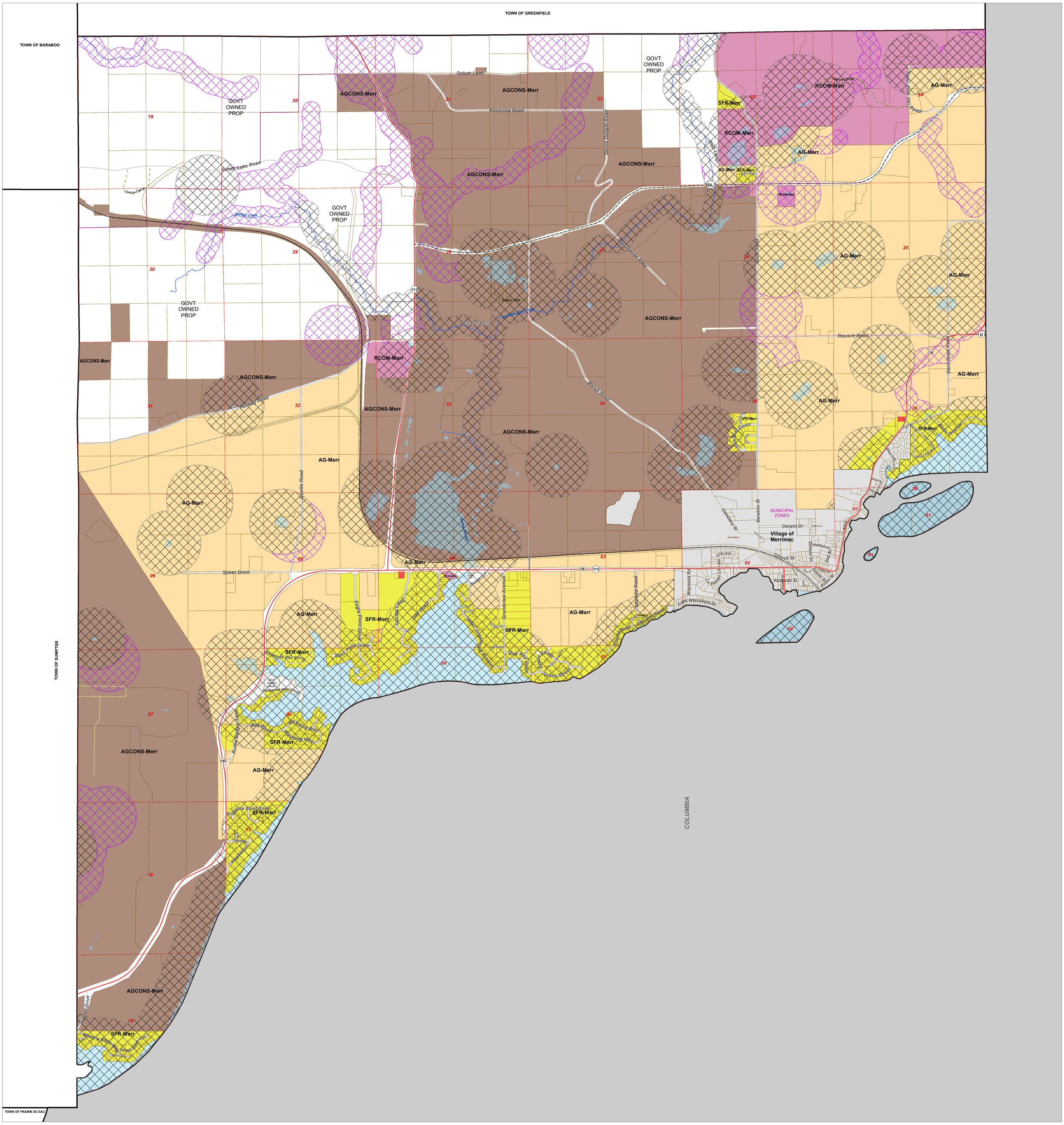
N

FOR INFORMATIONAL PURPOSES ONLY
Sauk County does not attest to the accuracy of the data contained herein and makes no warranty with respect to its correctness or validity. Data contained in this map is limited by the method and accuracy of its collection.

0 0.75 1.5 Miles

Prepared 2018

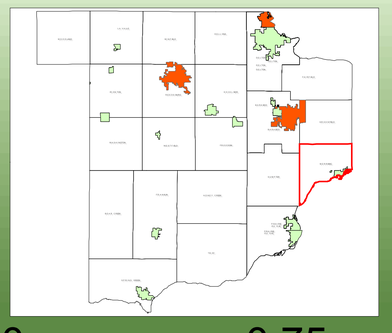
NR115 SHORELAND ZONING — TOWN OF MERRIMAC



Sauk County Zoning Plan

Legend

- PLSS Sections
- **Road Centerlines**
- **Layer Type**
  - Interstate
  - Federal
  - State
  - County
  - Town
  - Muni
  - Alley
  - Private-Named
  - Private
  - Ramp
- **NR115 Shoreland Zoning**
- **ShoreClass**
  - FIELD CHECK
  - FLOODPLAIN
  - NAVIGABLE
- **Municipal Boundaries**
  - Agriculture Conservanc-Merr
  - Agriculture-Merrimac
  - Commercial-Merr
  - Institutional-Merr
  - Recreational-Commercial-Merrimac
  - Single Family Residential-Merrimac
- **Municipal Type**
  - City
  - Town
  - Village



N

0 — 0.75 — 1.5 Miles

Prepared 2018

Town of Merrimac, Sauk County, Wisconsin
Ordinance #2019-33
Alcoholic Beverages

WHEREAS, in accordance with Chapter 125 of the Wisconsin Statutes, the Town of Merrimac, Sauk County, Wisconsin, desires to establish standards under which provisional operator's licenses may be issued; and

WHEREAS, Merrimac Ordinance 2008-02 adopted on April 8, 2008 vacated Ordinance #1-79 limiting the number of Class "A: beer licenses and Ordinance #3-78 limiting Class "B" license; and

WHEREAS, Town of Merrimac Ordinance 2014-15 was adopted August 14, 2014 prohibiting the issuance of Licenses or Permits for Nonpayment of Taxes, Assessments and Claims; and

WHEREAS, Town of Merrimac Ordinance 3-91 adopted October 1, 1991 also addresses the restriction of the issuance of liquor licenses;

NOW, THEREFORE BE IT RESOLVED, the Town Board of the Town of Merrimac rescinds Merrimac Ordinance 3-91 and adopts the following ordinance related to Alcoholic Beverages:

Section 1 Strict Compliance Required.
It shall be unlawful for any person, firm, association, corporation or limited liability company to sell, or keep for sale, at wholesale or retail, or permit to be sold, or kept for sale, at wholesale or retail, within the Town of Merrimac, any alcohol beverages except in strict accordance with this chapter's provisions.

Section 2 Statute adopted.
The statutory provisions of Chapter 125 of the Wisconsin Statutes, describing and defining regulations with respect to alcoholic beverages are hereby adopted and by reference made a part of this Chapter as if set forth in full herein; except for those provisions requiring imprisonment or provisions permitting the Town to enact standards different from that set forth by the legislature. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this Chapter unless there is specific provision to the contrary. Any future amendments, revisions or modifications of the statutes incorporated herein are made part of this Chapter. In the event of a conflict between the provisions of this Chapter and any statute, the Chapter controls unless expressly forbidden by the statute. If the statute authorizes the Town to enact a provision in its sole discretion and the Chapter does not so provide, the Town shall be deemed to have declined to act.

Section 3 Definitions.

Whenever the following terms are used in this Chapter, they shall be construed as follows:

A. **Alcohol beverages.** Means fermented malt beverages, wine and intoxicating liquor.
B. **Brewer.** Means any person who manufactures fermented malt beverages for sale or

transportation.

C. **Brewery premises.** Means all land and buildings used in the manufacture or sale of fermented malt beverages at a brewer's principal place of business.

D. **Club.** Means an organization, whether incorporated or not, which is the owner, lessee or occupant of a building or portion thereof used exclusively for club purposes, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent or athletic purpose but not for pecuniary gain and that only sells alcohol beverages incidental to its operation.

E. **Department.** Means the state of Wisconsin Department of Revenue.

F. **Fast food restaurant.** Means a restaurant serving food primarily prepared in advance and sold to its customers at a counter, and/or a restaurant utilizing a drive-through facility.

G. **Fermented malt beverages.** Means any beverage made by the alcohol fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing one-half percent (0.5 %) or more of alcohol by volume.

H. **Full-service restaurant.** Means a restaurant where meals are primarily prepared individually for the customer and are served to customers at their table by wait staff. A restaurant that is a fast food restaurant, or that has drive-through facilities is not considered a full-service restaurant.

I. **Intoxicating liquor.** Means all ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half percent (0.5 %) or more of alcohol by volume, which are beverages, but does not include 'fermented malt beverages' that contain less than five percent (5 %) of alcohol by weight.

J. **Legal drinking age.** Means twenty-one (21) years of age.

K. **License.** Means an authorization to sell alcohol beverages issued by a municipal governing body under this Chapter.

L. **Permit.** Means any permit issued by the Department under this Chapter.

M. **Person.** Means a natural person, sole proprietorship, partnership, limited liability company, corporation or association.

N. **Premises.** Means the area described in a license or permit.

O. **Principal business.** Means the primary activity as determined by analyzing the amount of capital, labor, time, attention and floor space devoted to each business activity and by analyzing the sources of net income and gross income. The name, appearance and advertising of the entity may also be taken into consideration if they are given less weight.

P. **Restaurant.** Has the meaning as defined in s. 254.61(5), Wis. Stats., and whose sale of alcohol beverages accounts for less than fifty percent (50%) of the establishment's gross receipts.

Q. **Sell, sold, sale or selling.** Means any transfer of alcohol beverages with consideration, or any transfer without consideration if knowingly made for purposes of evading the law relating to the sale of alcohol beverages, or any shift, device, scheme or transaction for obtaining alcohol beverages, including the solicitation of orders for, or the sale for future delivery of, alcohol beverages.

R. **Under the influence.** Means not only all the well-known and easily recognized conditions and degrees of intoxication, but any abnormal mental or physical condition that is the result of indulging to any degree in alcohol beverages and that tends to deprive a person of the clearness of intellect and control of himself or herself that he or she would otherwise possess.

S. **Underage person.** Means a person who has not attained the legal drinking age.

T. **Wholesaler.** Means a person, other than a brewer, manufacturer or rectifier, who sells alcohol beverages to a licensed retailer or to another person who holds a permit or license to sell alcohol beverages at wholesale.

U. **Wine.** Means products obtained from the normal alcohol fermentation of the juice or must of sound, ripe grapes, other fruits or other agricultural products, imitation wine, compounds sold as wine, vermouth, cider, perry, mead and sake, if such products contain one-half percent (0.5 %) or more of alcohol by volume.

Section 4 License Classifications.

A. **Class "A" Licenses.** A Class "A" license authorizes retail sales of fermented malt beverages within the Town of Merrimac, for off-premise consumption only.

B. **"Class A" Licenses.** A "Class A" license authorizes retail sales of intoxicating liquor to consumers only in original packages for off-premise consumptions. They may offer taste samples of wine or intoxicating liquor on premises. "Class A" retailers may not make retail sales or offer taste samples of any intoxicating liquor other than cider.

C. **Class "B" Licenses.** A Class "B" license authorizes retail sales of fermented malt beverages to be consumed either on the premises where sold or off the premises, provided that only fermented malt beverages in original packages or containers may be removed from the premises where sold.

D. **"Class B" Licenses.** A "Class B" license authorizes retail sales of wine, fermented malt beverages and intoxicating liquor for consumption on the premises where sold by the glass and to be consumed on the licensed premises where sold and the sale of wine, fermented malt beverages and intoxicating liquor in the original package or container in multiples not to exceed four (4) liters at any one time and to be consumed off the licensed premises, except that wine may be sold in the original container or otherwise in any quantity to be consumed off the premises. "Class B" licenses are restricted by a population based quota per Wisconsin Statute 125.51 (4). When a "Class B" reserve license becomes available, applicants are subject to an initial issuance fee of not less than $10,000 in accordance with Wisconsin Statute 125.51(3)(e)(2). When there are no regular or reserve "Class B" licenses available, exceptions to the "Class B" quota for the following two types of businesses may be made so long as they meet with the requirements of Section 5 of this ordinance:

    1. A full-service restaurant that has a seating capacity of 300 or more persons; or
    2. A hotel that has 100 or more rooms of sleeping accommodations and that has either an attached restaurant with a seating capacity of 150 or more persons or a banquet room in which banquets attended by 400 persons or more may be held.

E. **Temporary Class "B" Licenses.** A Temporary Class "B" License may be issued to qualified applicants in accordance with the provisions of s. 125.26 (6), Wis. Stats.

F. "Class C" Licenses. A "Class C" license authorizes the retail sale of wine by the glass or in opened original containers for consumption on the premises when the quota limiting the number of "Class B" Licenses as set forth in s. 125.51 (4) Wis. Stats. has been filled or the retailer does not meet the siting requirements for a "Class B" license.

G. Wholesaler's License. A Wholesaler's license shall permit its holder to sell and keep for sale, within the Town of Merrimac, alcohol beverages in their original packages or containers to dealers to be consumed elsewhere than on the premises where stored or sold.

H. Operator's License. An Operator's license shall permit its holder to serve or sell alcohol beverages.

Section 5 Licensing Requirements.

A. License or permit, when required. No person may sell, manufacture, rectify, brew or engage in any other activity for which Chapter 125, Wis. Stats., provides a license, permit, or other type of authorization without holding the appropriate license, permit or authorization issued under this Chapter.

B. Licenses or permits issued in violation of this Chapter. No license or permit may be issued to any person except as provided in this Chapter. Any license or permit issued in violation of this Chapter is void.

C. Application for licenses.

1. Contents. The Town Clerk shall provide an application form prepared by the Department for each kind of license issued under this Chapter. Said application shall be completed by the applicant containing the information required by s. 125.04, Wis. Stats., and any additional information the Town requests, signed by the applicant and verified by oath of the applicant and filed with the Town Clerk.
2. Publication of application for license. The Town Clerk shall publish in the town's official newspaper a notice of such application, containing the name and address of the applicant, the kind of license applied for, and the location of the premises to be licensed. At the time of filing the application the applicant shall pay to the Town Clerk the cost of said publications.
3. Time of filing and acting on applications. Applications and renewal applications for all classes of licenses, which are to be acted upon at the first meeting in June of each year, must be filed on or before twenty-eight (28) days of this meeting. The Town Clerk may accept new applications throughout the course of the year and shall notice such application for consideration by the town board in accordance with Wisconsin Statute.
4. The Town Board authorizes the Town Clerk to review all Operator's License applications and issue the Operator's Licenses in accordance with Wisconsin Statute. If the clerk refuses to issue a new Operator's License, the Clerk shall transmit to the applicant by first-class mail the Clerk's decision and shall state the reason thereof.
5. Training course. No licenses shall be issued unless the applicant has successfully completed a responsible beverage server training course at any location that is offered by a vocational, technical and adult-education district and that conforms

to curriculum guidelines specified by the board of vocational, technical and adult education or a comparable training course that is approved by the department or the educational approval board or unless the applicant fulfills one of the following requirements:

a. The person is renewing an operator's license.
b. Within the past two (2) years, the person held a "Class A", "Class B", "Class A", or "Class B" license or permit or a manager's or operator's license.
c. Within the past two (2) years, the person has completed such a training course.

5. Refusals to issue new license or permit. If the Town Board decides not to issue a new license or permit under this chapter, such denial shall include a reason. The Town Clerk shall transmit to the applicant by first-class mail, the Town Board's decision and shall state the reason thereof.

D. Qualifications for licenses and permits. Qualifications for licenses and permits issued under this Chapter are as set forth in this Chapter and the requirements of Chapter 125 Wisconsin Statutes.

F. Criteria for granting the license.

1. The Town Board shall answer certain questions in the affirmative before it shall be proper to grant a license. Among the questions, but not limited thereto, shall be those questions following, and it is mandatory for the said Board to consider these conditions on any request for a "Class A" Beer or "Class B" Malt Beverage and Liquor License, or combination thereof or "Class B" Fermented Malt Beverage Licenses, and the Board shall not issue such a license until it finds the answers to the following questions to be in the affirmative:
   a. Are the premises and the building in which the licensee is to be conducting business in accordance with the state of Wisconsin building codes and the Town of Merrimac Zoning ordinance?
   b. Is the building sightly and will its construction and operation be in such a manner that it will not create, add to, or aggravate the general welfare of the Town of Merrimac?
   c. Does granting the license have a valid purpose?
   d. Will the aesthetic propensities of the building and the operation generally, including fencing, grounds, parking and otherwise, contribute to the community's general attractiveness?
   e. Has the Town Board considered the availability of the sale of the product that will be sold under this license in its total quantum capacity available to the residents, tourists, passers-through and others that will be affected and have access to same and is it the Town Board's decision that adding this license will not create an oversupply that would be adverse to the health, safety, general welfare and public peace, safety and order of the community?

f. Has the Town Board carefully considered the application in its entirety, including such background material as shall be lawful as it may require within the orbit of proper inquiry in this respect, and also the personnel involved in the operation, and is the Town Board satisfied that there is no one operating who is a convicted felon or who is not a person of good character and that every applicant and all employees and/or agents etc. are people of good character and that the application itself meets with all of the legal requirements of the laws of the state of Wisconsin and the Town of Merrimac's ordinances?

2. Issuance of a "Class B" license. The Town Board may in its sole discretion issue "Class B" licenses to qualified applicants. In reviewing an application for a "Class B" license the Town Board shall, in addition to other requirements of this Chapter, and of *Wisconsin Statutes Chapter 125*, investigate and determine whether the premises meets the qualifications for a "Class B" license. In making its determination of whether a particular application qualifies for a "Class B" license the Town Board shall consider, in addition to the requirements of paragraph F (1) above, the following factors in making its determination:
   a. Whether the premises defined in the application constitutes a full-service restaurant that has a indoor seating capacity of at least 100 or more persons; or
   b. Whether issuing the site license is in the public interest.
   d. For purposes of this paragraph seating capacity means the indoor seating capacity of the restaurant.
3. Discretionary authority of the Town Board. The fact that a particular premises meets the qualifications set forth in Subparagraphs F(1) and (2) above does not entitle said premises to a license, the issuance of which remains the sole discretion of the Town Board considering all factors relevant to the issuance of said license.

G. Expiration dates. Except as otherwise provided in this Chapter all licenses and permits issued under this Chapter shall expire on June 30 of each year.

H. License framed and posted. Licenses for the sale of alcohol beverages shall be enclosed in a frame having a transparent front that allows the license to be clearly read. All licenses shall be conspicuously displayed for public inspection at all times in a room or place where the activity subject to licensure is carried on.

I. Transfer of licenses and permits.

1. From place to place. With the exception of a "Class B" license that is non-transferable, a license may only be transferred to another place or premises with the Town Board's approval. The Town Board may permit one (1) transfer during the license year provided the licensee proves to the Town Board's satisfaction the new premises is in full and complete compliance with all state, county, and town laws, regulations and ordinances; the owner and/or lien holder of the existing premises consents to the transfer in writing, and that such transfer is not detrimental to the public interest. Application to transfer shall be filed with the Town Clerk along with payment of a transfer fee in the amount of ten dollars ($10.00).
2. From Person to Person.

a. Licenses to sell alcohol beverages may not be transferred to persons other than the licensee without the Town Board's approval. If the licensee, or an applicant for a subsequently granted license, dies, becomes bankrupt or makes an assignment for the benefit of creditors during the license year or after filing the application, then under such circumstances or others deemed sufficient by the Town Board in its discretion, the Town Board may, upon application, transfer the license to the licensee's designee provided such designee complies with all the requirements under this Chapter applicable to original applicants, except that a surviving spouse shall be exempt from payment of the license fee for the year in which the transfer takes place.

b. Upon the happening of any of the events under Paragraph (a) above, the personal representative, the surviving spouse, if a personal representative is not appointed, the trustee, or the receiver may continue or sell or assign the business.

c. Businesses may be continued under Paragraph (b) above only if the personal representative or surviving spouse is a U.S. citizen.

J. Limitation upon issuance of licenses.

1. Issuance of "Class A" licenses.

a. "Class A" Fermented Malt Beverage and Intoxicating Liquor licenses that will be issued within the Town shall only be issued to qualifying businesses meeting the standards established in Chapter 125, Wisconsin Statutes and in Subparagraph b below.

b. Standards for licensing of premises for "Class A" Fermented Malt Beverage and Intoxicating Liquor sales. Only the following businesses are eligible for "Class A" Fermented Malt Beverage and Intoxicating Liquor licenses provided they meet all other requirements of this Chapter:

i. Full service grocery stores open twelve (12) months a year with a minimum of fifty thousand (50,000) square feet of interior space. The liquor area must be located in a separate room either inside the grocery store or connected by a door from the inside of the store to an attached structure. This structure could have an outside entrance as long as there is an interior entrance from the grocery store.

ii. Liquor stores open twelve (12) months a year with a minimum of five thousand (5000) square feet of interior space and with a minimum inventory of one hundred seventy-five thousand dollars ($175,000). For purposes of this provision liquor store means a retail store in which the sale of alcoholic beverages exceeds eighty percent (80%) of its gross sales. No liquor store may be located within one thousand (1000) feet of an existing liquor store.

iii. Retail stores offering occasional sales of liquor and/or wine in special promotions in combination with other goods provided that the full retail value of the alcoholic beverage constitutes less than fifty percent (50%) of the price or the promotion. For purposes of this provision, up to four special promotions may be held during a

license year.

4. Retail stores holding "Class A" licenses in effect at the time of enactment of this Section.

c. "Class A" Fermented Malt Beverage and Intoxicating Liquor licenses are not transferable to another location.

2. "Class B" Fermented Malt Beverage License.

a. No "Class B" Fermented Malt Beverage license shall be issued in the Town of Merrimac except:
(1) in restaurants where full-course meals are served, and where food is predominantly the major sales item, computed by gross sales, floor area and general use of the restaurant, or
(2) in restaurants or hotels meeting the criteria specified in § 125.51(4)(v), Wis. Stats.

b. No "Class B" license shall be issued hereunder for the sale of alcohol beverages on any premises unless such premises complies with and conforms to all ordinances, health, sanitation, building and fire regulations of the Town and the state.

c. Off-premises sale of liquor in original packages. Holders of "Class B" Fermented Malt Beverage and Intoxicating Liquor licenses may sell liquor in the original package for off-premises consumption, not to exceed one-gallon per sale. Such sales shall be made either by the licensee or by a licensed bartender or employee licensed for such purposes.

3. "Class B" License (Picnic). Original "Class B" licenses may be issued by the Town Board to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least six (6) months prior to the application date and to posts of veterans' organizations, authorizing the sale of fermented malt beverages at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. Such application shall be filed with the Town Board at least thirty (30) days prior to the granting of the license. The Town Board may issue a license for an application that is not timely filed provided it finds it has all the information necessary to make an informed decision. The license shall be issued upon written application, and for such time, not to exceed four (4) days, as shall be designated by the Board and shall be subject to such restrictions as imposed by the Board. The Town Clerk is authorized to issue renewal "Class B" picnic licenses to previously approved applicants.

4. Class C License.

a. A Retail "Class C" license may be issued to a person qualified under § 125.04 (5), Wis. Stats., for a restaurant operating under a restaurant license issued by the state of Wisconsin, in which the sale of alcohol beverages accounts for less than fifty percent (50%) of gross receipts and which does not have a barroom.

b. Each applicant for a "Class C" license shall disclose on the application the

receipts for the sale of alcohol beverages and the percentage of such sales to the gross sales.

Section 6 General Provisions and Hours.

A. **No license where pending violation.** No license shall be issued, renewed or granted hereunder to any person, firm, corporation, limited liability company or organization for any premises as a result of the sale or transfer of the business, stock in trade or furnishings of said premises, to a new applicant while there is pending against the former licensee thereof any proceedings for the violation of any provisions of the Town of Merrimac's general ordinances, which on conviction would result in automatic forfeiture of said license.

B. **Hours.** All licensees and Classes of licenses are to prohibited from selling alcohol or be open for business outside of the hours prescribed in Wisconsin Statute 125.32(3) and 125.68(4).

C. **Intoxication.** It shall be unlawful for the licensee or any employee of a licensed establishment to be under the influence of an intoxicant, or a controlled substance or a combination of an intoxicant and a controlled substance, while performing services on the licensed premises.

D. **Licenses for less than one (1) year.** A license may be issued after July 1 in any license year. The license shall expire on the following June 30. The fee for the license shall be prorated according to the number of months or fractions thereof remaining until the following June 30.

E. A Retail "Class A" and "Class B" license shall not both be issued for the same premises or connecting premises.

F. No person may hold both a "Class C" license and either a "Class A" or "Class B" license for the same premises or for connecting premises. No person may allow another to use his/her "Class C" license or permit to sell alcohol beverages.

G. No retail license shall be issued to any person who has not attained the legal drinking age.

H. **Place-to-place deliveries.** No person may peddle any alcohol beverage from house to house where the sale and delivery are made concurrently.

I. **Public notification of availability of "Class B" license.** In the event that a Reserve "Class B" Fermented Malt Beverage and Intoxicating Liquor License becomes available, the Clerk shall publish a Class l Notice pursuant to Chapter 985 of the Wisconsin Statutes notifying the public of the availability of the Reserve "Class B" license. That no hearing on an application for a Reserve "Class B" License may be held prior to thirty (30) days after publication of the notice. **J.** The consumption of fermented beverages and intoxicating liquors shall be prohibited on commercial quadricycles.

K. **No retail license shall be issued unless all fees, personal property taxes, and room taxes, are paid in full.**

Section 7 Fees.

The Town Board shall establish fees for licenses issued pursuant to this Chapter.

Section 8 License Revocation, Suspension or Nonrenewal.
The following provisions shall apply to the revocation, suspension or nonrenewal of any license issued pursuant to this Chapter.

A. Complaint. Any Town resident may file a sworn written complaint with the Town Clerk alleging one (1) or more of the following about any person or other entity licensed pursuant to this Chapter:

1. The person has violated any provision of this Chapter.
2. The person keeps or maintains a disorderly or riotous, indecent or improper house.
3. The person has sold or given away any intoxicant to any underage person, or to persons intoxicated or bordering on intoxication, or to be known habitual drunkards.
4. The person has failed to maintain the premises according to standards prescribed for sanitation by the state division of public health, or in whose premises persons are permitted to loiter for purposes of prostitution.
5. The person has not observed and obeyed any lawful order of the Town Board or Sauk County Sheriff's deputies.
6. The person does not possess the qualifications required under this Chapter to hold the license.
7. The person has been convicted of manufacturing or delivering a controlled substance under § 161.41(1), Wis. Stats.; of possessing, with intent to manufacture or deliver, a controlled substance under § 161. 41 (1 m), Wis. Stats.; or of possessing, with intent to manufacture or deliver, or of manufacturing or delivering a controlled substance under a substantially similar federal law or a substantially similar law of another state.
8. The person knowingly allows another person, who is on the premises for which the license under this Chapter is issued, to possess, with the intent to manufacture or deliver, or to manufacture or deliver a controlled substance.

B. Notice of hearing on complaint. Upon the filing of the complaint, the Town Board shall issue a notice of hearing on complaint, signed by the Clerk and directed to any peace officer who shall serve said notice upon the licensee in the manner provided under Chapter 801, Wis. Stats., for service in civil actions in circuit court. The notice shall set forth the nature and content of the complaint filed with the Town and shall command the licensee complained of to appear before the Town Board on a day and time and at a place named in the notice, not less than three (3) days and not more than ten (10) days from the date of issuance, and show cause why the license should not be revoked or suspended. The notice and a copy of the complaint shall be served on the licensee at least three (3) days before the time at which the licensee is commanded to appear.

C. Hearing procedure.

1. If the licensee does not appear as required by the notice the allegations of the complaint shall be taken as true and if the Town Board finds the allegations sufficient, the license shall be revoked. The Clerk shall give notice of the revocation to the person whose license is revoked.
2. The Town chair, or his designee, shall conduct the hearing, administer oaths to all

witnesses and may issue subpoenas. So far as practicable, the rules of evidence provided in § 227.45, Wis. Stats., shall be followed. The complainant shall have the burden of proving the charges by a preponderance of the evidence.

3. If the licensee appears as required by the notice and denies the complaint, both the complainant and the licensee may produce witnesses, cross-examine witnesses and be represented by counsel. The licensee shall be provided a written transcript of the hearing at his or her expense. All proceedings and testimony shall be recorded on tape and transcribed unless waived by both the complainant and licensee. If either party requests a stenographic recording and transcription, Town staff shall make the necessary arrangements, but the expense shall be borne by the requesting party. The Town Clerk shall mark and receive all exhibits admitted into the record.

D. Town Board decision.

1. Within twenty (20) days of the hearing completion, the Town board shall submit its findings of fact, conclusions of law and decision. The committee shall provide the complainant and the licensee with a copy of the decision.
2. The Town Board decision shall be a final determination for purposes of judicial review. If the complaint is found to be true, the licensee shall pay to the Town the actual cost of the proceedings.
3. If the Town Board finds the complaint untrue, the proceeding shall be dismissed without cost to the accused. If the Town Board finds the complaint is true, it shall determine the sanctions to be imposed against the licensee. Sanctions include a warning, a fine not to exceed five hundred dollars ($500.00), suspension of license or revocation of license.
4. The Town Clerk shall give notice of the sanctions imposed to the licensee.

E. Effect of revocation. When a license is revoked under this Subsection, the Town Clerk shall record the revocation and no other license issued under this Chapter shall be granted to such licensee or for such premises for a period of twelve (12) months from the date of the revocation.

F. Judicial review. The Town Board action in granting or failing to grant, suspending or revoking any license, or the failure of the Town Board to revoke or suspend any license for good cause, may be reviewed by the circuit court for the county in which the application for the license was issued, upon application by any applicant, licensee or Town resident.

G. Nonrenewal of license. The Town's Attorney, or special counsel appointed for such purposes may, after investigation, commence an action before the Town Board to hear evidence that a license issued pursuant to this Chapter should not be renewed. The Town Board shall, in writing, notify the licensee of the consideration of nonrenewal. Such notification shall be in the form of and shall serve as the summons and complaint and shall include a statement of the reasons for the consideration of the nonrenewal of the license in the same specificity required for a summons and complaint for revocation or suspension. If the license is recommended for nonrenewal, costs may be assessed against the licensee and any renewal application fee shall be forfeited. In all other respects, the provisions of Subdivisions (A) and (B) shall apply. The commencement of this action shall stay action by the Town Board on the licensee's application until the decision of the Town Board is final.

H. Other provisions. Any license issued pursuant to this order shall be subject to such further regulations and restrictions as the Town Board of the Town of Merrimac may impose by

amendment to this Section or by the enactment of new ordinances. If any licensee shall fail or neglect to meet the requirements imposed by such new restrictions and regulations her/his license may be revoked in accordance with this Section. In case of revocation of any license or any violation of any provision of this Chapter in accordance with this Section or by the court or for any reasonable cause except the imposition of new restrictions, no refund shall be made of any part of the license fee.

Section 9 Nudity, Nude Entertainment.

This Section and Section 10 requires that any establishment hosting nude, semi-nude and other sexually explicit performances on premises that have municipal liquor and beer licenses shall not be:

A. Located within 500 feet of any area zoned for residential use;
B. Located within 500 feet of the property line of any of the following uses or facilities:
   1. Church or other facility used primarily for worship or other religious purposes,
   2. City, county, state, federal or other governmental public buildings, including, but not limited to: city halls, schools, libraries, police and fire stations and post offices,
   3. Hospitals and convalescent facilities,
   4. Parks and playgrounds,
   5. Senior, youth or similar centers.

Section 10 Penalties.

A. Any person violating any provision of this Chapter or any condition included on a license application or on the license itself or who provides any false or inaccurate information on a written application shall be subject to a penalty of not more than five hundred dollars ($500.00), unless a greater maximum penalty is specifically provided for in this Chapter, except that where a lower maximum penalty shall be provided by Chapter 125 of the Wisconsin Statutes for any specific offense such maximum penalty shall prevail for the same offense committed in violation of this Chapter.

B. Nothing in this Subsection shall in any way diminish the Town Board's authority to suspend, revoke or not renew any license issued pursuant to this chapter for any violation of this Chapter or other Town Ordinance or state law.

C. Any person, partnership or corporation who violates any of the provisions of the Sections 9 and 10 shall be subject to license suspension, revocation or nonrenewal as provided by Section 8 of this Chapter and § 125.12 (1), Wis. Stats., and a forfeiture of not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000.00). A separate offense shall be deemed committed on each day on that a violation occurs or continues.

Section 12. Severability.

The various provisions of this Ordinance are deemed severable and it is expressly declared that the Town Board would have passed other provisions hereof irrespective of whether or not one or more provisions may be declared invalid. If any provision or the application thereof

to any person or circumstances is held invalid, the remainder of the Ordinance and application of such provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect.

The town clerk shall properly publish this ordinance as required under s. 60.80, Wis. Statutes.
Adopted this 3rd day of July, 2019.

Charlie Hall, Interim-Town Chair

Tim Healy, Interim-Supervisor

John Gaedke, Supervisor

ATTEST:

Tim McCumber
Town Administrator & Clerk – Treasurer

MERRIMAC CABLE TELEVISION FRANCHISE ORDINANCE

Sec. 1. Short title.

This chapter shall be known and may be cited as the "Merrimac Cable Television Franchise Ordinance," hereinafter "Franchise" or "Ordinance."

Sec. 2. Definitions.

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein:

"Basic Service" means all Subscriber services provided by the Grantee in one (1) or more service tiers, which includes the delivery of local broadcast stations, and public, educational and government access channels. Basic Service does not include optional program and satellite service tiers, a la carte services, per channel, per program, or auxiliary services for which a separate charge is made. However, Grantee may include other satellite signals on the Basic Service tier.

"Cable Service" means: (A) the transmission to subscribers of (1) video programming, or (2) other programming services; and (B) subscriber interaction, if any, that is required for the selection or use of such video programming or other programming services.

"Cable System" or "System" or "Cable Television System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way, (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of this Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) to the extent such facility is used in transmission of video programming directly to Subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility system.

"Class IV Channel" means a signaling path provided by a cable communications system to transmit signals of any type from a Subscriber terminal to another point in the cable communications system.

"Control" or "Controlling Interest" shall mean actual working control or ownership of a System in whatever manner exercised. A rebuttal presumption of the existence of Control or a Controlling Interest shall arise from the ownership, directly or indirectly, by any person or legal entity (except underwriters during the

period in which they are offering securities to the public) of forty percent (40%) or more of a Cable System or the Franchise under which the System is operated. A change in the Control or Controlling Interest of a legal entity which has Control or a Controlling Interest in a Grantee shall constitute a change in the Control or Controlling Interest of the System under the same criteria. Control or Controlling Interest as used herein may be held simultaneously by more than one person or legal entity.

"Converter" means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and by an appropriate channel selector also permits a Subscriber to view more than twelve (12) channels delivered by the System at designated converter dial locations.

"Dwelling Unit" means any building or part of a building that is used as a home or residence.

"FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

"Franchise" means an initial authorization, or renewal thereof, issued by the Town, as the franchising authority, to a Grantee to construct or operate a Cable System.

"Franchise Agreement" means a contractual agreement entered into between the Town and any Grantee hereunder that is enforceable by the Town and by the Grantee, and which sets forth the rights and obligations between the Town and the Grantee in connection with the Franchise.

"Grantee" means a person or legal entity to whom or to which a Franchise under this Ordinance is granted by the Town, along with the lawful successors or assigns of such person or entity.

"Gross Revenues" means all revenue collected by the Grantee, arising from or attributable to the provision of cable service by the Grantee within the Town including, but not limited to: periodic fees charged Subscribers for any basic, optional, premium, per-channel or per-program service; franchise fees; installation and reconnection fees; leased channel fees; converter rentals and/or sales; program guide revenues; late or administrative fees; upgrade, downgrade or other change-in-service fees; local advertising revenues; revenues from home shopping; revenues from the sale, exchange, use or cable cast of any programming developed on the System for community or institutional use; provided, however, that this shall not include any taxes on services furnished by the Grantee herein imposed directly upon any Subscriber or User by the state, local or other governmental unit and collected by the Grantee on behalf of the governmental unit.

Initial Franchise means the first franchise awarded to any entity.

"Initial Service Area" means all areas in the Town having a density of at least thirty-five (35) dwelling units per street mile.

"Installation" means the connection of the System from feeder cable to a Subscriber's terminal.

"May" is permissive.

"Monitoring" means observing a communications signal, or the absence of a signal, where the observer is neither the Subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever; provided monitoring shall not include system-wide, non-individually addressed sweeps of the System for purposes of verifying System integrity, controlling return paths transmissions, or verification of billing for premium or other services.

"Normal Business Hours" as applied to the Grantee shall mean those hours during which similar businesses in the Town are open to serve customers. In all cases, Normal Business Hours must include some evening hours at least one night per week, and/or some weekend hours.

"Normal Operating Conditions" shall mean those service conditions that are within the control of the Grantee. Those conditions that are not within the control of the Grantee include, but are not limited to: natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

"Person" means any natural person or any association, firm, partnership, joint stock company, limited liability company, joint venture, corporation, or other legally recognized entity, private or public, whether for-profit or not-for-profit.

"Shall" is mandatory.

"Service Interruption" is the loss of either picture or sound or both for a single or multiple Subscriber(s).

"Street" means the surface of and all right-of-ways and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the Town for the purpose of public travel and shall include other easements or right-of-ways as shall be now held or hereafter held by the Town which shall, within their proper use and meaning entitle the Grantee to the use thereof for the purposes of installing poles, wires, cable, conductors, ducts,

conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a Cable Television System.

"Subscriber" shall mean any person(s), firm, Grantee, corporation or other legal entity, or association lawfully receiving any service provided by a Grantee pursuant to this Ordinance.

"User" means a party utilizing a Cable Television System channel for purposes of production or transmission of material to Subscribers, as contrasted with receipt thereof in a Subscriber capacity.

"Town" means the Town of Merrimac, Wisconsin.

Sec. 3. Rights and privileges of Grantee.

Any Franchise granted by the Town pursuant to Wisconsin Statutes Section 66.00419 shall grant to the Grantee the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the streets now in existence and as may be created or established during the term of the Franchise any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a Cable System.

Sec. 4. Agreement and incorporation of application by reference.

(a) Upon adoption of any Franchise Agreement by the Town and execution thereof by the Grantee, the Grantee and the Town agree to be bound by all the terms and conditions contained herein.

(b) Any Grantee also agrees to provide all services specifically set forth in its application, and to provide cable television service within the confines of the Town; and by its acceptance of the Franchise, the Grantee specifically grants and agrees that its application, is thereby incorporated by reference and made a part of the Franchise.

Sec. 5. Franchise territory.

Any Franchise is for the legally incorporated territorial limits of the Town and for any area henceforth added thereto during the term of the Franchise.

Sec. 6. Duration and acceptance of Franchise.

Any Franchise and the rights, privileges and authority granted under this Ordinance shall take effect and be in force from and after final Town approval thereof, as provided by law, and shall continue in force and effect for a term of no longer than fifteen (15) years, provided that within forty-five (45) days after the

date of final Town approval of the Franchise the Grantee shall file with the Town its unconditional acceptance of the Franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed. Such Franchise shall be non-exclusive and revocable.

Sec. 7. Franchise renewal.

Current federal procedures and standards pursuant to 47 U.S.C. §546, shall govern the renewal of any Franchise awarded under this Ordinance.

Sec. 8. Police powers.

(a) In accepting a Franchise, the Grantee acknowledges that its rights thereunder are subject to the police power of the Town to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the Town pursuant to such power. Any Ordinance enacted that directly contradicts the express terms of the Franchise Agreement shall not be enforced during the term of any Franchise Agreements that may already be in place at the time the new or amended Ordinance is passed.

(b) Any conflict between the provisions of a Franchise and any other current or future lawful exercise of the Town's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to the Grantee or cable television systems which contains provisions inconsistent with this ordinance, shall prevail only if upon such exercise the Town finds a danger to health, safety, property or general welfare or if such exercise is mandated by law.

Sec. 9. Cable Television Franchise required.

No Cable Television System shall be allowed to operate or to occupy or use the streets for System installation and maintenance purposes without a Franchise.

Sec. 10. Use of Grantee facilities.

The Town shall have the right to install and maintain upon the poles of the Grantee at a charge equal to Grantee's costs any wire or pole fixtures that do not unreasonably interfere with the Cable Television System operations, including future plans, of the Grantee. The Town shall indemnify and hold harmless the Grantee from any claim that might arise due to or as a result of the Town's use.

Sec. 11. Initial Franchise Costs.

Costs to be borne by a Grantee shall include any requirements or charges incidental to the awarding or enforcing of its initial Franchise, but shall not be limited to: all costs of publications of notices prior to any public meeting provided for pursuant to this Ordinance, and any costs not covered by application fees, incurred by the Town in its study, preparation of proposal documents, evaluation of all applications, and examinations of the applicant's qualifications unless all, or any portion thereof, shall be waived by the Town.

Sec. 12. Notices.

All notices from the Grantee to the Town pursuant to any Franchise shall be to the Town Clerk. The Grantee shall maintain with the Town, throughout the term of the Franchise, an address for service of notices by mail. The Grantee shall maintain a central office to address any issues relating to operating under this cable television Ordinance.

Sec. 13. Bond.

(a) Within sixty (60) days after the award of an initial or renewal Franchise, the Grantee shall deposit with the Town a bond in the amount of five thousand dollars ($5,000.00) with the form to be established by the Town. The form and content of such bond shall be approved by the Town Attorney. This instrument shall be used to ensure the faithful performance of the Grantee of all provisions of this Ordinance, and to ensure compliance with all orders, permits and directions of any agency, commission, board, department, division, or office of the Town having jurisdiction over its acts or defaults under this Ordinance, and to ensure the payment by the Grantee of any claims, liens, and taxes due the Town which arise by reason of the construction, operation or maintenance of the System.

(b) The bond shall be maintained at the amount established in Section 13(a) for the entire term of the Franchise, even if amounts have to be withdrawn pursuant to this Ordinance.

(c) If the Grantee fails to pay to the Town any amounts owed under the Franchise Agreement, that is not on appeal to the court of proper jurisdiction, within the time fixed herein; or fails after fifteen (15) days notice to pay to the Town any taxes due and unpaid; or fails to repay the Town within fifteen (15) days, any damages, costs or expenses which the Town is compelled to pay by reason of any act or default of the Grantee in connection with the Franchise, or fails, after three (3) days notice of such failure by the Town to comply with any provision of the Franchise which the Town reasonably determines can be remedied by demand on the bond, the Town may immediately demand payment of the amount thereof, with interest and any penalties, from the bond. Upon such demand for payment, the Town shall notify the Grantee of the amount and date thereof.

(d) The rights reserved to the Town with respect to the bond are in addition to all other rights of the Town, whether reserved by the Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the Town may have.

(e) The bond shall contain an endorsement agreeing that the bond may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Town, by registered mail, of a written notice of such intention to cancel or not to renew.

(f) In the event the Town receives a thirty (30) day notice from a surety, it shall have the right to demand payment from the bond unless Grantee provides appropriate assurance that a replacement bond will be presented before the expiration of the thirty (30) day period. Assurance shall be determined by the Town at its sole discretion. This section shall not apply if the Town and Grantee agree that a bond is no longer required or if the bond is, by agreement between the Town and Grantee, in the process of being reduced.

(g) The Town may, at any time during the term of this Ordinance, waive the Grantee's requirement to maintain a bond. The waiver of the requirement may be initiated by the Town or may be requested by the Grantee.

Sec. 14. Construction Performance Bond.

(a) Within sixty (60) days after the award of an initial or renewal Franchise, the Grantee shall file with the Town a performance bond in the amount of not less than fifty thousand dollars ($50,000) in favor of the Town. This bond shall be maintained throughout the construction period and until such time as determined by the Town, unless otherwise specified in the Franchise Agreement.

(b) If the Grantee fails to comply with any law, ordinance or resolution governing the Franchise, or fails to observe, fulfill and perform each term and condition of the Franchise, as it relates to the conditions relative to the construction of the System, including the Franchise Agreement that is incorporated herein by reference, there shall be recoverable jointly and severally, from the principal and surety of the bond, any damages or losses suffered by the Town, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorney's fees, including the Town's legal staff, and costs, up to the full amount of the bond. This section shall be an additional remedy for any and all violations outlined in Section 13.

(c) The Town shall, upon completion of construction of the service area, waive the requirement of the Grantee to maintain the bond. However, the Town may require a performance bond to be posted by the Grantee for any construction subsequent to the completion of the initial service areas, in a

reasonable amount not to exceed fifty thousand dollars ($50,000) and upon such terms as determined by the Town.

(d) The bond shall contain an endorsement stating that the bond may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Town, by registered mail, a written notice of such intent to cancel and not to renew.

(e) Upon receipt of a thirty (30) day notice, and following a 30-day period to cure, this shall be construed as default granting the Town the right to demand payment on the bond.

(f) The Town, at any time during the term of this Ordinance, may waive Grantee's requirement to maintain a performance bond. The waiver of the requirement can be initiated by the Town or the Grantee.

Sec. 15. Liability and insurance.

(a) The Grantee shall maintain and by its acceptance of the Franchise specifically agrees that it will maintain throughout the term of the Franchise, liability insurance insuring the Town and the Grantee in the minimum amount of:

(1) One million dollars ($1,000,000.00) for property damage to any one person;

(2) One million dollars ($1,000,000.00) for property damage from any one occurrence;

(3) One million dollars ($1,000,000.00) for personal injury to any one person; and

(4) One million dollars ($1,000,000.00) for personal injury from any one occurrence.

(b) The certificate of insurance obtained by the Grantee in compliance with this section shall be filed and maintained with the Town during the term of the Franchise. The Grantee shall immediately advise the Town Attorney of any litigation that may develop that would affect this insurance.

(c) Neither the provisions of this section nor any damages recovered by the Town thereunder, shall be construed to or limit the liability of the Grantee under any Franchise issued hereunder.

Sec. 16. Indemnification.

(a) Disclaimer of Liability. The Town shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation,

condition or dismantling of the Grantee's Cable Television System or due to the act or omission of any person or legal entity other than the Town or those persons or legal entities for which the Town is legally liable as a matter of law.

(b) Indemnification. The Grantee shall, at its sole cost and expense, indemnify and hold harmless the Town, its respective officers, boards, departments, commissions and employees (hereinafter referred to as "Indemnitees") from and against:

(1) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the Indemnitees by reason of any act or omission of the Grantee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, corporation or other legal entity, which may arise out of or be in any way connected with the construction, installation, operation, maintenance or condition of the Cable Television System caused by Grantee, its subcontractors or agents or the Grantee's failure to comply with any federal, state or local law.

(2) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants) imposed upon Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to Grantee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the Cable Television System. Upon written request by the Town, such claim or lien shall be discharged or bonded within fifteen (15) days following such request.

(3) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the Indemnitees by reason of any financing or securities offering by Grantee or its Affiliates for violations of the common law or any laws, statutes or regulations of the

State of Wisconsin or of the United States, including those of the Federal Securities and Exchange Commission, whether by the Grantee or otherwise; excluding therefrom, however, claims which are based upon and arise out of information supplied by the Town to the Grantee in writing and included in the offering materials with the express written approval of the Town prior to the offering.

(c) Assumption of Risk.

(1) The Grantee undertakes and assumes for its officers, directors, agents, contractors and subcontractors and employees all risk of dangerous conditions, if any, on or about any Town-owned or controlled property, including public right-of-ways, and the Grantee hereby agrees to indemnify and hold harmless the Indemnitees against and from any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the Cable Television System or the Grantee's failure to comply with any federal, state or local law.

(2) The Town shall hold Grantee harmless for any damages resulting from the negligence or misconduct of the Grantor or its officials, boards, departments, commissions or employees.

(d) Defense of Indemnitees. In the event any action or proceeding shall be brought against any or all of the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Grantee shall, upon notice from any of the Indemnitees, at the Grantee's sole cost and expense, defend the same to the extent it is obligated to do so.

(e) Notice, Cooperation and Expenses. The Town shall give the Grantee reasonably prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the Town from cooperating with the Grantee and participating in the defense of any litigation by the Town’s own counsel at the Town's own expense. No recovery by the Town of any sum under the bond shall be any limitation upon the liability of the Grantee to the Town under the terms of this Section, except that any sum so received by the Town shall be deducted from any recovery which the Town might have against the Grantee under the terms of this Section.

(f) Nonwaiver of Statutory Limits. Nothing in this Ordinance is intended to express or imply a waiver by the Town of statutory provisions,

privileges or immunities of any kind or nature as set forth in Wisconsin Statutes Section 893.80, et. seq., including the limits of liability of the Town.

Sec. 17. Rights of individuals.

(a) The Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel Users, or general citizens on the basis of race, color, religion, national origin, income, sex, marital status, sexual preference or age. The Grantee shall make reasonable attempts to comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Ordinance by reference.

(b) The Grantee shall make all reasonable efforts to comply with the equal employment opportunity requirements of the Federal Communications Commission and of state and local governments, and as amended from time to time.

(c) The Grantee shall, at all times, make all reasonable efforts to comply with the privacy requirements of state and federal law.

(d) The Grantee is required to make all services available to all residential dwellings throughout the service area located in areas having a density of at least thirty-five (35) dwelling units per street mile.

(e) The Grantee shall have the right deny service or deny access to any Subscriber, User, or Citizen who is unable to pay for Grantee's Service regardless of race, color, religion, national origin, sex, marital status, sexual preference or age.

Sec. 18. Public notice.

Minimum public notice of any public meeting relating to the Franchise shall be governed by the provisions of the State Open Meetings Law, and shall be on at least one (1) channel of the Grantee's System between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days prior to the meeting.

Sec. 19. Service availability and record request.

The Grantee shall provide cable television service throughout the entire Franchise area pursuant to the provisions of the Franchise and shall keep a record for at least three (3) years of all requests for service received by the Grantee. This record shall be available for public inspection at the local office of the Grantee during regular office hours.

Sec. 20. System construction.

(a) New construction timetable.

(1) Within two (2) years from the date of the award of an initial Franchise, the Grantee must make cable television service available to every dwelling unit within the initial service area.

a. The Grantee must make cable television service available to at least twenty (20) percent of the dwelling units within the initial service area within six (6) months from the date of the award of the Franchise.

b. The Grantee must make cable television service available to at least fifty (50) percent of the dwelling units within the initial service area within one (1) year from the date of the award of the Franchise.

(2) The Grantee, in its application, may propose a timetable of construction which will make cable television service available in the initial service area sooner than the above minimum requirements, in which case the said schedule will be made part of the Franchise Agreement, and will be binding upon the Grantee.

(3) Any delay beyond the terms of this timetable, unless specifically approved by the Town, will be considered a violation of this Ordinance for which the provisions of either Sections 37 or 46 shall apply, as determined by the Town.

(4) In special circumstances the Town may waive one hundred percent (100%) completion within the two (2) year time frame, provided substantial completion is accomplished within the allotted time frame, substantial completion to be not less than ninety-five (95) percent. Justification for less than one hundred percent (100%) must be submitted subject to the approval of the Town.

(b) Line extensions:

(1) In areas of the Franchise territory not included in the initial service areas, a Grantee shall be required to extend its System pursuant to the following requirements:

a. No customer shall be refused service arbitrarily. Grantee is hereby authorized to extend the Cable

System as necessary within the Town. To expedite the process of extending the Cable System into a new sub-division, the Town will forward to the Grantee an approved engineering plan of each project. Subject to the density requirements, the Grantee shall commence the design and construction process upon receipt of the final engineering plan. Upon notification from the Town that the first home in the project has been approved for a building permit, the Grantee shall have a maximum of three (3) months, weather permitting, to complete the construction/activation process within the applicable project phase.

b. The Grantee shall extend and make cable television service available to every dwelling unit in all unserved, developing areas having at least thirty-five (35) dwelling units per street mile, as measured from the existing System from which service can be provided.

c. The Grantee shall extend and make cable television service available to any isolated resident outside the initial service area requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard one hundred and fifty (150) foot drop line.

(2) Early extension. In areas not meeting the requirements for mandatory extension of service, the Grantee shall provide, upon the request of a potential Subscriber desiring service, an estimate of the Grantee's costs required to extend service to the Subscriber. The Grantee shall then extend service upon request of the potential Subscriber. The Grantee may require advance payment or assurance of payment satisfactory to the Grantee. In the event the area reaches the density required for mandatory extension within two (2) years, such payments shall be refunded to the Subscriber upon request.

(3) New development undergrounding. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the Grantee reasonable notice of such construction or development, and of the particular date on which open trenching will be available for the Grantee's installation of conduit, pedestals and/or vaults, and laterals. The Grantee shall also provide specifications as needed for

trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if the Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching is to be borne by the Grantee. Except for the notice of the particular date on which trenching will be available to the Grantee, any notice provided to the Grantee by the Town of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager of the Grantee prior to approval of the preliminary plat request.

(c) Special agreements. Nothing herein shall be construed to prevent the Grantee from serving areas within the legally incorporated boundaries of the Town not covered under this section upon agreement with developers, property owners residents, or businesses, provided that five (5) percent of the gross revenues from those areas are paid to the Town as franchise fees under Section 27. The Town may waive or modify any or all of the provisions set forth in this Section.

(d) A Grantee may propose a line extension policy that will result in serving more residents of the Town than as required above, in which case the Grantee's policy will be incorporated into the Franchise Agreement and will be binding on the Grantee.

(e) The continued violation of this section following a reasonable notice of at least a thirty (30)-day period to cure shall be considered a breach of the terms of this Ordinance, for which the provisions of either Sections 38 or 46 shall apply, as determined by the Town.

Sec. 21. Construction and technical standards.

(a) Compliance with construction and technical standards. The Grantee shall construct, install, operate and maintain its System in a manner consistent with all laws, ordinances, construction standards, governmental requirements, and FCC technical standards. In addition, the Grantee shall provide the Town, upon request, a written report of the results of the Grantee's annual proof of performance tests conducted pursuant to Federal Communications Commission standards and requirements.

(b) Additional specifications:

(1) Construction, installation and maintenance of the Cable Television System shall be performed in an orderly and

workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(2) The Grantee shall at all times make reasonable efforts to comply with the applicable:

a. National Electrical Safety Code (National Bureau of Standards);

b. National Electrical Code (National Bureau of Fire Underwriters);

c. Applicable FCC or other federal, state and local regulations.

(3) In any event, the System shall not endanger or interfere with the safety of persons or property in the Franchise area or other areas where the Grantee may have equipment located.

(4) Any antenna structure used in the System shall comply with construction, marking, and lighting of antenna structure, required by the United States Department of Transportation.

(5) All working facilities and conditions used during construction, installation and maintenance of the Cable Television System shall comply with the standards of the Occupational Safety and Health Administration.

(6) Radio frequency (RF) leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC rules and regulations shall govern.

(7) In all areas of the Town where all cables, wires and other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires and other like facilities underground. When all public utilities relocate their facilities from pole to underground, the cable operator must concurrently do so.

Sec. 22. Use of streets.

(a) Interference with persons and improvements. The Grantee's System, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons or interfere with the rights or reasonable health, safety or welfare of property owners who adjoin any of the streets and public ways, or interfere with any improvements the Town may make, or hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

(b) Restoration to prior condition. In case of any disturbance of pavement, sidewalk, landscaping, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the Town, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any street or alley disturbed, in as good condition as before the work was commenced and in accordance with standards for such work set by the Town. After thirty (30) days, if restoration measures are not performed to the reasonable satisfaction of the Town, the Town may undertake remedial restoration activities, such activities to be performed at the Grantee's cost.

(c) Erection, removal and common uses of poles:

(1) No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the Town with regard to location, height, types, and any other pertinent aspect. However, no location of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the Town determines that the public health, safety or welfare would be enhanced thereby.

(2) Where poles or other wire-holding structures already existing for use in serving the Town are available for use by the Grantee, but it does not make arrangements for such use, the Town may require the Grantee to use such poles and structures if it determines that the public health, safety or welfare would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

(3) Where the Town desires to make use of the poles or other wire-holding structures of the Grantee and the use will not unduly interfere with the Grantee's operations, the Town may require the Grantee to permit such use for reasonable consideration and terms.

(d) Relocation of facilities. If at any time during the period of the Franchise the Town shall lawfully elect to alter, or change the grade of any street, alley or other public ways, the Grantee, upon reasonable notice by the Town, shall

remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(e) Cooperation with building movers. The Grantee shall, at the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings. Expenses of such temporary removal, raising or lowering of wires shall be paid by the person making the request, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given at least ten (10) days advance notice to arrange for such temporary wire changes.

(f) Tree trimming. The Grantee shall not remove any tree or trim any portion of any tree within any public street as defined herein without the prior consent of the Town, except in an emergency situation. The Grantee shall provide notice to any affected residents at the same time that the Grantee applies to the Town for consent to perform tree trimming. The Town shall have the right to do the trimming requested by the Grantee at the cost of the Grantee. Regardless of who performs the work requested by the Grantee, the Grantee shall be responsible, shall defend and hold Town harmless from any and all damages to any tree as a result of Grantee's trimming, or to the property surrounding any tree, whether such tree is trimmed or removed.

(g) Road cuts. The Grantee shall not use road cuts for the laying of cable or wires without the prior approval of the Town. In the absence of such approval, the Grantee shall utilize auguring.

Sec. 23. Operational standards.

(a) The Grantee shall maintain all parts of the System in good condition throughout the entire Franchise period.

(b) Upon the reasonable request for service by any person located within the Franchise territory, the Grantee shall, within thirty (30) days, furnish the requested service to such person within terms of the line extension policy. A request for service shall be unreasonable for the purpose of this subsection if no distribution line capable of servicing that person's block has been installed.

(c) Temporary Service Drops:

(1) The Grantee shall put forth every effort to bury temporary drops within twenty-five (25) days after placement. Any delays for any other reason than listed will be communicated to the Town. The following delays will be found understandable and within the course of doing business: weather, ground conditions, street bores, System redesign requirements and any other unusual obstacle, such as obstructive landscaping that is created by the customer.

(2) The Grantee shall provide reports to the Town, upon request, on the number of drops pending.

(d) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum System use.

(e) The Grantee shall not allow its cable or other operations to interfere with television reception of Subscribers or persons not served by the Grantee, nor shall the System interfere with, obstruct or hinder in any manner the operation of the various utilities serving the customers within the confines of the Town, nor shall other utilities interfere with the Grantee's System.

Section 24. Customer service standards.

(a) Nothing in this Ordinance shall be construed to prohibit the enforcement of any federal, state or local law or regulation concerning customer service or consumer protection that imposes customer service standards or consumer protection requirements that exceed the customer service standards set out in this Ordinance or that address matters not addressed in this Ordinance.

(b) The Grantee shall maintain a local or toll-free telephone access line which is available to its Subscribers and shall have knowledgeable, qualified representatives available to respond to customer telephone inquiries regarding repairs twenty-four (24) hours per day, seven (7) days per week.

(c) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the total time that the office is open for business.

(d) A centrally-located customer service center will be open for walk-in customer transactions a minimum of eight (8) hours per day Monday through Friday, unless there is a need to modify those hours because of the location or customers served. The Grantee and Town by mutual consent shall establish supplemental hours on weekdays and weekends as fits the needs of the community.

(e) Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time as measured on an annual basis.

(1) Standard installations will be performed within seven (7) business days after an order has been placed. A standard installation is one that is within one hundred fifty (150) feet of the existing System.

(2) Excluding those situations that are beyond its control, the Grantee will respond to any service interruption promptly and in no event later than twenty-four (24) hours from the time of initial notification. All other regular service requests will be responded to within thirty-six (36) hours during the normal work week for that System. The appointment window alternatives for installations, service calls and other installation activities will be: "morning" or "afternoon"; not to exceed a four-hour "window" during Normal Business Hours for the System, or at a time that is mutually acceptable. The Grantee shall schedule supplemental hours during which appointments can be scheduled based on the needs of the community. If at any time an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time that is convenient to the customer.

(f) Subscriber Credit for Outages. Upon Service Interruption of a Subscriber's Cable Service, the following shall apply:

(1) For Service Interruptions of more than four (4) hours and up to four (4) days, the Grantee shall provide, at the Subscriber's request, a credit of one-thirtieth (1/30) of one month's fees for affected services for each 24-hour period service is interrupted for four (4) or more hours for any Subscriber, with the exception of Subscribers disconnected because of non-payment or excessive signal leakage.

(2) For interruptions of one hundred sixty-eight (168) hours or more in one month, the Grantee shall provide, at the Subscriber's request, a full month's credit for affected services for all affected Subscribers.

(g) The Grantee shall provide written information for each of the following areas at the time of installation and at any future time upon the request of the customer:

(1) Product and services offered

(2) Prices and service options

(3) Installation and service policies

(4) How to use the cable television services

(h) Bills will be clear, concise and understandable, with all charges for cable services itemized.

(i) Credits will be issued promptly, but no later than the customer's next billing cycle following the resolution of the request and the return of the equipment by the Grantee if service has been terminated.

(j) The Grantee shall notify customers a minimum of thirty (30) days in advance of any rate or channel change.

(k) The Grantee shall maintain and operate its network in accordance with the rules and regulations incorporated herein or as may be promulgated by Federal Communications Commission, the United States Congress, or the State of Wisconsin.

(l) The Grantee shall continue, through the term of the Franchise, to maintain the technical standards and quality of service set forth in this Ordinance. Should the Town find, by resolution, that the Grantee has failed to maintain these technical standards and quality of service, and should it, by resolution, specifically enumerate improvements to be made, the Grantee shall make such improvements, if reasonable. Failure to commence such improvements within three (3) months of such resolution will constitute a breach of a condition for which penalties contained in Section 46 are applicable.

(m) The Grantee shall keep a monthly service log that indicates the nature of each service complaint received in the last twenty-four (24) months, the date and time each complaint was received, the disposition of each complaint, and the time and date thereof. This log shall be made available for periodic inspection by the Town.

Sec. 25. Continuity of service mandatory.

(a) It shall be the right of all Subscribers to continue receiving service as long as their financial and other obligations to the Grantee are honored. If the Grantee elects to rebuild, modify or sell the System, or the Town gives notice of intent to terminate or fails to renew the Franchise, the Grantee shall reasonably act so as to ensure that all Subscribers receive continuous, uninterrupted service until alternative service can be provided; however, in all events, not beyond the duration of the Franchise Agreement.

(b) If there is a change of Franchise, or if a new operator acquires the System, the Grantee shall cooperate with the Town, new franchisee or new operator to maintain continuity of service to all Subscribers.

(c) If the Grantee fails to operate the System for seven (7) consecutive days without prior approval of the Town or without just cause, the Town may, at its option, operate the System or designate an operator until such time as the Grantee restores service under conditions acceptable to the Town or a permanent operator is selected. If the Town is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the Town for all reasonable costs or

damages in excess of revenues from the System received by the Town that are the result of the Grantee's failure to perform.

Sec. 26. Complaint procedure.

(a) The Town Board or its designee has primary responsibility for the continuing administration of the Franchise and implementation of complaint procedures.

(b) During the terms of the Franchise and any renewal thereof, the Grantee shall maintain a central office, designated by the Grantee, for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local and/or toll-free telephone call to receive complaints regarding quality of service, equipment functions and similar matters. The Grantee will make good faith efforts to arrange for one or more payment locations in a central location where customers may pay bills or drop off equipment.

(c) As Subscribers are connected or reconnected to the System, the Grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed.

(d) When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the Town, casts doubt on the reliability or quality of cable service, the Town shall have the right and authority to require the Grantee to test, analyze and report on the performance of the System. The Grantee shall fully cooperate with the Town in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice, if reasonably possible. Such report shall include the following information:

(1) The nature of the complaint or problem that precipitated the special tests;

(2) The System component(s) tested;

(3) The equipment used and procedures employed in testing;

(4) The method, if any, in which such complaint or problem was resolved;

(5) Any other information pertinent to the tests and analysis which may be required.

(e) The Town may require that tests be supervised, at the Grantee's expense unless results are found to be in compliance by an independent

professional engineer or equivalent of the Town's choice. The engineer shall sign all records of special tests and forward to the Town such records with a report interpreting the results of the tests and recommending actions to be taken.

(f) The Town's rights under this section shall be limited to requiring tests, analysis and reports covering specific subjects and characteristics based on complaints or other evidence when and under such circumstances as the Town has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

Sec. 27. Grantee rules and regulations.

The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under the Franchise, and to assure uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

Sec. 28. Franchise fee.

(a) A Grantee shall pay to the Town a franchise fee in the amount designated in the Franchise Agreement. Unless otherwise specified in the Franchise Agreement, such franchise fee shall be five percent (5%) of the basic and extended basic service charge generated from subscribers located in the Town.

(b) The franchise fee payment shall be in addition to any other tax or payment owed to the Town by the Grantee and shall not be construed as payment in lieu of municipal property taxes or other state, county or local taxes.

(c) The franchise fee and any other costs or penalties assessed shall be payable quarterly on a calendar year basis to the Town within forty-five (45) days of the end of each quarter. The Grantee shall also file a complete and accurate verified statement of all Gross Revenues as previously defined within forty-five (45) days of the end of each quarter.

(d) The Town shall have the right to inspect the Grantee's income records and to audit and recompute any amounts determined to be payable under this Ordinance; provided, however, that such audit shall take place within sixty (60) months following the close of each of the Grantee's fiscal years that is the subject of the audit. Any additional amount due the Town as a result of an audit shall be paid within thirty (30) days following written notice to the Grantee by the Town, which shall include a copy of the audit report.

(e) If any franchise fee payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at an annual rate of twelve percent (12%). The

Grantee shall reimburse the Town for any additional expenses and costs incurred by the Town by reason of the delinquent payment(s), including, but not limited to, attorney's fees, consultant fees and audit fees.

(f) The Town may waive the franchise fee provisions set forth in this Section.

Sec. 29. Transfer of ownership or control.

(a) A Franchise shall not be assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written consent of the Town. The Grantee may, however, transfer or assign the Franchise to a wholly owned subsidiary of the Grantee and such subsidiary may transfer or assign the Franchise back to the Grantee without such consent, providing that such assignment is without any release of liability of the Grantee. Any proposed assignee must show legal, technical and financial responsibility as determined by the Town and must agree to comply with all provisions of the Franchise. The Town shall have one hundred and twenty (120) days to act upon any request for approval of a sale or transfer submitted in writing that contains or is accompanied by all such information as is required in accordance with FCC regulations and by the Town. The Town shall be deemed to have consented to a proposed transfer or assignment if its refusal to consent (including the reasons therefor) is not communicated in writing to the Grantee within one hundred and twenty (120) days following receipt of written notice together with all necessary information as to the effect of the proposed transfer or assignment upon the public, unless the requesting party and the Town agree to an extension of time. The Town shall not unreasonably withhold consent to a proposed transfer.

(b) The Grantee shall promptly notify the Town of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttal presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of forty percent (40%) of the voting shares of the Grantee. Every change, transfer or acquisition of control of the Grantee shall make the Franchise subject to cancellation unless and until the Town shall have consented thereto, which consent shall not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the Town may inquire into the legal, technical, financial and other qualifications of the prospective controlling party, and the Grantee shall assist the Town in such inquiry.

(c) The consent or approval of the Town to any transfer of the Grantee shall not constitute a waiver or release of the rights of the Town in and to the

streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of the Franchise.

(d) In the absence of extraordinary circumstances, the Town shall not be required to approve any transfer or assignment of a new Franchise prior to substantial completion of construction of the proposed System.

(e) In no event shall a transfer of ownership or control be approved without the successor(s) in interest agreeing in writing to abide by the terms and conditions of the Franchise Agreement.

Sec. 30. Availability of books and records.

(a) The Grantee shall fully cooperate in making available at reasonable times, and the Town shall have the right to inspect at the Grantee's office, upon reasonable notice and where reasonably necessary for the enforcement of the Franchise, books, records, maps, plans and other like materials of the Grantee applicable to the Cable Television System, at any time during Normal Business Hours.

(b) Unless prohibited by law, rule or regulation, the following records and/or reports are to be made available to the Town upon request, but no more frequently than on an annual basis if so mutually agreed upon by the Grantee and the Town:

(1) a yearly review and resolution or progress report submitted by the Grantee to the Town;

(2) periodic preventive maintenance reports;

(3) copies of FCC Form 395-A (or successor form) or any supplemental forms related to equal opportunity or fair contracting policies;

(4) Subscriber inquiry/complaint resolution data (but not including names or addresses) and the right to review documentation concerning these inquiries and/or complaints periodically;

(5) periodic construction update reports including, where appropriate, the submission of strand maps.

Sec. 31. Other petitions and applications.

Copies of all petitions, applications, communications and reports submitted by the Grantee to the Federal Communications Commission, or to any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to

the Franchise or received from such agencies shall be provided to the Town upon request.

Sec. 32. Fiscal reports.

(a) The Grantee shall file annually with the Town no later than one hundred twenty (120) days after the end of the Grantee's fiscal year, a copy of a gross revenues statement certified by an officer of the Grantee. This provision may be waived by the Town.

Sec. 33. Removal of Cable Television System.

At the expiration of the term for which the Franchise is granted or when any renewal is denied, or upon its termination as provided herein, the Grantee shall forthwith, upon written notice by the Town, remove at its own expense all aerial portions of the Cable Television System from all streets and public property within the Town within six (6) months. If the Grantee fails to do so within six (6) months, the Town may perform the work at the Grantee's expense. Upon such notice of removal, a bond shall be furnished by the Grantee in an amount sufficient to cover this expense.

Sec. 34. Required services and facilities.

(a) The Cable Television System shall have a minimum channel capacity of seventy-seven (77) channels.

(b) Such System shall maintain a plant having the technical capacity for two-way communications.

(c) The Grantee shall provide the following:

(1) At least one (1) specially designated channel for use by local education authorities;

(2) At least one (1) specially designated channel for local governmental uses;

(3) If required by the Franchise Agreement, an Institutional Network (I-Net) of cable, optical, electrical or electronic equipment, including Cable Television Systems, used for the purpose of transmitting two-way video signals interconnecting designated entities to be determined by the Town. The cost of such network will be borne by the Town as negotiated between the Grantee and the Town. Such Network may be provided as needed by utilizing capacity on the System.

(4) Provided, however, these uses may be combined on one or more channels until such time as additional channels

become necessary in the opinion of the Town. Studios and associated production equipment will be located in a mutually agreed upon site to meet the need for educational and local governmental access as noted in (1), (2) and (3). Financial and technical support and replacement and maintenance of equipment of this facility shall be separately incorporated into the Franchise by agreement.

(d) The Grantee shall incorporate into its Cable Television System the capacity to permit the Town, in times of emergency, to override by remote control the audio, video and/or text of all channels simultaneously, which the Grantee may lawfully override. The Grantee shall provide emergency broadcast capacity pursuant to FCC rules. The Grantee shall cooperate with the Town in the use and operation of the emergency alert override system.

Sec. 35. Rules and regulations.

(a) In addition to the inherent powers of the Town to regulate and control any cable television Franchise, and those powers expressly reserved by the Town, or agreed to and provided for herein, the right and power is hereby reserved by the Town to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and furtherance of the terms and conditions of the Franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations and do not appreciably increase the burdens or appreciably impair the rights of the Grantee under the Franchise Agreement.

(b) The Town may also adopt such regulations at the request of Grantee upon application.

Sec. 36. Performance evaluation sessions.

(a) The Town and the Grantee may hold scheduled performance evaluation sessions within thirty (30) days of the third and sixth anniversary dates of the Grantee's award or renewal of the Franchise and as may be required by federal and state law. All such evaluation sessions shall be open to the public.

(b) Special evaluation sessions may be held at any time during the term of the Franchise at the request of the Town or the Grantee.

(c) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. The Grantee shall notify its Subscribers of all evaluation sessions by announcements on at least one (1) channel of its System between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days preceding each session.

(d) Topics which may be discussed at any scheduled or special evaluation session may include, but are not limited to: service rate structures; franchise fee, penalties, free or discounted services; application of new technologies; System performance; services provided; programming offered; customer complaints; privacy; amendments to this Ordinance; judicial and FCC rulings; line extension policies; and Grantee or Town rules. The Town acknowledges that, pursuant to federal law, it does not have jurisdiction nor enforcement rights over all the standards and services mentioned above, including programming and the application of all new technologies under a cable television franchise. Nothing in this subsection shall be construed as requiring the renegotiation of the cable Franchise Agreement.

(e) Members of the general public may add topics either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of fifty (50) or more residents of the Town, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.

Sec. 37. Rate change procedures.

Pursuant to the Cable Television Consumer Protection and Competition Act of 1992, if the Town is currently certified to regulate the Basic Service rates charged by Grantee, it may, under these rules, require the Grantee to obtain approval from the Town for a rate increase for any change to the rates for Basic Service. Should federal or state law permit further rate regulation beyond Basic Service the Town may, if certified, assume such rate regulation and adopt appropriate procedures for such regulation.

Sec. 38. Forfeiture and termination.

(a) Pursuant to Section 47, in addition to all other rights and powers retained by the Town under this Ordinance or otherwise, the Town reserves the right to forfeit and terminate the Franchise and all rights and privileges of the Grantee hereunder in the event of a substantial breach of its terms and conditions following a reasonable period of at least thirty (30) days to cure. A substantial breach by the Grantee shall include, but shall not be limited to the following:

(1) Violation of any material provision of the Franchise or any material rule, order, regulation or determination of the Town made pursuant to the Franchise;

(2) Attempt to evade any material provision of the Franchise or to practice any fraud or deceit upon the Town or its Subscribers or customers;

(3) Failure to begin or complete System construction or System extension as provided under section 20;

(4) Failure to provide the services promised in the Grantee's initial application as incorporated herein by section 4;

(5) Failure to restore service after one hundred sixty-eight (168) consecutive hours of interrupted service, except when approval of such interruption is obtained from the Town; or

(6) Material misrepresentation of fact in the application for or negotiation of the Franchise.

(b) The foregoing shall not constitute a major breach if the violation occurs but is without fault of the Grantee or occurs as a result of circumstances beyond its control. The Grantee shall not be excused by mere economic hardship.

(c) The Town may make a written demand that the Grantee comply with any such provision, rule, order or determination under or pursuant to the Franchise. If the violation by the Grantee continues for a reasonable period of at least thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the Town may place the issue of termination of the Franchise before the Town Board. The Town shall cause to be served upon the Grantee, at least twenty (20) days prior to the date of such meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and the issue(s) which the Board is to consider.

(d) The Town Board shall hear and consider the issue(s) and shall hear any person interested therein and shall determine in its discretion whether or not any violation by the Grantee has occurred.

(e) If the Town Board determines that the violation by the Grantee was the fault of the Grantee and within its control and that the Grantee has failed to make reasonable efforts to correct the violation, then the Board may, by resolution declare that the Franchise of the Grantee shall be forfeited and terminated unless there is compliance within such period as the Board may fix, such period to not be less than thirty (30) days; provided, however, that no opportunity for compliance need be granted for fraud or material misrepresentation.

(f) The issue of forfeiture and termination shall automatically be placed upon the Board agenda at the expiration of the time set by it for compliance. The Board may then terminate the Franchise forthwith upon finding that the Grantee has failed to take reasonable actions necessary to achieve compliance or it may further extend the period, at its discretion.

Sec. 39. Foreclosure.

Upon the foreclosure or other judicial sale of all or a substantial part of the System, or upon the termination of any lease covering all or a substantial part of

the System, the Grantee shall notify the Town of such fact, and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of the Franchise governing the consent of the Town to such change in control of the Grantee shall apply.

Sec. 40. Approval of transfer and right of acquisition by the Town.

(a) Federal regulations as per 47 U.S.C. §537 shall apply to approval of transfer issues and the right of acquisition by the Town.

Sec. 41. Receivership.

The Town shall have the right to cancel a Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Grantee, unless such receivership or trusteeship shall have been vacated prior to the expiration of one hundred twenty (120) days, or unless:

(1) Within one hundred twenty (120) days after his/her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and

(2) Such receiver or trustee, within the one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the Franchise granted to the Grantee.

Sec. 42. Compliance with state and federal laws.

(a) Notwithstanding any other provisions of the Franchise to the contrary, the Grantee shall at all times make reasonable efforts to comply with all laws and regulations of the state and federal government or any administrative agencies thereof; provided, however, if any such state or federal law or regulation shall require the Grantee to perform any service, or shall permit the Grantee to perform any service, or shall prohibit the Grantee from performing any service, in conflict with the terms of the Franchise or of any law or regulation of the Town, then as soon as possible following knowledge thereof, the Grantee shall notify the Town of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Town or the Franchise.

(b) If the Town determines that a material provision of this Ordinance is affected by any subsequent action of the state or federal government, the Town and the Grantee shall negotiate to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this Ordinance.

(c) If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid or unconstitutional by any court of competent

jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the franchise, or any renewal or renewals thereof.

Sec. 43. Landlord/tenant.

(a) Interference with cable service prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive and use Cable Service, cable installation or maintenance of the Cable System in any way.

(b) Penalties and charges to tenants for service prohibited. Neither the owner or any multiple unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable television service from a Grantee operating under a valid and existing cable television Franchise issued by the Town.

(c) Reselling service prohibited. No person shall resell, without the expressed, written consent of the Grantee, any cable service, program or signal transmitted by a cable television Grantee under a Franchise issued by the Town.

(d) Protection of property permitted. Nothing in this Ordinance shall prohibit a person from requiring that Cable Television System facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.

Sec. 44. Applicants' Applications for Initial Franchise.

(a) All applications received by the Town from the applicants for an Initial Franchise will become the sole property of the Town.

(b) The Town reserves the right to reject any and all applications and waive informalities and/or technicalities where the best interest of the Town may be served.

(c) All questions regarding the meaning or intent of this Ordinance or application documents shall be submitted to the Town in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the Town as having received the application documents. The Town reserves the right to make extensions of time for receiving applications as it deems necessary. Questions received less than fourteen (14) days prior to the date for the opening of applications will not be answered. Only replies to questions by written addenda will be binding. All applications must contain an acknowledgment of receipt of all addenda.

(d) Applications must be sealed, and submitted at the time and place indicated in the application documents for the public opening. Applications may be modified at any time prior to the opening of the applications, provided that any modifications must be duly executed in the manner that the applicant's application must be executed. No application shall be opened or inspected before the public opening.

(e) Before submitting a application, each applicant must:

(1) Examine this Ordinance and the application documents thoroughly;

(2) Familiarize himself/herself with local conditions that may in any manner affect performance under the Franchise;

(3) Familiarize himself/herself with federal, state and local laws, ordinances, rules and regulations affecting performance under the Franchise; and

(4) Carefully correlate the application with the requirements of this Ordinance and the application documents.

(f) The Town may make such investigations as it deems necessary to determine the ability of an applicant to perform under the Franchise, and the applicant shall furnish to the Town all such information and data for this purpose as the Town may request. The Town reserves the right to reject any application if the evidence submitted by, or investigation of, such applicant fails to satisfy the Town that such applicant is properly qualified to carry out the obligations of the Franchise and to complete the work contemplated therein. Conditional applications will not be accepted.

(g) All applications received shall be placed in a secure depository approved by the Town and shall not be opened nor inspected prior to the public opening.

Sec. 45. Financial, contractual, shareholder and system disclosure for initial Franchises.

(a) No initial Franchise will be granted to any applicant unless all requirements and demands of the Town regarding financial, contractual, shareholder and System disclosure have been met.

(b) Applicants, including all shareholders and parties with any interest in the applicant, shall fully disclose all agreements and undertakings, whether written or oral, or implied with any person, firm, group, association or corporation with respect to the Franchise and the proposed Cable Television System. The Grantee of a Franchise shall disclose all other contracts to the Town as the

contracts are made. This section shall include, but not be limited to, any agreements between local applicants and national companies.

(c) Applicants, including all shareholders and parties with any interest in the applicant, shall submit all requested information as provided by the terms of this Ordinance or the application documents, which are incorporated herein by reference. The requested information must be complete and verified as true by the applicant.

(d) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose the numbers of shares of stock, and the holders thereof, and shall include the amount of consideration for each share of stock and the nature of the consideration.

(e) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding other cable Systems in which they hold an interest of any nature, including, but not limited to, the following:

(1) Locations of all other Franchises and the dates of award for each location;

(2) Estimated construction costs and estimated completion dates for each System;

(3) Estimated number of miles of construction and number of miles completed in each System as of the date of this application; and

(4) Date for completion of construction as promised in the application for each System.

(f) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding pending applications for other cable Systems, including, but not limited to, the following:

(1) Location of other Franchise applications and date of application for each System;

(2) Estimated dates of Franchise awards;

(3) Estimated number of miles of construction; and

(4) Estimated construction costs.

Sec. 46. Penalties and Forfeitures.

For the violation of any of the following provisions of this Ordinance, damages shall be chargeable to the letter of credit or corporate guarantee in lieu of bond as follows, and the Town may determine the amount of the forfeiture for other violations that are not specified in a sum not to exceed two hundred and fifty dollars ($250.00) for each violation, with each day constituting a separate violation:

(a) Failure to furnish, maintain, or offer all cable services to any eligible Subscriber within the Town pursuant to Section 20 herein upon order of the Town: up to two-hundred-fifty dollars ($250.00) per day, per violation, for each day that such failure occurs or continues up to a maximum of $1,000;

(b) Failure to obtain or file evidence of required insurance, construction bond, performance bond, or other required financial security: up to two-hundred-fifty dollars ($250.00) per day, per violation, for each day such failure occurs or continues up to a maximum of $1,000;

(c) Failure to provide access to data, documents, records, or reports to the Town as required by sections 19, 29, 30, 31 and 37: up to two-hundred-fifty dollars ($250.00) per day, per violation, for each day such failure occurs or continues up to a maximum of $1,000;

(d) Failure to comply with applicable construction, operation, or maintenance standards: up to two-hundred-fifty dollars ($250.00) per day, per violation up to a maximum of $1,000;

(e) Failure to comply with a rate decision or refund order: up to five hundred dollars ($500.00) per day, per violation, for each day such a violation occurs or continues up to a maximum of $1,000.

(f) Any violations for non-compliance with the customer service standards of Sections 23 through 25, the Grantee shall pay up to two-hundred-fifty dollars ($250.00) per day for each day, or part thereof, that such noncompliance continues up to a maximum of $1,000;

(g) Any other violations of a Franchise Agreement to be determined by the Grantor in a public hearing but not specifically noted in this section shall not exceed two hundred and fifty dollars ($250.00) per day, per violation up to a maximum of $1,000.

Section 47. Procedures.

(a) Whenever the Town believes that the Grantee has violated one (1) or more terms, conditions or provisions of the Franchise, and wishes to impose penalties, a written notice shall be given to the Grantee informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford the Grantee an opportunity to remedy the violation. The Grantee shall have thirty (30) days subsequent to receipt of the

notice in which to correct the violation before the Town may impose penalties unless the violation is of such a nature so as to require more than thirty (30) days and the Grantee proceeds diligently within the thirty (30) days to correct the violation. In any case where the violation is not cured within thirty (30) days of notice from the Town, or such other time as the Grantee and the Town may mutually agree to, the Town may proceed to impose the penalties described in Section 46 above.

(b) The Grantee may, within twenty (20) days of receipt of notice, notify the Town that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the Grantee to the Town shall specify with particularity the matters disputed by the Grantee and shall stay the running of the applicable right to cure period pending Board decision as required below. The Board shall hear the Grantee's dispute. Grantee must be given at least twenty (20) days notice of the hearing. At the hearing, the Grantee shall be entitled to the right to present evidence and the right to be represented by counsel. After the hearing, the Town shall provide Grantee a copy of its action, along with supporting documents. In the event the Town upholds the finding of a violation, the Grantee shall have fifteen (15) days subsequent, or such other time period as the Grantee and the Town mutually agree, to correct the violation.

(c) The rights reserved to the Town under this section are in addition to all other rights of the Town whether reserved by this Ordinance or authorized by law or equity, and no action, proceeding or exercise of a right with respect to penalties shall affect any other right the Town may have.

Section 48. Force Majeure

The grantee shall not be held in default under, or in noncompliance with, the provisions of the franchise, nor suffer any enforcement or penalty relating to noncompliance or default including termination, cancellation or revocation of the franchise, where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, severe weather conditions or other catastrophic act of nature, labor disputes, inability to obtain necessary contract labor or materials, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate and control and that makes performance impossible.

ORDINANCE 2009-04
ESTABLISHING SPLIT SHIFTS FOR ELECTION OFFICIALS

STATE OF WISCONSIN
Town of Merrimac
Sauk County

The Town Board of the Town of Merrimac, Sauk County, Wisconsin, has the specific authority under 7.30 (1), Wis. Stats., to adopt this ordinance.

This ordinance, adopted by a majority of the town board on a roll call vote with a quorum present and voting, and proper notice having been given, provides for the selection of 2 sets of election officials to work at different times on each election day as follows:

A. There shall be 2 shifts for election workers on all election days. The first shift shall commence at 6:45 a.m. and end at 1:15 p.m. The second shift shall commence at 1:00 p.m. and end with the completion of all required election day duties that follow the closure of the polls.

B. The town clerk may appoint for each election at least one additional inspector who may serve ad-hoc at the polling place. Each additional inspector shall serve as a greeter to answer questions and to direct electors to the proper location for registration and voting and shall be available for other election officials who must leave the room during the voting process.

This ordinance is effective on posting.

The town clerk shall properly post this ordinance as required under s.60.80 Wis. Stats.

Adopted this 2nd day ~~of December~~, 2009.

Steve Peetz, Town Chair

Terry Frosch, Supervisor

John Gaedke, Supervisor

ATTEST:

Tim McCumber
Town Administrator & Clerk – Treasurer

Town of Merrimac, Sauk County, Wisconsin
Ordinance #2021-40
An Ordinance relating to Emergency and Service Vehicles Access

The Town of Merrimac, Sauk County does hereby, in accordance with Wisconsin State Statutes, ordain as follows:

1.01 Title and Purpose: The title of this chapter is emergency and service vehicles Access. The purpose of this Ordinance is to assure adequate access is provided for emergency and service vehicles throughout the Town.

1.02 Authority: The Town of Merrimac has the authority to enact this ordinance under its village powers under §60.22, Wis. Stats.

1.03 Definitions: The following words and phrases shall have the designated meaning unless a different meaning is expressly provided, or the context clearly indicates a different meaning:

Emergency Vehicles means any vehicle owned and operated by the Town of Merrimac or other emergency response organization dispatched to an emergency situation within the Town of Merrimac.

Service Vehicles means any government or private vehicles owned and operated by authorized agents of the Town of Merrimac for services provided to properties with easement rights such as garbage collection, snow removal, maintenance and general upkeep of the town.

Fire Chief means the Chief of the Town of Merrimac Fire Department or other person authorized by the Fire Chief.

Fire Lane means the area within any public right-of-way, easement, or on private property designated for the purpose of permitting fire trucks and other firefighting or emergency equipment to use, travel upon, and park.

1.04 Driveways:

(A) All private roads and driveways must be maintained clear of trees, natural objects and structures to a minimum width of fourteen feet and a minimum height of fifteen feet.

(B) All shared private roads and driveways must be accessible for emergency and town vehicles on official business.

(C) Driveways to vacant structures with activated emergency alarm systems must be kept clear of snow. The inability of the Fire Department to access structures in response to automated emergency alarms could result in forfeitures for non-compliance with this provision.

(D) All private roads and driveways shall be maintained with a paved or gravel surface sufficient to support vehicular traffic.

1.05 Fire Lanes for Commercial Structures:

(A) ESTABLISHING AND MARKING FIRE LANES:

(1) The Fire Chief may establish fire lanes around facilities which are by their, size, location, design, or contents warrant access which exceeds that normally provided by the proximity of existing public roadways.

(2) Fire lanes shall provide access to at least two sides of all buildings 150 to 200 feet long. For buildings over 200 feet in length, fire lanes shall provide access to four sides of the building or group of buildings. Fire lanes shall be at least 30 feet in width with the road edge closed to the building at least ten feet from the building. Any dead-end fire lane more than 300 feet long shall include a turnaround at the closed end at least 90 feet in diameter.

(3) Fire lanes shall provide a minimum, unobstructed width of 30 feet and vertical clearance of 15 feet.

(4) Fire lanes shall be identified by a 4-inch-wide line and block letters 2 feet high, painted in the lane, at 50 foot or such other intervals which the Fire Chief determines to be reasonable, stating "Emergency Vehicles Only" color to be determined by the Fire Chief, and by posting of signs stating "Emergency Vehicles Only-No Parking". Signs shall be posted on or immediately next to the curb line, or on the building. Signs shall be 12" x 18" and shall have letters and background of contrasting colors, readily readable from at least 50 feet. Signs shall be posted at a minimum no further than 50 feet apart, unless a greater distance is deemed reasonable by the Fire Chief, nor shall they be more than 4 feet from the ground unless a greater height is determined necessary by the Fire Chief.

(5) Where fire lanes connect to town roads, county highways, state highways or parking lots, adequate clearances and turning radii shall be provided. All proposed plans shall have Fire Chief approval.

(B) FIRE LANES AS PART OF DRIVEWAYS AND/OR PARKING AREAS: The Fire Chief may require that areas specified for use as driveways or private thoroughfares shall not be used for parking. These areas, when specified, shall be marked as specified in §8.05(A)(4).

(C) RESTRICTIONS IN FIRE LANES: Except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer or fire official or traffic control sign, signal, or device, no person shall stop, stand or park a vehicle, whether occupied or not at any place where fire lane signs are posted, except:

(1) Momentarily to pick-up or discharge a passenger or passengers; or
(2) Delivery vehicle for the purpose of, and while actually engaged in loading or unloading.

(D) FIRE LANES, EXISTING BUILDINGS: The Fire Chief may require fire lanes to be constructed and maintained when the Fire Chief determines that inaccessibility for fire apparatus exists around existing buildings or structures.

1.06 NUISANCE, INJUNCTION. The repeated violation of this ordinance is hereby declared to be a nuisance. In addition to any other relief provided by this ordinance, the Town of Merrimac may apply for an injunction to prohibit the continuation of any violation of this ordinance. Such

application for relief may include seeking a temporary restraining order, temporary injunction, or permanent injunction.

1.07 ENFORCEMENT AND FORFEITURES: It shall be the duty of the Town Board to enforce this ordinance. Any person who violates any provisions of this chapter may be subject to a forfeiture of $50.00 plus court costs for the first violation, $100.00 plus court costs for the second violation and $200.00 plus court costs for all subsequent violations. Failure to come into compliance after 10 days shall also constitute a new violation each day thereafter

1.08 SEVERABILITY CLAUSE: If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

This ordinance shall become effective September 2, 2021 and published by the town clerk in accordance with s. 60.80, Wis. Stats.

Adopted this 1st day of September, 2021.

Charlie Hall, Interim-Town Chair

Tim Healy, Interim-Supervisor

John Gaedke, Supervisor

ATTEST:

Tim McCumber
Town Administrator & Clerk – Treasurer

Posted in Town: August 11, 2021
For Publication: August 14, 2021 & August 21, 2021

TOWN OF MERRIMAC ORDINANCE 2013-11
RELATING TO THE CONFIDENTIALITY OF CERTAIN FINANCIAL RECORDS

Whereas, this ordinance is entitled the Town of Merrimac Ordinance Relating to Confidentiality of Income and Expense Records. The purpose of this ordinance is to provide confidentiality of the records of taxpayers who provide income and expense record information to the town assessor under s. 70.47 (7) (af), Wis. stats. and to the town treasurer under Wis. Stat. 66.0615(2), Wis. Stats. and to exempt that information from being subject to the right of inspection or copying as a public record under s. 19.35 (1), Wis. stats.

Whereas, the Town Board of the Town of Merrimac, Sauk County, Wisconsin, has the specific authority under s. 70.47 (7) (af), Wis. stats., to provide confidentiality to taxpayers of certain income and expense records provided to the town assessor by those taxpayers for purposes of valuation of real property in the Town of Merrimac, owned by those taxpayers.

Whereas, the Town Treasurer of the Town of Merrimac, Sauk County, Wisconsin, has the specific authority under s. 66.0615(2), Wis. stats., to provide confidentiality to taxpayers of certain income and expense records provided to the town treasurer by those taxpayers for purposes determining and collection of room tax per Town Ordinance 1-78.

Therefore, be it hereby ordained by the Town Board of the Town of Merrimac, Sauk, County, adopts as follows:

1. Income and expense information provided by a property owner to the town assessor for the purpose of establishing valuation for assessment purposes by the income method of valuation shall be confidential and not a public record open to inspection or copying under s. 19.35 (1), Wis. stats. Unless a court determines that the information is inaccurate, the information provided to the assessor is not subject to the right of inspection or copying as a public record under s. 19.35 (1), Wis. stats.
2. Wisconsin Department of Revenue records including state sales tax records and income and expense information provided by a person to the town treasurer for the purpose of auditing room tax, shall be confidential and not a public record open to inspection or copying under s. 19.35 (1), Wis. stats. Unless a court determines that the information is inaccurate, the information provided to the assessor is not subject to the right of inspection or copying as a public record under s. 19.35 (1), Wis. stats.
3. A town officer in the Town of Merrimac may make public disclosure or allow access to income and expense information provided by a property owner to the town assessor for the purpose of establishing valuation for assessment purposes by the income method of valuation in his or her possession and a town officer in the Town of Merrimac may make public disclosure or allow access to income and expense information provided by a tax payer to the town treasurer for the purpose of determining or auditing room tax in his possession as provided below:
    a. The town assessor and/or town treasurer shall have access to the provided income and expense information in the performance of his or her duties.

b. The board of review may review the provided income and expense information when needed, in its opinion, to decide upon a contested assessment.
c. Any person or body who has the right or whose duty in his or her office is to review the provided income and expense information shall have access to the information.
d. A town officer who is complying with a court order may release the provided income and expense information in accordance with the court's order.
e. If the provided income and expense information, or related financial records, has been determined by a court to be inaccurate, the information is open and public.
f. If the property owner or tax payer has provided written approval for public disclosure or limited disclosure to that person, and the Town Board of the Town of Merrimac has approved the disclosure, the provided income and expense information is open and public to the extent approved.

4. Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this ordinance shall, upon conviction, pay a forfeiture of not less than $100 nor more than $500, plus the applicable surcharges, assessments, and costs for each violation. Each day a violation exists or continues constitutes a separate offense under this ordinance. In addition, the town board may seek injunctive relief from a court of record to enjoin further violations.
5. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.
6. This ordinance shall take effect immediately upon publication.

The town clerk shall properly post or publish this ordinance as required under s. 60.80, Wis. stats.

Adopted this 4th day of December, 2013.

Steve Peetz, Town Chair

Terry Frosch, Supervisor

John Gaedke, Supervisor

Attest: _____
Tim McCumber, Town Administrator & Clerk - Treasurer

Town of Merrimac, Sauk County, Wisconsin
Ordinance #2020-37
Ordinance Establishing Fire Protection Charges

The Town of Merrimac, Sauk County does hereby, in accordance with Wisconsin State Statutes, ordain as follows:

SECTION I:

1.1. This ordinance is adopted pursuant to the authority granted under Wisconsin Statute 60.55(2)(b) which allows for the town to recover the cost of fire calls made to a property within the town.

SECTION II:

2.1. The Town of Merrimac, Sauk County, Wisconsin, hereby imposes a charge for each fire call made within the limits of the Town of Merrimac by the Merrimac Fire Department. The fee is not to exceed the actual cost to the Town for the fire call. The charges imposed are on all owners of the real estate to which the particular fire call is made.

2.2. When a call is made is made to personal property, the property shall be imposed upon the owner of such personal property.

SECTION III:

3.1. The fire charges provided for in this ordinance shall be paid in full to the Town Clerk of the Town of Merrimac no later than 90 days from the date of billing. Failure to pay the bill will result in an interest penalty of 1 ½ percent per month from the date of the bill.

3.2 Those bills for real estate that remain outstanding for more than 90 days as of November 1st of any year shall become a lien against the restate and shall be placed on the tax roll as a delinquent special charge under Wis. Stat. 66.0627.

SECTION IV:

4.1. Should any section or provisions of this ordinance be declared invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance.

This ordinance shall become effective January 1, 2021 and published by the town clerk in accordance with s. 60.80, Wis. Stats.

Adopted this 4th day of November, 2020.

Charlie Hall, Interim-Town Chair

Tim Healy, Interim-Supervisor

John Gaedke, Supervisor

ATTEST:

Tim McCumber
Town Administrator & Clerk – Treasurer

PUBLIC NUISANCE ORDINANCE
TOWN OF MERRIMAC
ORDINANCE NO. 98-01

10.01 PUBLIC NUISANCES PROHIBITED. No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the Town of Merrimac.

10.02 "INSPECTION AUTHORITY" DEFINED. The terms Inspection Authority or Inspecting Authority as used in this Ordinance refer to the Town Chairman or Town official designated by the Town Chairman, acting on behalf of the Town Board.

10.03 PUBLIC NUISANCE DEFINED. A public nuisance is a thing, act, occupation, condition or use of property which shall continue for such length of time as to:

(1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public; or

(2) In any way render the public insecure in life or in the use of property; or

(3) Greatly offend the public morals or decency; or

(4) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way or the use of public property.

10.04 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY. The following acts, omissions, places, conditions and things are hereby declared to be public nuisances affecting peace and safety, but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the definition of sec. 10.03 of this chapter:

(1) DILAPIDATED BUILDINGS, WALLS AND FOUNDATIONS. All buildings, walls, foundations, or similar structures so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use.

(2) NOISY ANIMALS OR FOUL. The keeping or harboring of any animal or fowl which by frequent or habitual howling, yelping, barking, crowing or making of other

noises shall greatly annoy or disturb a neighborhood or any considerable number of persons within the Town.

(3) OPEN PITS, BASEMENTS, ETC. All open and unguarded pits, wells, excavations and basements.

(4) FENCES, STRUCTURES, AND OTHER OBJECTS IN HIGHWAY RIGHT-OF-WAY. The encroachment upon, under or over any highway right-of-way by any fence, stand, building or any other structure or object, and including encroachments caused by acquisition by the town of new or increased widths of highway right-of-way.

(5) ABANDONED MOBILE HOMES. Any mobile home left unattended on any public highway or private or public property, for such time and under such circumstances as to cause the mobile home to reasonably appear to have been abandoned. A mobile home is deemed abandoned and constitutes a nuisance whenever it has been left unattended without the permission of the property owner for more than 48 hours. [See s.342.40, Wisconsin Statutes 1995-96.] As used in this section, the terms "mobile home" mean that which is, or was as originally constructed, designed to be transported by any motor vehicle upon a public highway and designed, equipped and used primarily for sleeping, eating and living quarters, or is intended to be so used; and includes any additions, attachments, annexes, foundations and appurtenances. [See 66.058(1)(d), Wisconsin Statutes 1995-96.]

10.05 JUNK, CERTAIN VEHICLES, RECREATIONAL EQUIPMENT AND FIREWOOD.

(1) PUBLIC NUISANCES DECLARED. The following are hereby declared to be public nuisances wherever they may by found within the Town.

(a) Any motor vehicle, truck body, tractor or trailer as enumerated in sub. (3) and (4) below and defined in sub. (2) (a), (b) and (c) below.

(b) Any junk stored contrary to sub. (5) below.

(c) Any recreational equipment stored contrary to sub. (6) below.

(d) Any firewood used or stored contrary to sub. (7) below.

(2) DEFINITIONS. The following words, phrases and terms used in this section shall be interpreted as follows:

(a) Disassembled, Inoperable, Junked or Wrecked Motor Vehicles, Truck Bodies, Tractors, Trailers. Motor vehicles, truck bodies, tractors or trailers in such state of physical or mechanical ruin as to be incapable of propulsion or being operated upon the public streets or highways.

(b) Unlicensed Motor Vehicles, Truck Bodies, Tractors or Trailers. Motor vehicles, truck bodies, tractors or trailers which do not bear lawful current license plates.

(c) Motor Vehicles. As defined in S. 340.0l(35), Wis. Stats.

(d) Junk. Worn out or discarded material of little or no value including, but not limited to, household appliances or parts thereof, machinery and equipment, including recreational equipment, or parts thereof, vehicles or parts thereof, tools, discarded building materials, or any other unsightly debris, the accumulation of which has an adverse effect upon neighborhood or Town property values, health, safety or general welfare.

(e) Recreational Equipment. Boats, canoes, boat and utility trailers, mobile homes, campers, off-highway vehicles and snowmobiles.

(f) In the Open. Land which may be viewed from public streets or adjoining property.

(3) STORAGE OF INOPERABLE VEHICLES, ETC.

(a) Restricted. No person shall accumulate, store or allow any disassembled, inoperable, junked or wrecked motor vehicles, truck bodies, tractors or trailers in the open upon any public or private property in the Town for a period exceeding 72 hours.

(b) Exceptions.

1. Any business engaged in automotive sales or repair located in a properly zoned district may retain no more than 3 disassembled or wrecked vehicles in the open for a period not to exceed 30 days, after which such vehicles shall be removed.

2. Properly licensed junk yards.

(4) STORAGE OF UNLICENSED VEHICLES, ETC.

(a) Restricted. No person shall accumulate, store or allow any unlicensed motor vehicle, truck body, tractor or trailer in the open upon any public or private property in the Town for a period exceeding 72 hours.

(b) Exceptions.

1. Any business engaged in the sale, repair or storage of such unlicensed vehicles in a properly zoned district.

(5) STORAGE OF JUNK PROHIBITED. No person, except a licensed junk dealer shall accumulate, store or allow any junk outside of any building on any public or private real estate located in the Town.

(6) STORAGE OF RECREATIONAL EQUIPMENT REGULATED.

(a) No person shall store any recreational equipment on any street right of way for a period of more than 48 hours.

(b) No person shall accumulate, store or allow any recreational equipment in the open upon any public or private property in the Town for a period exceeding 72 hours, unless such recreational equipment is in compliance with all registration, identification, and registration display requirements for such recreational equipment provided by Wisconsin State Statute or Wisconsin Administrative Rule. [For e.g. snowmobiles are subject to the registration requirements and decal display requirements set forth in s.350.12, Wis. Stats.].

(7) STORAGE OF FIREWOOD.

(a) Regulated. No person shall store firewood on any residential premises except for use on the premises.

10.06 EXCEPTION FOR CERTAIN AGRICULTURAL USES AND PRACTICES.

(1) An "agricultural use" or an "agricultural practice", as hereinafter defined, is not a nuisance under this Ordinance if all of the following apply:

(a) The agricultural use or agricultural practice alleged to be a nuisance is conducted on, or on a public right-of-way adjacent to, land that was in agricultural use without substantial interruption before the person affected thereby began the use of property that said person alleges was interfered with by the agricultural use or agricultural practice.

(b) The agricultural use or agricultural practice does not present a substantial threat to public health or safety.

(2) Paragraph (1) applies without regard to whether a change in agricultural use or agricultural practice is alleged to have contributed to the nuisance.

(3) DEFINITIONS. In this section:

(a) "Agricultural practice" means any activity associated with an agricultural use.

(b) "Agricultural use" has the meaning given in s.91.05(1), Wisconsin Statutes 1995-96, and as the same may hereafter from time to time be amended, renumbered, or recreated.

10.07 ENFORCEMENT; ABATEMENT OF PUBLIC NUISANCES.

(1) ENFORCEMENT. It shall be the duty of the Inspection Authority to make such periodic inspections and inspections upon complaint as the Inspection Authority deems reasonably necessary to ensure that the provisions of this Ordinance are not violated. No action shall be taken or commenced under this action to abate a public nuisance and/or to impose a forfeiture unless the Inspection Authority shall have inspected or caused to be inspected the premises where the nuisance is alleged to exist and is satisfied that a nuisance does in fact exist.

(2) NOTICE TO OWNER OR OCCUPANT; ACTION FOR CIVIL FORFEITURE. Whenever the Inspection Authority shall find any nuisance as defined herein within the Town, the Inspection Authority shall notify the owner or occupant of said property on which said nuisance is located of the violation of this Ordinance. If such nuisance is not removed within 10 days, the Inspection Authority shall report such fact to the Town Board who may direct the Town attorney to commence an action in Circuit Court for the abatement of the nuisance and/or for the imposition of a forfeiture or forfeitures.

(3) SUMMARY ABATEMENT OF NUISANCES OF GREAT AND IMMEDIATE DANGER.

(a) Notice to Owner. If the Inspecting Authority shall determine that a public nuisance exists within the Town and that there is great and immediate danger to the public health, safety, peace, morals or decency, the Inspection Authority may serve notice on the persons causing, permitting or maintaining such nuisance or upon the owner or occupant of the premises where such nuisance is caused, permitted or maintained and to post a copy of said notice on the premises. Such notice shall direct the person causing, permitting or maintaining such nuisance, or the owner or occupant of the premises where such nuisance is caused, permitted or maintained, to abate or remove such nuisance within 24 hours and shall state that unless such nuisance is so abated, the Town shall cause the same to be abated and will charge the costs thereof to the owner, occupant and/or person causing, permitting or maintaining the nuisance, as the case may be.

(b) Abatement by Town. If the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be found, the Inspecting Authority shall cause the abatement or removal of such public nuisance.

(4) OTHER METHODS NOT EXCLUDED. Nothing in this chapter shall be construed as prohibiting the abatement of public nuisances by the Town or its officials in accordance with the laws of the State, nor as prohibiting an action to be commenced in the Circuit Court seeking a forfeiture in accordance with the laws of the State of Wisconsin.

(5) COST OF ABATEMENT. In addition to any other penalty imposed by this Ordinance for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the Town shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance. If the charge is not paid within 30 days of the date of billing, an additional administrative collection charge of 10 percent of the charge shall be added to the amount due, plus interest shall accrue thereon at the rate of 1 percent per month until paid and if notice to abate the nuisance has been given to the owner of the property where the nuisance occurred, such charge shall be extended upon the current or next tax roll as a charge for current services.

10.08 PENALTY. Any person, corporation, partnership, or other legal entity who shall be adjudicated to have violated any of the provisions of this Ordinance shall be subject to a forfeiture of not less than $10 nor more than $200, plus the costs of said prosecution, and upon default of payment of such forfeiture and costs, shall be imprisoned in the County Jail until such forfeiture and costs are paid, but not to exceed 10 days. Each day that a violation of this Ordinance continues shall be deemed a separate offense.

Town of Merrimac, Sauk County, Wisconsin
Ordinance #2020-36
Ordinance to Adopt a Parking Ordinance

The Town of Merrimac, Sauk County does hereby, in accordance with Wisconsin State Statutes, ordain as follows:

SECTION I:

1.1. This ordinance hereby incorporates the definitions found in chapters 340 and 345 of the Wisconsin Statutes and also incorporates portions of 340 through 349 as they relate to parking along with all rules relating to both criminal and civil liability.

1.2. Penalties for violations of these sections are deemed forfeitures only and enforcement thereof is limited as such.

SECTION II:

2.1. It shall be unlawful for any person or persons to park on the paved surface on any town highway.

2.2. It shall not be lawful for any person or persons to park or store any recreational equipment in the public right-of-way for more than 48 hours. Recreational equipment includes, but is not limited to boats, canoes, boat and utility trailers, mobile homes, campers, off-highway vehicles, and snowmobiles. Persons in violation of this provision may also be found to be in violation of Town of Merrimac Nuisance Ordinance #98-01.

2.3. Parking on South Lake Road is strictly prohibited and per Section 4.2 of this ordinance may be enforced by the Wisconsin Department of Natural Resources (DNR) wardens. Additionally, the DNR may post signs restricting parking and notifying persons of high use periods and the road may also be temporarily closed. Any closure anticipated to last more than eight (8) hours requires that the town is notified in writing to the town clerk.

SECTION III:

3.1. This ordinance shall apply year around.

SECTION IV: Penalty.

4.1. Any person or persons violating any of the provisions of this ordinance shall be fined no less than $20.00 for the first offense and $50.00 for all subsequent offenses during the calendar year along with all the costs and other penalties as provided under chapter 345 of the Wisconsin Statutes.

4.2. All deputy sheriffs for the County of Sauk County and any enforcement officer, which the Town Board may appoint, shall issue a citation to the owners of illegally parked vehicles.

This ordinance shall become effective upon its publication and/or posting in the manner set forth in s. 60.80, Wis. Stats.

Adopted this 1st day of July, 2020.

Charlie Hall, Interim-Town Chair

Tim Healy, Interim-Supervisor

John Gaedke, Supervisor

ATTEST:

Tim McCumber
Town Administrator & Clerk – Treasurer

ORDINANCE 2009-01

AN ORDINANCE TO GOVERN THE PLACEMENT OF PRIVATE PIERS ON PUBLIC ACCESSES IN THE TOWN OF MERRIMAC
TOWN OF MERRIMAC, SAUK COUNTY, WISCONSIN

1. Only those persons who have applied for and received permits during the 2008 permitting season may apply for a pier placement permit in the future.
2. Those persons making application may make no changes to their permit application from the previous year, which is to say that no new persons, or configurations, may be added, to a pier permit application.
3. If any person no longer wants to, or is not able to, place a boat lift or a pier, no other person may apply for that space.
4. Any applicant, or applicants, failing to make application during any permitting season shall concede their right to make future application.
5. Any person, or persons, who is granted a pier permit does not have the authority to grant to any other person, or persons, the use of their pier or boat lift that is not already allowed for in the pier permit. Any person in violation of this section shall lose the right to make future application and will have their current permit revoked.
6. Any person who violates the general rules of the permit as established by the town board shall lose the right to make future application and will have their current permit revoked.

Adopted March 4, 2009

Town of Merrimac Room Tax Ordinance
Ordinance #1-78

SECTION A. ROOM TAX

1. Definitions. The definitions of s. 66.0615 (1) and 77.51(1f) Wis. Stats. are adopted and incorporated herein. The meaning of "gross receipts" includes the definition of s. 77.51 (4) (c), Wis. Stats, and bundled transactions as further defined;
    a. "Hotel" or "Motel" means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establish as inn, motels, tourist homes, tourist houses or courts, lodging houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins and any other building or group of buildings in which accommodations are available to the public, except accommodations rented for a continuous period of more than one month and accommodations furnished by any hospitals, sanatoriums, or nursing homes, or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes provided that no part of the net earnings of such corporations and associations inures to the benefit of any private shareholder or individual, and excepting mobile home parks.
    b. Gross receipts. Means total revenue received from the retail furnishing of rooms, lodging, or similar accommodations by an operator including all bundled transactions.
    c. "Transient" means any person residing for a continuous period of less than one month in a hotel, motel or other furnished accommodations available to the public.
    d. Bundled transaction. A bundled transaction is one in which distinct and other identifiable amenities, services or products are sold for one non-itemized price.

2. Pursuant to Wisconsin Statutes 66.0615, a tax is hereby imposed on the privilege and server of a furnishing, at retail, of rooms or lodging to transients by hotel keepers, motel operators, and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for the use of the accommodations. Such tax shall be at the rate of 7 percent of the gross receipts from such retail furnishing of the rooms or lodging. Such tax shall not be subject to the selective sales tax imposed by Wisconsin Statutes, Section 77.52 (2) (a) 1.
    a. The proceeds of such tax, when collected, less all collection expenses,
        1. Shall be applied to General Property Tax Relief.
        2. This section shall be administered by the Treasurer. The tax imposed for the calendar quarter commencing with the month of April, 1978, and for each calendar quarter thereafter is due and payable on the last day of the month next succeeding the calendar quarter for which imposed. A return shall be filed with the Treasurer by those furnishing at retail such rooms and lodging on or before the same date on which such tax is due and payable. Such return shall show the gross receipts of the preceding calendar quarter from such retail furnishing of rooms or lodging, the amount of taxes imposed for such period, and such other information as the Treasurer deems necessary. Every person required to file such quarterly return shall, with his first return, elect to file an annual calendar year or fiscal year return. Such annual return shall be filed

within 30 days of the close of each such calendar year.

The annual return shall summarize the quarterly returns, reconcile and adjust for errors in the quarterly return, and shall contain certain such additional information as the Treasurer requires. Such annual returns shall be made on forms prescribed by the Treasurer. All such returns shall be signed by the person required to file a return or his duly authorized agent, but need not be verified by oath. The treasurer may, for good cause, extend the time for filing any return, but in no event longer than one month from the filing date.

3. Permit
   a. Every person furnishing rooms or lodging in the town of Merrimac shall file with the Treasurer an application for a permit for each place of business. Every application for a permit shall be made upon a form the treasurer prescribes and shall set forth the name under which the applicant transacts or intends to transact business, the location of the place of business, and such other information as the treasurer requires. The owner, if a sole proprietor, shall sign the application and if not a sole proprietor, the person authorized to act on behalf of such applicant shall sign. If the applicant is not the owner, the applicant shall include a guaranty signed by the owner assuring payment of any room tax collected by the applicant. In lieu of said guaranty, the applicant may post a bond, in a form and issued by a bonding company acceptable to the town treasurer, in an amount equal to the estimated gross annual room tax to be collected for said property.

4. Upon determination that the application complies with this section, the treasurer shall grant and issue to each applicant a separate permit for each place of business within the town. Such permit is not assignable and is valid only for the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

5. BOARD OF HOUSING REVIEW. Any person who shall question the tax herein levied may file a petition setting forth the reason for the challenge of the tax and the merits of such challenge shall by determined by a Board of Housing Tax Review which shall consist of the Town Treasurer and the Town Board. As a condition to such review, payment of the tax challenged shall be required and if the tax has been wrongfully assessed, it shall be returned to the person who has paid such tax under protest.

6. If any person liable for any amount of tax under this section sells out his business or stock of goods or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Treasurer that it has been paid or a certificate stating that no amount is due. If a person subject to the tax imposed by this section fails to withhold such amount of tax from the purchase price as required, he shall become personally liable for payment of the amount required to be withheld by him to the extent of the price of the accommodations valued in money.

7. The Treasurer may, by office audit, determine the tax required to be paid to the Town or the refund due to any person under this section. This determination may be made upon the basis of the facts contained in the return being audited or on the basis of any other information within the Treasurer's possession. One or more such office audit determinations may be made of the amount due for anyone or for more than one period.

8. The Treasurer may, by field audit, determine the tax required to be paid to the Town or the refund due to any person under this section. The determination may be made upon the basis of the facts contained in the return being audited or upon any other information in the Treasurer's possession. The Treasurer is authorized to examine and inspect the state sales tax records, and memorandum, of any person in order to verify the tax liability of that person or another person.

9. If any persons fail to file a as required by this section, the Treasurer shall make an estimate of the amount of the gross receipts under Subsection 2. Such estimate shall be made for the period in which such person failed to make a return and shall be based on the State Sales Tax records and memoranda as Stated in Subsection 9. On the basis of this estimate the Treasurer shall compute and determine the amount required to be paid to the town, adding to the sum this arrived at a penalty equal to 10 percent thereof. One or more such determinations may be made for one or more than one period.

10. All unpaid taxes under this section shall bear interest at the rate of 1 (one) percent per month on the unpaid balance. No refund or modification of the payment determined may be granted until the person files a correct room tax return and permits the municipality to inspect and audit his or her financial returns per Wis. Stat. 66.0615 (2) (a).

11. Delinquent tax returns shall be subject to a $10.00 late filing fee. The tax imposed by this section shall become delinquent if not paid:
    a. In the case of a timely filed return, within 30 days after the due date of the return, or within 30 days after the expiration of an extension period if one has been granted.
    b. In the case of no return filed, or a return is filed late, by the due date of the return.

12. If due to negligence no return is filed, or a return is filed late, the entire tax finally determined shall be subject to a penalty of 10 percent of the tax exclusive of any other interest or other penalties. If a person fails to file a return when due or files a false or fraudulent return with the intent in either case to defeat or evade the tax imposed by this section, a penalty of 10 percent shall be added to the tax required to be paid, exclusive of interest and other penalties.

13. Every person liable for the tax imposed by this section shall keep or cause to be kept such records, receipts, invoices and other pertinent papers in such form as the Treasurer requires.

14. All tax returns, schedules, exhibits, writings or audit reports relating to such returns, on file with the Treasurer are deemed to be confidential, except the Treasurer may divulge their contents to the following, and no others:
    a. A person who filed the return.
    b. Officers, agents, or employees of the Federal Internal Revenue Service or the State Department of Revenue.
    c. Officers, or agents of the Town of Merrimac as may be necessary to enforce collection.

15. No person having any administrative duty under this section shall make known in any manner the business affairs, operations or information obtained by an investigation of records of any person on whom a tax is imposed by this section, or the amount or source of income, profits, losses, expenditures, or any particular thereof set forth or disclosed in any return, or to permit

any return or copy thereof to be seen or examined by any person except as provided in Subsection 14.

16. Any person who is subject to the tax imposed by this section who fails to obtain a permit as required in Subsection 4 or who fails or refuses to permit the inspection of state sales records by the Treasurer after such inspection has been duly requested by the Treasurer, shall be subject to a forfeiture not to exceed two hundred fifty dollars ($250). Each day, or portion thereof, that such violation continues is hereby deemed to constitute a separate offense.

17. Any person subject to this ordinance who fails to file a return and pay the tax due, or who violates any other provision of this section, shall be subject to a forfeiture not to exceed 25 percent of the room tax due for the previous year under Subsection 2 or $5,000, whichever is less.

18. In addition to the penalties provided herein, whenever any person fails to comply with this ordinance the Treasurer may, upon ten (10) days notification and after affording such person the opportunity to show cause why his permit should not be revoked, revoke or suspend the Room Tax Permit held by such person. The Treasurer shall give to such person written notice of the suspension or revocation of any of his permits. The treasurer shall reinstate the room tax permit only upon payment in full of the amount due and owing including all penalties and interest.

19. When circumstances warrant, the town board may reinstate a room tax permit upon such terms and conditions it deems appropriate. A fee of Twenty-five dollars ($25.00) shall be imposed for the renewal or issuance of a permit which has been previously suspended or revoked.

SECTION B. SEPARABILITY AND CONFLICT

1. If any section, subsection, paragraph, sub-paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.
2. All ordinances or parts of ordinances which are inconsistent or contrary to this ordinance are repealed.
3. This ordinance shall take effect on April 1, 1978 subject to prior passage and publication as provided by law.

Ordinance adopted February 7, 1978. Effective April 1, 1978.
Amended December 3, 1991 to increase the tax rate from 5% to 7%. Effective January 1, 1992.
Amended December 4, 2013 to define Wis. Statute references and increase penalties for non-compliance. Effective January 1, 2014.

ORDINANCE 2007-01

SEASONAL WEIGHT LIMITS ON TOWN HIGHWAYS

The following seasonal or special weight limits shall be effective annually from February 15th through May 31st, or as published by Sauk County Highway Department and during other periods of time as deemed necessary, on the following Town of Merrimac town highways, which are declared to be class "B" highways under s. 349.15 (2), Wis. stats.:

Town Highway	**Weight Limit**
Inspiration Dr.	8 tons G.V.W.
Kilpatrick Point Rd.	8 tons G.V.W.
Bay Rd.	8 tons G.V.W.
Wynding Way	8 tons G.V.W.
Lookout Court	8 tons G.V.W.
Spear Rd.	8 tons G.V.W.
Halweg Rd.	8 tons G.V.W.
Goette Rd.	8 tons G.V.W.
Eagle Point Rd.	8 tons G.V.W.
West Point Rd	8 tons G.V.W.
High Point Dr.	8 tons G.V.W.
Oak Rd.	8 tons G.V.W.
Walleye Lane	8 tons G.V.W.
Idlewild Rd.	8 tons G.V.W.
Allbrite Rd.	8 tons G.V.W.
Bensen Lane	8 tons G.V.W.
Grandview Ave.	8 tons G.V.W.
W. Grandview Ave.	8 tons G.V.W.
Sue Kay Dr.	8 tons G.V.W.
Grace St.	8 tons G.V.W.
Nishishin Ct.	8 tons G.V.W.
Dan Mar Ct.	8 tons G.V.W.
Horseshoe Ct	8 tons G.V.W.
White Oak Ct.	8 tons G.V.W.
Devil's Delight Rd.	8 tons G.V.W.
Elma Ave. *	8 tons G.V.W.
Thurow Ln. *	8 tons G.V.W.
Camp Lake Wisconsin Rd.	8 tons G.V.W.
Owls Head Rd.	8 tons G.V.W.
Baltic Ave. *	8 tons G.V.W.
Reusch Rd.	8 tons G.V.W.
Bluff Rd.	8 tons G.V.W.
Yum Yum Hill Trail	8 tons G.V.W.
Marsh Rd.	8 tons G.V.W.
Solum Lane	8 tons G.V.W.
Kentview Rd.	8 tons G.V.W.

**That portion of the road that lies in the Town of Merrimac*
(G.V.W. is defined as Gross Vehicle Weight)

The town chairperson, or his or her designee shall erect signs as required under s. 349.16 (2), Wis. stats..

No persons, with the exception of emergency vehicles and vehicles employed by the Town of Merrimac or Sauk County for the purposes of general repair and maintenance of the highway, shall operate any vehicles on the above noted highways, in violation of the above noted weight limits, without verbal approval followed by a written permit issued by the Town of Merrimac, and any violation shall be subject to penalties under s. 348.21, Wis. stats.

Adopted March 6, 2007

TOWN OF MERRIMAC
ORDINANCE 2019-28
SNOWMOBILE ROUTE ORDINANCE

STATE OF WISCONSIN
Town of Merrimac
Sauk County

SECTION I – TITLE AND PURPOSE
The title of this ordinance is the Town of Merrimac Snowmobile Route Ordinance. The purpose of this ordinance is to establish snowmobile routes in the town and to regulate the operation of snowmobiles in the town.

SECTION II – AUTHORITY
The town board has the specific authority to adopt this Snowmobile Route Ordinance under s. 350.18, Wis. stats. and general authority under its village powers under s. 60.22, Wis. stats.

SECTION III – ADOPTION OF ORDINANCE
This ordinance, adopted by a majority of the town board on a roll call vote with a quorum present and voting and proper notice having been given, designates snowmobile routes in the town and provides for the regulation of the use of those trails.

SECTION IV – DESIGNATION OF SNOWMOBILE ROUTES
The following routes are designated snowmobile routes in the town:

BLUFF ROAD – located within east side of the public right-of-way beginning at the NE ¼ of the SW ¼ of S35, T10N, R7E entering/egressing from current tax parcel 026-0656-00000 and ending at the NE corner of the NE corner of S35, T10N, R7E and entering/egressing from current tax parcel 026-0634-100000.

SECTION V – CONDITIONS APPLICABLE TO SNOWMOBILE ROUTES
The following restrictions are placed on the use of the town snowmobile routes designated by this ordinance during the following periods of the year:

A. Town highways designated as snowmobile routes shall be marked with uniform snowmobile route signs in accordance with s. 350.13, Wis. stats. by the Merrimac SnowBusters, Inc. from April to November of each year.
B. Operation shall be subject to all provisions of s. 350.04 (2), Wis. stats., and any other provision of chapter 350, Wis. stats., which is adopted as a part of this ordinance by reference, pursuant to s. 350.18, Wis. stats.
C. A copy of this ordinance shall be sent by the town clerk to the Sauk County Sheriff's Department.
D. All snowmobile operators shall observe posted roadway speed limits.
E. All snowmobile operators shall ride single file.
F. All snowmobile operators shall slow the vehicle to 10 mph or less when operating within 150 feet of a dwelling.
G. All snowmobile operators shall not operate on the paved surface of the road unless traversing to the trail for entrance/egress.

TOWN OF MERRIMAC
ORDINANCE 2019-28
SNOWMOBILE ROUTE ORDINANCE

SECTION VI - ENFORCEMENT
This ordinance may be enforced by any law enforcement officer authorized to enforce the laws of the state of Wisconsin.

SECTION VII - PENALTIES
The penalties under s. 350.11, Wis. Stats., are adopted and incorporated by reference.

SECTION VIII – SEVERABILITY
If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION IX – EFFECTIVE DATE
This ordinance is effective on posting.

The town clerk shall properly publish this ordinance as required under s. 60.80, Wis. stats., and mail a copy to the State of Wisconsin Department of Natural Resources and to the Sauk County Sheriff, as required under s. 350.047, Wis. stats.

Adopted this 2nd day of January, 2019.

Steve Peetz, Town Chair

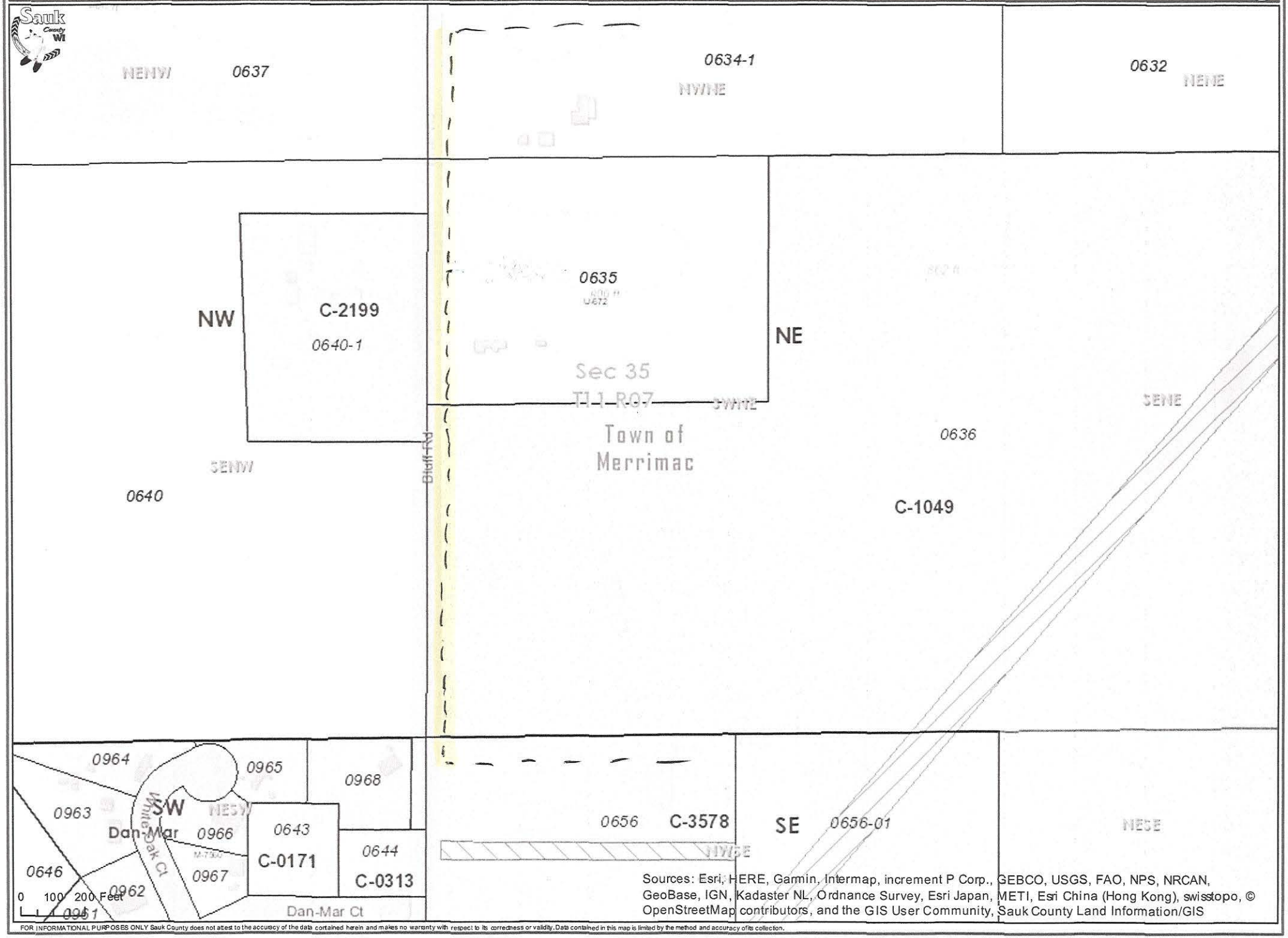
Charlie Hall, Supervisor

John Gaedke, Supervisor

ATTEST:

Tim McCumber
Town Administrator & Clerk – Treasurer

Sauk County Land Information/GIS Web Map



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, © OpenStreetMap contributors, and the GIS User Community, Sauk County Land Information/GIS

TOWN OF MERRIMAC
ORDINANCE 2011-07
TO POST SPEED LIMITS ON TOWN HIGHWAYS
Town of Merrimac, Sauk County, State of Wisconsin

Whereas, the Town Board of the Town of Merrimac, Sauk County, adopted Town Ordinance 05-01 To Post Speed Limit on Town Highways on September 6, 2005; and

Whereas, the Town Board has the specific authority under s. 349.11, Wis. stats., to adopt this ordinance; and

Whereas, the Town Board repeals Ordinance 05-01; and

Whereas, This ordinance, adopted by a majority of the town board on a roll call vote with a quorum present and voting and proper notice having been given, provides for the reduction of the speed limits on certain town highways in the town as follows:

Therefore, pursuant to s. 346.57 (j) and s. 349.11 (3) (i), Wis. Stats., effective November 3, 2011, speed limits on certain Town of Merrimac town highways are reduced or modified as follows:

Inspiration Dr.	25 mph
Kilpatrick Point Rd.	25 mph
Bay Rd.	25 mph
Wynding Way	25 mph
Lookout Court	25 mph
Spear Rd.	35 mph
Halweg Rd.	35 mph
Goette Rd.	45 mph
Eagle Point Rd. from Hwy. 78 to West Point Rd.	35 mph
Eagle Point Rd. from West Point Rd. to the end	25 mph
West Point Rd	25 mph
High Point Dr.	25 mph
Oak Rd.	25 mph
Walleye Lane	25 mph
Idlewild Rd. from Hwy. 78 to the top of the hill	35 mph
Idlewild Rd from the top of the hill south to its end, including all roads in the Camp Idlewild subdivision	25 mph
Allbrite Rd.	25 mph
Bensen Lane	25 mph
Grandview Ave. from Hwy.78 to the driveway at S7623 Grandview Ave.	35 mph
Grandview Ave. from S7623 Grandview Ave. to W. Grandview Ave.	25 mph
W. Grandview Ave.	25 mph
Sue Kay Dr.	25 mph
Grace St.	25 mph
Nishishin Ct.	25 mph
Dan Mar Ct.	25 mph
Horseshoe Ct	25 mph

White Oak Ct.	25 mph
Devil's Delight Rd.	35 mph
Elma Ave.	25 mph
Thurow Ln.	25 mph
Camp Lake Wisconsin Rd.	25 mph
Owls Head Rd.	25 mph
Baltic Ave.	25 mph
Reusch Rd.	35 mph
Bluff Rd.	45 mph
Yum Yum Hill Trail	25 mph
Marsh Rd.	35 mph
Solum Lane	35 mph
Kentview Rd.	35 mph
South Lake Rd. from State Highway 113 west to 200 ft. east of the CCC Camp entrance	35 mph
South Lake Rd. from 200 ft. east of the CCC Camp entrance west to the town line	15 mph
Ruthe Badger Lane	25 mph
Lucille Lane from Hwy.78 south 2,000 feet.	35 mph
Lucille Lane starting 2,000 feet south of Hwy. 78	25 mph

The town chairperson, or his or her designee, shall place appropriate traffic signs at the appropriate locations by, on or before the effective date of this ordinance.

No person may operate any vehicle on the above-noted town highways in violation of the above-noted speed limits. Any violation shall be subject to penalties under s. 346.60, Wis. stats.

The town clerk shall properly post or publish this ordinance as required under s. 60.80, Wis. stats.

Adopted this 2nd day of November, 2011.

Amended September 1, 2021; Ordinance 2021-41

CHAPTER 60

TOWNS

NOTE: 1983 Wisconsin Act 532, which completely revised chapter 60, has extensive notes explaining the revision. See Laws of Wisconsin, 1983.

SUBCHAPTER I

DEFINITIONS

60.001 Definitions. In this chapter:

(1) "Annual town meeting" means the town meeting held under s. 60.11.

(2) "Special town meeting" means a town meeting, other than the annual town meeting, held under s. 60.12.

(3) "Town meeting" means the annual town meeting or a special town meeting.

History: 1983 a. 532.

SUBCHAPTER II

LEGAL STATUS; ORGANIZATION

60.01 Legal status; general powers. (1) A town is a body corporate and politic, with those powers granted by law. A town shall be designated in all actions and proceedings by its name, as "Town of ....".

(2) A town may:

(a) Sue and be sued.

(b) Acquire and hold real and personal property for public use and convey and dispose of the property.

(c) Enter into contracts necessary for the exercise of its corporate powers.

History: 1983 a. 532.

60.03 Division and dissolution of towns generally. **(1)** GENERAL RULE. Subject to sub. (7), a town may be divided or dissolved under subs. (2) to (6).

(2) PETITION. If at least 20 percent of the residents of a town who have a freehold interest in real property located in the town and who constitute at least one−third of the electors of the town file a petition with the county board, conforming to the requirements of s. 8.40, requesting division or dissolution of the town and file the petition with the town clerk at least 60 days before the next annual town meeting, a referendum shall be held at the annual town meeting on the question of division or dissolution.

(3) NOTICE OF REFERENDUM. A town clerk who receives a petition under sub. (2) shall, at least 30 days before the annual town meeting, give notice that a referendum on the question of division or dissolution will be held at the annual town meeting. The notice shall describe any proposed division. Notice of a division or dissolution shall be published as a class 2 notice under ch. 985. Notice of a division referendum shall also be made by posting the notice in 3 public places in each subdivision of the town proposed by the petition under sub. (2). Notice of a dissolution referendum shall also be made by posting the notice in 3 public places in the town.

(4) BALLOT QUESTION. In a referendum under this section, the ballot on the question of division shall pose the question as "For Division" and "Against Division" and describe the proposed division. The ballot on the question of dissolution shall pose the question as "For Dissolution" and "Against Dissolution".

(5) REFERENDUM VOTE; AUTHORITY OF COUNTY BOARD. (a) *Division.* The electors of each subdivision proposed under sub. (2) shall vote separately. If a majority of the electors voting in either subdivision favors division, the town clerk shall certify the result to the county board of the county in which the town is located. Upon receipt of the certified result, the county board may divide the town accordingly. If the county board does not divide the town within 180 days after the board receives the certified result of the referendum, the board's authority to divide the town, based on that referendum, lapses.

(b) *Dissolution.* If a majority of the electors votes in favor of dissolution, the town clerk shall certify the result to the county board of the county in which the town is located. Upon receipt of the certified result, the county board may dissolve the town. If the county board does not dissolve the town within 180 days after the board receives the certified result of the referendum, the board's authority to dissolve the town, based on that referendum, lapses.

(6) VALIDITY OF PROCEEDING. Any person aggrieved may have the validity of proceedings under this section reviewed by commencing an action in circuit court. An action brought under this subsection shall be brought within the time provided under s. 893.73 (1) (b). A town which has exercised the powers and functions of a town for one year is conclusively presumed to have been duly organized.

(7) DIVISION NOT PERMITTED. No town may be divided if division results in a town of less than 36 sections in area unless each resulting town of less than 36 sections contains 75 electors and real estate valued, at the last preceding assessment, at at least 40 percent of the equalized value of real estate in the town before division.

History: 1983 a. 532; 1989 a. 192.

60.05 Organization of towns in special cases. **(1)** APPLICATION. (a) In this subsection, "area" means any government township or any contiguous territory which is part of one or more towns, which is equal in area to more than one government township but not more than 2 government townships and which is within one county.

(b) Any area which has at least 300 residents who have a freehold interest in real property located in the area, at least 150 of whom are electors who have resided in the area for at least one year prior to verification of the petition under sub. (2), and which has an equalized valuation of at least $5,000,000, according to the last preceding assessment, may be organized into a town if the remaining territory of any town of which the newly organized town was formerly a part is not less than 36 square miles and has not less than 75 electors and real estate valued at at least 40 percent of the equalized value of real estate in the town before division, according to the last preceding assessment.

(2) PETITION. To initiate a proceeding to organize a town under this section a petition, signed by a majority of the electors of the proposed town, shall be filed with the circuit court of the county in which the area is located. The petition shall demonstrate that the area is entitled to be organized as a town under sub. (1) and shall contain an accurate description of the proposed area of the town, the name of the town of which the area is currently a part, the names of the electors of the proposed town and the proposed name of the new town. The petition shall be verified by at least 3 signers. Upon receipt of a petition, the court shall establish the time and place for a hearing on the petition and direct that a copy of the petition and order be served upon the clerk of the town of which the proposed town is currently a part. The petition and order shall be served upon the clerk at least 20 days before the hearing. The court shall order that a notice of the hearing be published in the area of the proposed town as a class 3 notice under ch. 985.

(3) HEARING. The court shall conduct a hearing on the petition and shall permit any elector or taxpayer of the area of the proposed town, or of any town of which the proposed area is currently a part, to be heard. The court may adjourn the hearing from time to time and refer any issue of fact to a referee. The fees and expenses of the referee shall be established and apportioned by the court after the trial of any issue and paid by any town of which the area of the proposed town is a part.

(4) COURT ORDER. If, after the hearing under sub. (3), the court finds that the area of the proposed town meets the requirements of sub. (1), the court shall enter an order establishing a new town under the name proposed in the petition and shall designate the location of the first town meeting of the new town. The clerk of court shall immediately file certified copies of the order with the secretary of administration and the county clerk.

(5) APPORTIONMENT OF DEBTS. Assets and liabilities of the newly organized town and any town or towns of which it was a part shall be apportioned under s. 66.0235.

(6) ATTACHMENT OF REMAINDER OF OLD TOWN. If the remaining territory of any town from which a new town is organized is divided into 2 detached parts by the organization of the new town, the detached portion with the least number of electors shall be attached to and become part of the new town.

History: 1983 a. 532; 1999 a. 150 s. 672; 2015 a. 55.

60.06 Validity of attachment or detachment. The town board may bring an action to test the validity of an ordinance attaching or detaching all or part of the territory of the town to or from any town, village or city. Any expense incurred by the town board and its agents, attorneys and representatives in the action shall be paid by the town.

History: 1983 a. 532.

No tort liability can attach to the exercise of a town's legal right to challenge an annexation. Whispering Springs Corp. v. Town of Empire, 183 Wis. 2d 396, 515 N.W.2d 469 (Ct. App. 1994).

60.065 Change of town name. The name of a town shall be changed if a petition designating the new name is signed and filed with the town clerk under the procedures in s. 9.20 (1), certified by the town clerk under the procedure in s. 9.20 (3), approved by the electors in an election held under the procedures in s. 9.20 (4) and the result of the election is published in the town's official paper, or posted in the town, and the new name is filed with the secretary of administration.

History: 1993 a. 246; 2015 a. 55.

60.07 Delivery of papers to clerk of new town. If a new town is organized, the town clerk of the town from which the new town was organized shall deliver, if removable, all of his or her official papers and files pertaining to the new town and a certified copy of all relevant official records, papers and files not removable to the office of the clerk of the new town. Any record, paper or file delivered to the office of the clerk of a new town under this section shall have the same effect as if originally filed there.

History: 1983 a. 532.

60.09 When a county constitutes a town. (1) GENERALLY. If a county is not divided into towns, it shall, for purposes of town government, be considered one town.

(2) MENOMINEE COUNTY. The county of Menominee consists of one town, known as the town of Menominee.

History: 1983 a. 532.

SUBCHAPTER III

TOWN MEETING

60.10 Powers of town meeting. (1) DIRECT POWERS. The town meeting may:

(a) *Raise money.* Raise money, including levying taxes, to pay for expenses of the town, unless the authority has been delegated to the town board under sub. (2) (a).

(b) *Town offices and officers.* 1. Fix the compensation of elective town offices under s. 60.32, unless the authority has been delegated to the town board under sub. (2) (k).

2. Combine the offices of town clerk and town treasurer under s. 60.305 (1).

2m. In a town with a population of 2,500 or more, provide for the appointment by the town board of the town clerk, town treasurer, or both, or of the combined office of town clerk and town treasurer under s. 60.305 (1), at a level of compensation to be set by the board that may not be reduced during the term to which the person is appointed.

3. Combine the offices of town assessor and town clerk under s. 60.305 (2).

4. Establish or abolish the office of town constable and establish the number of constables. Abolition of the office is effective at the end of the term of the person serving in the office.

5. Designate the office of town clerk, town treasurer or the combined office of clerk and treasurer as part−time under s. 60.305 (1) (b).

6. Designate town board supervisors as full−time officers.

(c) *Election of town officers.* 1. Adopt a plan under s. 5.60 (6) to elect town board supervisors to numbered seats.

2. Provide under s. 8.05 (3) (a) for the nomination of candidates for elective town offices at a nonpartisan primary election.

(e) *Cemeteries.* Authorize the acquisition and conveyance of cemeteries under s. 157.50 (1) and (3).

(f) *Administrator agreements.* Approve agreements to employ an administrator for more than 3 years under s. 60.37 (3) (d).

(g) *Hourly wage of certain employees.* Establish the hourly wage to be paid under s. 60.37 (4) to a town employee who is also an elected town officer, unless the authority has been delegated to the town board under sub. (2) (L).

(2) DIRECTIVES OR GRANTS OF AUTHORITY TO TOWN BOARD. Except as provided under par. (c), directives or grants of authority to the town board under this subsection may be general and continuing or may be limited as to purpose, effect or duration. A resolution adopted under this subsection shall specify whether the directive or grant is general and continuing or whether it is limited as to purpose, effect or duration. A resolution that is continuing remains in effect until rescinded at a subsequent town meeting by a number of electors equal to or greater than the number of electors who voted for the original resolution. This subsection does not limit any authority otherwise conferred on the town board by law. By resolution, the town meeting may:

(a) *Raise money.* Authorize the town board to raise money, including levying taxes, to pay for expenses of the town.

(b) *Membership of town board in populous towns.* In a town with a population of 2,500 or more, direct the town board to increase the membership of the board under s. 60.21 (2).

(c) *Exercise of village powers.* Authorize the town board to exercise powers of a village board under s. 60.22 (3). A resolution adopted under this paragraph is general and continuing.

(d) *General obligation bonds.* Authorize the town board to issue general obligation bonds in the manner and for the purposes provided by law.

(e) *Purchase of land.* Authorize the town board to purchase any land within the town for present or anticipated town purposes.

(f) *Town buildings.* Authorize the town board to purchase, lease or construct buildings for the use of the town, to combine for this purpose the town's funds with those of a society or corporation doing business or located in the town and to accept contributions of money, labor or space for this purpose.

(g) *Disposal of property.* Authorize the town board to dispose of town real property, other than property donated to and required to be held by the town for a special purpose.

(h) *Exercise of certain zoning authority.* In a town located in a county which has enacted a zoning ordinance under s. 59.69, authorize, under s. 60.62 (2), the town board to enact town zoning ordinances under s. 61.35.

(i) *Watershed protection and soil and water conservation.* Authorize the town board to engage in watershed protection, soil conservation or water conservation activities beneficial to the town.

(j) *Appointed assessors.* Authorize the town board to select assessors by appointment under s. 60.307 (2).

(k) *Compensation of elective town offices.* Authorize the town board to fix the compensation of elective town offices under s. 60.32 (1) (b).

(L) *Hourly wage of certain employees.* Authorize the town board to establish the hourly wage to be paid under s. 60.37 (4) to a town employee who is also an elected town officer, other than a town board supervisor.

(m) *Membership of town sanitary district commission.* If the town board does not constitute itself as the town sanitary district commission, direct the town board to increase the membership of the town sanitary district commission under subch. IX from 3 members to 5 members, or direct the town board to decrease the membership of the town sanitary district commission from 5 members to 3 members, except that the town meeting may not act under this paragraph more frequently than every 2 years. If a town meeting directs the town board to decrease the membership of the town sanitary district commission, the reduction in members first applies upon the expiration of the terms of the first 2 commissioners whose terms expire at the same time after the town meeting directs the town board to reduce the number of commissioners.

(3) AUTHORIZATION TO TOWN BOARD TO APPROPRIATE MONEY. The town meeting may authorize the town board to appropriate money in the next annual budget for:

(a) *Conservation of natural resources.* The conservation of natural resources by the town or by a bona fide nonprofit organization under s. 60.23 (6).

(b) *Civic functions.* Civic and other functions under s. 60.23 (3).

(c) *Insects, weeds and animal diseases.* The control of insect pests, weeds or plant or animal diseases within the town.

(d) *Rural numbering systems.* Posting signs and otherwise cooperating with the county in the establishment of a rural numbering system under s. 59.54 (4) and (4m).

(e) *Cemetery improvements.* The improvement of the town cemetery under s. 157.50 (5).

History: 1983 a. 532; 1991 a. 39; 1995 a. 34, 201; 2001 a. 16; 2003 a. 214; 2015 a. 245.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

The terms "authorize" and "direct" in sub. (2) are not used interchangeably. A town meeting that "authorize(s)" an act gives the town board permission to do the act within its discretion, but if it "direct(s)" that an act be done, the action is mandatory. Graziano v. Town of Long Lake, 191 Wis. 2d 813, 530 N.W.2d 55 (Ct. App. 1995).

Assessments made by an assessor appointed in the absence of authorization under sub. (2) (j) were valid under the de facto officer doctrine. Joyce v. Town of Tainter, 2000 WI App 15, 232 Wis. 2d 349, 606 N.W.2d 284, 99−0324.

Section 60.55 does not create an exception to the grant of power to the town meeting to authorize land purchases or construction by the town board. If a town board chooses to meet the requirements of s. 60.55 to provide fire protection by providing housing for fire protection services and also chooses to purchase land and construct that housing, then the town board must proceed with the authorization of the town meeting under sub. (2) (e) and (f) to purchase the land and construct the building. Town of Clayton v. Cardinal Construction Company, Inc. 2009 WI App 54, 317 Wis. 2d 424, 767 N.W.2d 605, 08−1793.

A town board exercising village powers under s. 60.22 (3) is not entitled to purchase land and contract for construction when doing so would conflict with statutes relating to towns and town boards. The village board power to acquire land and construct buildings under s. 61.34 (3) is in direct conflict with sub. (2) (e) and (f), which relates to towns and town boards and which confers that power of authorization on the town meeting. Town of Clayton v. Cardinal Construction Company, Inc. 2009 WI App 54, 317 Wis. 2d 424, 767 N.W.2d 605, 08−1793.

60.11 Annual town meeting. (1) REQUIREMENT. Each town shall hold an annual town meeting, as provided in this section.

(2) WHEN HELD. (a) Except as provided in par. (b), the annual town meeting shall be held on the 3rd Tuesday of April.

(b) The annual town meeting may set a date different than provided under par. (a) for the next annual town meeting if the date is within 10 days after the 3rd Tuesday of April.

(3) WHERE HELD. (a) The annual town meeting may be held in the town or in any other town, village, or city in the same county or in an adjoining county.

(b) The annual town meeting shall be held at the location of the last annual town meeting unless the location is changed by the town board. If the town board changes the location, it shall publish a class 2 notice under ch. 985 stating the location of the meeting, not more than 20 nor less than 15 days before the date of the meeting.

(4) ADJOURNMENT. The annual town meeting may be recessed to a time and date certain if the resumed meeting is held within 30 days after the date of the meeting originally scheduled under sub. (2).

(5) NOTICE. No public notice of an annual town meeting is required if held as provided under sub. (2) (a). If held as provided under sub. (2) (b), notice of the time and date of the meeting shall be given under s. 60.12 (3).

(6) JURISDICTION. An annual town meeting may transact any business over which a town meeting has jurisdiction.

(7) POLL LIST. An annual town meeting may require the clerk of the town meeting to keep a poll list with the name and address of every elector voting at the meeting. If an elector of the town obtains a confidential listing under s. 6.47 (2) and presents an identification card issued under s. 6.47 (3), the clerk shall record the identification serial number of the elector in lieu of the elector's address.

History: 1983 a. 532; 1999 a. 49; 2005 a. 312; 2011 a. 115.

60.12 Special town meetings. (1) WHO MAY CONVENE. A special town meeting may be convened if:

(a) Called by a town meeting.

(b) A written request, signed by a number of electors equal to not less than 10 percent of the votes cast in the town for governor at the last general election, is filed with the town clerk.

(c) Called by the town board.

(2) TIME, DATE AND PURPOSE TO BE STATED. If a special town meeting is requested or called under sub. (1), the time, date and purpose of the meeting shall be stated in the request or as part of the call.

(3) NOTICE. The town clerk shall, not more than 20 nor less than 15 days before the date of a special town meeting, publish a class 2 notice of the meeting under ch. 985. The notice shall state the purpose, date, time and location of the meeting. If notice is posted, the same time and content requirements apply.

(4) LOCATION. (a) A special town meeting may be held in the town or in any other town, village, or city in the same county or in an adjoining county.

(b) A special town meeting shall be held where the preceding annual town meeting was held, unless the location is changed by the town board.

(5) ADJOURNMENT. A special town meeting may be recessed to a time and date certain if the resumed meeting is held within 30 days after the date of the originally scheduled meeting.

(6) JURISDICTION. Any business which may be transacted at an annual town meeting may be transacted at a special town meeting.

History: 1983 a. 532; 2005 a. 312.

60.13 Presiding officer. (1) WHO PRESIDES. (a) If present, the town board chairperson shall chair the town meeting. If the town board chairperson is absent, another town board supervisor shall chair the town meeting. If no town board supervisor is present, the town meeting shall elect the chairperson of the meeting.

(b) If the annual town meeting is held in a year when the office of town board chairperson is filled by election, the person holding the office on the day prior to the date of the election to fill the office shall preside at the annual town meeting and is entitled to receive the per diem which is ordinarily paid to the presiding officer. If such person is absent or refuses to serve as the presiding officer, the presiding officer shall be chosen under par. (a).

(2) DUTIES. The town meeting chairperson shall conduct the meeting's proceedings in accordance with accepted parliamentary procedure.

(3) ENFORCEMENT AUTHORITY. The town meeting chairperson shall maintain order and decorum, and may order any person to leave a town meeting if the person has conducted himself or herself in a disorderly manner and persisted in such conduct after being directed by the chairperson to cease the conduct. If the person refuses the chairperson's order to withdraw, the town meeting chairperson may order a constable or other law enforcement officer to take the person into custody until the meeting is adjourned.

History: 1983 a. 532.

60.14 Procedure. (1) QUALIFIED VOTERS. Any qualified elector of the town, as defined under ch. 6, may vote at a town meeting.

(2) METHOD OF ACTION; NECESSARY VOTES. All actions of a town meeting shall be by vote. All questions shall be decided by a majority of the electors voting.

(3) ORDER OF BUSINESS. At the beginning of the town meeting, the town meeting chairperson shall state the business to be transacted and the order in which the business will be considered. No proposal to levy a tax, except a tax for defraying necessary town expenses, may be acted on out of the order stated by the town meeting chairperson.

(4) RECONSIDERATION OF ACTIONS. (a) A vote of the town meeting may be reconsidered at the same meeting at which the vote was taken if the town meeting votes to reconsider within one hour after the initial vote was taken.

(b) No action of a town meeting may be reconsidered at a subsequent town meeting held prior to the next annual town meeting unless a special town meeting is convened under s. 60.12 (1) (b)

or (c) and the written request or the call for the meeting states that a purpose of the meeting is reconsideration of the action.

History: 1983 a. 532.

60.15 Clerk. The town clerk shall serve as clerk of the town meeting. If the town clerk is absent, the deputy town clerk shall serve as town meeting clerk. If the deputy clerk is absent, the town meeting chairperson shall appoint a clerk for the meeting. The clerk of the town meeting shall keep minutes of the proceedings. The clerk of the town meeting shall keep a poll list if required by the annual town meeting under s. 60.11 (7). The town meeting minutes shall be signed by the clerk of the town meeting and filed in the office of the town clerk within 5 days after the meeting.

History: 1983 a. 532.

60.16 First town meeting in new towns. (1) WHEN HELD. The first town meeting in a newly organized town shall be held at 8 p.m. on the 3rd Tuesday of the first April after the town is organized. If the 3rd Tuesday of the first April after a town is organized has passed and the first town meeting has not been held, 3 qualified electors of the town may call the first town meeting any time thereafter by posting notice of the town meeting in at least 3 public places at least 10 days prior to the date of the meeting.

(2) WHERE HELD. The first town meeting shall be held at the location designated in the documents which established the town. The location may be within the town or, if convenient, within any other town or within a city or village in the county in which the town is located.

(3) OFFICERS. The qualified electors present at the first town meeting shall choose one elector as chairperson of the town meeting, 2 electors as inspectors and one elector as clerk. The inspectors and clerk shall take and sign the oath required of inspectors at elections under s. 7.30 (5). The oath may be administered to the inspectors and clerk by the chairperson and either inspector may then administer the oath to the chairperson. After they have signed the oath, the chairperson, clerk and inspectors shall conduct the first town meeting.

(4) JURISDICTION. The first town meeting may conduct any business that a town meeting may conduct under ss. 60.11 and 60.12.

History: 1983 a. 532, 538; 2005 a. 312; 2011 a. 115.

SUBCHAPTER IV

TOWN BOARD

60.20 Town board. (1) MEMBERSHIP. The town board consists of the supervisors of the town. The board shall be designated "Town Board of ....".

(2) QUORUM. Two supervisors constitute a quorum of a 3−member town board, 3 supervisors constitute a quorum of a 4−member or 5−member town board, and 4 supervisors constitute a quorum of a 7−member town board under s. 60.21 (3).

(3) MEETINGS. Meetings of the town board may be held in the town or in any other town, city or village in the same county or in an adjoining county, subject to subch. V of ch. 19.

History: 1983 a. 532; 1991 a. 39; 2005 a. 312.

60.21 Town board, increased size authorized. (1) IN TOWNS WHERE BOARD HAS VILLAGE POWERS. Any town board authorized to exercise village powers may, by ordinance, increase the number of supervisors to no more than 5. If the number of supervisors is increased to 4, the town shall elect 2 supervisors each year. If the number is increased to 5, the town shall elect 3 supervisors in odd−numbered years and 2 supervisors in even−numbered years. An increase in the number of town board supervisors under this subsection does not create a vacancy on the town board.

(2) WHERE TOWN OF CERTAIN POPULATION. (a) If directed by the town meeting under s. 60.10 (2) (b), a town board of 5 members, elected at−large, shall be established in towns having a population of 2,500 or more.

(b) If a 5−member board is established and the seats of the board are numbered, the board may, by ordinance, stagger the terms of its supervisors so that the chairperson and 2 supervisors running for even−numbered seats on the town board serve 2−year terms and the other 2 supervisors serve one−year terms, with each subsequent election to be for 2−year terms so that elections occur in both odd−numbered and even−numbered years.

(c) If a 5−member board is established and the seats of the board are not numbered, the board may, by ordinance, stagger the terms of its members so that the chairperson and 2 supervisors receiving the highest number of votes in the next election serve 2−year terms and the other 2 supervisors serve one−year terms, with each subsequent election to be for 2−year terms so that elections occur in both odd−numbered and even−numbered years.

(d) An ordinance to stagger the terms of supervisors may be adopted to apply to the initial election of 5 supervisors or to any subsequent election.

(e) An increase or reduction in the membership of a town board under this subsection takes effect on January 1 of the first odd−numbered year following the most recent federal decennial or special census, but does not create any vacancy on a town board prior to the spring election.

(3) IN A COUNTY CONTAINING ONE TOWN. (a) The town board of a town in any county containing only one town may consist of not more than 7 members. One or more members shall be elected from the town at−large and one member shall be elected from each town board ward, of which there shall be not less than 2 nor more than 5. The member elected from the town at−large who has the highest number of votes shall be the town board chairperson.

(b) The number and boundaries of the town board wards and the number of town board members to be elected from the town at−large shall be designated by the legislature when the town is first established. Thereafter, the number of wards shall be subject to reapportionment and increase or decrease and the number of town board members elected at−large shall be subject to increase or decrease by majority vote of the town board. In order to provide that all inhabitants are adequately represented, each ward shall have substantially the same number of inhabitants, shall, insofar as practicable, consist of contiguous territory and shall be in compact form. The total number of town board members may not be changed from the number initially fixed by the legislature.

History: 1983 a. 532; 1985 a. 135.

60.22 General powers and duties. The town board:

(1) CHARGE OF TOWN AFFAIRS. Has charge of all affairs of the town not committed by law to another body or officer or to a town employee.

(2) CHARGE OF ACTIONS. Has charge of any action or legal proceeding to which the town is a party.

(3) VILLAGE POWERS. If authorized under s. 60.10 (2) (c), may exercise powers relating to villages and conferred on village boards under ch. 61, except those powers which conflict with statutes relating to towns and town boards.

(4) JURISDICTION OF CONSTABLE. Shall determine the jurisdiction and duties of the town constable. A town constable who is given law enforcement duties by the town board, and who meets the definition of a law enforcement officer under s. 165.85 (2) (c), shall comply with the minimum employment standards for law enforcement officers established by the law enforcement standards board and shall complete training under s. 165.85 (4) (a) 1.

(5) PURSUE CERTAIN CLAIMS OF TOWN. Shall demand payment of penalties and forfeitures recoverable by the town and damages incurred by the town due to breach of official bond, injury to property or other injury. If, following demand, payment is not made, the board shall pursue appropriate legal action to recover the penalty, forfeiture or damages.

History: 1983 a. 532; 1987 a. 237; 2013 a. 214.

There is a 4−part test in evaluating whether a municipality may regulate a matter of state−wide concern: 1) whether the legislature has expressly withdrawn the power of municipalities to act; 2) whether the ordinance logically conflicts with the state legislation; 3) whether the ordinance defeats the purpose of the state legislation; or 4) whether the ordinance goes against the spirit of the state legislation. Anchor Savings and Loan Association v. Madison EOC, 120 Wis. 2d 391, 355 N.W.2d 234 (1984).

The state regulatory scheme for tobacco sales preempts municipalities from adopting regulations that are not in strict conformity with those of the state. U.S. Oil, Inc. v. City of Fond du Lac, 199 Wis. 2d 333, 544 N.W.2d 589 (Ct. App. 1995), 95−0213.

A town with village powers has the authority to adopt ordinances authorizing its plan commission to review and approve industrial site plans before issuing a building permit. An ordinance regulating development need not be created with a particular degree of specificity other than is necessary to give developers reasonable notice of the areas of inquiry that the town will examine in approving or disapproving proposed sites. Town of Grand Chute v. U.S. Paper Converters, Inc. 229 Wis. 2d 674, 600 N.W.2d 33 (Ct. App. 1999), 98−2797.

A town board exercising village powers is not entitled to purchase land and contract for construction when doing so would conflict with statutes relating to towns and town boards. The village board power to acquire land and construct buildings under s. 61.34 (3) is in direct conflict with s. 60.10 (2) (e) and (f), which relates to towns and town boards and which confers that power of authorization on the town meeting. Town of Clayton v. Cardinal Construction Company, Inc. 2009 WI App 54, 317 Wis. 2d 424, 767 N.W.2d 605, 08−1793.

The line distinguishing general police power regulation from zoning ordinances is far from clear. The question of whether a particular enactment constitutes a zoning ordinance is often a matter of degree. Broad statements of the purposes of zoning and the purposes of an ordinance are not helpful in distinguishing a zoning ordinance from an ordinance enacted pursuant to non−zoning police power. The statutorily enumerated purposes of zoning are not the exclusive domain of zoning regulation. A more specific and analytically helpful formulation of the purpose of zoning, at least in the present case, is to separate incompatible land uses. Multiple factors are considered and discussed. Zwiefelhofer v. Town of Cooks Valley, 2012 WI 7, 338 Wis. 2d 488, 809 N.W.2d 362, 10−2398.

Permitting general town regulation of shorelands under village powers conflicts with the statutory scheme of ss. 59.692 and 281.31, which, by their plain language, appear to deliberately exclude towns from having shoreland zoning authority, except in the circumstance identified in s. 59.692 (2) (b). Hegwood v. Town of Eagle Zoning Board of Appeals, 2013 WI App 118, 351 Wis. 2d 196, 839 N.W.2d 111, 12−2058.

60.23 Miscellaneous powers.

The town board may:

(1) JOINT PARTICIPATION. Cooperate with the state, counties and other units of government under s. 66.0301, including cooperative arrangements involving the acquisition, development, remodeling, construction, equipping, operation and maintenance of land, buildings and facilities for regional projects, whether or not located in the town.

(2) UTILITY DISTRICTS. Establish utility districts under s. 66.0827 and provide that any convenience or public improvement in the district be paid for under that section.

(3) APPROPRIATIONS FOR CIVIC AND OTHER FUNCTIONS. If authorized under s. 60.10 (3) (b), appropriate reasonable amounts of money for gifts or donations to be used to:

(a) Further civic functions and agricultural societies.

(b) Advertise the attractions, advantages and natural resources of the town.

(c) Attract industry.

(d) Establish industrial complexes.

(e) Establish, maintain and repair ecological areas.

(f) Provide for the organization, equipment and maintenance of a town museum or a municipal band, or for the employment of other bands to give concerts and municipal entertainment in the town.

(g) Construct or otherwise acquire, equip, furnish, operate and maintain, with the county in which the town is located, a county−town auditorium. The provisions of s. 66.0925, as they apply to cities, shall apply to towns, and the powers and duties conferred and imposed by s. 66.0923 upon mayors, councils and specified city officials are hereby conferred upon town board chairpersons, town boards and town officials performing duties similar to the duties of such specified city officials respectively, except those provisions or powers that conflict with statutes relating to towns and town boards.

(4) TOWN INDUSTRIAL DEVELOPMENT AGENCY. In order to promote and develop the resources of the town, appropriate money for and create a town industrial development agency or appoint an executive officer and provide staff and facilities for a nonprofit organization organized to act under this subsection. A town industrial development agency created under this subsection may:

(a) Develop data regarding the industrial needs of, advantages of and sites in the town.

(b) Engage in promotional activities to acquaint prospective purchasers with industrial products manufactured in the town.

(c) Coordinate its activities with the county planning commission, the Wisconsin Economic Development Corporation, and private credit development organizations.

(d) Engage in any other activity necessary for the continued improvement of the town's industrial climate.

(5) COOPERATION IN COUNTY PLANNING. Cooperate with the county in rural planning under ss. 27.019, 59.54 (4) and (4m) and 59.69.

(6) CONSERVATION OF NATURAL RESOURCES. If authorized by the town meeting under s. 60.10 (3) (a), appropriate money for the conservation of natural resources or for payment to a bona fide nonprofit organization for the conservation of natural resources within the town or beneficial to the town. No payment may be made to a nonprofit organization unless the organization submits and the town board approves a detailed plan of the work to be done. The plan shall include the name of the owner of any property on which work is to be performed.

(8) EMERGENCY PEST AND DISEASE CONTROL. Appropriate money for the control of insects, weeds or plant or animal diseases if:

(a) An emergency arises within the town due to insects, weeds or plant or animal diseases; and

(b) The board determines that any delay resulting from calling a special town meeting to authorize the town board to appropriate money for this purpose under s. 60.10 (3) (c) would result in serious harm to the general welfare of the town.

(9) RESIDENT PHYSICIANS, PHYSICIAN ASSISTANTS AND NURSES IN CERTAIN TOWNS. In a town comprised entirely of one or more islands, annually appropriate money to retain a physician or, if no physician is available, a physician assistant or nurse practitioner, as a resident within the town.

(10) BOWLING CENTERS, DANCE HALLS, ROADHOUSES, PLACES OF AMUSEMENT, POOL TABLES AND AMUSEMENT DEVICES. Regulate, including the licensing of, bowling centers, dance halls, roadhouses, other places of amusement, billiard and pool tables and amusement devices maintained in commercial facilities. If a license is required, the board shall establish the term of the license, not to exceed one year, and the license fee. The board may suspend or revoke, for cause, a license issued under this subsection. Any person violating a regulation adopted under this subsection shall forfeit to the town an amount established by the town board.

(12) REIMBURSEMENT OF SCHOOL DISTRICTS FOR PROVIDING TRANSPORTATION IN HAZARDOUS AREAS. Reimburse a school district for costs incurred by the district under s. 121.54 (9) in transporting pupils who reside in the town.

(13) EXCHANGE TAX CREDIT FOR COUNTY LAND. Authorize the town treasurer to exchange any credit the town has with the county, arising from delinquent real estate taxes, for county−owned land.

(14) ASSOCIATIONS OF TOWNS. Appropriate money to purchase membership in any association of town boards for the protection of town interests and improvement of town government.

(15) VACATION OF ALLEYS. Vacate any alley in the town under s. 66.1003. The town board may not vacate, under this subsection, an alley adjacent to land fronting a state or county trunk highway.

(16) CEMETERIES. Provide for cemeteries under subch. II of ch. 157.

(17) CHANGE STREET NAMES. Name, or change the name of, any street in the town under s. 82.03 (7).

(17m) NEIGHBORHOOD WATCH PROGRAM AND SIGNS. Authorize a neighborhood watch program. The town board may place within the right−of−way of a street or highway under the jurisdiction of the town a neighborhood watch sign of a uniform design approved by the department of transportation. If the town board

obtains the approval of the county board, the town board may place a sign under this subsection within the right−of−way of a county trunk highway within the limits of the town. No sign under this subsection may be placed within the right−of−way of a highway designated as part of the national system of interstate and defense highways.

(19) FENCES IN SUBDIVISIONS. If authorized under s. 60.10 (2) (c) to exercise village powers, by ordinance require a subdivider to construct a fence under s. 90.02 on the boundary of a subdivision, as defined under s. 236.02 (8), as a condition of plat approval by the town. The fence shall be maintained under s. 90.05 (2) and repaired under ss. 90.10 and 90.11.

(20) DISPOSITION OF DEAD ANIMALS. Notwithstanding s. 59.54 (21), dispose of any dead animal within the town or contract for the removal and disposition with any private disposal facility. A town may enter into a contract with any other governmental unit under s. 66.0301 to provide for the removal and disposition. A town may recover its costs under this subsection by imposing a special charge under s. 66.0627.

(22) CONTRIBUTION TO TRUANCY. If the town board has established a municipal court under s. 755.01 (1), adopt an ordinance to prohibit conduct that is the same as or similar to that prohibited by s. 948.45 and impose a forfeiture for a violation of the ordinance.

(22m) SCHOOL ATTENDANCE. If the town board has established a municipal court under s. 755.01 (1), enact and enforce an ordinance to impose a forfeiture, which is the same as the fine provided under s. 118.15 (5), upon a person having under his or her control a child who is between the ages of 6 and 18 years and whose child is not in compliance with s. 118.15.

(23) POWER TO PROHIBIT CERTAIN CONDUCT. Enact and enforce ordinances, and provide forfeitures for violations of those ordinances, that prohibit conduct which is the same as or similar to that prohibited by chs. 941 to 948, except as provided in s. 66.0107 (3).

(25) SELF−INSURED HEALTH PLANS. Provide health care benefits to its officers and employees on a self−insured basis, subject to s. 66.0137 (4).

(27) TOWN HOUSING AUTHORITIES, BLIGHTED AREAS. Engage in certain housing and redevelopment activities. The provisions of ss. 66.1201 to 66.1211, 66.1301 to 66.1329, 66.1331 to 66.1333 and 66.1335, except the provisions of s. 66.1201 (10) and any other provisions that conflict with statutes relating to towns and town boards, apply to towns, and the powers and duties conferred and imposed by ss. 66.1201 to 66.1211, 66.1301 to 66.1329, 66.1331 to 66.1333 and 66.1335, except the powers and duties conferred and imposed by s. 66.1201 (10) and any other powers that conflict with statutes relating to towns and town boards, upon mayors, common councils and specified city officials are conferred upon town board chairpersons, town boards and town officials performing duties similar to the duties of the specified city officials and common councils respectively. Any town housing authorities created under this subsection may participate in any state grants−in−aid for housing in the same manner as city housing authorities created under ss. 66.1201 to 66.1211.

(28) SAFETY BUILDINGS. Construct, acquire, equip, furnish, operate and maintain a safety building. The provisions of s. 66.0925, as they apply to cities, shall apply to towns, and the powers and duties conferred and imposed by s. 66.0925 upon mayors, common councils and specified city officials are hereby conferred upon town board chairpersons, town boards and town officials performing duties similar to the duties of such specified city officials and common councils respectively, except those provisions or powers that conflict with statutes relating to towns and town boards.

(29) BILLBOARD REGULATION. Enact and enforce an ordinance, and provide a forfeiture for a violation of the ordinance, that regulates the maintenance and construction of billboards and other similar structures on premises abutting on highways in the town that are maintained by the town or by the county in which the town is located so as to promote the safety of public travel on the highways.

(30) RIDING HORSES, DOGS RUNNING AT LARGE. Enact and enforce ordinances, and provide forfeitures for violations of those ordinances, that are the same as or similar to ordinances that may be enacted by a county to regulate riding horses and commercial stables under s. 59.54 (19) or to regulate dogs running at large under s. 59.54 (20).

(31) UNIFIED LOCAL TRANSPORTATION SYSTEM. Cooperate with a county under s. 59.58 (2) (j) in the establishment of a comprehensive unified local transportation system, as defined in s. 59.58 (2) (c) 2.

(32) TOWN TAX INCREMENT POWERS. (a) Subject to s. 66.1105 (16), exercise all powers of cities under s. 66.1105. If the town board exercises the powers of a city under s. 66.1105, it is subject to the same duties as a common council under s. 66.1105 and the town is subject to the same duties and liabilities as a city under s. 66.1105.

(b) 1. In this paragraph, "town" means the town of Brookfield in Waukesha County, the town of Somers in Kenosha County, the town of Freedom in Outagamie County, or the town of Cable in Bayfield County.

2. Subject to subds. 3., 4., and 5., a town may exercise all powers of cities under s. 66.1105 to create a tax incremental district. If the town board exercises the powers of a city under s. 66.1105, it is subject to the same duties as a common council under s. 66.1105 and the town is subject to the same duties and liabilities as a city under s. 66.1105.

3. a. If a town creates a tax incremental district under s. 60.85, the town may not take any action with regard to that district except by acting under s. 60.85.

b. If a town creates a tax incremental district under par. (a), the town may not take any action with regard to that district except by acting under par. (a).

4. The 12 percent limit described under s. 66.1105 (4) (gm) 4. c. shall be 5 percent with regard to the town of Cable acting under subd. 2.

5. The town of Cable may create only one tax incremental district acting under subd. 2.

(c) If any part of a tax incremental district that is created as provided under par. (b) 2. is annexed by a city or village, any assets or liabilities associated with that annexed territory, including a proportional share of any bonds or other debt associated with the district, shall become the responsibility of the annexing city or village.

(d) If after January 1 a city or village annexes any part of a tax incremental district that is created as provided under par. (b) 2., the department of revenue shall redetermine the tax incremental base of the district by subtracting from the tax incremental base the value of the taxable property that is annexed from the existing district as of the following January 1, and if the annexation becomes effective on January 1 of any year, the redetermination shall be made as of that date. The tax incremental base as redetermined under this paragraph is effective for the purposes of this paragraph and par. (b) only if it is less than the original tax incremental base determined under s. 66.1105 (5) (a).

(eg) 1. In this paragraph:

a. "Department" means the department of natural resources.

b. "Sewer service area" means territory specified in the sewer service area provisions of an areawide water quality management plan under s. 283.83 approved by the department.

c. "Town" means a town in which the equalized value of all taxable property in the town, in the year before the year in which the town adopts a resolution under s. 66.1105 (4) (gm), is at least $500 million, and the town's population, in the year before the year in which the town adopts a resolution under s. 66.1105 (4) (gm), is at least 3,500.

2. Subject to subd. 3. and par. (f), a town with a population of at least 3,500 may exercise all powers of cities under s. 66.1105 to create a tax incremental district if the boundaries of the proposed district are within a sewer service area and sewer service is either currently extended to the proposed district or will be provided to the proposed district before the use or operation of any improvements to real property in the proposed district begins and the sewage treatment is provided by a wastewater treatment facility that complies with ch. 283. If the town board exercises the powers of a city under s. 66.1105, it is subject to the same duties as a common council under s. 66.1105 and the town is subject to the same duties and liabilities as a city under s. 66.1105.

3. a. If a town creates a tax incremental district under s. 60.85, the town may not take any action with regard to that district except by acting under s. 60.85.

b. If a town creates a tax incremental district under par. (a), the town may not take any action with regard to that district except by acting under par. (a).

(em) If any part of a tax incremental district that is created as provided under par. (eg) 2. is annexed by a city or village, any assets or liabilities associated with that annexed territory, including a proportional share of any bonds or other debt associated with the district, shall become the responsibility of the annexing city or village.

(er) If after January 1 a city or village annexes any part of a tax incremental district that is created as provided under par. (eg) 2., the department of revenue shall redetermine the tax incremental base of the district by subtracting from the tax incremental base the value of the taxable property that is annexed from the existing district as of the following January 1, and if the annexation becomes effective on January 1 of any year, the redetermination shall be made as of that date. The tax incremental base as redetermined under this paragraph is effective for the purposes of this paragraph and par. (eg) only if it is less than the original tax incremental base determined under s. 66.1105 (5) (a).

(f) 1. Before a town board may approve a project plan under s. 66.1105 (4) (g), the town board must ensure that the project plan specifies at least one of the items listed in subd. 2. The starting point for determining a tax incremental district's remaining life, under subd. 2. b. and c., is the date on which the district is created, as described in s. 66.1105 (4) (gm) 2.

2. The project plan under s. 66.1105 (4) (g) must specify one of the following:

a. With regard to the total value of public infrastructure improvements in the district, at least 51 percent of the value of such improvements must be financed by a private developer, or other private entity, in return for the town's agreement to repay the developer or other entity for those costs solely through the payment of cash grants as described in s. 66.1105 (2) (f) 2. d. To receive the cash grants, the developer or other private entity must enter into a development agreement with the town as described in s. 66.1105 (2) (f) 2. d.

b. The town expects all project costs to be paid within 90 percent of the proposed tax incremental district's remaining life, based on the district's termination date as calculated under s. 66.1105 (7) (ak) to (au).

c. Expenditures may be made only within the first half of the proposed tax incremental district's remaining life, based on the district's termination date as calculated under s. 66.1105 (7) (ak) to (au), except that expenditures may be made after this period if the expenditures are approved by a unanimous vote of the joint review board. No expenditure under this subd. 2. c. may be made later than the time during which an expenditure may be made under s. 66.1105 (6) (am).

(33) COMPREHENSIVE PLAN. Adopt or amend a master plan under s. 62.23.

(34) TOWN WITHDRAWAL FROM COUNTY ZONING. (a) Subject to pars. (b) and (c), after December 31, 2016, and before January 1, 2018, and during the one−year period every 3 years after January 1, 2017, enact an ordinance withdrawing the town from coverage of a county zoning ordinance that had previously been approved under s. 59.69 (5) (c) and from coverage by a county development plan that has been enacted under s. 59.69 (3) (a), except that a town board may act under this paragraph only if the town is located in a county with a population on January 1, 2016, of at least 485,000.

(b) Subject to pars. (c) and (d), an ordinance enacted under par. (a) may not take effect until all of the following occur:

1. Not later than 180 days before enacting an ordinance under par. (a), the town notifies the county clerk and one or more officials of every other town in the county, in writing, of the town's intent to enact an ordinance under par. (a).

2. The town enacts a zoning ordinance under s. 60.62, a comprehensive plan under s. 66.1001, and an official map under s. 62.23 (6), and the town sends certified copies of such documents to the county clerk.

3. The ordinance enacted under par. (a) is approved either at the annual town meeting or in a referendum called by the town board for that purpose at the next spring or general election, to be held not sooner than 70 days after the referendum is called by the town board.

(c) 1. The zoning ordinance that the town enacts under s. 60.62 must be essentially identical to either the county zoning ordinance that is in effect when the town issues the written notification described in par. (b) 1., or to the model ordinance described in subd. 2. A town that enacts an ordinance that is essentially identical to the county ordinance may amend the ordinance, but only to the extent that the amendment relates to the location of district boundaries, by following the procedures specified in s. 60.62.

2. All towns in a county that issue a written notification described in par. (b) 1. shall work together to develop a model zoning ordinance. The model ordinance may be recommended for enactment by a majority vote of the towns that participate in drafting the model ordinance in that county. Once the model ordinance is recommended, a town may enact the ordinance under s. 60.62. The model ordinance may be amended by a majority vote of the towns that have enacted the model ordinance in that county, except that if an amendment affects only the location of district boundaries, each town may unilaterally enact such an amendment.

3. A town which enacts either an ordinance that is essentially identical to a county ordinance, as described in subd. 1., or a model ordinance, as described in subd. 2., may switch from having one type of ordinance apply in the town to having the other type of ordinance apply in the town, except that a town may make such a switch not more than once every 3 years, and the switch may occur only during the one−year periods described in par. (a).

4. The zoning ordinance that the town enacts under s. 60.62 may not prohibit the continued use of any building, premises, structure, or land that is lawful under the county zoning ordinance that is in effect when the town issues the written notification described in par. (b) 1. With regard to the continued nonconforming use of any building, premises, structure, or land that is lawful under that county zoning ordinance, the town ordinance may not prohibit the nonconforming use even if the building, premises, structure, or land is not in continuous use.

(d) A zoning ordinance enacted under s. 60.62, a comprehensive plan enacted under s. 66.1001, and an official map established under s. 62.23 (6), that are enacted in conjunction with an ordinance enacted under par. (a), shall all take effect on the first day of the 3rd month beginning after certified copies of the documents are sent to the county clerk under par. (b) 2.

History: 1983 a. 532; 1985 a. 316 s. 25; 1987 a. 205; 1989 a. 121, 197, 276, 359; 1991 a. 28, 296; 1993 a. 105, 246, 456; 1995 a. 27 ss. 3300m, 9116 (5); 1995 a. 77, 201, 289, 448; 1997 a. 27, 111, 155, 237; 1999 a. 115; 1999 a. 150 ss. 8, 9, 672; 2001 a. 16; 2003 a. 214; 2005 a. 13, 116; 2007 a. 42; 2009 a. 42, 372; 2011 a. 32; 2013 a. 50, 51, 151, 193; 2015 a. 178, 181; 2015 a. 195 s. 82; 2017 a. 292.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

One who deals with a municipality does so at his or her own risk and may be subject to any provisions of law that might prevent him or her from being paid by a municipality even though the services are rendered. Unless the power to bind the municipality financially has been specifically delegated, the only entity with the statutory authority to contract is the municipality. Holzbauer v. Safway Steel Products, Inc. 2005 WI App 240, 288 Wis. 2d 250, 712 N.W.2d 35, 04−2058.

Sub. (1) applies to joint undertakings involving a regional project. It did not apply to authorization for building a fire station by a town that provided fire protection through a cooperative arrangement with another town when each town was responsible for furnishing and maintaining its own current fire station and there is nothing in the authorizing resolution that provided for any involvement by the joint fire board in decisions about additional fire stations. The decision to build was subject to town meeting authorization under s. 60.10 (2) (e) and (f). Town of Clayton v. Cardinal Construction Company, Inc. 2009 WI App 54, 317 Wis. 2d 424, 767 N.W.2d 605, 08−1793.

While sub. (28) permits a town board to construct or acquire a safety building, when read in its entirety, its application is reasonably limited to the construction of joint county−city safety buildings. Sub. (28) extends the provisions of s. 66.0925, as they apply to cities, to towns, and s. 66.0925 addresses county−city safety buildings, or joint safety buildings. Town of Clayton v. Cardinal Construction Company, Inc. 2009 WI App 54, 317 Wis. 2d 424, 767 N.W.2d 605, 08−1793.

A county has the authority under both s. 59.69 (1) and (4) and s. 59.70 (22) to enact ordinances regulating billboards and other similar structures. When a town approves a county zoning ordinance under s. 59.69 (5) (c) that includes a billboard ordinance, the town's billboard ordinance adopted under sub. (29) does not preempt a county's authority to regulate billboards in that town. Adams Outdoor Advertising, L.P. v. County of Dane, 2012 WI App 28, 340 Wis. 2d 175, 811 N.W.2d 421, 10−0178.

60.24 Powers and duties of town board chairperson.

(1) GENERAL POWERS AND DUTIES. The town board chairperson shall:

(a) *Preside at board meetings.* Preside over meetings of the town board.

(b) *Preside at town meetings.* Preside over town meetings as provided under s. 60.13.

(c) *Sign documents.* 1. Sign all ordinances, resolutions, bylaws, orders, regulations, commissions, licenses and permits adopted or authorized by the town board unless the town board, by ordinance, authorizes another officer to sign specific types of documents in lieu of the chairperson. The board, by ordinance, may authorize use of a facsimile signature under this paragraph.

2. Sign all drafts, order checks and transfer orders as provided under s. 66.0607.

(d) *Assure administration of statutes.* Supervise the administration of statutes relating to the town and town operations to see that they are faithfully executed.

(e) *Act on behalf of board.* Act, on behalf of the town board, to:

1. See that town orders and ordinances are obeyed.

2. See that peace and order are maintained in the town.

3. Obtain necessary assistance, if available, in case of emergency, except as provided under ch. 323.

(f) *Act on authorization of board.* If authorized by the town board, act on behalf of the board, to:

1. Direct, as appropriate, the solicitation of bids and quotations for the town's purchase of equipment, materials and services and submit the bids and quotations to the town board for approval.

2. Represent, or designate another officer to represent, the town at meetings of, and hearings before, governmental bodies on matters affecting the town.

(2) ADMINISTER OATHS. The town board chairperson may administer oaths and affidavits on all matters pertaining to the affairs of the town.

(3) OTHER RESPONSIBILITIES. In addition to the powers and duties under this section, the town board chairperson has the following responsibilities:

(a) Nominate individuals for service as election officials to the town board whenever the town board disapproves the nominee of a party committee under s. 7.30 (4) and the names of additional nominees are not available.

(b) Serve as caucus official under s. 8.05 (1) (c).

(c) Sue on official bonds under s. 19.015.

(d) Execute and sign a certificate of indebtedness in connection with obtaining a state trust fund loan under s. 24.67.

(e) Serve as town fire warden under ss. 26.13 and 26.14.

(f) Appoint members of the board of harbor commissioners under s. 30.37 (3).

(g) Appoint members of library boards under ss. 43.54 (1) (a) and 43.60 (3).

(h) Exercise the powers and duties specified for a mayor under s. 62.13 if the town creates a joint board of police and fire commissioners or joint police or fire department with a village under s. 61.65 (3g) (d) 2. or a board of police and fire commissioners under s. 60.57.

(i) Provide an annual estimate of funds necessary for any utility district established under s. 66.0827 (2).

(j) Appoint, at his or her discretion, one or more commissioners of noxious weeds under s. 66.0517.

(L) If authorized by the town board, represent the interests of the town in connection with appearances before the state tax appeals commission under s. 70.64 (5).

(m) Approve the bond of the town treasurer delivered to the county treasurer under s. 70.67 (1).

(o) Sign orders for payment of work performed and materials furnished on town highways.

(p) See that all tunnels in the town are constructed under s. 82.37 and that they are kept in good repair.

(q) Serve as a member of the county highway committee under s. 83.015 (1) (d).

(r) Close county trunk highways when rendered dangerous for travel and notify the highway commissioner under s. 83.09.

(s) Appoint members to the airport commission under s. 114.14 (2).

(v) Under s. 167.10 (8), enforce regulation of fireworks under s. 167.10.

(w) Perform the town chairperson's duties related to stray animals and lost goods under ch. 170.

(x) Perform the town chairperson's duties related to distrained animals under ch. 172.

(xm) Perform the town chairperson's duties related to animals that have caused damage in the town under ch. 172.

(y) Perform the town chairperson's duties related to municipal power and water districts under ch. 198.

(ym) Cause actions to be commenced for recovery of forfeitures for violations of town ordinances that can be recovered in municipal court under s. 778.11.

(z) Notify the district attorney of forfeitures which may not be recovered in municipal court under s. 778.12.

(zm) Approve bonds furnished by contractors for public works under s. 779.14 (1m).

History: 1983 a. 532; 1985 a. 225; 1987 a. 197, 399; 1989 a. 336; 1997 a. 127, 192, 287; 1999 a. 150 ss. 10, 672; 2003 a. 214; 2009 a. 42.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

The offices of president of a common school district board and chairperson of a town board within the school district and the offices of school board member and town clerk are probably compatible. 74 Atty. Gen. 50.

SUBCHAPTER V

TOWN OFFICERS AND EMPLOYEES

60.30 Election, appointment of town officers; general provisions.

(1) ELECTED TOWN OFFICERS. (a) At the annual spring election in odd−numbered years, each town shall elect:

1. Except as provided under par. (b), 3 town board supervisors. One of the supervisors shall be designated on the ballot as town board chairperson.

2. Except as provided in sub. (1e), a town clerk and a town treasurer or a person to serve in the combined office of town clerk and town treasurer under s. 60.305 (1).

3. A town assessor, if election of the assessor is required, or a person to serve in the combined office of town clerk and town assessor under s. 60.305 (2).

4. The number of constables established by the last preceding town meeting unless the office has been abolished and has not been reestablished by the town meeting under s. 60.10 (1) (b) 4.

(b) If the town board has increased the number of supervisors under s. 60.21, town board supervisors shall be elected at the annual spring election as provided in that section.

(1e) APPOINTED TOWN OFFICERS. (a) Notwithstanding sub. (1) (a) 2. and subject to pars. (b) and (c), a town board may enact an ordinance that provides for the appointment of a person by a majority of the members−elect of the town board, as defined in s. 59.001 (2m), to fill the office of town clerk, town treasurer, or both, or to fill the combined office of town clerk and town treasurer under s. 60.305 (1).

(b) An ordinance enacted under par. (a) may not take effect until it is approved in a referendum called by the town board for that purpose at the next spring or general election, to be held not sooner than 70 days after the referendum is called by the town board. The referendum question shall be: "Shall the person holding the office of ... [town clerk or town treasurer, or both; or the combined office of town clerk and town treasurer] in the town of ... be appointed by the town board?".

(c) If an ordinance is approved in a referendum under par. (b), the change from an elective office to an appointive office may not take effect until the term of office of the incumbent town clerk, town treasurer, or combined town clerk and town treasurer expires. If an ordinance is approved under par. (b) at a general election, the ordinance takes effect upon the expiration of the term or terms of the incumbent officer or officers. If an ordinance is approved under par. (b) at a spring election at which the office of town clerk or town treasurer is filled, the ordinance takes effect upon the expiration of the term or terms of each officer who is elected at that election. A person appointed to the office of town clerk or town treasurer, or to the combined office of town clerk and town treasurer, shall serve for a term, not to exceed 3 years, that is set by the town board. The person may be reappointed and may be dismissed by the board only for cause, as defined in s. 17.001.

(d) Not sooner than 2 years after an ordinance is approved in a referendum under par. (b), the town board may enact an ordinance to return to a system of electing the town clerk and town treasurer or the combined office of town clerk and town treasurer, under sub. (1) (a) 2., without a referendum. If the ordinance under this paragraph is enacted on or after the date of the spring election and on or before November 1 in any year, a town clerk, town treasurer or combined town clerk and town treasurer shall be elected to succeed the appointive officer at the next spring election following enactment of the ordinance. If the ordinance is enacted on any other date, a town clerk, town treasurer or combined town clerk and town treasurer shall be elected to succeed the appointive officer at the 2nd spring election following enactment of the ordinance.

(e) Notwithstanding sub. (1) (a) 2. and subject to pars. (f) and (g), a town board that is authorized to do so by a town meeting under s. 60.10 (1) (b) 2m. shall appoint, by a majority of the members−elect of the town board, as defined in s. 59.001 (2m), a person to fill the office of town clerk, town treasurer, or both, or to fill the combined office of town clerk and town treasurer under s. 60.305 (1). The town board shall make the initial appointment not less than 30 days nor more than 60 days after the annual town meeting at which the authorization is given.

(f) If a person is appointed to office under par. (e), the person initially appointed may not take office until the term of office of the incumbent town clerk, town treasurer, or combined town clerk and town treasurer expires. A person appointed to the office of town clerk or town treasurer, or to the combined office of town clerk and town treasurer, shall serve for a term, not to exceed 3 years, that is set by the town board. The person may be reappointed and may be dismissed by the board only for cause, as defined in s. 17.001.

(g) Not sooner than 2 years after a person is appointed to office under par. (e), the town board may enact an ordinance to return to a system of electing the town clerk and town treasurer or the combined office of town clerk and town treasurer, under sub. (1) (a) 2. without a vote of a town meeting. An ordinance enacted under this paragraph shall follow the procedures in par. (d).

(1m) PART−TIME SUPERVISORS. Town board supervisors shall be part−time officers, unless designated as full−time by the town meeting under s. 60.10 (1) (b) 6.

(2) RESTRICTIONS. (a) Only an elector of the town may hold a town office, other than an assessor appointed under s. 60.307 or a town clerk, town treasurer or combined town clerk and town treasurer appointed under sub. (1e).

(b) No person may hold the offices of town treasurer and town assessor at the same time.

(c) No assessor may be elected in any town appointing assessors under s. 60.307 or in any town which is under the jurisdiction of a county assessor under s. 70.99.

(d) No person may assume the office of town assessor unless certified by the department of revenue, under s. 73.09, as qualified to perform the functions of the office of town assessor. If a person is elected to the office and is not certified by June 1 of the year elected, the office is vacant and the town board shall fill the vacancy from a list of persons certified by the department of revenue.

(3) NOTICE OF ELECTION. Within 5 days after completion of the canvass under s. 7.53, the town clerk shall transmit a notice of election to each person elected to a town office.

(4) TERM OF OFFICE. (a) Every elected town officer shall hold the office for 2 years.

(b) The regular term of elected town officers, other than the town assessor, commences on the 3rd Tuesday of April in the year of their election. The regular term of an elected assessor commences on June 1 in the year of the assessor's election.

(5) TEMPORARY VACANCY. (a) If any elected town officer, other than a town board supervisor, is absent or temporarily incapacitated from any cause, the town board may appoint, if there is no deputy officer for the office, a suitable person to discharge the duties of the office until the officer returns or the disability is removed, except that the appointment procedures of this paragraph apply to a town board supervisor if he or she is absent because of entry into the U.S. armed forces. Appointees shall file the official oath and bond required under s. 60.31.

(b) If any elected town officer, other than a town board supervisor, refuses to perform any official duty, the town board may appoint a suitable person to perform those duties which the officer refuses to perform. An appointee shall file the official oath and bond required of the office under s. 60.31. This paragraph does not preclude a finding that refusal to perform official duties constitutes cause under s. 17.13 (3).

(6) TOWN OFFICERS RESIDING IN NEW INCORPORATED MUNICIPALITY OR ANNEXED TERRITORY. Notwithstanding s. 17.03 (4), if, due to incorporation or annexation, any town officer, except a town board supervisor or a municipal judge, becomes a resident of a city or village, the officer shall continue in the town office and discharge the duties of the office until completion of the term for which elected.

History: 1983 a. 532, 538; 1991 a. 39; 1993 a. 246; 1995 a. 34; 1997 a. 27; 2001 a. 103; 2011 a. 75, 115.

60.305 Combined and part−time offices. (1) CLERK AND TREASURER. Except as provided under sub. (3), the town meeting may:

(a) Combine the offices of town clerk and town treasurer. If the offices are combined, the town board shall provide for an annual audit under s. 60.43 (2).

(b) Designate as part−time the office of town clerk, the office of town treasurer or the combined office of town clerk and town treasurer.

(2) CLERK AND ASSESSOR. Except as provided under sub. (3), the town meeting may combine the offices of town clerk and town assessor. If a person elected to a combined office is not certified under s. 73.09 by June 1 of the year elected, the combined office is vacant.

(3) TOWN IN COUNTY WITH ONLY ONE TOWN. (a) In the town in any county containing only one town, the town board may, by resolution:

1. Combine 2 or more town offices.
2. Designate any town office as a part−time position.
3. Combine, if concurred in by the county board, the offices of town clerk and county clerk and any other town and county offices if the offices combined are not incompatible and the combination is not expressly forbidden by law.

(b) If the town board and county board agree to combine a county and town office under this subsection, the election to fill the combined office shall be under s. 59.20 (2). No separate election for the town office may be held until the county board, by resolution, revokes the combination and the town board, by resolution, concurs.

(4) GENERAL PROVISIONS. (a) A combination of offices under this section takes effect on the latest date that any current term of an office to be combined expires.

(b) Except as provided under sub. (3) (b) for combined town and county offices, the election to fill any combined office shall be under s. 60.30.

(c) The combination of town offices may be revoked in the same way that they were combined. No separate election for a town office, if combined, may be held until the combination is so revoked.

History: 1983 a. 532; 1995 a. 201.

Compensation may be increased to the clerk for service on the board of review if the clerk has been designated part−time by the town meeting. 79 Atty. Gen. 176.

60.307 Appointment of town assessors. (1) APPLICABILITY. This section does not apply to any town within the jurisdiction of a county assessor under s. 70.99.

(2) TOWN MEETING AUTHORIZATION. If authorized by the town meeting under s. 60.10 (2) (j), the town board may select assessors by appointment.

(3) METHOD OF SELECTION. If authorized under sub. (2), a town board may appoint an assessor and any assistants by one of the following methods:

(a) If the town has a civil service system, under that system. If the town has no civil service system, the town board may adopt a civil service system under s. 66.0509 (2) (b) for the selection of assessors.

(b) If the town does not have or adopt a civil service system, the town board shall appoint assessors on the basis of merit, experience and general qualifications for a term not to exceed 3 years.

(4) INDEPENDENT CONTRACTOR AS ASSESSOR. (a) In this subsection, "independent contractor" means a person who either is under contract to furnish appraisal and assessment services or is customarily engaged in an independently established trade, business or profession in which the services are offered to the general public.

(b) An independent contractor may be appointed as the town assessor. The independent contractor shall designate the individual responsible for the assessment. The designee shall file the official oath under s. 19.01 and sign the affidavit of the assessor attached to the assessment roll under s. 70.49. No individual may be designated by an independent contractor unless he or she has been granted the appropriate certification under s. 73.09.

(5) ASSESSORS; ASSISTANTS; NUMBER AND SALARIES. The town board shall determine the number of assistant assessors required and the salaries to be paid the assessor and assistant assessors. If the assessor and assistant assessors are appointed under civil service, the salaries shall be within the civil service salary schedule and appointments shall be from the civil service lists.

(6) COMMENCEMENT OF OFFICE. An initial appointee under this section shall take office at the expiration of the terms of the last elected assessors.

History: 1983 a. 532; 1993 a. 246; 1999 a. 150 s. 672.

60.31 Official oath and bond. (1) OFFICIAL OATH. Except as provided in sub. (3), every elected or appointed town officer shall take and file the oath under s. 19.01 within 5 days after notification of election or appointment.

(2) OFFICIAL BOND. Every town clerk, deputy town clerk, town treasurer, deputy town treasurer, elected assessor and town constable shall execute and file an official bond provided by the town or by sufficient sureties, or the town may provide a schedule or blanket bond that includes any or all of these officials. The official bond or schedule or blanket bond provided by the town may be furnished by a surety company under s. 632.17 (2). The amount of the bond shall be fixed by the town board. If the amount of the bond is not fixed by the board, the amount shall be the same as that required of the last incumbent of the office. If the town board at any time determines that the bond is insufficient, it may require an additional bond to be filed within 10 days, in an amount fixed by the board.

(3) EXCEPTIONS. (a) An elected assessor shall take and file the official oath and bond at any time between May 27 to May 31.

(b) Municipal judges shall take and file the official oath and bond under s. 755.03.

(4) FAILURE TO FILE OATH OR BOND. If any person elected or appointed to a town office fails to file a required official oath or bond within the time prescribed by law, the failure to file constitutes refusal to serve in office.

History: 1983 a. 532; 1991 a. 39; 1993 a. 246.

60.32 Compensation of elective town offices. (1) ESTABLISHED BY TOWN MEETING OR BOARD. (a) Except as provided under par. (b) and s. 66.0507, the town meeting shall establish the compensation of elective town offices.

(b) If authorized by the town meeting under s. 60.10 (2) (k), the town board shall establish the compensation of elective town offices, other than the office of town board supervisor.

(2) NATURE OF COMPENSATION. Compensation under this section may be:

(a) An annual salary.

(b) A per diem compensation for each day or part of a day necessarily devoted to the service of the town and the discharge of duties.

(c) A combination of pars. (a) and (b).

(3) CHANGES DURING TERM. Subject to sub. (4), the town meeting or, if authorized to establish compensation, the town board may make a change in the compensation of an elective town office to take effect during the term of office.

(4) WHEN ESTABLISHED. Compensation under this section shall be established prior to the latest date and time for filing nomination papers for the office. After that date and time, no change may be made in the compensation of the office that applies to the current term of office.

History: 1983 a. 532; 1993 a. 246; 1999 a. 150 s. 672.

60.321 Reimbursement of expenses. (1) GENERALLY. The town board may provide for reimbursement of expenses necessarily incurred by any officer or employee of the town in the performance of official town duties. The board may determine who is eligible for expense reimbursement, which expenses are reimbursable and the amount of reimbursement. Expenses reimbursable under this section include, but are not limited to:

(a) Traveling expenses, including mileage, lodging and meal expenses.

(b) Costs associated with programs of instruction related to the officer's or employee's office or employment.

(2) MANUALS. The town board may purchase handbooks and manuals that will materially assist town officials and employees in the performance of official duties.

History: 1983 a. 532.

60.323 Compensation when acting in more than one official capacity. Except for offices combined under s. 60.305, no town may compensate a town officer for acting in more than one office of the town at the same time.

History: 1983 a. 532; 2001 a. 16.

60.33 Duties of town clerk. The town clerk shall:

(1) CLERK OF TOWN MEETING. Serve as clerk of the town meeting under s. 60.15.

(2) CLERK OF TOWN BOARD. (a) Serve as clerk of the town board, attend meetings of the board and keep a full record of its proceedings.

(b) File all accounts approved by the town board or allowed at town meetings and enter a statement of the accounts in the town's record books.

(c) File with the town board claims approved by the clerk, as required under s. 60.44 (2) (c).

(3) FINANCE BOOK. Maintain a finance book, which shall contain a complete record of the finances of the town, showing the receipts, with the date, amount and source of each receipt; the disbursements, with the date, amount and object of each disbursement; and any other information relating to town finances prescribed by the town board.

(4) ELECTIONS AND APPOINTMENTS. (a) Perform the duties required by chs. 5 to 12 relating to elections.

(b) Transmit to the county clerk, within 10 days after election or appointment and qualification of any town supervisor, treasurer, assessor or clerk, a written notice stating the name and post−office address of the elected or appointed officer. The clerk shall promptly notify the county clerk of any subsequent changes in such offices.

(c) Transmit to the clerk of circuit court, immediately after the election or appointment of any constable or municipal judge in the town, a written notice stating the name of the constable or municipal judge and the term for which elected or appointed. If the judge or constable was elected or appointed to fill a vacancy in the office, the clerk shall include in the notice the name of the incumbent who vacated the office.

(5) SALE OF REAL PROPERTY. Execute the conveyance of real property of the town.

(6) NOTICES. (a) Publish or post ordinances and resolutions as required under s. 60.80.

(b) Give notice of annual and special town meetings as required under ss. 60.11 (5) and 60.12 (3).

(7) RECORDS. (a) Comply with subch. II of ch. 19 concerning any record of which the clerk is legal custodian.

(b) Demand and obtain the official books and papers of any municipal judge if the office becomes vacant and the judge's successor is not elected or appointed and qualified, or if any municipal judge dies. The town clerk shall dispose of the books and papers as required by law.

(8) LICENSES. Issue any license or permit granted by the town board when presented with a receipt from the town treasurer indicating that any required fee has been paid.

(8m) STREET TRADE PERMITS. Stamp or endorse street trade permits at the request of an employer under s. 103.25 (3m) (b).

(8p) TRAVELING SALES CREW WORKER PERMITS. Stamp or endorse traveling sales crew worker permits at the request of an employer under s. 103.34 (11) (c).

(9) SCHOOLS. (a) Perform the clerk's duties under chs. 115 to 121, relating to public instruction.

(b) Within 10 days after the clerk's election or appointment, report his or her name and post−office address to the administrator of each cooperative educational service agency which contains any portion of the town. The clerk shall report to the administrator the name and post−office address of each school district clerk within 10 days after the name and address is filed in the clerk's office.

(c) Make and keep in the clerk's office a map of the town, showing the exact boundaries of school districts within the town.

(d) Apportion, as provided by law, tax revenues collected by the town for schools.

(10) HIGHWAYS AND BRIDGES. Perform the duties specified in chs. 82 to 92, relating to highways, bridges and drains.

(10m) NOTICE OF PROPERTY TAX REVENUE. Notify the treasurer of the county in which the town is located, by February 20, of the proportion of property tax revenue and of the credits under s. 79.10 that is to be disbursed by the taxation district treasurer to each taxing jurisdiction located in the town.

(11) IN GENERAL. Perform all other duties required by law, ordinance or lawful direction of the town meeting or town board.

History: 1983 a. 532; 1985 a. 39 s. 17; 1989 a. 113; 1991 a. 39; 1995 a. 27; 1997 a. 27; 2003 a. 214; 2009 a. 3.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

The offices of president of a common school district board and chairperson of a town board within the school district and the offices of school board member and town clerk are probably compatible. 74 Atty. Gen. 50.

60.331 Deputy town clerk. Each town clerk may appoint one or more deputies for whom the town clerk is responsible. A deputy shall take and file the official oath and bond under s. 60.31. The town clerk may designate a deputy to perform the clerk's duties during the absence, sickness or other disability of the clerk.

History: 1983 a. 532.

60.34 Duties of town treasurer. The town treasurer shall:

(1) RECEIVE AND DISBURSE TOWN MONEY. (a) Except as provided in s. 66.0608, receive and take charge of all money belonging to the town, or which is required by law to be paid into the town treasury, and disburse the money under s. 66.0607.

(b) Keep an itemized account of all moneys received and disbursed, specifying the source from which it was received, the person to whom it was paid and the object for which it was paid. The treasurer shall issue numbered receipts for all funds received. At the request of the town board, the treasurer shall present the account books, and any supporting documents requested, to the board.

(2) DEPOSIT OF TOWN MONEY. (a) Deposit as soon as practicable the funds of the town in the name of the town in the public depository designated by the town board. Failure to comply with this paragraph is grounds for removal from office.

(b) When money is deposited under par. (a), the treasurer and the treasurer's sureties are not liable for any loss as defined in s. 34.01 (2). The interest arising from the money deposited shall be paid into the town treasury.

(3) RECORDS. Comply with subch. II of ch. 19 concerning records of which the treasurer is legal custodian.

(4) TAXES. Perform all of the duties relating to taxation required of the town treasurer under chs. 70 to 79.

History: 1983 a. 532; 1985 a. 25 s. 15; 1985 a. 29; 1985 a. 135 s. 85; 1985 a. 218 s. 22; 1987 a. 27, 378; 1999 a. 150 s. 672; 2001 a. 16.

60.341 Deputy town treasurer. Each town treasurer may appoint a deputy for whom the treasurer is responsible. The deputy shall take and file the official oath and bond under s. 60.31. In case of the absence, sickness or other disability of the treasurer, the deputy shall perform the treasurer's duties.

History: 1983 a. 532.

60.35 Duties of town constable. (1) A town constable shall perform the duties established by the town board under s. 60.22 (4).

(2) A town constable shall keep his or her office in the town. No constable who keeps his or her office outside the limits of the town may receive fees for any service performed.

History: 1983 a. 532.

60.351 Town constable fees. (1) Town constables shall collect the fees prescribed for sheriffs in s. 814.70 for similar services, unless a higher fee is applicable under s. 814.705 (1) (d).

(2) If any person except a party to an action performs the services of a town constable, the person shall collect the fees to which the town constable would be entitled.

(3) No town constable may serve or execute any summons, writ or process in any action or proceeding in which he or she is agent or attorney for the plaintiff or if he or she is interested in the collection of any claim which is the subject of the action or proceeding. A town constable may not recover any costs, fees or expenses, nor may any costs or fees be taxed for any services rendered in violation of this subsection.

History: 1983 a. 532; 1987 a. 181; 1997 a. 27.

60.36 Municipal judge. The town board may provide for the election of a municipal judge under ch. 755.

History: 1983 a. 532.

60.37 Town employees. (1) GENERAL. The town board may employ on a temporary or permanent basis persons necessary to carry out the functions of town government including, subject to sub. (4), any elected officer of the town. The board may establish the qualifications and terms of employment, which may not include the residency of the employee, except as provided in s. 66.0502 (4) (b). The board may delegate the authority to hire town employees to any town official or employee.

(2) LEGAL ASSISTANCE. The town board may designate, retain or employ one or more attorneys on a temporary or continuing basis to counsel the town on legal matters or represent the town in legal proceedings.

(3) TOWN ADMINISTRATOR. (a) The town board may create the position of town administrator and establish the qualifications, compensation and terms of employment for the position. The town administrator may be employed to serve at the pleasure of the town board or for a fixed term. If employed for a fixed term, the town board may suspend or remove the town administrator for cause.

(b) The town administrator shall perform all lawful duties assigned by the town board which do not conflict with duties and powers conferred by law on other town officers.

(c) No elected town officer may serve as town administrator.

(d) A town may join with one or more towns, villages or cities, in any combination, to employ a person as administrator for the towns, villages or cities. The governing body of each town, village and city may enter into an agreement for this purpose, which may include agreement to share the costs of the position. The town board may not enter into an agreement under this paragraph to employ an administrator for more than 3 years unless the town meeting approves the agreement.

(4) ELECTED OFFICERS SERVING AS EMPLOYEES. (a) An elected town officer, other than a town clerk, a town treasurer, or an officer serving in a combined office of town clerk and town treasurer, who also serves as a town employee may be paid an hourly wage for serving as a town employee, not exceeding a total of $5,000 each year. An elected town officer, who is a town clerk, a town treasurer, or an officer serving in a combined office of town clerk and town treasurer, who also serves as a town employee may be paid an hourly wage for serving as a town employee, not exceeding a total of $15,000 each year. Amounts that are paid under this paragraph may be paid in addition to any amount that an individual receives under s. 60.32 or as a volunteer fire fighter, emergency medical services practitioner, or emergency medical responder under s. 66.0501 (4) (a). The $5,000 maximum in this paragraph includes amounts paid to a town board supervisor who is acting as superintendent of highways under s. 82.03 (1).

NOTE: Par. (a) is shown as affected by 2017 Wis. Acts 12 and 326 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(b) 1. Except as provided in subd. 2., the town meeting shall establish the hourly wage to be paid an elected town officer for serving as a town employee.

2. If authorized by the town meeting under s. 60.10 (2) (L), the town board may establish the hourly wage to be paid an elected town officer, other than a town board supervisor, for serving as a town employee.

History: 1983 a. 532; 2001 a. 16; 2003 a. 214; 2007 a. 20; 2013 a. 20; 2017 a. 12, 326; s. 13.92 (2) (i).

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

SUBCHAPTER VI

FINANCE

60.40 Preparation and adoption of budget. (1) FISCAL YEAR; ANNUAL BUDGET. The town fiscal year is the calendar year. A town budget shall be adopted annually.

(2) PREPARATION. The town board is responsible for preparation of the proposed budget required under s. 65.90. In preparing the budget, the town board may provide for assistance by any person.

(3) HEARING. The town board shall conduct the budget hearing required under s. 65.90.

(4) ADOPTION. The town board shall adopt the town budget.

(5) AMENDMENT. The town budget may be amended by the town board under s. 65.90 (5).

History: 1983 a. 532.

Local units of government may not create and accumulate unappropriated surplus funds. However, a local unit of government may maintain reasonable amounts necessary in the exercise of sound business principles to meet the immediate cash flow needs of the municipality during the current budgetary period or to accumulate needed capital in non−lapsing funds to finance specifically identified future capital expenditures. 76 Atty. Gen. 77.

Article VIII, section 5 restricts the state from levying taxes to create a surplus having no public purpose. Although the constitutional provision does not apply directly to municipalities, the same limitation applies indirectly to them because the state cannot delegate more power than it has. 76 Atty. Gen. 77.

60.41 Annual financial statement. The town board annually shall prepare a statement of the financial condition of the town and present the statement to the annual town meeting. In preparing the statement, the town board may provide for assistance by any person. The statement shall include the previous year's revenues and expenditures and the current indebtedness of the town.

History: 1983 a. 532.

60.42 Finance book. The town clerk shall maintain a finance book under s. 60.33 (3).

History: 1983 a. 532.

60.43 Financial audits. (1) GENERAL. The town board may provide for financial audits under s. 66.0605.

(2) AUDIT OF COMBINED CLERK AND TREASURER OFFICE. If the offices of town clerk and town treasurer are combined under s. 60.305 (1) (a), the town board shall arrange for an audit of the town financial records at least once every year. The audit may be conducted either by a certified public accountant, appointed by the town board and not otherwise employed by the town, or by the department of revenue if the department provides such a service.

History: 1983 a. 532; 1999 a. 150 s. 672.

60.44 Claims against town. (1) GENERAL PROCEDURE. (a) Claims for money against a town or against officers, officials, agents or employees of the town arising out of acts done in their official capacity shall be filed with the town clerk as provided under s. 893.80 (1d) (b). This paragraph does not apply to actions commenced under s. 19.37, 19.97 or 281.99.

(b) The town board shall allow or disallow the claim. Notice of disallowance shall be made as provided under s. 893.80 (1g).

(2) ALTERNATIVE PROCEDURE. (a) The town board, by ordinance, may provide a procedure for approving financial claims against the town which are in the nature of bills and vouchers. The ordinance shall provide that payment may be made from the town treasury under s. 66.0607 after the town clerk reviews and approves in writing each bill or voucher as a proper charge against the treasury, after having determined that:

1. Funds are available under the town budget to pay the bill or voucher.

2. The item or service covered by the bill or voucher has been duly authorized.

3. The item or service covered by the bill or voucher has been supplied or rendered in conformity with the authorization.

4. The claim appears to be a valid claim against the town.

(b) The town clerk may require submission of proof to determine compliance with the conditions under par. (a) 1. to 4.

(c) The ordinance shall require that the clerk file with the town board at least monthly a list of the claims approved, showing the date paid, name of claimant, purpose and amount.

(3) COURT ACTIONS TO RECOVER CLAIMS. Subsection (2), or an ordinance adopted under that subsection, does not affect the applicability of s. 893.80. No action may be brought or maintained against a town upon a claim unless the claimant complies with s. 893.80. This subsection does not apply to actions commenced under s. 19.37, 19.97 or 281.99.

History: 1983 a. 532; 1995 a. 158; 1997 a. 27; 1999 a. 150 s. 672; 2011 a. 162.

60.45 Disbursements from town treasury. Disbursements from the town treasury shall be made under s. 66.0607.

History: 1983 a. 532; 1999 a. 150 s. 672.

60.46 Public depository. The town board shall designate one or more public depositories for depositing funds of the town. The treasurer and the treasurer's surety are not liable for loss, as defined under s. 34.01 (2), of money deposited in the name of the town in a designated public depository. Interest accruing from town money in a public depository shall be credited to the town.

History: 1983 a. 532; 1985 a. 25 s. 15.

60.47 Public contracts and competitive bidding. (1) DEFINITIONS. In this section:

(a) "Public contract" means a contract for the construction, execution, repair, remodeling or improvement of any public work or building or for the furnishing of materials or supplies, with an estimated cost greater than $5,000.

(b) "Responsible bidder" means a person who, in the judgment of the town board, is financially responsible and has the capacity and competence to faithfully and responsibly comply with the terms of the public contract.

(2) NOTICE; ADVERTISEMENT FOR BIDS. Except as provided in subs. (4) and (5):

(a) No town may enter into a public contract with an estimated cost of more than $5,000 but not more than $25,000 unless the town board, or a town official or employee designated by the town board, gives a class 1 notice under ch. 985 before execution of that public contract.

(b) No town may enter into a public contract with a value of more than $25,000 unless the town board, or a town official or employee designated by the town board, advertises for proposals to perform the terms of the public contract by publishing a class 2 notice under ch. 985. The town board may provide for additional means of advertising for bids.

(3) CONTRACTS TO LOWEST RESPONSIBLE BIDDER. The town board shall let a public contract for which advertising for proposals is required under sub. (2) (b) to the lowest responsible bidder. Section 66.0901 applies to public contracts let under sub. (2) (b).

(4) CONTRACTS WITH GOVERNMENTAL ENTITIES. This section does not apply to public contracts entered into by a town with a municipality, as defined under s. 66.0301 (1) (a).

(5) EXCEPTION FOR EMERGENCIES AND DONATED MATERIALS AND LABOR. This section is optional with respect to public contracts for the repair and construction of public facilities when damage or threatened damage to the facility creates an emergency, as declared by resolution of the town board, that endangers the public health or welfare of the town. This subsection no longer applies when the town board declares that the emergency no longer exists. This section is optional with respect to a public contract if the materials related to the contract are donated or if the labor that is necessary to execute the public contract is provided by volunteers.

(6) APPLICATION TO WORK BY TOWN. This section does not apply to any public work performed directly by the town.

History: 1983 a. 532; 1989 a. 272; 1999 a. 9; 1999 a. 150 s. 672; 2005 a. 202.

Sub. (3) does not imply a broad range of discretion beyond determining whether a bidder is responsible. D.M.K., Inc. v. Town of Pittsfield, 2006 WI App 40, 290 Wis. 2d 474, 711 N.W.2d 672, 05−0221.

An unsuccessful bidder was not entitled to maintain a suit for damages, but was instead required to seek an injunction. Only if the bidder successfully obtained an injunction would it be entitled to limited damages, not including lost profits, as, if successful, the bidder could force the town to award it the contracts, or alternatively, to relet them. D.M.K., Inc. v. Town of Pittsfield, 2006 WI App 40, 290 Wis. 2d 474, 711 N.W.2d 672, 05−0221.

A disappointed bidder may recover bid preparation expenses for a violation of the competitive bidding statute regardless of whether it has sought injunctive relief. North Twin Builders, LLC v. Town of Phelps, 2011 WI App 77, 334 Wis. 2d 148, 800 N.W.2d 1, 09−3036.

SUBCHAPTER VII

PUBLIC WORKS AND PUBLIC SAFETY

60.50 Public works. Without limitation because of enumeration, the town board may:

(1) ACQUIRE LANDS. Notwithstanding s. 60.10 (2) (e), acquire lands to lay, construct, alter, extend or repair any highway, street or alley in the town.

(2) STREETS, SEWERS AND SERVICE MAINS. Provide for laying, constructing, altering, extending, replacing, removing or repairing any highway, street, alley, sanitary sewer, storm sewer, water main or any other service pipes, under s. 62.16 (2) (d), in the town.

(3) SIDEWALKS. Provide for construction, removal, replacement or repair of sidewalks under s. 66.0907.

(4) LIGHTING HIGHWAYS. Provide for lighting for highways, as defined under s. 340.01 (22), located in the town.

(5) LAKE IMPROVEMENTS. Provide for making improvements in any lake or waterway located in the town.

(6) INSPECTIONS. Gather at the site of a public works project or a highway, street or alley project that has been approved by the town board for the sole purpose of inspecting the work that has been completed or that is in progress if, before gathering at the site, the chairperson of the board or the chairperson's designee notifies by telephone or facsimile transmission those news media who have filed a written request for notice of such inspections in relation to that project and if the chairperson of the board or the chairperson's designee submits at the next board meeting a report that describes the inspection. The board may not take any official action at the inspection site.

History: 1983 a. 532; 1993 a. 246; 1995 a. 185; 1999 a. 150 s. 672.

60.52 Sewer and water systems of adjoining municipality. (1) With the approval of the town board, any city or village adjoining a town may construct and maintain extensions of its sewer or water system in the town. An extension of a sewer or water system under this subsection is subject to s. 62.175 (1) and the rights of abutting property owners.

(2) An abutting property owner who is permitted to connect with and use a sewer or water system constructed under sub. (1) may not be deprived of the use of the sewer or water system,

except for nonpayment of water or sewer charges, without the approval of the town board.

History: 1983 a. 532.

A city or village sewer extension through town lands that does not provide service for town residents does not require approval of the town board under sub. (1). Danielson v. City of Sun Prairie, 2000 WI App 227, 239 Wis. 2d 178, 619 N.W.2d 108, 99−2719.

In determining under *Danielson* whether the extension through a town serves the town and thus requires the town's approval, the extension project must be looked at as a whole, and not in its component parts. Town of Union v. City of Eau Claire, 2003 WI App 161, 265 Wis. 2d 879, 667 N.W.2d 810, 02−3393.

60.53 Service pipes and laterals. Sections 62.16 (2) and 66.0911, relating to service pipes and laterals, are applicable to towns.

History: 1983 a. 532; 1999 a. 150 s. 672.

60.54 Solid waste transportation. (1) The town board may designate any town highway which provides reasonable access to a solid waste disposal site or facility licensed under s. 289.31 as appropriate for the transportation of solid waste into, within or through the town for the purpose of disposing of the waste at the site or facility and may prohibit the use of other town highways for that purpose.

(2) Any person violating a prohibition enacted under sub. (1) shall forfeit not more than $1,000.

History: 1983 a. 532; 1995 a. 227.

60.55 Fire protection. (1) GENERAL AUTHORITY. (a) The town board shall provide for fire protection for the town. Fire protection for the town, or any portion of the town, may be provided in any manner, including:

1. Establishing a town fire department.

2. Joining with another town, village or city to establish a joint fire department. If the town board establishes a joint fire department with a village under s. 61.65 (2) (a) 3., the town board shall create a joint board of fire commissioners with the village under s. 61.65 (2) (b) 2.

3. Contracting with any person.

4. Utilizing a fire company organized under ch. 213.

5. Creating a combined protective services department under s. 60.553.

(b) The town board may provide for the equipping, staffing, housing and maintenance of fire protection services.

(2) FUNDING. The town board may:

(a) Appropriate money to pay for fire protection in the town.

(b) Charge property owners a fee for the cost of fire protection provided to their property under sub. (1) (a) according to a written schedule established by the town board.

(c) Levy taxes on the entire town to pay for fire protection.

(d) Levy taxes on property served by a particular source of fire protection, to support the source of protection.

History: 1983 a. 532; 1987 a. 399; 2011 a. 32.

Any fire department created under this section, whether formed under ch. 181 or 213, is a government subdivision or agency entitled to immunity under s. 893.80 (4). Mellenthin v. Berger, 2003 WI App 126, 265 Wis. 2d 575, 663 N.W.2d 817, 02−2524.

This section does not create an exception to the grant of power to the town meeting to authorize land purchases or construction by the town board. If a town board chooses to meet the requirements of this section to provide fire protection by providing housing for fire protection services and also chooses to purchase land and construct that housing, then the town board must proceed with the authorization of the town meeting under s. 60.10 (2) (e) and (f) to purchase the land and construct the building. Town of Clayton v. Cardinal Construction Company, Inc. 2009 WI App 54, 317 Wis. 2d 424, 767 N.W.2d 605, 08−1793.

The presence of a fire district standing by ready to extinguish fires constitutes a fire protection service for which a fee may be assessed. Unlike in the pre−1988 version of this statute, fire protection services for which a fee may be assessed are not limited to "fire calls made." Here, the town demonstrated that the primary purpose of a charge was to cover the expense of providing the service of fire protection to the properties within its geographic boundaries and, therefore, the charge was a fee rather than a tax and assessable against county property. Town of Hoard v. Clark County, 2015 WI App 100, 366 Wis. 2d 239, 873 N.W.2d 241, 15−0678.

A town may assess a fire protection special charge under sub. (2) (b) for making fire protection services generally available, and not based on the incidence of fire calls at a property. The special charge is a fee, not a tax, and, therefore, may be assessed against the county. OAG 1−15.

60.553 Combined protective services. (1) Any town may provide police and fire protection services by any of the following:

(a) A combined protective services department which is neither a police department under s. 60.56 (1) (a) nor a fire department under s. 60.55 (1) (a), and in which the same person may be required to perform police protection and fire protection duties without being required to perform police protection duties for more than 8 hours in each 24 hours except in emergency situations, as described under s. 62.13 (7n).

(b) Persons in a police department or fire department who, alone or in combination with persons designated as police officers or fire fighters, may be required to perform police protection and fire protection duties without being required to perform police protection duties for more than 8 hours in each 24 hours except in emergency situations, as described under s. 62.13 (7n).

(2) The governing body of a town acting under sub. (1) may designate any person required to perform police protection and fire protection duties under sub. (1) as primarily a police officer or fire fighter for purposes described in ss. 62.13 (7m), (7n), (10m), and (11), 891.45, 891.453, and 891.455.

History: 2011 a. 32; 2013 a. 165 s. 115.

60.555 Fire safety regulations. Except as provided in s. 101.14 (4) (de), the town board, by ordinance, may adopt regulations to prevent, detect and suppress fire and related fire hazards. The regulations may include provision for the inspection, at reasonable times, of property in the town for compliance with regulations adopted under this section.

History: 1983 a. 532; 2015 a. 240.

60.557 Reimbursement for fire calls on highways. (1) If a town incurs costs for a fire call by responding to a vehicle fire on a county trunk highway, the county maintaining that portion of the highway where the vehicle was located at the time of the fire shall reimburse the town up to $200 for the costs if the town submits written proof that the town has made a reasonable effort to collect the cost from the insurer of the person to whom the fire call was provided or from the person to whom the fire call was provided, except that the town may attempt to collect the cost from the person only if the town is unsuccessful in its efforts to collect from the person's insurer or if the person has no insurer. If the town collects the cost from an insurer or such person after the county reimburses the town, the town shall return the amount collected to the county.

(2) If a town incurs costs for a fire call on a state trunk highway or any highway that is a part of the national system of interstate highways and maintained by the department of transportation, the department of transportation shall reimburse the town up to $500 for the costs, even if the fire equipment is not actually used, if the town submits written proof that the town has made a reasonable effort to collect the cost from the insurer of the person to whom the fire call was provided or from the person to whom the fire call was provided, except that the town may attempt to collect the cost from the person only if the town is unsuccessful in its efforts to collect from the person's insurer or if the person has no insurer. If the town collects the cost from an insurer or such person after the department reimburses the town, the town shall return the amount collected to the department.

History: 1983 a. 532, 538; 1993 a. 16; 1999 a. 131; 2003 a. 205.

60.56 Law enforcement. (1) GENERAL AUTHORITY. (a) The town board may provide for law enforcement in the town or any portion of the town in any manner, including:

1. Establishing a town police department.

2. Joining with another town, village or city to create a joint police department. If the town board establishes a joint police department with a village under s. 61.65 (1) (a) 3., the town board shall create a joint board of police commissioners with the village under s. 61.65 (1) (b) 1. b.

3. Contracting with any person.

4. Creating a combined protective services department under s. 60.553.

(am) If a town board establishes a town police department under par. (a) 1. or 2. and does not create a board of police commissioners singly or in combination with another town, village or city, or if a town board establishes a combined protective services department under s. 60.553 and does not create a board of police and fire commissioners, the town may not suspend, reduce, suspend and reduce, or remove any police chief, chief of a combined protective services department, or other law enforcement officer who is not probationary, and for whom there is no valid and enforceable contract of employment or collective bargaining agreement which provides for a fair review prior to that suspension, reduction, suspension and reduction or removal, unless the town board does one of the following:

1. Establishes a committee of not less than 3 members, none of whom may be an elected or appointed official of the town or be employed by the town. The committee shall act under s. 62.13 (5) in place of a board of police and fire commissioners. The town board may provide for some payment to each member for the member's cost of serving on the committee at a rate established by the town board.

2. Appoint a person who is not an elected or appointed official of the town and who is not employed by the town. The person shall act under s. 62.13 (5) in place of a board of police and fire commissioners. The town board may provide for some payment to that person for serving under this subdivision at a rate established by the town board.

(b) The town board may provide for the equipping, staffing, housing and maintenance of law enforcement services.

(2) FUNDING. The town board may appropriate money to fund law enforcement services.

History: 1983 a. 532; 1985 a. 166 ss. 1, 8; 1987 a. 27; 2011 a. 32.

A town cannot "establish" a police department without official action. Christian v. Town of Emmett, 163 Wis. 2d 277, 471 N.W.2d 252 (Ct. App. 1991).

That a police chief served on a volunteer basis without compensation did not render him a probationary officer under sub. (1) (am). "At−will" employment has no relevance to whether the procedures outlined in this section must be followed. Town of LaGrange v. Auchinleck, 216 Wis. 2d 84, 573 N.W.2d 232 (Ct. App. 1997), 96−3313.

A sheriff may not unilaterally withdraw investigative services provided to one urbanized town within the county because the town maintains its own police department. 81 Atty. Gen. 98.

60.563 Rewards for crime information. When any heinous offense or crime has been committed against life or property within a town, the town board chairperson, with the consent of a majority of the members of the town board, may offer a reward for the apprehension of the criminal or perpetrator of such offense.

History: 1993 a. 246.

60.565 Ambulance service. The town board shall contract for or operate and maintain ambulance services unless such services are provided by another person. If the town board contracts for ambulance services, it may contract with one or more providers. The town board may determine and charge a reasonable fee for ambulance service provided under this section. The town board may purchase equipment for medical and other emergency calls.

History: 1983 a. 532; 1991 a. 39.

County home rule under s. 59.03 (1) allows every county to "exercise any organizational or administrative power, subject only to the constitution and to any enactment of the legislature." The language of this section acknowledges that another person can provide the ambulance service instead of a town and withdraws the mandate when another person provides ambulance services. The absence of a command from the legislature that towns provide an ambulance service in all situations causes the argument that county home rule prevents counties from providing ambulance service to miss the mark. Town of Grant, Portage County v. Portage County, 2017 WI App 69, 378 Wis. 2d 289, 903 N.W.2d 152, 16−2435.

60.57 Police and fire commission. (1) The town board may:

(a) If the town has a police department, establish a board of police commissioners.

(b) If the town has a fire department, establish a board of fire commissioners.

(c) If the town has both a police and fire department, or a combined protective services department, establish a board of police and fire commissioners.

(2) A board created under this section shall be organized in the same manner as boards of police and fire commissioners under s. 62.13 (1).

(3) A board created under this section is subject to the provisions of s. 62.13 (2) to (5) and (7) to (12) to the extent that the provisions apply to 2nd and 3rd class cities. In applying s. 62.13 under this section, the town board chairperson has the powers and duties specified for a mayor, the town board has the powers and duties specified for a common council and the town has the powers and duties specified for a city.

History: 1983 a. 532; 2011 a. 32.

SUBCHAPTER VIII

LAND USE AND PLANNING

60.61 General zoning authority. (1) PURPOSE AND CONSTRUCTION. (a) Ordinances adopted under this section shall be designed to promote the public health, safety and general welfare.

(b) Authority granted under this section shall be liberally construed in favor of the town exercising the powers. This section may not be construed to limit or repeal any powers possessed by any town.

(1m) BUILDING CODE ENFORCEMENT. A town board may enact and enforce building code ordinances under ss. 62.17, 101.65, 101.76 and 101.86.

(2) EXTENT OF AUTHORITY. Subject to subs. (3) and (3m), if a town is located in a county which has not enacted a county zoning ordinance under s. 59.69, the town board, by ordinance, may:

(a) Regulate, restrict and determine all of the following:

1. The areas within which agriculture, forestry, mining and recreation may be conducted, except that no ordinance enacted under this subsection may prohibit forestry operations that are in accordance with generally accepted forestry management practices, as defined under s. 823.075 (1) (d).

2. The location of roads, schools, trades and industries.

3. The location, height, bulk, number of stories and size of buildings and other structures.

4. The percentage of a lot which may be occupied.

5. The size of yards, courts and other open spaces.

6. Subject to s. 66.10015 (3), the density and distribution of population.

7. The location of buildings designed for specified uses.

8. The trades, industries or purposes that may be engaged in or subject to regulation.

9. The uses for which buildings may not be erected or altered.

(b) Establish districts of such number, shape and area necessary to carry out the purposes under par. (a). The town board may establish mixed−use districts that contain any combination of uses, such as industrial, commercial, public, or residential uses, in a compact urban form.

(c) Establish building setback lines.

(d) Regulate, restrict and determine the areas in or along natural watercourses, channels, streams and creeks in which trades and industries, filling or dumping, erection of structures and the location of buildings may be prohibited or restricted.

(e) Adopt an official map showing areas, outside the limits of villages and cities, suited to carry out the purposes of this section. Any map adopted under this paragraph shall show the location of any part of an airport, as defined in s. 62.23 (6) (am) 1. a., located in the town and of any part of an airport affected area, as defined in s. 62.23 (6) (am) 1. b., located in the town.

(f) Regulate, restrict and determine the location, height, bulk, number of stories and size of buildings and other structures and objects of natural growth in any area of the town in the vicinity of an airport owned by the town or privately owned, divide the territory into several areas and impose different restrictions for each area. In exercising its power under this paragraph, the town board may, by eminent domain, remove or alter any buildings, structures or objects of natural growth which are contrary to the restrictions imposed in the area in which they are located, except railroad buildings, bridges or facilities other than telegraph, telephone and overhead signal system poles and wires.

(g) Encourage the protection of groundwater resources.

(h) Provide for the preservation of burial sites, as defined in s. 157.70 (1) (b).

(i) Provide adequate access to sunlight for solar collectors and to wind for wind energy systems.

(3) EXERCISE OF AUTHORITY. Before exercising authority under sub. (2), the town board shall petition the county board to initiate, at any regular or special meeting, action to enact a county zoning ordinance under s. 59.69. The town board may proceed under sub. (2) if:

(a) The county board fails or refuses, at the meeting, to direct the county zoning agency to proceed under s. 59.69;

(b) The county zoning agency's report and the recommended county zoning ordinance prepared pursuant to the report are not presented to the county board within one year; or

(c) The county zoning agency report and recommended county zoning ordinance are presented to the county board within one year and the county board at its next meeting following receipt of the report fails to adopt the ordinance.

(3c) ANTENNA FACILITIES. The town board may not enact an ordinance or adopt a resolution on or after May 6, 1994, or continue to enforce an ordinance or resolution on or after May 6, 1994, that affects satellite antennas with a diameter of 2 feet or less unless one of the following applies:

(a) The ordinance or resolution has a reasonable and clearly defined aesthetic or public health or safety objective.

(b) The ordinance or resolution does not impose an unreasonable limitation on, or prevent, the reception of satellite−delivered signals by a satellite antenna with a diameter of 2 feet or less.

(c) The ordinance or resolution does not impose costs on a user of a satellite antenna with a diameter of 2 feet or less that exceed 10 percent of the purchase price and installation fee of the antenna and associated equipment.

(3d) AMATEUR RADIO ANTENNAS. The town board may not enact an ordinance or adopt a resolution on or after April 17, 2002, or continue to enforce an ordinance or resolution on or after April 17, 2002, that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:

(a) The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.

(b) The ordinance or resolution reasonably accommodates amateur radio communications.

(3m) MIGRANT LABOR CAMPS. The town board may not enact an ordinance or adopt a resolution that interferes with any repair or expansion of migrant labor camps, as defined in s. 103.90 (3), that are in existence on May 12, 1992, if the repair or expansion is required by an administrative rule promulgated by the department of workforce development under ss. 103.90 to 103.97. An ordinance or resolution of the town that is in effect on May 12, 1992, and that interferes with any repair or expansion of existing migrant labor camps that is required by such an administrative rule is void.

(3r) ZONING IN SHORELANDS. (a) In this subsection, "shorelands" has the meaning given in s. 59.692 (1) (b).

(b) A town may enact a zoning ordinance under this section that applies in shorelands, except as provided in par. (c).

(c) A town zoning ordinance enacted under this section may not impose restrictions or requirements in shorelands with respect to matters regulated by a county shoreland zoning ordinance enacted under s. 59.692 affecting the same shorelands, regardless of whether the county shoreland zoning ordinance was enacted separately from, or together with, an ordinance enacted under s. 59.69, except as provided in s. 59.692 (2) (b).

(4) PROCEDURE. (a) The town board shall appoint a town zoning committee consisting of 5 members. The town zoning committee shall also include, as a nonvoting member, a representative from a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in the town, if the base's or installation's commanding officer appoints such a representative.

(b) Before the town board may adopt an ordinance under sub. (2), the town zoning committee shall recommend zoning district boundaries and appropriate regulations and restrictions for the districts. In carrying out its duties, the town zoning committee shall develop a preliminary report and hold a public hearing on the report before submitting a final report to the town board. The town zoning committee shall give notice of the public hearing on the preliminary report and of the time and place of the public hearing on the report by a class 2 notice under ch. 985. The town zoning committee shall consider any comments made, or submitted, by the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the town. If the town zoning committee makes a substantial change in its report following the public hearing, it shall hold another public hearing on the report. After the final report of the town zoning committee is submitted to the town board, the board may adopt an ordinance under sub. (2) following a public hearing held by the board on the proposed ordinance. The town board shall give notice of the public hearing on the proposed ordinance and of the time and place of the public hearing on the ordinance by a class 2 notice under ch. 985. If the proposed ordinance has the effect of changing the allowable use of any property, the notice shall include either a map showing the property affected by the ordinance or a description of the property affected by the ordinance and a statement that a map may be obtained from the town board. A copy of an adopted ordinance shall be sent to the commanding officer, or the officer's designee, of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the town.

(c) 1. After the town board has adopted a town zoning ordinance, the board may alter, supplement or change the boundaries or regulations established in the ordinance if a public hearing is held on the revisions. The board shall give notice of any proposed revisions in the zoning ordinance and of the time and place of the public hearing on them by a class 2 notice under ch. 985. If the proposed amendment would have the effect of changing the allowable use of any property, the notice shall include either a map showing the property affected by the amendment or a description of the property affected by the amendment and a statement that a map may be obtained from the town board. The board shall allow any interested person to testify at the hearing, and shall consider any comments made, or submitted, by the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the town. If any proposed revision under this subdivision would make any change in an airport affected area, as defined in s. 62.23 (6) (am) 1. b., the board shall mail a copy of such notice to the owner or operator of the airport bordered by the airport affected area.

2. A proposed amendment, supplement or change to the town zoning ordinance must be adopted by not less than a three−fourths vote of the town board if a protest against the proposed amendment, supplement or change is presented to the town board prior to or at the public hearing under subd. 1. and:

a. The protest is signed and acknowledged by the owners of at least 50 percent of the area proposed to be altered; or

b. The protest is signed and acknowledged by the abutting owners of at least 50 percent of the total perimeter of the area proposed to be altered that is included within 300 feet of the parcel or parcels to be rezoned.

3. A proposed amendment, supplement or change to the town zoning ordinance must be adopted by not less than a two−thirds vote of the town board if the proposed amendment, supplement or change would make any change in an airport affected area, as defined under s. 62.23 (6) (am) 1. b. and if a protest against the proposed revision is presented to the town board prior to or at the public hearing under subd. 1. by the owner or operator of the airport bordered by the airport affected area.

(d) 1. In this paragraph, "comprehensively revise" means to incorporate numerous and substantial changes in the zoning ordinance.

2. The town board may, by a single ordinance, comprehensively revise an existing town zoning ordinance. The ordinance shall be adopted under par. (b).

(e) Neither the town board nor the town zoning committee may condition or withhold approval of a permit under this section based upon the property owner entering into a contract, or discontinuing, modifying, extending, or renewing any contract, with a 3rd party under which the 3rd party is engaging in a lawful use of the property.

(f) The town board shall maintain a list of persons who submit a written or electronic request to receive notice of any proposed ordinance or amendment that affects the allowable use of the property owned by the person. Annually, the town board shall inform residents of the town that they may add their names to the list. The town board may satisfy this requirement to provide such information by any of the following means: publishing a 1st class notice under ch. 985; publishing on the town's Internet site; 1st class mail; or including the information in a mailing that is sent to all property owners. If the town zoning committee completes a final report on a proposed zoning ordinance and the town board is prepared to vote on the proposed ordinance under par. (b) or if the town board is prepared to vote on a proposed amendment under par. (c) 1., the town board shall send a notice, which contains a copy or summary of the proposed ordinance or amendment, to each person on the list whose property, the allowable use or size or density requirements of which, may be affected by the proposed ordinance or amendment. The notice shall be by mail or in any reasonable form that is agreed to by the person and the town board, including electronic mail, voice mail, or text message. The town board may charge each person on the list who receives a notice by 1st class mail a fee that does not exceed the approximate cost of providing the notice to the person. An ordinance or amendment that is subject to this paragraph may take effect even if the town board fails to send the notice that is required by this paragraph.

(g) As part of its approval process for granting a conditional use permit under this section, a town may not impose on a permit applicant a requirement that is expressly preempted by federal or state law.

(4e) CONDITIONAL USE PERMITS. (a) In this subsection:

1. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a town, but does not include a variance.

2. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

(b) 1. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the town ordinance or those imposed by the town zoning board, the town shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

2. The requirements and conditions described under subd. 1. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the town relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The town's decision to approve or deny the permit must be supported by substantial evidence.

(c) Upon receipt of a conditional use permit application, and following publication in the town of a class 2 notice under ch. 985, the town shall hold a public hearing on the application.

(d) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the town may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the town zoning board.

(e) If a town denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures described in s. 59.694 (10).

(5) NONCONFORMING USES. (ab) In this subsection "nonconforming use" means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.

(am) An ordinance adopted under this section may not prohibit the continued use of any building, premises, structure, or fixture for any trade or industry for which the building, premises, structure, or fixture is used when the ordinance takes effect. An ordinance adopted under this section may prohibit the alteration of, or addition to, any existing building, premises, structure, or fixture used to carry on an otherwise prohibited trade or industry within the district. If a use that does not conform to an ordinance adopted under this section is discontinued for a period of 12 months, any future use of the land, building, premises, structure, or fixture shall conform to the ordinance.

(b) Except as provided in par. (d), immediately after the publication of a town zoning ordinance, the town board shall provide for the compilation of a record of the present use of all buildings and premises used for purposes not in conformity with the zoning ordinance. The record shall contain the names and addresses of the owner of the nonconforming use and any occupant other than the owner, the legal description of the land, and the nature and extent of the use of the land. The record shall be published in the town as a class 1 notice under ch. 985. Within 60 days after final publication, upon presentation of proof to the town board, errors or omissions in the record may be corrected. At the expiration of the 60−day period, the record shall be filed in the office of the town clerk after the record is first recorded in the office of the register of deeds. The record is prima facie evidence of the extent and number of nonconforming uses existing at the time the ordinance takes effect. Errors or omissions in the record shall be corrected by the town board upon petition of any citizen or by the board on its own motion. The decision of the board concerning errors or omissions is final.

(c) Immediately after the record of nonconforming uses is filed with the town clerk, the clerk shall furnish the town assessor the record of nonconforming uses within the town. After the assessment for the following year and each succeeding assessment, the town assessor shall file a written report, certified by the board of review, with the town clerk listing all nonconforming uses which have been discontinued since the prior assessment. The town

clerk shall record discontinued nonconforming uses as soon as reported by the assessor. In this paragraph, "town assessor" includes the county assessor assessing the town under s. 70.99.

(d) Paragraphs (b) and (c) do not apply to towns issuing building permits as a means of enforcing the zoning ordinance or of identifying nonconforming uses or to towns which have established other procedures for this purpose.

(e) 1. In this paragraph, "amortization ordinance" means an ordinance that allows the continuance of the lawful use of a nonconforming building, premises, structure, or fixture that may be lawfully used as described under par. (am), but only for a specified period of time, after which the lawful use of such building, premises, structure, or fixture must be discontinued without the payment of just compensation.

2. Subject to par. (am), an ordinance enacted under this section may not require the removal of a nonconforming building, premises, structure, or fixture by an amortization ordinance.

(5e) REPAIR, REBUILDING, AND MAINTENANCE OF CERTAIN NONCONFORMING STRUCTURES. (a) In this subsection:

1. "Development regulations" means the part of a zoning ordinance that applies to elements including setback, height, lot coverage, and side yard.

2. "Nonconforming structure" means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance.

(b) An ordinance may not prohibit, limit based on cost, or require a variance for the repair, maintenance, renovation, rebuilding, or remodeling of a nonconforming structure or any part of a nonconforming structure.

(5m) RESTORATION OF CERTAIN NONCONFORMING STRUCTURES. (a) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance adopted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

1. The nonconforming structure was damaged or destroyed on or after March 2, 2006.

2. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

(b) An ordinance adopted under this section to which par. (a) applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.

(6) ENFORCEMENT. The town board may by ordinance provide for the enforcement of all ordinances adopted under this section. The board may impose forfeitures and other penalties for violation of ordinances adopted under this section. To enforce compliance with ordinances adopted under this section, the town or the owner of real estate within a district affected by the ordinance may seek a court order.

History: 1983 a. 532, 538; 1985 a. 136, 316; 1991 a. 255; 1993 a. 246, 301, 400, 414, 491; 1995 a. 27 s. 9130 (4); 1995 a. 201; 1997 a. 3.; 2001 a. 50; 2005 a. 26, 79, 81, 112, 171, 208; 2007 a. 97; 2009 a. 351; 2011 a. 170; 2015 a. 41, 55, 391; 2017 a. 67.

60.62 Zoning authority if exercising village powers.

(1) Except as provided in s. 60.23 (33) and subject to subs. (2) and (4), if a town board has been granted authority to exercise village powers under s. 60.10 (2) (c), the board may adopt zoning ordinances under s. 61.35.

(2) If the county in which the town is located has enacted a zoning ordinance under s. 59.69, the exercise of the authority under sub. (1) is subject to approval by the town meeting or by a referendum vote of the electors of the town held at the time of any regular or special election. The question for the referendum vote shall be filed as provided in s. 8.37.

(3) (a) In counties having a county zoning ordinance, no zoning ordinance or amendment of a zoning ordinance may be adopted under this section unless approved by the county board. This paragraph applies only in counties with a population of less than 485,000, and does not apply to a town that has withdrawn from county zoning.

(b) With regard to a town to which all of the following apply, the town may not adopt or amend a zoning ordinance under this section without county board approval:

1. The town is located in a county that has a population exceeding 380,000.

2. The county in which the town is located is adjacent to a county that has a population exceeding 800,000.

3. The county in which the town is located has a zoning ordinance in effect on January 1, 2013.

(c) As part of its approval process for granting a conditional use permit under this section or s. 61.35, a town may not impose on a permit applicant a requirement that is expressly preempted by federal or state law.

(4) (a) Notwithstanding ss. 61.35 and 62.23 (1) (a), a town with a population of less than 2,500 that acts under this section may create a "Town Plan Commission" under s. 62.23 (1) (a) that has 5 members, all of whom shall be appointed by the town board chairperson, subject to confirmation by the town board. The town chairperson shall also select the presiding officer. The town board chairperson may appoint town board members to the commission and may appoint other town elected or appointed officials to the commission, except that the commission shall always have at least one citizen member who is not a town official. Appointees to the town plan commission may be removed only by a majority vote of the town board. All other provisions of ss. 61.35 and 62.23 shall apply to a town plan commission that has 5 members.

(b) If a town plan commission consists of 7 members and the town board enacts an ordinance or adopts a resolution reducing the size of the commission to 5 members, the commission shall continue to operate with 6 or 7 members until the expiration of the terms of the 2 citizen members, who were appointed under s. 62.23 (1) (a), whose terms expire soonest after the effective date of the ordinance or resolution that reduces the size of the commission.

(c) If a town plan commission consists of 5 members and the town board enacts an ordinance or adopts a resolution increasing the size of the commission to 7 members, the town board chairperson shall appoint the 2 new members under s. 62.23 (1) (a).

(d) Notwithstanding ss. 61.35 and 62.23 (1) (a), if a town with a population of at least 2,500 acts under this section and creates a "Town Plan Commission" under s. 62.23 (1) (a), all members of the commission shall be appointed by the town board chairperson, subject to confirmation by the town board. The town chairperson shall also select the presiding officer. The town board chairperson may appoint town board members to the commission and may appoint other town elected or appointed officials to the commission, except that the commission shall always have at least 3 citizen members who are not town officials. Appointments shall be made by the town board chairperson during the month of April for terms that expire in April or at any other time if a vacancy occurs during the middle of a term except that the appointees to the town plan commission may be removed before the expiration of the appointee's term by a majority vote of the town board. All other provisions of ss. 61.35 and 62.23 shall apply to a town plan commission to which this paragraph applies.

(4e) (a) In this subsection:

1. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a town, but does not include a variance.

2. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

(b) 1. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the town ordinance or those imposed by the town zoning board, the town shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

2. The requirements and conditions described under subd. 1. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the town relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The town's decision to approve or deny the permit must be supported by substantial evidence.

(c) Upon receipt of a conditional use permit application, and following publication in the town of a class 2 notice under ch. 985, the town shall hold a public hearing on the application.

(d) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the town may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the town zoning board.

(e) If a town denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures described in s. 61.35.

(5) (a) In this subsection, "shorelands" has the meaning given in s. 59.692 (1) (b).

(b) A town may enact a zoning ordinance under this section that applies in shorelands, except as provided in par. (c).

(c) A town zoning ordinance enacted under this section may not impose restrictions or requirements in shorelands with respect to matters regulated by a county shoreland zoning ordinance enacted under s. 59.692 affecting the same shorelands, regardless of whether the county shoreland zoning ordinance was enacted separately from, or together with, an ordinance enacted under s. 59.69, except as provided in s. 59.692 (2) (b).

(6) (a) Not later than 60 days before a town board that wishes to withdraw from county zoning and the county development plan may enact an ordinance under s. 60.23 (34), the town board shall enact a zoning ordinance under this section, an official map under s. 62.23 (6), and a comprehensive plan under s. 66.1001.

(b) If a town receives notification under s. 59.69 (5m) that the county board has repealed its zoning ordinances, the town board shall enact a zoning ordinance under this section, an official map under s. 62.23 (6), and a comprehensive plan under s. 66.1001, all of which take effect on the effective date of the county's repeal of its zoning ordinance.

History: 1983 a. 532; 1995 a. 201; 1997 a. 27; 1999 a. 9, 182; 2005 a. 207; 2009 a. 372; 2013 a. 287; 2015 a. 41, 55, 178; 2017 a. 67, 365.

An amended PUD ordinance that allowed the placement of a PUD in any district, subject only to the approval of the town board as a conditional use, was invalid as it allowed the town to rezone without county board approval. City of Waukesha v. Town of Waukesha, 198 Wis. 2d 592, 543 N.W.2d 515 (Ct. App. 1995), 94–0812.

Permitting general town regulation of shorelands under village powers conflicts with the statutory scheme of ss. 59.692 and 281.31, which, by their plain language, appear to deliberately exclude towns from having shoreland zoning authority, except in the circumstance identified in s. 59.692 (2) (b). Hegwood v. Town of Eagle Zoning Board of Appeals, 2013 WI App 118, 351 Wis. 2d 196, 839 N.W.2d 111, 12–2058.

Judicial review of a county board's legislative decision concerning approval or disapproval of town zoning ordinances submitted under sub. (3) is limited to cases of abuse of discretion, excess of power, or error of law. 79 Atty. Gen. 117.

60.625 Required notice on certain approvals.

(1) In this section, "wetland" has the meaning given in s. 23.32 (1).

(2) (a) Except as provided in par. (b), a town that issues a building permit or other approval for construction activity, shall give the applicant a written notice as specified in subs. (3) and (4) at the time the building permit is issued.

(b) 1. A town is not required to give the notice under par. (a) at the time that it issues a building permit if the town issues the building permit on a standard building permit form prescribed by the department of safety and professional services.

2. A town is not required to give the notice under par. (a) at the time that it issues a building permit or other approval if the building permit or other approval is for construction activity that does not involve any land disturbing activity including removing protective ground cover or vegetation, or excavating, filling, covering, or grading land.

(3) Each notice shall contain the following language: "YOU ARE RESPONSIBLE FOR COMPLYING WITH STATE AND FEDERAL LAWS CONCERNING CONSTRUCTION NEAR OR ON WETLANDS, LAKES, AND STREAMS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER CAN BE DIFFICULT TO IDENTIFY. FAILURE TO COMPLY MAY RESULT IN REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE LAW OR OTHER PENALTIES OR COSTS. FOR MORE INFORMATION, VISIT THE DEPARTMENT OF NATURAL RESOURCES WETLANDS IDENTIFICATION WEB PAGE OR CONTACT A DEPARTMENT OF NATURAL RESOURCES SERVICE CENTER."

(4) The notice required in sub. (2) (a) shall contain the electronic website address that gives the recipient of the notice direct contact with that website.

(5) A town in issuing a notice under this section shall require that the applicant for the building permit sign a statement acknowledging that the person has received the notice.

History: 2009 a. 373; 2011 a. 32; 2017 a. 365 s. 112.

60.627 Town construction site erosion control and storm water management zoning.

(1) DEFINITION. In this section, "department" means the department of natural resources.

(2) AUTHORITY TO ENACT ORDINANCE. (a) To effect the purposes of s. 281.33 and to promote the public health, safety and general welfare, if a town board may enact zoning ordinances under s. 60.62, the town board may enact a zoning ordinance, that is applicable to all of its area, for construction site erosion control at sites described in s. 281.33 (3) (a) 1. a. and b. and for storm water management. This ordinance may be enacted separately from ordinances enacted under s. 60.62. An ordinance enacted under this paragraph is subject to the strict conformity requirements under s. 281.33 (3m).

(b) A county ordinance enacted under s. 59.693 does not apply and has no effect in a town in which an ordinance enacted under this section is in effect.

(4) APPLICABILITY OF VILLAGE ZONING PROVISIONS. (a) Except as otherwise specified in this section, the provisions of s. 61.35, as they apply to villages, apply to any ordinance or amendment to an ordinance enacted under this section.

(b) Variances and appeals regarding a construction site erosion control and storm water management ordinance under this section are to be determined by the board of appeals or similar agency for the town. To the extent specified under s. 61.35, procedures under s. 62.23 (7) (e) apply to these determinations.

(c) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 60.62 that relate to construction site erosion control at sites described in s. 281.33 (3) (a) 1. a. and b. or to storm water management regulation.

(5) APPLICABILITY OF COMPREHENSIVE ZONING PLAN OR GENERAL ZONING ORDINANCE. An ordinance enacted under this section shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable to the enacting town, so far as practicable.

(6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted to a town under s. 236.45 may be exercised by it with respect to construction site erosion control at sites described in s. 281.33 (3) (a) 1. a. and b. or with respect to storm water management regulation, if the town has or provides a planning commission or agency.

(7) APPLICABILITY TO LOCAL GOVERNMENTS AND AGENCIES. An ordinance enacted under this section is applicable to activities conducted by a unit of local government and an agency of that unit of government. An ordinance enacted under this section is not applicable to activities conducted by an agency, as defined under s. 227.01 (1) but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under s. 281.33 (2).

(8) INTERGOVERNMENTAL COOPERATION. (a) Except as provided in par. (c), s. 66.0301 applies to this section, but for the purposes of this section any agreement under s. 66.0301 shall be effected by ordinance.

(b) If a town is served by a regional planning commission under s. 66.0309 and if the commission consents, the town may empower the commission by ordinance to administer the ordinance enacted under this section throughout the town, whether or not the area otherwise served by the commission includes all of that town.

(c) If a town is served by the Dane County Lakes and Watershed Commission, and if the commission consents, the town may empower the commission by ordinance to administer the ordinance enacted under this section throughout the town, whether or not the area otherwise served by the commission includes all of that town. Section 66.0301 does not apply to this paragraph.

(9) VALIDITY UPON ANNEXATION. An ordinance enacted under this section by a town continues in effect in any area annexed by a city or village after the effective date of that ordinance unless the city or village enacts, maintains and enforces a city or village ordinance which complies with minimum standards established by the department and which is at least as restrictive as the town ordinance enacted under this section. If, after providing notice and conducting a hearing on the matter, the department determines that an ordinance enacted by a city or village which is applicable to an area annexed after the effective date of the town ordinance does not meet these standards or is not as restrictive as the town ordinance, the department shall issue an order declaring the city or village ordinance void and reinstating the applicability of the town ordinance to the annexed area.

History: 1993 a. 246; 1995 a. 201, 227; 1999 a. 150 s. 672; 2013 a. 20.

60.63 Community and other living arrangements. For purposes of s. 60.61, the location of a community living arrangement for adults, as defined in s. 46.03 (22), a community living arrangement for children, as defined in s. 48.743 (1), a foster home, as defined in s. 48.02 (6), or an adult family home, as defined in s. 50.01 (1), in any town shall be subject to the following criteria:

(1) No community living arrangement may be established after March 28, 1978 within 2,500 feet, or any lesser distance established by an ordinance of the town, of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the local town. Two community living arrangements may be adjacent if the town authorizes that arrangement and if both facilities comprise essential components of a single program.

(2) Community living arrangements shall be permitted in each town without restriction as to the number of facilities, so long as the total capacity of the community living arrangements does not exceed 25 or one percent of the town's population, whichever is greater. If the capacity of the community living arrangements in the town reaches such total, the town may prohibit additional community living arrangements from locating in the township. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the town.

(3) A foster home that is the primary domicile of a foster parent and that is licensed under s. 48.62 or an adult family home certified under s. 50.032 (1m) (b) shall be a permitted use in all residential areas and is not subject to subs. (1) and (2) except that foster homes operated by corporations, child welfare agencies, churches, associations, or public agencies shall be subject to subs. (1) and (2).

(3m) (a) No adult family home described in s. 50.01 (1) (b) may be established within 2,500 feet, or any lesser distance established by an ordinance of the town, of any other adult family home described in s. 50.01 (1) (b) or any community living arrangement. An agent of an adult family home described in s. 50.01 (1) (b) may apply for an exception to this requirement, and the exception may be granted at the discretion of the town.

(b) An adult family home described in s. 50.01 (1) (b) that meets the criteria specified in par. (a) and that is licensed under s. 50.033 (1m) (b) is permitted in the town without restriction as to the number of adult family homes and may locate in any residential zone, without being required to obtain special zoning permission except as provided in sub. (10).

(4) If the community living arrangement has capacity for 8 or fewer persons being served by the program, meets the criteria listed in subs. (1) and (2), and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, the community living arrangement is entitled to locate in any residential zone, without being required to obtain special zoning permission except as provided under sub. (10).

(5) In all cases where the community living arrangement has capacity for 9 to 15 persons being served by the program, meets the criteria listed in subs. (1) and (2), and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to locate in any residential area except areas zoned exclusively for single−family or 2−family residences except as provided in sub. (10), but is entitled to apply for special zoning permission to locate in those areas. The town may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(6) In all cases where the community living arrangement has capacity for serving 16 or more persons, meets the criteria listed in subs. (1) and (2), and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The town may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(7) The department of health services shall designate a single subunit within that department to maintain appropriate records indicating the location and the capacity of each community living arrangement for adults, and such information shall be available to the public. The department of children and families shall designate a single subunit within that department to maintain appropriate records indicating the location and the capacity of each community living arrangement for children, and such information shall be available to the public.

(8) In this section, "special zoning permission" includes but is not limited to the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.

(9) The attorney general shall take all necessary action, upon the request of the department of health services or the department of children and families, to enforce compliance with this section.

(10) Not less than 11 months nor more than 13 months after the first licensure of an adult family home under s. 50.033 or of a

community living arrangement and every year thereafter, the town board of a town in which a licensed adult family home or a community living arrangement is located may make a determination as to the effect of the adult family home or community living arrangement on the health, safety or welfare of the residents of the town. The determination shall be made according to the procedures provided under sub. (11). If the town board determines that the existence in the town of a licensed adult family home or a community living arrangement poses a threat to the health, safety or welfare of the residents of the town, the town board may order the adult family home or community living arrangement to cease operation unless special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the licensed adult family home or community living arrangement. The licensed adult family home or community living arrangement must cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.

(10m) The fact that an individual with acquired immunodeficiency syndrome or a positive HIV test, as defined in s. 252.01 (2m), resides in a community living arrangement with a capacity for 8 or fewer persons may not be used under sub. (10) to assert or prove that the existence of the community living arrangement in the town poses a threat to the health, safety or welfare of the residents of the town.

(11) A determination made under sub. (10) shall be made after a hearing before the town board. The town shall provide at least 30 days' notice to the licensed adult family home or the community living arrangement that such a hearing will be held. At the hearing, the licensed adult family home or the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross−examine other witnesses called. The town board may call witnesses and may issue subpoenas. All witnesses shall be sworn by the town board. The town board shall take notes of the testimony and shall mark and preserve all exhibits. The town board may, and upon request of the licensed adult family home or the community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the town. Within 20 days after the hearing, the town board shall deliver to the licensed adult family home or the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

History: 1983 a. 532; 1985 a. 281; 1987 a. 161; 1989 a. 56, 201; 1993 a. 27, 327, 446, 491; 1995 a. 27 s. 9126 (19); 1995 a. 225, 417; 2007 a. 20 ss. 1861 to 1866, 9121 (6) (a); 2009 a. 28, 209; 2011 a. 32.

60.635 Environmental protection; interstate hazardous liquid pipelines. A town may not require an operator of an interstate hazardous liquid pipeline to obtain insurance if the pipeline operating company carries comprehensive general liability insurance coverage that includes coverage for sudden and accidental pollution liability.

History: 2015 a. 55.

60.64 Historic preservation. (1) Subject to subs. (2) and (2m), the town board, in the exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, may regulate any place, structure or object with a special character, historic interest, aesthetic interest or other significant value for the purpose of preserving the place, structure or object and its significant characteristics. Subject to subs. (2), (2m), and (3), the town board may create a landmarks commission to designate historic landmarks and establish historic districts. Subject to subs. (2) and (2m), the board may regulate all historic landmarks and all property within each historic district to preserve the historic landmarks and property within the district and the character of the district.

(2) Before the town board designates a historic landmark or establishes a historic district, the town board shall hold a public hearing. If the town board proposes to designate a place, structure, or object as a historic landmark or establish a historic district that includes a place, structure, or object, the town board shall, by 1st class mail, notify the owner of the place, structure, or object of the determination and of the time and place of the public hearing on the determination.

(2m) In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this section, the town board shall allow an owner to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.

(3) An owner of property that is affected by a decision of a town landmarks commission may appeal the decision to the town board. The town board may overturn a decision of the commission by a majority vote of the town board.

History: 1983 a. 532; 2015 a. 176; 2017 a. 317.

60.65 Board of adjustment. (1) TOWN BOARD SHALL APPOINT. If a zoning ordinance has been adopted under s. 60.61, the town board shall establish and appoint a board of adjustment.

(2) MEMBERSHIP. The board of adjustment consists of 3 members. Not more than one town board supervisor may be a member of the board of adjustment. The initial terms of the members of the board of adjustment are one, 2 and 3 years, respectively, starting from the first day of the month next following the appointment. Successors shall be appointed or elected at the expiration of each term and their term of office shall be 3 years and until their successors are appointed or elected. Members of the board of adjustment shall reside within the town. The board shall choose a chairperson. Vacancies shall be filled for the unexpired term of any member whose office becomes vacant. The town board may compensate the members of the adjustment board.

(3) POWERS AND DUTIES. The town board may authorize the board of adjustment to, in appropriate cases and subject to appropriate conditions and safeguards, permit special exceptions to the terms of the zoning ordinance under s. 60.61 consistent with the ordinance's general purpose and intent and with applicable provisions of the ordinance. This subsection does not preclude the granting of special exceptions by the town zoning committee designated under s. 60.61 (4) or the town board, in accordance with regulations and restrictions adopted under s. 60.61.

(4) PROCEDURE. The town board shall adopt regulations for the conduct of the business of the board of adjustment consistent with ordinances adopted under s. 60.61. The board of adjustment may adopt rules necessary to implement the regulations of the town board. Meetings of the board shall be held at the call of the chairperson and other times as the board may determine. The chairperson or, in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. The board shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent, indicating that fact and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. In any action involving a historic property, as defined in s. 44.31 (3), the board shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the zoning committee.

(5) EXERCISE OF COUNTY BOARD OF ADJUSTMENT POWERS. Boards of adjustment under town zoning ordinances shall have the powers and duties provided for boards of adjustment under s. 59.694 and shall carry out their duties in the manner provided for boards of adjustment by s. 59.694.

History: 1983 a. 532; 1985 a. 135; 1987 a. 395; 1995 a. 201.

General, rather than explicit, standards regarding the granting of special exceptions may be adopted and applied by the governing body. The applicant has the burden of formulating conditions showing that the proposed use will meet the standards. Upon approval, additional conditions may be imposed by the governing body. Kraemer & Sons v. Sauk County Adjustment Board, 183 Wis. 2d 1, 515 N.W.2d 256 (1994).

Sub. (3) requires that the authority of a town board of adjustment to grant conditional use permits be contained in the town zoning ordinance. There is no statutory

authority for a town board of adjustment to hear appeals from decisions of town boards granting or denying conditional use permits. Magnolia Township and Western Rock County Citizens Against Factory Farming v. Town of Magnolia, 2005 WI App 119, 284 Wis. 2d 361, 701 N.W.2d 60, 04−1591

Conditional Use Permits: Strategies for Local Zoning Procedures. Peranteau. Wis. Law. Sept. 2015.

60.66 Town park commission. **(1)** ESTABLISHED BY ANNUAL TOWN MEETING. The annual town meeting may establish a town park commission consisting of 7 members.

(2) APPOINTMENT AND TERM. (a) The town board shall appoint the members of the commission within 60 days after the commission is established. Each member shall take and file the official oath.

(b) Except as provided under par. (c), members shall serve a term of 7 years, commencing July 1 of the year in which appointed. The town board shall appoint a successor during the month of June immediately preceding the expiration of the member's term.

(c) The first 7 members shall be appointed for staggered terms so that on the first day of July in each of the 7 years next following the year in which they are appointed, the term of one member expires.

(d) A member shall hold his or her office until his or her successor is appointed and qualified.

(3) ORGANIZATION. (a) Within 30 days after the appointment and qualification of the initial members of the commission, the commission shall hold a meeting to appoint officers and establish bylaws for its operation.

(b) The commission may appoint necessary assistants and employees to carry out its functions, make rules and regulations concerning their work and remove them at pleasure.

(c) The town board shall provide sufficient office space for the maps, plans, documents and records of the commission.

(4) POWERS AND DUTIES. (a) In this subsection, "park" means a public park, parkway, boulevard or pleasure drive.

(b) The commission shall have charge of and supervision over all parks located in the town and may exercise the powers of a board of park commissioners under ss. 27.08 and 27.10 (1).

(c) Within 2 years after its organization under sub. (3), the commission shall:

1. Make a thorough study of the town with reference to reserving lands for park purposes.

2. Make plans and maps of a comprehensive town park system.

3. Present the results of its study and its plans to the town meeting.

(d) The commission may:

1. Lay out, improve and maintain parks in the town.

2. Lay out, grade, construct, improve and maintain highways, roads and bridges in a park or connecting the park with any other park or with any municipality.

3. Establish regulations for the use and enjoyment of the parks by the public.

4. With town board approval, acquire, in the name of the town, by purchase, land contract, lease, condemnation or otherwise, tracts of land suitable for parks. No land acquired by the commission may be disposed of by the town without the consent of the commission. If the land is disposed of, all money received for the land shall be paid into a town park fund.

5. Accept, in the name of the town, grants, conveyances and devises of land and bequests and donations of money to be used for parks located in the town.

History: 1983 a. 532.

SUBCHAPTER IX

TOWN SANITARY DISTRICTS

60.70 Definitions. In this subchapter:

(1) "Commission" means the town sanitary district commission.

(1m) "Commissioner" means a member of a commission.

(2) "Equalized full value" means the assessed full value adjusted to reflect the full value as determined under s. 70.57.

(3) "Municipality" means a city, village or town.

(4) "Pollution" means contaminating or rendering unclean or impure the waters of the state, or making them injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

(5) "Private on−site wastewater treatment system" has the meaning given under s. 145.01 (12).

(6) "Sewerage system" means all structures, conduits and pipelines by which sewage is collected, transported, pumped, treated and disposed of, except plumbing inside and in connection with buildings served, and service pipes from building to street main.

(7) "Solid waste" has the meaning given under s. 289.01 (33).

(8) "Solid waste disposal" has the meaning given under s. 289.01 (34).

(9) "Town sanitary district" or "district" means a town sanitary district created under this subchapter.

(10) "Water system" means all structures, conduits and appurtenances by means of which water is delivered to consumers except piping and fixtures inside buildings served and service pipes from building to street main.

(11) "Waters of the state" has the meaning given under s. 281.01 (18).

History: 1983 a. 532; 1991 a. 189; 1995 a. 227, 378; 2011 a. 146.

60.71 Creation of town sanitary district by town board order. **(1)** TOWN BOARD AUTHORITY. (a) The town board may establish one or more town sanitary districts under this section.

(b) If a proposed town sanitary district is in more than one town, the town board of the town containing the largest portion of the equalized full value of taxable property within the proposed district has exclusive jurisdiction to establish the town sanitary district.

(2) PETITION. (a) At least 51 percent of the persons owning land or the owners of at least 51 percent of the land within the limits of the territory proposed to be organized into a town sanitary district may petition the town board for the establishment of a town sanitary district. The petition shall be addressed to the town board and filed with the town clerk. The petition shall contain the following information:

1. The proposed name of the town sanitary district.

2. A statement of the necessity for the proposed work.

3. A statement that the public health, safety, convenience or welfare will be promoted by the establishment of the town sanitary district and that the property to be included will be benefited by the proposed district.

4. A legal description of the boundaries of the proposed town sanitary district.

5. A plat or sketch showing the approximate area and boundaries of the proposed town sanitary district.

6. A general description of the proposed improvements.

(b) One or more of the petitioners shall verify that the petition was signed personally by the persons whose signatures appear on

the petition, or a person who signs a petition may have his or her signature notarized. The petition is presumed to have been signed by the persons whose signatures appear on the petition. No petition with the requisite number of valid signatures may be declared void because of alleged defects in the information required to be included in the petition. The town board at any time may permit a petition to be amended to conform to the facts.

(3) BOND. At least 15 days prior to the hearing under sub. (4), the petitioners shall file a personal or a surety bond with the town clerk, with security approved by the town board, sufficient to pay all of the expenses connected with the proceedings if the town board refuses to organize the district. The petitioners shall maintain the bond until either the town board issues an order to organize the district, the petitioners pay the costs of the town board under sub. (6) (f) or the proceedings are otherwise terminated. If the town board determines that a bond is insufficient, it may order the execution of an additional bond within a specified time, but not less than 10 days from the date of the order. If the petitioners fail to execute or maintain the bond, the town board may dismiss the petition.

(4) HEARING. (a) The town board shall schedule and conduct a hearing within 30 days after receipt of any petition with the requisite number of valid signatures.

(b) The town board shall publish a class 2 notice, under ch. 985, of the hearing. The notice shall contain an announcement of the hearing and a description of the boundaries of the proposed town sanitary district. The town board shall mail the notice to the department of safety and professional services and the department of natural resources at least 10 days prior to the hearing.

(c) Any person may file written comments on the formation of the district with the town clerk. Any owner of property within the boundary of the proposed district may appear at the hearing and offer objections, criticisms or suggestions as to the necessity of the proposed district and the question of whether his or her property will be benefited by the establishment of the district. A representative of the department of safety and professional services and of the department of natural resources may attend the hearing and advise the town board.

(5) TERRITORY COMPRISING A DISTRICT. (a) A town sanitary district may not include any territory located within a village or city.

(b) A town sanitary district may include territory located within a metropolitan sewerage district or any other similar district outside of the boundaries of a village or city for the purpose of auxiliary sewer construction by the town sanitary district.

(6) DECISION BY THE TOWN BOARD. (a) Within 30 days after the conclusion of the hearing under sub. (4), the town board shall issue written findings and a decision on formation of the proposed town sanitary district.

(b) As part of its findings, the town board shall determine if:

1. The proposed work is necessary.

2. Public health, safety, convenience or welfare will be promoted by the establishment of the district.

3. Property to be included in the district will be benefited by the district.

(c) If the town board's findings required by par. (b) are all in the affirmative, the town board shall issue an order establishing the boundaries of the town sanitary district, declaring the district organized and giving the district a corporate name. After the district is established, the town board and the petitioners may submit to the commission certified bills covering their reasonable costs and disbursements in connection with the petition and hearing. The commission shall pay the expenses out of the funds of the district.

(d) If the town board's findings required by par. (b) are in the affirmative, except that part of the territory described in the petition will not be benefited by the establishment of the district, the town board shall issue an order under par. (c), but shall exclude such territory from the district.

(e) If the town board determines that other territory not described in the original petition should be included within the town sanitary district, the town board shall continue the hearing for not more than 30 days and publish a class 2 notice, under ch. 985, of the continued hearing. The notice shall contain a description of the revised boundaries of the proposed town sanitary district.

(f) Except as provided in par. (d), if any of the town board's findings under par. (b) are partly or wholly in the negative, the town board shall dismiss the proceedings and order the petitioners to pay, within 30 days, all reasonable costs and disbursements of the town board in connection with the proceedings.

(7) FILING AND RECORDING THE ORDER. The town board shall file copies of the order establishing the town sanitary district with the department of natural resources and record the order with the register of deeds in each county in which the district is located.

History: 1983 a. 532; 1985 a. 281; 1987 a. 77; 1993 a. 301; 1995 a. 27 ss. 3302, 3303, 9116 (5); 2001 a. 88; 2011 a. 32.

60.72 Creation of town sanitary district by order of the department of natural resources.

(1) DEFINITION. In this section, "department" means the department of natural resources.

(2) HEARING. The department shall conduct a public hearing to determine whether to order the establishment of a town sanitary district under this section.

(3) NOTICE. The department shall give notice of a hearing under this section by mail to the town clerk of each town in the area to be affected at least 30 days prior to the hearing. The town board shall publish a class 2 notice, under ch. 985, of the hearing. The notice by the town board shall contain an announcement of the hearing and a description of the area identified by the department for inclusion in the town sanitary district.

(4) FINDING. Following the public hearing, the department shall determine if private on−site wastewater treatment systems or private domestic water systems, or both, in the affected towns constitute a threat to public health, safety, convenience or welfare or of pollution of waters of the state, and that there is no local action to correct the situation. The department shall issue its determination as written findings.

(5) ORDER. If the department's findings under sub. (4) are in the affirmative, the department shall issue an order specifying the work which is necessary and designating the property which is to be included in the proposed town sanitary district.

(6) TOWN BOARD ACTION. Notwithstanding s. 60.71, upon receipt of an order from the department under sub. (5), the town board may order the establishment of a town sanitary district or create a utility district under s. 66.0827.

(7) TOWN BOARD FAILURE TO ACT. If the town board fails to establish a town sanitary district within 45 days after receipt of the department's order, the department shall issue an order establishing boundaries of the town sanitary district, declaring the district organized and giving the district a corporate name. The department's order establishes the district without any further action by the town board. The department shall record the order with the register of deeds in each county in which the district is situated and file a copy of the order with the town clerk of each town in which the district is situated.

(8) COMMISSIONERS. (a) After a town sanitary district has been established under sub. (6) or (7), the town board shall appoint or provide for the election of commissioners or constitute itself as the commission under s. 60.74 within 60 days after the expiration of the review period under s. 60.73, if no appeal is filed, or within 60 days after the department's order is affirmed in a proceeding under s. 60.73. If the town board does not appoint or provide for the election of commissioners or constitute itself as the commission, the department shall appoint, for 2−year terms, 3 commissioners who meet the residence and property−ownership requirements of s. 60.75 (3).

(b) If the department appoints commissioners under par. (a), the town board, after the initial 2−year terms, shall appoint or pro-

vide for the election of commissioners under s. 60.74 or constitute itself as the commission. If the town board does not appoint or provide for the election of commissioners or constitute itself as the commission within 60 days after the initial 2−year terms expire, the department shall appoint, for staggered terms as provided in s. 60.74, 3 commissioners who meet the residence and property−ownership requirements of s. 60.75 (3).

(c) If the town board fails to fill any vacancy on the commission within 60 days, the department shall appoint a person who meets the residence and property−ownership requirements of s. 60.75 (3) to fill the vacancy.

(d) The department shall file notice of all appointments of commissioners with the town clerk in each town in which the district is located.

(9) STATUTES APPLICABLE. Except as otherwise provided in this section, and unless clearly inapplicable, all other statutes relating to town sanitary districts shall apply to any town sanitary district created under sub. (6) or (7).

History: 1983 a. 532; 1993 a. 301; 1995 a. 378; 1999 a. 150 s. 672; 2011 a. 146.

60.726 Property with private on−site wastewater treatment system included. (1) Property that is excluded from a town sanitary district under s. 60.725 (1), 1995 stats., or, subject to sub. (2), property that is excluded from a town sanitary district under s. 60.725 (2), 1995 stats., shall be included in the town sanitary district, retroactive to April 19, 1990, and shall be subject to all property taxes, special assessments, special charges or other charges imposed or assessed by the town sanitary district on or after April 19, 1990.

(2) If a property owner installed on his or her property a private on−site wastewater treatment system that conforms with the state plumbing code, before a town sanitary district that encompasses that property came into existence, that property shall be included in the town sanitary district. If the private on−site wastewater treatment system was installed on or after 10 years before May 14, 1992, and if the property owner provides the town sanitary district with any information about the cost of the private on−site wastewater treatment system required by the district, the town sanitary district, when the district issues any assessment or charges or imposes property taxes to construct a sewage service system, shall pay or credit the property owner an amount equal to 10 percent of the cost of the private on−site wastewater treatment system, less any grants or aids received by the property owner for construction of the private on−site wastewater treatment system, multiplied by the number of years of remaining life of the private on−site wastewater treatment system. The number of years of remaining life of the private on−site wastewater treatment system is equal to 10 minus the number of years that the private on−site wastewater treatment system has been in operation.

History: 1991 a. 270; 1993 a. 213; 1997 a. 252; 2011 a. 146.

Homeowners did not have a constitutionally protected vested property right in being excluded from a sanitary district; retroactive application of sub. (1) requiring connection was constitutional. Vanderbloemen v. Town of West Bend, 188 Wis. 2d 458, 525 N.W.2d 133 (Ct. App. 1994).

60.73 Review of orders creating town sanitary districts. Any person aggrieved by any act of the town board or the department of natural resources in establishing a town sanitary district may bring an action in the circuit court of the county in which his or her lands are located, to set aside the final determination of the town board or the department of natural resources, within 90 days after the final determination, as provided under s. 893.73 (2). If no action is taken within the 90−day period, the determination by the town board or the department of natural resources is final.

History: 1983 a. 532.

60.74 Commissioners; method of selection. (1) SINGLE TOWN DISTRICTS. If a town sanitary district is located entirely within one town, the town board shall determine how commissioners will be selected. The town board may appoint the commissioners, provide for their election or constitute itself as the commission. If the town board constitutes itself as the commission, it shall do so by an affirmative vote of at least two−thirds of the town board supervisors. The town board shall determine the method of selection for the initial commissioners within 60 days after the town sanitary district is established.

(2) MULTIPLE TOWN DISTRICTS. (a) If a town sanitary district is located in 2 or more towns, the town board of the town containing the largest portion of the equalized full value of taxable property of the district shall determine, within 60 days after the district is established, how commissioners will be selected. The town board may appoint commissioners or provide for their election.

(b) If, as a result of a change in each town's share of the equalized full value of taxable property in the district, a town's share exceeds the share of the town first authorized to determine selection under par. (a), the town board of the town with the greater share, within 60 days, may provide for the election or appointment of commissioners to replace the commissioners selected under par. (a). Any commissioner selected under par. (a) shall serve until new commissioners are appointed or elected under this paragraph.

(3) ELECTION OF COMMISSIONERS. (a) If the town board provides for the election of commissioners, the town board shall either schedule the election of the first commissioners at the next regular spring election or call a special election. If the town board schedules the election of the first commissioners at the next regular spring election, the town board shall appoint commissioners, within the time limits specified in sub. (1) or (2), to serve until the 3rd Monday of April in the year when the next regular spring election is held.

(b) After the first commissioners are elected, all subsequent commissioners shall be elected at a regular spring election.

(4) CHANGE FROM APPOINTMENT TO ELECTION. (a) If the commissioners of a district have been appointed, a petition requesting that commissioners be elected may be submitted, subject to sub. (5m) (b), to the town board responsible for the selection of commissioners under sub. (1) or (2). The petition shall state whether the petitioners wish to have the first commissioners elected at a special election or at the spring election. The petition shall conform to the requirements of s. 8.40 and shall be signed by qualified electors of the district equal to at least 20 percent of the vote cast for governor in the district at the last gubernatorial election.

(b) Upon receipt of the petition, the town board shall provide for the election of commissioners. If the petition requests the election of the first commissioners at the spring election and the petition is filed on or after the date of the spring election and on or before November 15 in any year, they shall be elected at the succeeding spring election; otherwise they shall be elected at the 2nd succeeding spring election. If the petition requests the election of the first commissioners at a special election, the town board shall order the special election in accordance with s. 8.50 (2) (a). After the first commissioners are elected, all subsequent commissioners shall be elected at the spring election.

(c) If the commissioners are elected at a special election, the current appointed commissioners continue to serve until their successors are elected and qualify. If the commissioners are elected at a regular spring election, the current appointed commissioners continue to serve until the 3rd Monday of April following the election of the commissioners.

(5) CHANGE FROM ELECTION TO APPOINTMENT. (a) If the commissioners have been elected as the result of a petition under sub. (4), the town board may not change the method of selection from election to appointment except as provided under par. (b).

(b) A petition conforming to the requirements of s. 8.40 signed by qualified electors of the district equal to at least 20 percent of the vote cast for governor in the district at the last gubernatorial election, requesting a change to appointment of commissioners, may be submitted to the town board, subject to sub. (5m) (a). The petition shall be filed as provided in s. 8.37. Upon receipt of the petition, the town board shall submit the question to a referendum at the next regular spring election or general election, or shall call

a special election for that purpose. The inspectors shall count the votes and submit a statement of the results to the commission. The commission shall canvass the results of the election and certify the results to the town board which has authority to appoint commissioners.

(c) If the change in the method of selection of commissioners is approved at the referendum, the town board shall appoint commissioners within 60 days after the referendum is conducted.

(5m) FREQUENCY OF CHANGES BETWEEN ELECTION AND APPOINTMENT RESTRICTED. (a) If the commissioners have been elected as a result of a petition and election under sub. (4), no petition may be submitted under sub. (5) (b) to change the method of selection from election to appointment within 5 years after the date on which the election of the commissioners was held.

(b) If the commissioners have been appointed as the result of a petition and referendum under sub. (5), no petition may be submitted under sub. (4) (a) to change the method of selection from appointment to election within 5 years after the date on which the results of a referendum held under sub. (5) have been certified under sub. (5) (b).

(6) ELECTOR DETERMINATION. Whenever in this section the number of names of electors required on a petition cannot be determined on the basis of reported election statistics, the number shall be determined as follows:

(a) The area of the district in square miles shall be divided by the area, in square miles, of the municipality in which it lies.

(b) The vote for governor at the last general election in the municipality within which the district lies shall be multiplied by the quotient determined under par. (a).

(c) If a district is in more than one municipality, the method of determination under pars. (a) and (b) shall be used for each part of the district which constitutes only a fractional part of any area for which election statistics are available.

History: 1983 a. 532; 1987 a. 391; 1989 a. 192, 359; 1993 a. 167; 1999 a. 182.

60.75 Commissioners; requirements. (1) NUMBER OF COMMISSIONERS. (a) Except as provided in par. (b), the commission shall consist of 3 or 5 members.

(b) If the town board constitutes itself as the commission, the number of commissioners shall be the number of town board supervisors.

(2) TERMS. (a) Except as provided in pars. (b), (bm), and (c), commissioners shall serve for staggered 6−year terms.

(b) Except as provided under par. (c), of the commissioners in a district in which the town board changes the number of commissioners from 5 to 3 or of the commissioners first appointed or elected in a newly established town sanitary district, which consists of 3 members, one shall be appointed or elected for a term of 2 years, one for a term of 4 years and one for a term of 6 years. If the commissioners first elected in a newly established town sanitary district are elected at a special election, the town board shall specify shorter staggered terms for the commissioners so that their successors may be elected at a regular spring election.

(bm) Except as provided under par. (c), of the commissioners in a district in which the town board changes the number of commissioners from 3 to 5 or of the commissioners first appointed or elected in a newly established town sanitary district, which consists of 5 members, 2 shall be appointed or elected for a term of 2 years, 2 for a term of 4 years, and one for a term of 6 years. If the commissioners described in this paragraph are first elected at a special election, the town board shall specify shorter staggered terms for the commissioners so that their successors may be elected at a regular spring election.

(c) If the town board constitutes itself as the commission, the terms of the commissioners are concurrent with the terms of the town board supervisors.

(d) An elected commissioner shall hold office until the 3rd Monday of April in the year that his or her successor is elected. An appointed commissioner shall hold office until a successor takes office.

(3) RESIDENCE; REQUIREMENT TO OWN PROPERTY. (a) Except as provided in par. (b) or (c), all commissioners shall be residents of the town sanitary district.

(b) If commissioners are elected or appointed and if the sanitary district is composed primarily of summer resort property, any of the commissioners may be a resident of the district. Any commissioner who is not a resident shall own property within the town sanitary district.

(c) If the town board constitutes itself as the commission, par. (a) does not apply.

(4) VACANCIES. Any vacancy on an elective or appointive commission may be filled by appointment by the town board for the remainder of the unexpired term, except as provided in s. 9.10. Any vacancy on a commission consisting of town board supervisors remains vacant until a successor town board supervisor is appointed or elected.

(5) OATH OF OFFICE. Before assuming office, each commissioner shall take and sign the oath of office required under s. 19.01 and file the oath with the town clerk.

History: 1983 a. 532; 2007 a. 56; 2015 a. 245; 2017 a. 233.

60.76 Organization of the commission. (1) ELECTION OF OFFICERS. (a) Except as provided in par. (b), the commission shall organize by electing one of its members president and appointing a secretary and treasurer.

(b) When the town board constitutes the commission, the town chairperson shall be the commission president, the town clerk shall be the commission secretary and the town treasurer shall be the commission treasurer.

(2) SECRETARY; DUTIES. The secretary shall keep a separate record of all proceedings and minutes of meetings and hearings. At the end of each fiscal year, the secretary shall submit to the town board of each town in which the district is located a report showing a complete audit of the financial transactions of the commission during the fiscal year. The report shall be incorporated in the annual financial statement of the town containing the largest portion of the equalized full value of all taxable property in the district.

(3) TREASURER. The commission may require the treasurer to execute an indemnity bond, provided by the district, in an amount which the commission finds appropriate for the proper performance of the treasurer's duties.

(4) FISCAL YEAR. The town sanitary district fiscal year is the calendar year.

History: 1983 a. 532.

60.77 Powers and duties. (1) AUTHORITY OF THE COMMISSION. The commission has charge of all affairs of the town sanitary district.

(2) CORPORATE STATUS. The district is a body corporate with the powers of a municipal corporation for the purposes of carrying out this subchapter. The district may sue and be sued and may enter into contracts. The commission may provide for a corporate seal of the town sanitary district.

(3) COMPENSATION; EXPENSES. The town board of the town having the largest portion of the equalized full value of all taxable property in the district may fix the compensation of the commissioners, the secretary and the treasurer. The commissioners and the secretary and treasurer of the commission may receive actual and necessary expenses incurred while in the performance of the duties of the office in addition to any other compensation.

(4) GENERAL POWERS AND DUTIES. The commission may project, plan, construct and maintain a water, solid waste collection and sewerage system, including drainage improvements, sanitary sewers, surface sewers or storm water sewers, or all of the improvements or activities or any combination of them necessary for the promotion of the public health, comfort, convenience or

welfare of the district. The commission may provide chemical or mechanical treatment of waters for the suppression of swimmers' itch, algae and other nuisance−producing aquatic growths.

(5) SPECIFIC POWERS. The commission may:

(a) Sell any of its services to users outside of its corporate limits.

(b) Require the installation of private on−site wastewater treatment systems.

(bm) Require the inspection of private on−site wastewater treatment systems that have been already installed to determine compliance with the state plumbing code and may report violations of the state plumbing code to the governmental unit responsible for the regulation of private on−site wastewater treatment systems for enforcement under s. 145.20.

(bs) Provide direct financial assistance for costs related to the replacement of private on−site wastewater treatment systems that are failing.

(c) Issue rules or orders, which shall be published either in their entirety, as a class 1 notice under ch. 985, or as a notice, as described under sub. (5s) (b).

(d) Provide an office for the district.

(e) Fix and collect charges for solid waste collection and disposal, sewage service and water service. The commission may fix and collect sewage service charges under s. 66.0821 and water service charges under s. 66.0809.

(f) Except as provided in s. 66.0721, levy special assessments to finance the activities of the district, using the procedures under s. 66.0703.

(g) Provide for the operation as a single enterprise of its water, solid waste or sewerage system, or any part or combination of parts of the system.

(h) Lease or acquire, including by condemnation, any real property situated in this state and any personal property that may be needed for the purposes of this subchapter.

(i) Sell, convey or dispose of any part of its interest in real or personal property which it has acquired that is not needed to carry out the powers and duties of the commission.

(j) Administer the private on−site wastewater treatment system program if authorized under s. 145.20 (1) (am).

(k) Gather at the site of a public works project that has been approved by the commission for the sole purpose of inspecting the work that has been completed or that is in progress if, before gathering at the site, the president of the commission or the president's designee notifies by telephone or facsimile transmission those news media who have filed a written request for notice of such inspections in relation to that project and if the president of the commission or the president's designee submits at the next commission meeting a report that describes the inspection. The commission may not take any official action at the inspection site.

(5m) AUTHORITY TO ENACT ORDINANCES. The commission may enact and enforce ordinances to implement the powers listed under sub. (5). The ordinances shall be published either in their entirety, as a class 1 notice under ch. 985, or as a notice, as described under sub. (5s) (b).

(5s) REQUIREMENTS FOR NOTICE. (a) In this subsection, "summary" has the meaning given in s. 59.14 (1m) (a).

(b) A notice of an ordinance, rule, or order that may be published under this subsection shall be published as a class 1 notice under ch. 985 and shall contain at least all of the following:

1. The number and title of the ordinance, rule, or order.

2. The date of enactment.

3. A summary of the subject matter and main points of the ordinance, rule, or order.

4. Information as to where the full text of the ordinance, rule, or order may be obtained, including the phone number of the commission's secretary, a street address where the full text of the ordinance, rule, or order may be viewed, and a website, if any, at which the ordinance, rule, or order may be accessed.

(6) SPECIFIC DUTIES. The commission shall:

(a) Let contracts for any work or purchase that involves an expenditure of $25,000 or more to the lowest responsible bidder in the manner prescribed by the commission. Section 66.0901 applies to contracts let under this paragraph.

(b) On or before November 1 of each year, levy a tax on all taxable property in the district and apportion the tax among the municipalities in which the district is located on the basis of equalized full value, for the purpose of carrying out the provisions of this subchapter. The amount of the tax in excess of that required for maintenance and operation of the district and for principal and interest on bonds or promissory notes may not exceed, in any one year, one mill on each dollar of the equalized full value of all taxable property in the district. The commission shall certify in writing to the clerk of every municipality in which the district is located the total amount of tax levied in the municipality.

(7) INTEREST IN CONTRACTS; PENALTY. No commissioner may have an interest, directly or indirectly, in a contract with, work or labor done for or material furnished to the town sanitary district or to anyone on the district's behalf, unless the interest is in a contract not exceeding $1,000 in any one year or in the publication of required legal notices by the district or a commissioner if the publication rate does not exceed the rate prescribed by law. A commissioner who violates this subsection shall forfeit not less than $50 nor more than $500.

History: 1983 a. 532; 1989 a. 31, 56, 159, 322; 1991 a. 39; 1993 a. 16; 1995 a. 185, 349, 378; 1999 a. 150 s. 672; 2001 a. 16; 2005 a. 202; 2007 a. 72; 2011 a. 146; 2017 a. 365 s. 112.

Sub. (6) (b) does not prevent the levy under s. 66.09 (1) (b) [now s. 66.0117 (2) (b)] of the full amount of a judgment against a district. Davy Engineering Co. v. Town of Mentor, 221 Wis. 2d 744, 585 N.W.2d 832 (Ct. App. 1998), 97−3575.

Sub. (5) (f) authorizes town sanitary districts to levy special assessments and makes the procedures under s. 66.0703 applicable to those districts. As such, service of a notice of appeal on the district clerk was proper under this section. Mayek v. Cloverleaf Lakes Sanitary District #1, 2000 WI App 182, 238 Wis. 2d 261, 617 N.W.2d 235, 99−2895.

60.78 Powers to borrow money and issue municipal obligations.

A town sanitary district may, under ss. 66.0621 and 66.0713 and ch. 67, borrow money and issue and execute municipal obligations, as defined under s. 67.01 (6).

History: 1983 a. 532; 1987 a. 197; 1999 a. 150 s. 672.

60.782 Power to act as a public inland lake protection and rehabilitation district.

(1) In this section, "public inland lake" means a lake, reservoir or flowage within the boundaries of the state that is accessible to the public via contiguous public lands or easements giving public access.

(2) A town sanitary district that has at least 60 percent of the footage of shoreline of a public inland lake within its boundaries for which a public inland lake protection and rehabilitation district is not in effect may do any of the following that is authorized by the commission:

(a) Create, operate and maintain a water safety patrol unit, as defined in s. 30.79 (1) (b) 2.

(b) Undertake projects to enhance the recreational uses of the public inland lake, including recreational boating facilities, as defined in s. 30.92 (1) (c).

(c) Appropriate money for the conservation of natural resources or for payment to a bona fide nonprofit organization for the conservation of natural resources within the district or beneficial to the district.

(d) Lease or acquire, including by condemnation, any real property situated in this state that may be needed for the purposes of s. 23.09 (19), 23.094 (3g) or 30.275 (4). The power of condemnation may not used to acquire property for the purpose of establishing or extending a recreational trail; a bicycle way, as defined in s. 340.01 (5s); a bicycle lane, as defined in s. 340.01 (5e); or a pedestrian way, as defined in s. 346.02 (8) (a).

(3) The commissioners of a town sanitary district that has the powers of a public inland lake protection and rehabilitation district under sub. (2) shall possess the powers of the board of commissioners of a public inland lake protection and rehabilitation district that are authorized by resolution of the town sanitary district.

History: 1995 a. 349; 2017 a. 59.

60.785 Changes in district boundaries. (1) ADDITIONS. (a) Territory may be added to a town sanitary district under the procedure in s. 60.71. The required signatures shall be obtained from property owners in the territory proposed to be added to the district.

(b) In lieu of commencing the process of adding territory by petition of property owners, the commission may request the town board to add territory to the town sanitary district. Except for the requirement of a petition, the town board shall use the procedure in s. 60.71.

(1m) REMOVAL. (a) Territory may be removed from a town sanitary district under the procedure in s. 60.71 if the town board, after the hearing, finds that one or more of the standards of s. 60.71 (6) (b) are not met for all or part of the territory subject to a petition under par. (b) 1. or a request under par. (b) 2.

(b) 1. The petition for removal of territory from a town sanitary district under par. (a) shall state why the portion of the town sanitary district which is subject to the petition does not meet the standards in s. 60.71 (6) (b). The signatures required on the petition shall be obtained from property owners in the territory proposed to be removed from the district.

2. In lieu of commencing the process of removing territory from a town sanitary district by petition of property owners, the commission may commence the process by requesting the town board to remove the territory. The town board shall use the procedure in s. 60.71 to act on the request.

(2) CONSOLIDATION. (a) Any town sanitary district may be consolidated with a contiguous town sanitary district by resolution passed by a two−thirds vote of all of the commissioners of each district, fixing the terms of the consolidation and ratified by the qualified electors of each district at a referendum held in each district. The resolution shall be filed as provided in s. 8.37. The ballots shall contain the words "for consolidation", and "against consolidation". If a majority of the votes cast on the referendum in each town sanitary district are for consolidation, the resolutions are effective and have the force of a contract. Certified copies of the resolutions and the results of the referendum shall be filed with the secretary of natural resources and the original documents shall be recorded with the register of deeds in each county in which the consolidated district is situated.

(b) Within 60 days after the referendum, the appropriate town board shall appoint or provide for the election of commissioners or constitute itself as the commission for the consolidated district, as provided in s. 60.74.

(c) Consolidation of a district does not affect the preexisting rights or liabilities of any town sanitary district and actions may be commenced or completed on such rights or liabilities as though no consolidation had occurred.

(3) DISSOLUTION. (a) 1. A town sanitary district may be dissolved in whole using the procedure for creating a town sanitary district under s. 60.71. The petition shall state why the town sanitary district does not meet the standards of s. 60.71 (6) (b). If the town board, after the hearing, finds that one or more of the standards of s. 60.71 (6) (b) are not met, the town board shall order the dissolution of the town sanitary district, except that a board may not order the dissolution of a district if, following dissolution, all outstanding indebtedness of the district would not be paid or provision for payment of the indebtedness would not be made.

2. A town sanitary district may be dissolved in part under subd. 1. if that sanitary district was created on October 31, 1967.

NOTE: Subd. 2. was created by 1987 Wis. Act 27. Section 3204 (57) (fm) states that the creation of subd. 2. takes effect retroactively to June 20, 1983.

(b) Any unexpended funds remaining after dissolution of the district shall be distributed by the commission on an equitable basis to the municipalities or persons who supplied the funds.

(4) REVIEW OF ORDERS. The town board's order under sub. (1), (1m) or (3) may be reviewed under the procedures and time limits in s. 60.73.

History: 1983 a. 532; 1987 a. 27, 77; 1993 a. 301; 1999 a. 182.

60.79 Alteration of town sanitary districts. (1) INCORPORATION OR ANNEXATION OF ENTIRE TOWN SANITARY DISTRICT. If any territory which includes an entire town sanitary district is incorporated as a city or village or if the territory is annexed by a city or village:

(a) The incorporation or annexation dissolves the district without further action by the commission or the town board and without any right to appeal the dissolution.

(b) The property of the district passes to the city or village and the city or village shall assume all assets and liabilities of the district. If any revenue bond, revenue bond anticipation notes, mortgage bonds or mortgage certificates issued under s. 66.0621 are outstanding, the transfer of the property is subject to the bonds, notes or certificates. If any general obligation bonds or notes issued under ch. 67 are outstanding, the city or village shall levy and collect an annual irrepealable tax on all taxable property in the city or village in an amount necessary to pay the interest and principal of the bonds and notes when due.

(c) The city or village continues to collect special assessments levied by the former district and shall apply the special assessments to the purpose for which the original assessment was made.

(2) INCORPORATION OR ANNEXATION OF PART OF A TOWN SANITARY DISTRICT. (a) The incorporation or annexation of territory within the town sanitary district detaches that territory from the district.

(b) The city or village and the town sanitary district are subject to pars. (c) to (e) if territory constituting less than the entire town sanitary district is annexed or incorporated and:

1. The territory is served by the town sanitary district with a water or sewerage system; or

2. The territory is not served by the town sanitary district with a water or sewerage system, but the district has obligations related to the territory subject to incorporation or annexation which require payment for longer than one year following the incorporation or annexation.

(c) The city or village and the town sanitary district shall divide the assets and liabilities of the town sanitary district under s. 66.0235 or by entering into an intergovernmental cooperation agreement under s. 66.0301, except that the ownership of any water or sewerage system shall be determined under par. (dm).

(d) 1. Any water or sewerage system, including all mains and all property of the system, shall belong to and be operated by the district or the city or village, in whichever the major portion of the patrons reside on the date of annexation or incorporation, unless other provision is made by agreement of the governing body of the city or village and the commission. Express power is hereby granted to the governing body of the city or village and the commission to contract with each other relative to the operation and property of any water or sewerage system.

2. In determining the major portion of the patrons, each location served shall be considered as one patron irrespective of the manner in which the title to the property is held.

(dm) If the responsibility for continuing the operation is vested in the town sanitary district, it shall continue, except by agreement, until the proportion of users changes so that a majority of the patrons reside in the city or village, at which time the property and the responsibility shall shift to the city or village.

(e) Any special assessment levied before the incorporation or annexation shall continue to be collected by the district or city or village which is operating the water or sewerage system and shall be applied to the purpose for which the original assessment was made.

(3) SERVICE AREA. No city or village which secures a water or sewerage system under this section is required to serve an area outside its corporate limits greater than that included in the town sanitary district at the time of annexation or incorporation. The city or village shall continue to serve the area previously included within the district.

(4) CITY OR VILLAGE AUTHORITY. A city or village which obtains a water or sewerage system under this section may:

(a) Continue, alter or discontinue operation by a commission.

(b) Continue or discontinue existing methods of financing construction and operation of the system.

(c) Finance or refinance the system under s. 66.0621, 67.04 or 67.12.

(d) Levy special assessments within the area of the former town sanitary district under s. 66.0703. Special assessments may be levied regardless of the time when the improvement was commenced or completed, when used for refunding purposes in conjunction with issuance of general obligation−local improvement bonds under s. 67.16 or special assessment bonds under s. 66.0713 (4).

(5) COLLECTION OF SPECIAL ASSESSMENTS BY TOWNS. Towns shall aid cities and villages, and villages and cities shall aid towns, in the levy and collection of special assessments, property taxes and all service charges under this section by entering them on town, city or village assessment and tax rolls and collecting and forwarding the moneys to the levying municipality.

History: 1983 a. 532; 1987 a. 197; 1989 a. 359; 1991 a. 315; 1995 a. 378; 1997 a. 237; 1999 a. 150 s. 672; 2001 a. 30.

Sub. (2) (b) requires selective rather than automatic application of subs. (2) (c) to (e). Town of Hallie v. City of Eau Claire, 173 Wis. 2d 450, 496 N.W.2d 656 (Ct. App. 1992).

Sub. (2) (d) is inapplicable to annexed property that contains no commercial or personal patrons of a town water system that runs through it. Under sub. (1) the annexed property lies within the annexing city's domain as a matter of law and the city bears the responsibility of providing water. Town of Sheboygan v. City of Sheboygan, 203 Wis. 2d 274, 553 N.W.2d 275 (Ct. App. 1996), 95−1839.

Although sub. (1) expressly precludes a sanitary district from taking any action to challenge an annexation when its entire territory has been subsumed by an annexation, the fact that sub. (2) is silent on such challenges does not require that sub. (2) must be interpreted to permit such challenges when only a partial taking of a sanitary district's territory has occurred. Darboy Joint Sanitary District No. 1 v. City of Kaukauna, 2013 WI App 113, 350 Wis. 2d 435, 838 N.W.2d 103, 12−2639.

SUBCHAPTER X

MISCELLANEOUS

60.80 Publication or posting of ordinances and resolutions. (1) GENERAL REQUIREMENT. The town clerk shall publish either in its entirety, as a class 1 notice under ch. 985, or as a notice, as described under sub. (5) (b), or post in at least 3 places in the town likely to give notice to the public, the following, within 30 days after passage or adoption:

(a) Resolutions, motions and other actions adopted by the town meeting, or in the exercise of powers, under s. 60.10.

(b) Ordinances adopted by the town board.

(c) Resolutions of general application adopted by the town board and having the effect of law.

(1m) EXCEPTION FOR MUNICIPAL OBLIGATIONS. Nothing under sub. (1) may be deemed to require notice under this subsection of the passage of any resolution authorizing the issuance of municipal obligations, as defined under s. 67.01 (6).

(2) REQUIREMENT FOR FORFEITURES. If an ordinance imposes a forfeiture, posting may not be used in lieu of publication under sub. (1).

(3) EFFECTIVE UPON PUBLICATION. An ordinance, resolution, motion or other action required to be published or posted under this section shall take effect the day after its publication or posting, or at a later date if expressly provided in the ordinance, resolution, motion or action.

(4) AFFIDAVIT OF POSTING. If an ordinance, resolution, motion or other action is posted under this section, the town clerk shall sign an affidavit attesting that the item was posted as required by this section and stating the date and places of posting. The affidavit shall be filed with other records under the jurisdiction of the clerk.

(5) REQUIREMENTS FOR NOTICE. (a) In this subsection, "summary" has the meaning given in s. 59.14 (1m) (a).

(b) A notice of a resolution, motion, ordinance, or action that may be published under this subsection shall be published as a class 1 notice under ch. 985 and shall contain at least all of the following:

1. The number and title of the resolution, motion, ordinance, or action.

2. The date of enactment.

3. A summary of the subject matter and main points of the resolution, motion, ordinance, or action.

4. Information as to where the full text of the resolution, motion, ordinance, or action may be obtained, including the phone number of the town clerk, a street address where the full text of the resolution, motion, ordinance, or action may be viewed, and a website, if any, at which the resolution, motion, ordinance, or action may be accessed.

History: 1983 a. 532; 1987 a. 197; 2007 a. 72; 2017 a. 365 s. 112.

60.81 Population; use of federal census. If the census of a town is required, the last federal census, including a special federal census, if any, shall be used.

History: 1983 a. 532.

60.82 Regional planning programs. The town board may act jointly with other municipalities in the area to establish and maintain a regional planning program to protect the health, safety and general welfare of the town as part of the region. The board may make payments out of the general fund for the town's share of the cost of the program.

History: 1983 a. 532.

60.83 Destruction of obsolete town records. The town board may provide for the destruction of obsolete town records under s. 19.21 (4).

History: 1983 a. 532.

60.84 Monuments. (1g) DEFINITION. In this section, "professional land surveyor" means a professional land surveyor licensed under ch. 443.

(1r) SURVEY, CONTRACT FOR. The town board may contract with the county surveyor or any professional land surveyor to survey all or some of the sections in the town and to erect monuments under this section as directed by the board.

(2) BOND. Before the town board executes a contract under sub. (1r), the county surveyor or professional land surveyor shall execute and file with the town board a surety bond or other financial security approved by the town board.

(3) MONUMENTS. (a) Monuments shall be set on section and quarter−section corners established by the United States survey. If there is a clerical error or omission in the government field notes or if the bearing trees, mounds, or other location identifier specified in the notes is destroyed or lost, and if there is no other reliable evidence by which a section or quarter−section corner can be identified, the county surveyor or professional land surveyor shall reestablish the corner under the rules adopted by the federal government in the survey of public lands. The county surveyor or professional land surveyor shall set forth his or her actions under this paragraph in the U.S. public land survey monument record under sub. (4).

(b) All monuments set under this section are presumed to be set at the section and quarter−section corners, as originally estab-

lished by the United States survey, at which they respectively purport to be set.

(c) To establish, relocate, or perpetuate a corner, the county surveyor or professional land surveyor shall set in the proper place a monument, as determined by the town board, consisting of any of the following:

1. A stone or other equally durable material, not less than 3 feet long and 6 inches square, with perpendicular, dressed sides and a square, flat top. As prescribed by the town board, the top shall be engraved with either of the following:

a. A cross formed by lines connecting the corners of the top.

b. If the monument is set at a section corner, the number of the section or, if set at a quarter−section corner, "1/4S".

2. A 3−inch diameter iron pipe, not less than 3 feet long, with pipe walls not less than one−quarter inch thick, galvanized or coal−charred to prevent rust. The pipe shall have a flat plate, screwed to the top, engraved as prescribed in subd. 1. The pipe shall have a suitable bottom plate or anchor.

3. An equivalent monument agreed upon by all parties of the contract.

(d) A monument under par. (c) shall be set 2 1/2 feet in the ground. If the monument is located in a highway, the top of the monument shall be even with or below the surface of the highway.

(4) U.S. PUBLIC LAND SURVEY MONUMENT RECORD. The county surveyor or professional land surveyor shall prepare a U.S. public land survey monument record setting forth a complete and accurate record of any monument erected on section and quarter section corners under this section, including the bearings and distances of each monument from each other monument nearest it on any line in the town. The U.S. public land survey monument record and a map of any additional monuments set shall be recorded in the office of the register of deeds or filed in the office of the county surveyor of the county in which the surveyed land is located and of the adjoining county if a monument is located on the county line.

History: 1983 a. 532; 2013 a. 358.

60.85 Town tax increment law. (1) DEFINITIONS. In this section, unless a different intent clearly appears from the context:

(a) "Agricultural project" means agricultural activities classified in the North American Industry Classification System, 1997 edition, published by the U.S. office of management and budget, under the following industry numbers:

1. 111 – Crop production
2. 112 – Animal production
3. 1151 – Support activities for agriculture.
4. 1152 – Support activities for animal production.
5. 493120 – Farm product warehousing and storage, refrigerated.

(b) "Environmental pollution" has the meaning given in s. 299.01 (4).

(c) "Forestry project" means forestry activities classified in the North American Industry Classification System, 1997 edition, published by the U.S. office of management and budget, under the following industry numbers:

1. 113 – Forestry and logging.
2. 1153 – Support activities for forestry.

(d) "Highway" has the meaning provided in s. 340.01 (22).

(e) "Manufacturing project" means manufacturing activities classified in the North American Industry Classification System, 1997 edition, published by the U.S. office of management and budget, under the following industry numbers:

1. 3116 – Animal slaughtering and processing.
2. 321 – Wood product manufacturing
3. 322 – Paper manufacturing.
4. 325193 – Ethyl alcohol manufacturing.

(f) "Personal property" has the meaning prescribed in s. 70.04.

(g) "Planning commission" means a plan commission created under s. 62.23, if the town board exercises zoning authority under s. 60.62 or the town zoning committee under s. 60.61 (4) if the town board is not authorized to exercise village powers.

(h) 1. "Project costs" means, subject to sub. (2) (b), any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by the town which are listed in a project plan as costs of public works or improvements within a tax incremental district or, to the extent provided in subd. 1. j., without the district, plus any incidental costs, diminished by any income, special assessments, or other revenues, including user fees or charges, other than tax increments, received or reasonably expected to be received by the town in connection with the implementation of the plan. Only a proportionate share of the costs permitted under this subdivision may be included as project costs to the extent that they benefit the tax incremental district. To the extent the costs benefit the town outside the tax incremental district, a proportionate share of the cost is not a project cost. "Project costs" include:

a. Capital costs including, but not limited to, the actual costs of the construction of public works or improvements, new buildings, structures, and fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures other than the demolition of listed properties as defined in s. 44.31 (4); the acquisition of equipment to service the district; the removal or containment of, or the restoration of soil or groundwater affected by, environmental pollution; and the clearing and grading of land.

b. Financing costs, including, but not limited to, all interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount of the obligations because of the redemption of the obligations prior to maturity.

c. Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the town of real or personal property within a tax incremental district for consideration which is less than its cost to the town.

d. Professional service costs, including, but not limited to, those costs incurred for architectural, planning, engineering, and legal advice and services.

e. Imputed administrative costs, including, but not limited to, reasonable charges for the time spent by town employees in connection with the implementation of a project plan.

f. Relocation costs, including, but not limited to, those relocation payments made following condemnation under ss. 32.19 and 32.195.

g. Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the creation of tax incremental districts and the implementation of project plans.

h. Payments made, in the discretion of the town board, which are found to be necessary or convenient to the creation of tax incremental districts or the implementation of project plans.

i. That portion of costs related to the construction or alteration of sewerage treatment plants, water treatment plants or other environmental protection devices, storm or sanitary sewer lines, water lines, or amenities on streets or the rebuilding or expansion of streets the construction, alteration, rebuilding or expansion of which is necessitated by the project plan for a district and is within the district.

j. That portion of costs related to the construction or alteration of sewerage treatment plants, water treatment plants or other environmental protection devices, storm or sanitary sewer lines, water lines, or amenities on streets outside the district if the construction, alteration, rebuilding or expansion is necessitated by the project plan for a district, and if at the time the construction, alteration, rebuilding or expansion begins there are improvements of the kinds named in this subdivision on the land outside the district in respect to which the costs are to be incurred.

k. Costs for the removal or containment of lead contamination in buildings or infrastructure if the town declares that such lead contamination is a public health concern.

L. A fee imposed by the department of revenue under sub. (5) (a).

2. Notwithstanding subd. 1., none of the following may be included as project costs for any tax incremental district:

a. The cost of constructing or expanding administrative buildings, police and fire buildings, libraries, community and recreational buildings and school buildings.

b. The cost of constructing or expanding any facility, if the town generally finances similar facilities only with utility user fees.

c. General government operating expenses unrelated to the planning or development of a tax incremental district.

d. Cash grants made by the town to owners, lessees, or developers of land that is located within the tax incremental district.

(i) "Project plan" means the properly approved plan for the development or redevelopment of a tax incremental district, including all properly approved amendments thereto.

(j) "Real property" has the meaning prescribed in s. 70.03.

(k) "Residential development" means sleeping quarters, within a proposed tax incremental district, for employees who work for an employer engaged in a project that is allowed under sub. (2) (b) 1. to 4. but does not include hotels, motels, or general residential housing development within a proposed tax incremental district.

(L) "Tax increment" means that amount obtained by multiplying the total county, town, school, and other local general property taxes levied on all taxable property within a tax incremental district in a year by a fraction having as a numerator the value increment for that year in the district and as a denominator that year's equalized value of all taxable property in the district. In any year, a tax increment is "positive" if the value increment is positive; it is "negative" if the value increment is negative.

(m) "Tax incremental base" means the aggregate value, as equalized by the department of revenue, of all taxable property located within a tax incremental district on the date as of which the district is created, determined as provided in sub. (5) (b).

(n) "Tax incremental district" means a contiguous geographic area within a town defined and created by resolution of the town board, consisting solely of whole units of property as are assessed for general property tax purposes, other than railroad rights−of−way, rivers or highways. Railroad rights−of−way, rivers or highways may be included in a tax incremental district only if they are continuously bounded on either side, or on both sides, by whole units of property as are assessed for general property tax purposes which are in the tax incremental district. "Tax incremental district" does not include any area identified as a wetland on a map under s. 23.32.

(o) "Taxable property" means all real and personal taxable property located in a tax incremental district.

(p) "Tourism project" means activities that involve retailers classified in the North American Industry Classification System, 1997 edition, published by the U.S. office of management and budget, under the following industry numbers:

1. 721214 — Recreational and vacation camps.
2. 721211 — Recreational vehicle parks and campgrounds.
3. 711212 — Racetracks.
4. Dairy product stores included in 445299.
5. Public golf courses included in 71391.

(q) "Value increment" means the equalized value of all taxable property in a tax incremental district in any year minus the tax incremental base. In any year "value increment" is positive if the tax incremental base is less than the aggregate value of taxable property as equalized by the department of revenue; it is negative if that base exceeds that aggregate value.

(2) POWERS OF TOWNS. (a) Subject to par. (b) and except as provided under par. (c) and in addition to any other powers conferred by law, a town may exercise any powers necessary and convenient to carry out the purposes of this section, including the power to:

1. Create tax incremental districts and define the boundaries of the districts.

2. Cause project plans to be prepared, approve the plans, and implement the provisions and effectuate the purposes of the plans.

3. Deposit moneys into the special fund of any tax incremental district.

4. Enter into any contracts or agreements, including agreements with bondholders, determined by the town board to be necessary or convenient to implement the provisions and effectuate the purposes of project plans. The contracts or agreements may include conditions, restrictions, or covenants which either run with the land or which otherwise regulate the use of land.

5. Designate, by ordinance or resolution, the town industrial development agency, as agent of the town, to perform all acts under this section.

(b) The only projects for which a town may expend money or incur monetary obligations as a project cost are the following:

1. Agricultural projects.
2. Forestry projects.
3. Manufacturing projects.
4. Tourism projects.
5. Residential development, but only to the extent that it has a necessary and incidental relationship to a project listed in subds. 1. to 4.
6. Retail development that is limited to the retail sale of products that are produced due to a project that is developed under subd. 1., 2. or 3.
7. A project that is related either to retail purposes, or to a purpose for which a city may create a district under s. 66.1105, except that this subdivision applies only to the town of Brookfield in Waukesha County, and the town may create only one district to which this subdivision applies.
8. A project that includes a golf course, except that this subdivision applies only to the town of Rome in Adams County and the town may create only one district to which this subdivision applies. Notwithstanding the limitations under sub. (1) (h) 2. d., the town of Rome in Adams County may include as project costs, for the project authorized under this subdivision, cash grants or loan subsidies to owners, lessees, or developers of land that is located within the tax incremental district. With regard to a district to which this subdivision applies, the town board resolution adopted under sub. (3) (h) need not contain the findings related to the required percentage of real property that is specified in sub. (3) (h) 5. a.

(c) Except as provided in par. (b) 7., no town may exercise any power under this subsection within the extraterritorial zoning jurisdiction of a city or village, as that term is defined in s. 62.23 (7a) (a), unless the city's or village's governing body adopts a resolution which approves the town's exercise of power under this subsection within such an extraterritorial zoning jurisdiction.

(3) CREATION OF TAX INCREMENTAL DISTRICTS AND APPROVAL OF PROJECT PLANS. In order to implement the provisions of this section, the following steps and plans are required:

(a) Holding of a public hearing by the planning commission at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a tax incremental district and the proposed boundaries of the district. Notice of the hearing shall be published as a class 2 notice, under ch. 985. Before publication, a copy of the notice shall be sent by first class mail to the chief executive officer or administrator of all local governmental entities having the power to levy taxes on property located within the proposed district and to the school board of any school district which includes property located within the pro-

posed district. For a county with no chief executive officer or administrator, notice shall be sent to the county board chairperson.

(b) Designation by the planning commission of the boundaries of a tax incremental district recommended by it and submission of the recommendation to the town board.

(c) Identification of the specific property to be included in the proposed tax incremental district. Owners of the property identified shall be notified of the proposed finding and the date of the hearing to be held under par. (e) at least 15 days prior to the date of the hearing.

(d) Preparation and adoption by the planning commission of a proposed project plan for each tax incremental district.

(e) At least 30 days before adopting a resolution under par. (h), holding of a public hearing by the planning commission at which interested parties are afforded a reasonable opportunity to express their views on the proposed project plan. The hearing may be held in conjunction with the hearing provided for in par. (a). Notice of the hearing shall be published as a class 2 notice, under ch. 985. The notice shall include a statement advising that a copy of the proposed project plan will be provided on request. Before publication, a copy of the notice shall be sent by 1st class mail to the chief executive officer or administrator of all local governmental entities having the power to levy taxes on property within the district and to the school board of any school district which includes property located within the proposed district. For a county with no chief executive officer or administrator, notice shall be sent to the county board chairperson.

(f) Adoption by the planning commission of a project plan for each tax incremental district and submission of the plan to the town board. The plan shall include a statement listing the kind, number and location of all proposed public works or improvements within the district or, to the extent provided in sub. (1) (h) 1. j., outside the district, an economic feasibility study, a detailed list of estimated project costs, and a description of the methods of financing all estimated project costs and the time when the related costs or monetary obligations are to be incurred. The plan shall also include a map showing existing uses and conditions of real property in the district; a map showing proposed improvements and uses in the district; proposed changes of zoning ordinances, master plan, if any, map, building codes and town ordinances; a list of estimated nonproject costs; and a statement of the proposed method for the relocation of any persons to be displaced. The plan shall indicate how creation of the tax incremental district promotes the orderly development of the town. The town shall include in the plan an opinion of the town attorney or of an attorney retained by the town advising whether the plan is complete and complies with this section.

(g) Approval by the town board of a project plan prior to or concurrent with the adoption of a resolution under par. (h). The approval shall be by resolution which contains findings that the plan is feasible and in conformity with the master plan, if any, of the town.

(h) Adoption by the town board of a resolution which:

1. Describes the boundaries, which may, but need not, be the same as those recommended by the planning commission, of a tax incremental district with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the district. The boundaries shall include only those whole units of property as are assessed for general property tax purposes.

2. Creates the district as of January 1 of the same calendar year for a resolution adopted before October 1 or as of January 1 of the next subsequent calendar year for a resolution adopted after September 30.

3. Assigns a name to the district for identification purposes. The first district created shall be known as "Tax Incremental District Number One, Town of .... in .... County". Each subsequently created district shall be assigned the next consecutive number.

4. Declares the district to be either an agricultural project district, forestry project district, manufacturing project district, or tourism project district, and identifies the North American Industry Classification System industry number of each activity under each project for which project costs are to be expended; or declares the district to be a project described in sub. (2) (b) 7.

5. Contains all of the following findings:

a. That not less than 75 percent, by area, of the real property within the district is to be used for projects of a single one of the project types listed under sub. (2) (b) 1. to 4. or 7. and in accordance with the declaration under subd. 4.

b. That the improvement of the area is likely to enhance significantly the value of substantially all of the other real property in the district. It is not necessary to identify the specific parcels meeting the criteria.

c. That the project costs of the district are limited to those specified under sub. (2) (b) and relate directly to a project described in sub. (2) (b) 7. or to promoting agriculture, forestry, manufacturing, or tourism development.

d. That either the equalized value of taxable property of the district plus all existing districts does not exceed 7 percent of the total equalized value of taxable property within the town or the equalized value of taxable property of the district plus the value increment of all existing districts within the town does not exceed 5 percent of the total equalized value of taxable property within the town.

6. Confirms that any real property within the district that is intended to be used for a manufacturing project is zoned for industrial use and will remain zoned for industrial use for the life of the tax incremental district.

(i) Review by a joint review board, acting under sub. (4), that results in its approval of the resolution under par. (h).

(j) 1. Subject to subd. 2., the planning commission may, by resolution, adopt an amendment to a project plan. The amendment is subject to approval by the town board and approval requires the same findings as provided in pars. (g) and (h). Any amendment to a project plan is also subject to review by a joint review board, acting under sub. (4). Adoption of an amendment to a project plan shall be preceded by a public hearing held by the plan commission at which interested parties shall be afforded a reasonable opportunity to express their views on the amendment. Notice of the hearing shall be published as a class 2 notice, under ch. 985. The notice shall include a statement of the purpose and cost of the amendment and shall advise that a copy of the amendment will be provided on request. Before publication, a copy of the notice shall be sent by 1st class mail to the chief executive officer or administrator of all local governmental entities having the power to levy taxes on property within the district and to the school board of any school district which includes property located within the proposed district. For a county with no chief executive officer or administrator, this notice shall be sent to the county board chairperson.

2. Not more than once during the 5 years after the tax incremental district is created, the planning commission may adopt an amendment to a project plan under subd. 1. to modify the district's boundaries by adding territory to the district that is contiguous to the district and that is served by public works or improvements that were created as part of the district's project plan. Expenditures for project costs that are incurred because of an amendment to a project plan to which this subdivision applies may be made for not more than 2 years after the date on which the town board adopts a resolution amending the project plan.

(k) The town board shall provide the joint review board with the following information and projections:

1. The projects included in the district and the specific project costs, the total dollar amount of these project costs to be paid with the tax increments, and the amount of tax increments to be generated over the life of the tax incremental district.

2. The amount of the value increment when the project costs in subd. 1. are paid in full and the tax incremental district is terminated.

3. The reasons why the project costs in subd. 1. may not or should not be paid by the owners of property that benefits by improvements within the tax incremental district.

4. The share of the projected tax increments in subd. 1. estimated to be paid by the owners of taxable property in each of the taxing jurisdictions overlying the tax incremental district.

5. The benefits that the owners of taxable property in the overlying taxing jurisdictions will receive to compensate them for their share of the projected tax increments in subd. 4.

(4) JOINT REVIEW BOARD. (a) 1. Any town that seeks to create a tax incremental district or amend a project plan shall convene a standing joint review board to review the proposal. If a town creates more than one tax incremental district consisting of different overlying taxing jurisdictions, it shall create a separate standing joint review board for each combination of overlying jurisdictions, except that if a town creates a tax incremental district under this section and s. 66.1105 that share the same overlying taxing jurisdictions, the town may create one standing joint review board for the districts. The joint review board shall remain in existence for the entire time that any tax incremental district exists in the town with the same overlying taxing jurisdictions as the overlying taxing jurisdictions represented on the standing joint review board. Except as provided in subd. 2., and subject to par. (am), the joint review board shall consist of one representative chosen by the school district that has power to levy taxes on the property within the tax incremental district, one representative chosen by the technical college district that has power to levy taxes on the property within the tax incremental district, one representative chosen by the county that has power to levy taxes on the property within the tax incremental district, one representative chosen by the town and one public member. If more than one school district, more than one union high school district, more than one elementary school district, or more than one technical college district has the power to levy taxes on the property within the tax incremental district, the unit in which is located property of the tax incremental district that has the greatest value shall choose that representative to the joint review board. The public member and the joint review board's chairperson shall be selected by a majority of the other joint review board members before the public hearing under sub. (3) (a) or (j) 1. is held. All joint review board members shall be appointed and the first joint review board meeting held within 14 days after the notice is published under sub. (3) (a) or (j) 1. Meetings of the joint review board in addition to the meeting required under this subdivision or par. (d) shall be held upon the call of any member. The town that seeks to create the tax incremental district or to amend its project plan shall provide administrative support for the joint review board. By majority vote, the joint review board may disband following the termination under sub. (9) of all existing tax incremental districts in the town with the same overlying taxing jurisdictions as the overlying taxing jurisdictions represented on the joint review board.

2. If a town seeks to create a tax incremental district that is located in a union high school district, the seat that is described under subd. 1. for the school district representative to the joint review board shall be held by 2 representatives, each of whom has one−half of a vote. One representative shall be chosen by the union high school district that has the power to levy taxes on the property within the tax incremental district and one representative shall be chosen by the elementary school district that has the power to levy taxes on the property within the tax incremental district.

(am) 1. A representative chosen by a school district under par. (a) 1. or 2. shall be the president of the school board, or his or her designee. If the school board president appoints a designee, he or she shall give preference to the school district's finance director or another person with knowledge of local government finances.

2. The representative chosen by the county under par. (a) 1. shall be the county executive or, if the county does not have a county executive, the chairperson of the county board, or the executive's or chairperson's designee. If the county executive or county board chairperson appoints a designee, he or she shall give preference to the county treasurer or another person with knowledge of local government finances.

3. The representative chosen by the town under par. (a) 1. shall be the town board chairperson, or his or her designee. If the town board chairperson appoints a designee, he or she shall give preference to the person in charge of administering the town's economic development programs, the town treasurer, or another person with knowledge of local government finances.

4. The representative chosen by the technical college district under par. (a) 1. shall be the district's director or his or her designee. If the technical college district's director appoints a designee, he or she shall give preference to the district's chief financial officer or another person with knowledge of local government finances.

(b) 1. The joint review board shall review the public record, planning documents and the resolution passed by the town board or planning commission under sub. (3) (h) or (j) 1. As part of its deliberations the joint review board may hold additional hearings on the proposal.

2. No tax incremental district may be created and no project plan may be amended unless the joint review board approves the resolution adopted under sub. (3) (h) or (j) 1. by a majority vote not less than 10 days nor more than 45 days after receiving the resolution.

3. The joint review board shall submit its decision to the town no later than 7 days after the board acts on and reviews the items in subd. 2.

(c) 1. The joint review board shall base its decision to approve or deny a proposal on the following criteria:

a. Whether the project costs to be expended in the tax incremental district comply with the limitations specified in sub. (2) (b).

b. Whether the development expected in the tax incremental district would occur without the use of tax incremental financing.

c. Whether the economic benefits of the tax incremental district, as measured by increased employment, business and personal income, and property value, are insufficient to compensate for the cost of the improvements.

d. Whether the benefits of the proposal outweigh the anticipated tax increments to be paid by the owners of property in the overlying taxing districts.

2. The joint review board shall issue either a written statement that, in its judgment, all of the criteria under subd. 1. have been met or a written explanation describing why any proposal it rejects fails to meet one or more of the criteria specified in subd. 1.

(d) A joint review board shall meet annually on July 1, or when an annual report under sub. (8) (c) becomes available, to review annual reports under sub. (8) (c) and to review the performance and status of each district governed by the board.

(5) DETERMINATION OF TAX INCREMENT AND TAX INCREMENTAL BASE. (a) Subject to sub. (10) (d), upon the creation of a tax incremental district or upon adoption of any amendment subject to par. (d) 1., its tax incremental base shall be determined as soon as reasonably possible. The department of revenue may impose a fee of $1,000 on a town to determine or redetermine the tax incremental base of a tax incremental district under this subsection.

(b) Upon application in writing by the town clerk, in a form prescribed by the department of revenue, the department shall determine according to its best judgment from all sources available to it the full aggregate value of the taxable property in the tax incremental district. Subject to sub. (10) (d), the department shall certify this aggregate valuation to the town clerk, and the aggregate valuation constitutes the tax incremental base of the tax incremental district. The town clerk shall complete these forms upon the creation of a tax incremental district or upon the amendment of a district's project plan and shall submit the application on or before December 31 of the year the tax incremental district is created, as defined in sub. (3) (h) 2. or, in the case of an amendment,

on or before December 31 of the year in which the changes to the project plan take effect.

(d) 1. If the town adopts an amendment to the original project plan under sub. (3) (j) for any district which includes additional project costs at least part of which will be incurred after the period specified in sub. (6) (b) 1., the tax incremental base for the district shall be redetermined by adding to the tax incremental base the value of the taxable property, and that is added to the existing district as of the January 1 of the same calendar year for a resolution adopted before October 1 or as of January 1 of the next subsequent calendar year for a resolution adopted after September 30. The tax incremental base as redetermined under this subdivision is effective for the purposes of this section only if it exceeds the original tax incremental base determined under par. (b).

2. If after January 1 a city or village annexes town territory that contains part of a tax incremental district that is created by the town, the department of revenue shall redetermine the tax incremental base of the district by subtracting from the tax incremental base the value of the taxable property that is annexed from the existing district as of the following January 1, and if the annexation becomes effective on January 1 of any year, the redetermination shall be made as of that date. The tax incremental base as redetermined under this subdivision is effective for the purposes of this section only if it is less than the original tax incremental base determined under par. (b).

(e) Annually, no later than May 15, the town clerk shall file with the department of revenue, on a form provided by the department, a list of the expenditures for the district that were made in the previous year.

(f) The town clerk shall give written notice of the adoption of an amendment to the department of revenue within 60 days after its adoption. The department of revenue may prescribe forms to be used by the town clerk when giving notice as required by this paragraph.

(g) The department of revenue may not certify the tax incremental base as provided in par. (b) until it determines that each of the procedures and documents required by sub. (3) (a), (b), (h) or (j) and par. (b) has been timely completed and all notices required under sub. (3) (a), (b), (h) or (j) timely given. The facts supporting any document adopted or action taken to comply with sub. (3) (a), (b), (h) or (j) are not subject to review by the department of revenue under this paragraph, except that the department may not certify the tax incremental base as provided in par. (b) until it reviews and approves the findings made under sub. (3) (h) 4. and 5. d.

(h) The town assessor shall identify upon the assessment roll returned and examined under s. 70.45 those parcels of property which are within each existing tax incremental district, specifying the name of each district. A similar notation shall appear on the tax roll made by the town clerk under s. 70.65.

(i) The department of revenue shall annually give notice to the designated finance officer of all governmental entities having the power to levy taxes on property within each district as to the equalized value of the property and the equalized value of the tax increment base. The notice shall also explain that the tax increment allocated to a town shall be paid to the town as provided under sub. (6) (c) from the taxes collected.

(6) ALLOCATION OF POSITIVE TAX INCREMENTS. (a) If the joint review board approves the creation of the tax incremental district under sub. (4), and subject to par. (am), positive tax increments with respect to a tax incremental district are allocated to the town which created the district for each year commencing after the date when a project plan is adopted under sub. (3) (g). The department of revenue may not authorize allocation of tax increments until it determines from timely evidence submitted by the town that each of the procedures and documents required under sub. (3) (d) to (f) has been completed and all related notices given in a timely manner. The department of revenue may authorize allocation of tax increments for any tax incremental district only if the town clerk and assessor annually submit to the department all required information on or before the 2nd Monday in June. The facts supporting any document adopted or action taken to comply with sub. (3) (d) to (f) are not subject to review by the department of revenue under this paragraph. After the allocation of tax increments is authorized, the department of revenue shall annually authorize allocation of the tax increment to the town that created the district until the sooner of the following events:

1. The department of revenue receives a notice under sub. (10) and the notice has taken effect under sub. (10) (b).

2. Sixteen years after the tax incremental district is created.

(am) With regard to each district for which the department of revenue authorizes the allocation of a tax increment under par. (a), the department shall charge the town that created the district an annual administrative fee of $150 that the town shall pay to the department no later than April 15. If the town does not pay the fee that is required under this paragraph, by April 15, the department may not authorize the allocation of a tax increment under par. (a) for that town.

(b) 1. No expenditure may be made for a tax incremental district that is created under this section later than 5 years after the tax incremental district is created.

2. The limitations on the period during which expenditures may be made under subd. 1. do not apply to expenditures to pay project costs incurred under ch. 32.

3. The limitations on the period during which expenditures may be made under subd. 1. do not apply to expenditures authorized by the adoption of an amendment to the project plan under sub. (3) (j), except that in no case may the total number of years during which expenditures are made exceed 7 years.

(c) Every officer charged by law to collect and pay over or retain local general property taxes shall, on the settlement dates provided by law, pay over to the town treasurer out of all the taxes which the officer has collected the proportion of the tax increment due the town that the general property taxes collected in the town bears to the total general property taxes levied by the town for all purposes included in the tax roll, exclusive of levies for state trust fund loans, state taxes and state special charges.

(d) All tax increments received with respect to a tax incremental district shall, upon receipt by the town treasurer, be deposited into a special fund for that district. The town treasurer may deposit additional moneys into such fund pursuant to an appropriation by the town board. No moneys may be paid out of such fund except to pay project costs with respect to that district, to reimburse the town for such payments, or to satisfy claims of holders of bonds or notes issued with respect to such district. Moneys paid out of the fund to pay project costs with respect to a district may be paid out before or after the district is terminated under sub. (9). Subject to any agreement with bondholders, moneys in the fund may be temporarily invested in the same manner as other town funds if any investment earnings are applied to reduce project costs. After all project costs and all bonds and notes with respect to the district have been paid or the payment thereof provided for, subject to any agreement with bondholders, if there remain in the fund any moneys, they shall be paid over to the treasurer of each county, school district or other tax levying municipality or to the general fund of the town in the amounts that belong to each respectively, having due regard for that portion of the moneys, if any, that represents tax increments not allocated to the town and that portion, if any, that represents voluntary deposits of the town into the fund.

(f) 1. The department of revenue shall, by rule, designate a format for annual reports under sub. (8) (c) and shall require these reports to be filed electronically.

2. The department of revenue shall post annual reports on its official Internet site no later than 45 days after the department receives the report from the town. The department shall also post a list of towns that have not submitted a required annual report to the department of revenue.

4. If an annual report is not timely filed under sub. (8) (c), the department of revenue shall notify the town that the report is past

due. If the town does not file the report within 60 days of the date on the notice, the department shall charge the town a fee of $100 per day for each day that the report is past due, up to a maximum penalty of $6,000 per report. If the town does not pay within 30 days of issuance, the department of revenue shall reduce and withhold the amount of the shared revenue payments to the town under subch. I of ch. 79, in the following year, by an amount equal to the unpaid penalty.

(7) NOTIFICATION OF POSITION OPENINGS. (a) Any person who operates for profit and is paid project costs under sub. (1) (h) 1. a., d., i., and j. in connection with the project plan for a tax incremental district shall notify the department of workforce development and the local workforce development board established under 29 USC 2832 of any positions to be filled in the county in which the town that created the tax incremental district is located during the period commencing with the date the person first performs work on the project and ending one year after receipt of its final payment of project costs. The person shall provide this notice at least 2 weeks prior to advertising the position.

(b) Any person who operates for profit and buys or leases property in a tax incremental district from a town for which the town incurs real property assembly costs under sub. (1) (h) 1. c. shall notify the department of workforce development and the local workforce development board established under 29 USC 2832 of any position to be filled in the county in which the town creating the tax incremental district is located within one year after the sale or commencement of the lease. The person shall provide this notice at least 2 weeks prior to advertising the position.

(8) REVIEW. (a) The town shall cause a certified public accountant to conduct audits of each tax incremental district to determine if all financial transactions are made in a legal and proper manner and to determine if the tax incremental district is complying with its project plan and with this section. Any town that creates a tax incremental district under this section and has an annual general audit may include the audits required under this subsection as part of the annual general audit.

(b) Audits shall be conducted at all the following times:

1. No later than twelve months after 30 percent of the project expenditures are made.

2. No later than twelve months after the end of the expenditure period specified in sub. (6) (b) 1.

3. No later than twelve months after the termination of the tax incremental district under sub. (9).

(c) The town shall prepare and make available to the public updated annual reports describing the status of each existing tax incremental district, including expenditures and revenues. The town shall file a copy of the report with each overlying district and the department of revenue by July 1 annually. The copy of the report filed with the department of revenue shall be in electronic format. The annual report shall contain at least all of the following information:

1. The name assigned to the district under sub. (3) (h) 3.

2. The types of projects under sub. (2) (b) that are included in the project plan and the scope of the project.

3. The name of any developer who is named in a developer's agreement with the town or who receives any financial assistance from tax increments allocated for the tax incremental district.

4. The date that the town expects the tax incremental district to terminate under sub. (9).

5. The amount of tax increments to be deposited into a special fund for that district under sub. (6) (d).

6. An analysis of the special fund under sub. (6) (d) for the district. The analysis shall include all of the following:

a. The balance in the special fund at the beginning of the fiscal year.

b. All amounts deposited in the special fund by source, including all amounts received from another tax incremental district.

c. An itemized list of all expenditures from the special fund by category of permissible project costs.

d. The balance in the special fund at the end of the fiscal year, including a breakdown of the balance by source and a breakdown of the balance identifying any portion of the balance that is required, pledged, earmarked, or otherwise designated for payment of, or securing of, obligations and anticipated project costs. Any portion of the ending balance that has not been previously identified and is not identified in the current analysis as being required, pledged, earmarked, or otherwise designated for payment of, or securing of, obligations or anticipated project costs shall be designated as surplus.

7. The contact information of a person designated by the town to respond to questions or concerns regarding the annual report.

Cross−reference: See also s. Tax 12.60, Wis. adm. code.

(9) TERMINATION OF TAX INCREMENTAL DISTRICTS. A tax incremental district terminates when the earliest of the following occurs:

(a) That time when the town has received aggregate tax increments with respect to the district in an amount equal to the aggregate of all project costs under the project plan and any amendments to the project plan for the district.

(b) Eleven years after the last expenditure identified in the original, unamended project plan is made.

(c) The town board, by resolution, dissolves the district, at which time the town becomes liable for all unpaid project costs actually incurred which are not paid from the special fund under sub. (6) (d).

(10) NOTICE OF DISTRICT TERMINATION. (a) A town which creates a tax incremental district under this section shall give the department of revenue written notice within 10 days of the termination of the tax incremental district under sub. (9).

(b) If the department of revenue receives a notice under par. (a) during the period from January 1 to April 15, the effective date of the notice is the date the notice is received. If the notice is received during the period from April 16 to December 31, the effective date of the notice is the first January 1 after the department of revenue receives the notice.

(c) Not later than February 15 of the year immediately following the year in which a town transmits to the department of revenue the notice required under par. (a), the town shall send to the department, on a form prescribed by the department, all of the following information that relates to the terminated tax incremental district:

1. A final accounting of all expenditures made by the town.

2. The total amount of project costs incurred by the town.

3. The total amount of positive tax increments received by the town.

(d) If a town does not send to the department of revenue the form specified in par. (c), the department may not certify the tax incremental base of a tax incremental district in the town under sub. (5) (a) and (b) until the form is sent to the department.

(11) FINANCING OF PROJECT COSTS. Payment of project costs may be made by any one or more of the following methods:

(a) Payment by the town from the special fund of the tax incremental district.

(b) Payment out of its general funds.

(c) Payment out of the proceeds of the sale of bonds or notes issued by it under ch. 67.

(d) Payment out of the proceeds of the sale of public improvement bonds issued by it under s. 66.0619.

(e) Payment as provided under s. 66.0713 (2) and (4) or 67.16.

(f) Payment out of the proceeds of revenue bonds or notes issued by it under s. 66.0621.

(g) Payment out of the proceeds of revenue bonds issued by the town as provided by s. 66.1103, for a purpose specified in that section.

(12) OVERLAPPING TAX INCREMENTAL DISTRICTS. (a) Subject to any agreement with bondholders, a tax incremental district may be created, the boundaries of which overlap one or more existing districts, except that districts created as of the same date may not have overlapping boundaries.

(b) If the boundaries of 2 or more tax incremental districts overlap, in determining how positive tax increments generated by that area which is within 2 or more districts are allocated among the overlapping districts, but for no other purpose, the aggregate value of the taxable property in the area as equalized by the department of revenue in any year as to each earlier created district is that portion of the tax incremental base of the district next created which is attributable to the overlapped area.

(13) EQUALIZED VALUATION FOR APPORTIONMENT OF PROPERTY TAXES. With respect to the county, school districts and any other local governmental body having the power to levy taxes on property located within a tax incremental district, if the allocation of positive tax increments has been authorized by the department of revenue under sub. (6) (a), the calculation of the equalized valuation of taxable property in a tax incremental district for the apportionment of property taxes may not exceed the tax incremental base of the district until the district is terminated.

(16) USE OF TAX INCREMENTAL FINANCING FOR INLAND LAKE PROTECTION AND REHABILITATION PROHIBITED. Notwithstanding sub. (11), no tax incremental financing project plan may be approved and no payment of project costs may be made for an inland lake protection and rehabilitation district or a county acting under s. 59.70 (8).

(17) PAYMENT OF ELIGIBLE COSTS FOR ANNEXED TERRITORY, REDETERMINATION OF TAX INCREMENTAL BASE. If a city or village annexes territory from a town and if all or part of the territory that is annexed is part of a tax incremental district created by the town, the city or village shall pay to the town that portion of the eligible costs that are attributable to the annexed territory. The city or village, and the town, shall negotiate an agreement on the amount that must be paid under this subsection. The department shall redetermine the tax incremental base of any parcel of real property for which the tax incremental base was determined under sub. (5) if part of that parcel is annexed under this subsection.

(18) SUBSTANTIAL COMPLIANCE. Substantial compliance with subs. (2), (3) (a), (b), (c), (d), (e), (f), and (j), (4), and (5) (b) by a town that creates, or attempts to create, a tax incremental district is sufficient to give effect to any proceedings conducted under this section if, in the opinion of the department of revenue, any error, irregularity, or informality that exists in the town's attempts to comply with subs. (2), (3) (a), (b), (c), (d), (e), (f), and (j), (4), and (5) (b) does not affect substantial justice. If the department of revenue determines that a town has substantially complied with subs. (2), (3) (a), (b), (c), (d), (e), (f), and (j), (4), and (5) (b), the department of revenue shall determine the tax incremental base of the district, allocate tax increments, and treat the district in all other respects as if the requirements under subs. (2), (3) (a), (b), (c), (d), (e), (f), and (j), (4), and (5) (b) had been strictly complied with based on the date that the resolution described under sub. (3) (h) 2. is adopted.

History: 2003 a. 231, 326, 327; 2005 a. 330; 2009 a. 28, 312; 2011 a. 11, 32; 2013 a. 151; 2015 a. 24, 256, 257; 2017 a. 15, 365.

CHAPTER 70

GENERAL PROPERTY TAXES

70.01 General property taxes; upon whom levied. Taxes shall be levied, under this chapter, upon all general property in this state except property that is exempt from taxation. Real estate taxes and personal property taxes are deemed to be levied when the tax roll in which they are included has been delivered to the local treasurer under s. 74.03. When so levied such taxes are a lien upon the property against which they are charged. That lien is superior to all other liens, except a lien under s. 292.31 (8) (i) or 292.81, and is effective as of January 1 in the year when the taxes are levied. Liens of special assessments of benefits for local improvements shall be in force as provided by the charter or general laws applicable to the cities that make the special assessments. In this chapter, unless the context requires otherwise, references to "this chapter" do not include ss. 70.37 to 70.395.

History: 1977 c. 29 s. 1646 (3); 1977 c. 31, 203; 1987 a. 378; 1993 a. 453; 1995 a. 227; 1997 a. 27.

The enactment of this chapter did not supersede the Milwaukee city charter, which exempts from taxation property leased by the city. Milwaukee v. Shoup Voting Machine Corp. 54 Wis. 2d 549, 196 N.W.2d 694 (1972).

Property held in trust by the federal government for the Menominee tribe and tribal members is not subject to state taxation. 66 Atty. Gen. 290.

70.02 Definition of general property. General property is all the taxable real and personal property defined in ss. 70.03 and 70.04 except that which is taxed under ss. 70.37 to 70.395 and ch.

76 and subchs. I and VI of ch. 77. General property includes manufacturing property subject to s. 70.995, but assessment of that property shall be made according to s. 70.995.

History: 1973 c. 90; 1977 c. 31; 1979 c. 221; 1985 a. 29 s. 3202 (39) (c).

70.03 Definition of real property. (1) In chs. 70 to 76, 78, and 79, "real property," "real estate," and "land" include not only the land itself but all buildings and improvements thereon, and all fixtures and rights and privileges appertaining thereto, except as provided in sub. (2) and except that for the purpose of time−share property, as defined in s. 707.02 (32), real property does not include recurrent exclusive use and occupancy on a periodic basis or other rights, including, but not limited to, membership rights, vacation services, and club memberships.

(2) "Real property" and "real estate" do not include any permit or license required to place, operate, or maintain at a specific location one or more articles of personal property described under s. 70.04 (3) or any value associated with the permit or license.

History: 1979 c. 89; 1983 a. 432; 1987 a. 399; 1993 a. 308; 1995 a. 225; 2013 a. 20; 2015 a. 196.

Income that is attributable to land, rather than personal to the owner, is inextricably intertwined with the land and is transferable to future owners. This income may be included in the land's assessment because it appertains to the land. Income from managing separate off−site property may be inextricably intertwined with land and subject to assessment if the income is generated primarily on the assessed property itself. ABKA Ltd. v. Fontana−On−Geneva−Lake, 231 Wis. 2d 328, 603 N.W.2d 217 (1999), 98−0851.

70.04 Definition of personal property. In chs. 70 to 79, "personal property" includes all of the following:

(1g) All goods, wares, merchandise, chattels, and effects, of any nature or description, having any real or marketable value, and not included in the term "real property," as defined in s. 70.03.

(1r) Toll bridges; private railroads and bridges; saw logs, timber, and lumber, either upon land or afloat; steamboats, ships, and other vessels, whether at home or abroad; ferry boats, including the franchise for running the same; ice cut and stored for use, sale, or shipment; beginning May 1, 1974, manufacturing machinery and equipment as defined in s. 70.11 (27), and entire property of companies defined in s. 76.28 (1), located entirely within one taxation district.

(2) Irrigation implements used by a farmer, including pumps, power units to drive the pumps, transmission units, sprinkler devices, and sectional piping.

(3) An off−premises advertising sign. In this subsection, "off−premises advertising sign" means a sign that does not advertise the business or activity that occurs at the site where the sign is located.

History: 1973 c. 90; 1973 c. 336 s. 36; 1979 c. 89; 1983 a. 27 s. 2202 (45); 1995 a. 225; 2013 a. 20; 2015 a. 196.

70.043 Mobile homes and manufactured homes. (1) A mobile home, as defined in s. 101.91 (10), or a manufactured home, as defined in s. 101.91 (2), is an improvement to real property if it is connected to utilities and is set upon a foundation upon land which is owned by the mobile home or manufactured home owner. In this section, a mobile home or manufactured home is "set upon a foundation" if it is off its wheels and is set upon some other support.

(2) A mobile home, as defined in s. 101.91 (10), or a manufactured home, as defined in s. 101.91 (2), is personal property if the land upon which it is located is not owned by the mobile home or manufactured home owner or if the mobile home or manufactured home is not set upon a foundation or connected to utilities.

History: 1983 a. 342; 1985 a. 332 s. 253; 1999 a. 150 s. 672; 2007 a. 11.

Under sub. (1), a mobile home is an improvement to real property if the home is resting for more than a temporary time, in whole or in part, on some means of support other than its wheels. Ahrens v. Town of Fulton, 2002 WI 29, 251 Wis. 2d 135, 641 N.W.2d 423, 99−2466.

70.045 Taxation district defined. Except as provided in s. 70.114 (1) (e), in this chapter, "taxation district" means a town, village or city in which general property taxes are levied and collected.

History: 1989 a. 336; 1991 a. 39 s. 3714.

70.05 Valuation of property; assessors in cities, towns and villages. (1) The assessment of general property for taxation in all the towns, cities and villages of this state shall be made according to this chapter unless otherwise specifically provided. There shall be elected at the spring election one assessor for each taxation district not subject to assessment by a county assessor under s. 70.99 if election of the assessor is provided. Commencing with the 1977 elections and appointments made on and after January 1, 1977, no person may assume the office of town, village, city or county assessor unless certified by the department of revenue under s. 73.09 as qualified to perform the functions of the office of assessor. If a person who has not been so certified is elected to the office, the office shall be vacant and the appointing authority shall fill the vacancy from a list of persons so certified by the department of revenue.

(2) The governing body of any town, city or village not subject to assessment by a county assessor under s. 70.99 may provide for the selection of one or more assistant assessors to assist the assessor in the discharge of the assessor's duties.

(3) The assessment of property of manufacturing establishments subject to assessment under s. 70.995 shall be made according to that section.

(4) All assessment personnel, including personnel of a county assessor system under s. 70.99, appointed under this section on or after January 1, 1977, shall have passed an examination and have been certified by the department of revenue as qualified for performing the functions of the office.

(4m) A taxation district assessor may not enter upon a person's real property for purposes of conducting an assessment under this chapter more than once in each year, except that an assessor may enter upon a person's real property for purposes of conducting an assessment under this chapter more often if the property owner consents. A property owner may deny entry to an assessor of the interior of the owner's residence if the owner has given prior notice to the assessor that the assessor may not enter the interior of the residence without the property owner's permission. Each taxation district assessor shall create and maintain a database identifying all such property owners in the taxation district. A property owner's refusal to allow the assessor to enter the interior of the owner's residence shall not preclude the property owner from appearing before the board of review to object to the property's valuation, as provided under s. 70.47 (7), and the assessor may not increase the property's valuation based solely on the property owner's refusal to allow entry.

(4n) If a taxation district assessor is requesting to view the interior of a residence, the assessor shall provide written notice to the property owner of the property owner's rights regarding the inspection of the interior of the owner's residence. The notice shall be in substantially the following form:

PROPERTY OWNER RIGHTS

You have the right to refuse entry into your residence pursuant to section 70.05 (4m) of the Wisconsin statutes. Entry to view your property is prohibited unless voluntarily authorized by you. Pursuant to section 70.05 (4m) of the Wisconsin statutes, you have the right to refuse a visual inspection of the interior of your residence and your refusal to allow an interior inspection of your residence will not be used as the sole reason for increasing your property tax assessment. Refusing entry to your residence also does not prohibit you from objecting to your assessment pursuant to section 70.47 (7) of the Wisconsin statutes. Please indicate your consent or refusal to allow an interior visual inspection of your residence.

(5) (a) In this subsection:

1. "Assessed value" means with respect to each taxation district the total values established under ss. 70.32 and 70.34, but excluding manufacturing property subject to assessment under s. 70.995.

1m. "Class of property" means residential under s. 70.32 (2) (a) 1.; commercial under s. 70.32 (2) (a) 2.; personal property; or

the sum of undeveloped under s. 70.32 (2) (a) 5., agricultural forest under s. 70.32 (2) (a) 5m.; productive forest land under s. 70.32 (2) (a) 6. and other under s. 70.32 (2) (a) 7.

2. "Full value" means with respect to each taxation district the total value of property as determined under s. 70.57 (1), but excluding manufacturing property subject to assessment under s. 70.995.

3. "Major class of property" means any class of property that includes more than 10 percent of the full value of the taxation district.

(b) Each taxation district shall assess property at full value at least once in every 5−year period. Before a city, village, or town assessor conducts a revaluation of property under this paragraph, the city, village, or town shall publish a notice on its municipal website that a revaluation will occur and the approximate dates of the property revaluation. The notice shall also describe the authority of an assessor, under ss. 943.13 and 943.15, to enter land. If a municipality does not have a website, it shall post the required information in at least 3 public places within the city, village, or town.

(c) Annually beginning in 1992, the department of revenue shall determine the ratio of the assessed value to the full value of all taxable general property and of each major class of property of each taxation district and publish its findings in the report required under s. 73.06 (5).

(d) If the department of revenue determines that the assessed value of each major class of property of a taxation district, including 1st class cities, has not been established within 10 percent of the full value of the same major class of property during the same year at least once during the 4−year period consisting of the current year and the 3 preceding years, the department shall notify the clerk of the taxation district of its intention to proceed under par. (f) if the taxation district's assessed value of each major class of property for the first year following the 4−year period is not within 10 percent of the full value of the same major class of property. The department's notice shall be in writing and mailed to the clerk of the taxation district on or before November 1 of the year of the determination.

(f) If, in the first year following the 4−year period under par. (d), the department of revenue determines that the assessed value of each major class of property of a taxation district, including 1st class cities, has not been established within 10 percent of the full value of the same major class of property, the department shall notify the clerk of the taxation district in writing on or before November 1 of the year of determination of the department's intention to proceed under par. (g) if the taxation district's assessed value of each major class of property for the 2nd year following the 4−year period under par. (d) is not within 10 percent of the full value of the same major class of property.

(g) If, in the 2nd year following the 4−year period under par. (d), the department of revenue determines that the assessed value of each major class of property is not within 10 percent of the full value of the same major class of property, the department shall order special supervision under s. 70.75 (3) for that taxation district for the assessments of the 3rd year following the 4−year period under par. (d). That order shall be in writing and shall be mailed to the clerk of the taxation district on or before November 1 of the year of the determination.

History: 1973 c. 90; 1975 c. 39, 199; 1979 c. 221; 1981 c. 20; 1983 a. 27; 1985 a. 332 s. 108; 1987 a. 399; 1989 a. 56; 1991 a. 39, 316; 1995 a. 27, 212; 2003 a. 33; 2009 a. 68; 2015 a. 322; 2017 a. 68; 2017 a. 365 s. 112.

Compliance with the requirement of sub. (5) that property be assessed at fair value at least once every 5 years is not a substitute for compliance with the uniformity clause and the requirement of s. 70.32 (1) that the property be valued using the best evidence available. Noah's Ark Family Park v. Village of Lake Delton, 210 Wis. 2d 301, 565 N.W.2d 230 (Ct. App. 1997), 96−1074.

Affirmed. 216 Wis. 2d 387, 573 N.W.2d 852 (1998), 96−1074.

70.055 Expert assessment help. If the governing body of any town, village or city not subject to assessment by a county assessor under s. 70.99 determines that it is in the public interest to employ expert help to aid in making an assessment in order that the assessment may be equitably made in compliance with law, the governing body may employ such necessary help from persons currently certified by the department of revenue as expert appraisers. If the help so employed is the department of revenue, the department shall designate the persons in its employ responsible for the assessment. If the emergency help so employed is a corporation the corporation shall designate the persons in its employ responsible for the assessment.

(1) CERTIFICATION REQUIREMENTS. An applicant for certification as an expert appraiser shall submit satisfactory evidence to the department of revenue as follows:

(a) That the applicant has acquired a thorough knowledge of appraisal techniques and general property assessment standards.

(b) That through examination given by the department of revenue he or she has demonstrated to the department that he or she possesses the necessary qualifications for certification of assessors as described in s. 73.09.

(3) STANDARD SPECIFICATIONS. The department of revenue shall prescribe standard specifications relating to assessment work performed by expert appraisers other than the department of revenue. No contract for expert help may be approved by the department of revenue unless the contract is submitted on standard contract forms prescribed by the department. If the department of revenue acts as the expert help it shall perform the assessment duties in accordance with the standard specifications.

NOTE: Sub. (3) is shown as renumbered from sub. (3) (a) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(4) DUTIES. When appointed, expert help, together with the assessor, shall act together as an assessment board in exercising the powers and duties of the assessor during this employment, and the concurrence of a majority of the board is necessary to determine any matter upon which they are required to act. All persons appointed or designated as emergency help shall file the official oath under s. 19.01.

(5) DEPARTMENT OF REVENUE COSTS. All costs of the department of revenue in connection with assessment under this section shall be borne by the taxation district. These receipts shall be credited to the appropriation under s. 20.566 (2) (h). Past due accounts shall be certified on or before the 4th Monday of August of each year and included in the next apportionment of state special charges to local units of government.

History: 1971 c. 40; 1973 c. 90; 1975 c. 39, 199; 1977 c. 29; 1979 c. 221; 1981 c. 20; 1983 a. 27; 1991 a. 316; s. 13.92 (1) (bm) 2.

70.06 Assessments, where made; first class city districts; assessors; appointment, removal. (1) In cities of the 1st class the assessment of property for taxation shall be under the direction of the city commissioner of assessments, who shall perform such duties in relation thereto as are prescribed by the common council, and the assessment rolls of the city shall be made as the council directs, except where such city of the 1st class is under the jurisdiction of a county assessor under s. 70.99. Manufacturing property subject to s. 70.995 shall be assessed according to that section.

(2) The commissioner of assessments may, with the approval of the common council, appoint one chief assessor, one or more supervising assessors and supervising assessor assistants, one or more property appraisers, and other expert technical personnel that the commissioner of assessments considers to be necessary in order that all valuations throughout the city are uniformly made in accordance with the law. The chief assessor, supervising assessors, and supervising assessor assistants shall exercise the direction and supervision over assessment procedure and shall perform the duties in relation to the assessment of property that the commissioner of assessments determines. Together with the chief assessor and the assessment analysis manager, they shall be members of the board of assessors and shall hold office in the same manner as assessors. Certification of the assessment roll shall be limited to the members of the board of assessors.

(3m) No person may assume the office of commissioner of assessments, chief assessor, assessment analysis manager, sys-

tems and administration supervisor, title records supervisor, supervising assessor, supervising assessor assistant, or property appraiser appointed under sub. (2), unless certified by the department of revenue under s. 73.09 as qualified to perform the functions of the office of assessor. If a person who has not been so certified is appointed to the office, the office shall be vacant and the appointing authority shall fill the vacancy from a list of persons so certified by the department of revenue.

(5) This section shall not apply to a city of the 1st class after it has come under a county assessor system.

History: 1973 c. 90; 1975 c. 39, 199; 1977 c. 203; 1979 c. 95 ss. 1, 4; 1979 c. 110, 221, 355; 1981 c. 37; 1983 a. 192; 1985 a. 29, 332; 1987 a. 87; 1991 a. 156; 2001 a. 103.

70.07 Functions of board of assessors in first class cities. (1) In all 1st class cities the several assessors shall make their assessments available to the commissioner of assessments on or before the 2nd Monday in May in each year.

(2) The commissioner of assessments shall publish a class 3 notice, under ch. 985, that on the days named, the assessments for the city will be open for examination by the taxable inhabitants of the city. On the 2nd Monday of May the commissioner of assessments shall call together all of the assessors, and the other members of the board of assessors as provided in s. 70.06 (2), and they together with the commissioner of assessments shall constitute an assessment board.

(3) To the end that all valuations throughout the city shall be made on a uniform basis, such board of assessors, under the direction and supervision of the commissioner of assessments, shall compare the valuations so secured, making all necessary corrections and all other just and necessary changes to arrive at the true value of property within the city; and the commissioner of assessments may direct that all objections to valuations filed under s. 70.47 (16) shall be investigated by such board.

(4) The concurrence of a majority of such board of assessors shall be necessary to determine any matter upon which the commissioner of assessments requires it to act. No notice need be given to the owners of the property assessed of any corrections or changes in assessments which are made prior to the day or days fixed in the notice mentioned in sub. (2) on which said assessments are to be open for examination, but any changes made thereafter and before the assessment roll is delivered to the board of review can only be made upon notice by first class mail to the person assessed if a resident of the city or, if a nonresident, the agent of the person assessed if there is one resident therein or, if neither, the possessor of the property assessed if any, if the residence of such owner, agent or possessor is known to any member of said board of assessors.

(5) The commissioner of assessments may provide for such committees of the board of assessors, as the commissioner of assessments may think best, to make investigations including the investigations mentioned in sub. (3) and perform such other duties as are prescribed by the commissioner of assessments. The commissioner of assessments shall be chairperson of the board of assessors, and may appoint as a member or chairperson of the various committees, himself or herself, any assessor or other officer or employee in the commissioner's department.

(6) The board of assessors shall remain in session until all corrections and changes have been made, including all those resulting from investigations by committees of objections to valuations filed with the commissioner of assessments as provided in this subsection, after which the commissioner of assessments shall prepare the assessment rolls as corrected by the board of assessors and submit them to the board of review not later than the 2nd Monday in October. The person assessed, having been notified of the determination of the board of assessors as required in sub. (4), shall be deemed to have accepted the determination unless the person notifies the commissioner of assessments in writing, within 15 days from the date that the notice of determination was issued under sub. (4), of the desire to present testimony before the board of review. After the board of review has met, the commissioner of assessments may appoint committees of the board of assessors to investigate any objections to the amount or valuation of any real or personal property which have been filed with the commissioner of assessments. The committees may at the direction of the commissioner of assessments report their investigation and recommendations to the board of review and any member of any such committee shall be a competent witness in any hearing before the board of review.

(7) This section shall not apply to a city of the 1st class after it has come under a county assessor system.

History: 1973 c. 90; 1977 c. 29 s. 1647 (8), (16); 1977 c. 273; 1979 c. 34 s. 2102 (46) (b); 1979 c. 95 ss. 2, 4; 1979 c. 176; 1983 a. 192, 220; 1991 a. 156, 316; 2001 a. 103; 2005 a. 49.

70.075 Functions of board of assessors in cities of the 2nd class. (1) In cities of the 2nd class the common council may by ordinance provide that objections to property tax assessments shall be processed through a board of assessors. In such cases, the city assessor shall publish a class 3 notice, under ch. 985, that on the days named in the notice, the assessments for the city will be open for examination by the taxable inhabitants of the city. On the 2nd Monday of May the city assessor shall call together all of the members of the board of assessors as created in sub. (2) and they, together with the city assessors, shall constitute an assessment board.

(2) In cities of the 2nd class which have elected to have a board of assessors, the board shall have at least 3 members and no more than 7 members, and shall consist of the city assessor, assistant assessors, appraisers or other expert technical personnel appointed by the city assessor and approved by the common council.

(3) To the end that all valuations throughout the city shall be made on a uniform basis, such board of assessors, under the direction and supervision of the city assessor, shall compare the valuations so secured, making all necessary corrections and all other just and necessary changes to arrive at the true value of property within the city. The city assessor may direct that all objections to valuations filed with the city assessor in writing, in the manner provided in s. 70.47 (13), shall be investigated by the board.

(4) The concurrence of a majority of the board of assessors is necessary to determine any matter upon which the city assessor requires it to act. No notice need be given to the owners of the property assessed of any corrections or changes in assessments which are made prior to the day or days fixed in the notice specified under sub. (1) on which the assessments are to be open for examination, but any changes made thereafter and before the assessment roll is delivered to the board of review can only be made upon notice by 1st class mail to the person assessed if a resident of the city or, if a nonresident, an agent if there is one resident in the city or, if neither, the possessor of the property assessed if any, if the residence of the owner, agent or possessor is known to any member of the board of assessors.

(5) The city assessor may provide for committees of the board of assessors to make investigations including the investigations mentioned in sub. (3) and perform such other duties as may be prescribed. The city assessor shall chair the board of assessors, and may appoint as a member or chairperson of the various committees, himself or herself, an assistant assessor, or other officer or employee in the office of the city assessor.

(6) The board of assessors shall remain in session until all corrections and changes have been made, including all those resulting from investigations by committees of objections to valuations filed with the city assessor as provided in this section, after which the city assessor shall prepare the assessment rolls as corrected by the board of assessors and submit them to the board of review not later than the last Monday in July. A person assessed who has been notified of the determination of the board of assessors as required in sub. (4) is deemed to have accepted such determination unless the person notifies the city assessor in writing, within 15 days from the date that the notice of determination was issued under sub. (4), of a desire to present testimony before the board of

review. After the board of review meets, the city assessor may appoint committees of the board of assessors to investigate any objections to the amount or valuation of any real or personal property which are referred to the city assessor by the board of review. The committees so appointed may at the city assessor's direction report their investigation and recommendations to the board of review and any member of any such committee shall be a competent witness in any hearing before the board of review.

(7) This section does not apply to a city of the 2nd class if it is contained within a county which adopts a county assessor system under s. 70.99.

History: 1977 c. 29; 1981 c. 20; 2005 a. 49.

70.08 Assessment district. The term "assessment district" is used to designate any subdivision of territory, whether the whole or any part of any municipality, in which by law a separate assessment of taxable property is made by an assessor or assessors elected or appointed therefor except that in cities of the first class such districts may be referred to as administrative districts.

70.09 Official real property lister; forms for officers.

(1) LISTER, COUNTY BOARDS MAY PROVIDE FOR. Any county board may appoint a county real property lister and may appropriate funds for the operation of the department of such lister.

(2) DUTIES OF LISTER. The county board may delegate any of the following duties to the lister:

(a) To prepare and maintain accurate ownership and description information for all parcels of real property in the county. That information may include the following:

1. Parcel numbers.

2. The owner's name and an accurate legal description as shown on the latest records of the office of the register of deeds.

3. The owner's mailing address.

4. The number of acres in the parcel if it contains more than one acre.

5. School district and special purpose district codes.

(b) To provide information on parcels of real property in the county for the use of taxation district assessors, city, village and town clerks and treasurers and county offices and any other persons requiring that information.

(c) To serve as the coordinator between the county and the taxation districts in the county for assessment and taxation purposes.

(d) To provide computer services related to assessment and taxation for the assessors, clerks and treasurers of the taxation districts in the county, including but not limited to data entry for the assessment roll, notice of assessments, summary reports, tax roll and tax bills.

(3) BASIC TAX FORMS. (a) The department of revenue shall prescribe basic uniform forms of assessment rolls, tax rolls, tax bills, tax receipts, tax roll settlement sheets and all other forms required for the assessment and collection of general property taxes throughout the state, and shall furnish each county designee a sample of the uniform forms.

(c) If any county has reason to use forms for assessment and collection of taxes in addition to those prescribed under par. (a), the county real property lister and treasurer jointly may prescribe such additional forms for use in their county, upon approval of the department of revenue.

(d) Each county designee who requires the forms prescribed in pars. (a) and (c) shall procure them at county expense and shall furnish such forms to the assessors, clerks and treasurers of the taxation districts within the county, as needed in the discharge of their duties.

History: 1977 c. 142; 1983 a. 275; 1985 a. 12 ss. 2, 3, 13; 1991 a. 204; 1995 a. 225.

70.095 Assessment roll; time−share property. For the purpose of time−share property, as defined in s. 707.02 (32), a time−share instrument, as defined in s. 707.02 (28), shall provide a method for allocating real property taxes among the time−share owners, as defined in s. 707.02 (31), and a method for giving notice of an assessment and the amount of property tax to the owners. Only one entry shall be made on the assessment roll for each building unit within the time−share property, which entry shall consist of the cumulative real property value of all time−share interests in the unit.

History: 1983 a. 432; 1985 a. 188 s. 16; 1987 a. 399.

70.10 Assessment, when made, exemption. The assessor shall assess all real and personal property as of the close of January 1 of each year. Except in cities of the 1st class and 2nd class cities that have a board of assessors under s. 70.075, the assessment shall be finally completed before the first Monday in April. All real property conveyed by condemnation or in any other manner to the state, any county, city, village or town by gift, purchase, tax deed or power of eminent domain before January 2 in such year shall not be included in the assessment. Assessment of manufacturing property subject to s. 70.995 shall be made according to that section.

History: 1973 c. 90; 1977 c. 29; 1981 c. 20.

Nothing in this section requires a property to be classified based on its actual use or prevents an assessor from considering a property's most likely use. West Capitol, Inc. v. Village of Sister Bay, 2014 WI App 52, 354 Wis. 2d 130, 848 N.W.2d 875, 13−1458.

70.109 Presumption of taxability. Exemptions under this chapter shall be strictly construed in every instance with a presumption that the property in question is taxable, and the burden of proof is on the person who claims the exemption.

History: 1997 a. 237.

Exemption from payment of taxes is an act of legislative grace; the party seeking the exemption bears the burden of proving entitlement. Exemptions are only allowed to the extent the plain language of a statute permits. For tax exemptions to be valid they must be clear and express, and not extended by implication. In construing tax exemptions, courts apply a strict but reasonable construction resolving any doubts regarding the exemption in favor of taxability. United Rentals, Inc. v. City of Madison, 2007 WI App 131, 302 Wis. 2d 245, 733 N.W.2d 322, 05−1440.

70.11 Property exempted from taxation. The property described in this section is exempted from general property taxes if the property is exempt under sub. (1), (2), (18), (21), (27) or (30); if it was exempt for the previous year and its use, occupancy or ownership did not change in a way that makes it taxable; if the property was taxable for the previous year, the use, occupancy or ownership of the property changed in a way that makes it exempt and its owner, on or before March 1, files with the assessor of the taxation district where the property is located a form that the department of revenue prescribes or if the property did not exist in the previous year and its owner, on or before March 1, files with the assessor of the taxation district where the property is located a form that the department of revenue prescribes. Except as provided in subs. (3m) (c), (4) (b), (4a) (f), and (4d), leasing a part of the property described in this section does not render it taxable if the lessor uses all of the leasehold income for maintenance of the leased property or construction debt retirement of the leased property, or both, and, except for residential housing, if the lessee would be exempt from taxation under this chapter if it owned the property. Any lessor who claims that leased property is exempt from taxation under this chapter shall, upon request by the tax assessor, provide records relating to the lessor's use of the income from the leased property. Property exempted from general property taxes is:

(1) PROPERTY OF THE STATE. Property owned by this state except land contracted to be sold by the state. This exemption shall not apply to land conveyed after September, 1933, to this state or for its benefit while the grantor or others for the grantor's benefit are permitted to occupy the land or part thereof in consideration for the conveyance; nor shall it apply to land devised to the state or for its benefit while another person is permitted by the will to occupy the land or part thereof. This exemption shall not apply to any property acquired by the department of veterans affairs under s. 45.32 (5) and (7) or to the property of insurers undergoing rehabilitation or liquidation under ch. 645. Property exempt under

this subsection includes general property owned by the state and leased to a private, nonprofit corporation that operates an Olympic ice training center, regardless of the use of the leasehold income.

(2) MUNICIPAL PROPERTY AND PROPERTY OF CERTAIN DISTRICTS, EXCEPTION. Property owned by any county, city, village, town, school district, technical college district, public inland lake protection and rehabilitation district, metropolitan sewerage district, municipal water district created under s. 198.22, joint local water authority created under s. 66.0823, long−term care district under s. 46.2895 or town sanitary district; lands belonging to cities of any other state used for public parks; land tax−deeded to any county or city before January 2; but any residence located upon property owned by the county for park purposes that is rented out by the county for a nonpark purpose shall not be exempt from taxation. Except as to land acquired under s. 59.84 (2) (d), this exemption shall not apply to land conveyed after August 17, 1961, to any such governmental unit or for its benefit while the grantor or others for his or her benefit are permitted to occupy the land or part thereof in consideration for the conveyance. Leasing the property exempt under this subsection, regardless of the lessee and the use of the leasehold income, does not render that property taxable.

(2m) PROPERTY LEASED OR SUBLEASED TO SCHOOL DISTRICTS. All of the property that is owned or leased by a corporation, organization or association that is exempt from federal income taxation under section 501 (c) (3) of the Internal Revenue Code if all of that property is leased or subleased to a school district for no or nominal consideration for use by an educational institution that offers regular courses for 6 months in a year.

(3) COLLEGES AND UNIVERSITIES. (a) 1. Except as provided in subd. 2., grounds of any incorporated college or university, not exceeding 80 acres.

2. Grounds of any incorporated college or university, not exceeding 150 acres, if the college or university satisfies all of the following criteria:

a. It is a nonprofit organization.

b. It was founded before January 1, 1900.

c. Its total annual undergraduate enrollment is at least 5,000 students, not including students receiving online instruction only.

(b) The fact that college or university officers, faculty members, teachers, students or employees live on the grounds does not render them taxable. In addition to the exemption of leased property specified in the introductory phrase of this section, a university or college may also lease property for educational or charitable purposes without making it taxable if it uses the income derived from the lease for charitable purposes.

(c) All buildings, equipment and leasehold interests in lands described in s. 36.06, 1971 stats., and s. 37.02 (3), 1971 stats.

(3a) BUILDINGS AT THE WISCONSIN VETERANS HOMES. All buildings, equipment and leasehold interests in lands described in s. 45.03 (5).

(3m) STUDENT HOUSING FACILITIES. (a) All real and personal property of a housing facility, not including a housing facility owned or used by a university fraternity or sorority, college fraternity or sorority, or high school fraternity or sorority, for which all of the following applies:

1. The facility is owned by a nonprofit organization.

2. At least 90 percent of the facility's residents are students enrolled at the University of Wisconsin−Madison and the facility houses no more than 300 such students.

3. The facility offers support services and outreach programs to its residents, the public or private institution of higher education at which the student residents are enrolled, and the public.

4. The facility is in existence and meets the requirements of this subsection on July 2, 2013, except that, if the facility is located in a municipally designated landmark, the facility is in existence and meets the requirements of this subsection on September 30, 2014.

(b) If a nonprofit organization owns more than one housing facility, as described under par. (a), the exemption applies to only one facility, at one location.

(c) Leasing a part of the property described in this subsection does not render it taxable if the lessor uses the leasehold income only for the following:

1. Maintenance of the leased property.

2. Construction debt retirement of the leased property.

3. The purposes for which the exemption under section 501 (c) (3) of the Internal Revenue Code is granted to the nonprofit organization that owns the facility.

(4) EDUCATIONAL, RELIGIOUS AND BENEVOLENT INSTITUTIONS; WOMEN'S CLUBS; HISTORICAL SOCIETIES; FRATERNITIES; LIBRARIES. (a) 1. Property owned and used exclusively by educational institutions offering regular courses 6 months in the year; or by churches or religious, educational or benevolent associations, or by a nonprofit entity that is operated as a facility that is licensed, certified, or registered under ch. 50, including benevolent nursing homes but not including an organization that is organized under s. 185.981 or ch. 611, 613 or 614 and that offers a health maintenance organization as defined in s. 609.01 (2) or a limited service health organization as defined in s. 609.01 (3) or an organization that is issued a certificate of authority under ch. 618 and that offers a health maintenance organization or a limited service health organization and not including property owned by any nonstock, nonprofit corporation which services guaranteed student loans for others or on its own account, and also including property owned and used for housing for pastors and their ordained assistants, members of religious orders and communities, and ordained teachers, whether or not contiguous to and a part of other property owned and used by such associations or churches, and also including property described under par. (b); or by women's clubs; or by domestic, incorporated historical societies; or by domestic, incorporated, free public library associations; or by fraternal societies operating under the lodge system (except university, college and high school fraternities and sororities), but not exceeding 10 acres of land necessary for location and convenience of buildings while such property is not used for profit. Property owned by churches or religious associations necessary for location and convenience of buildings, used for educational purposes and not for profit, shall not be subject to the 10−acre limitation but shall be subject to a 30−acre limitation. Property that is exempt from taxation under this subsection and is leased remains exempt from taxation only if, in addition to the requirements specified in the introductory phrase of this section, the lessee does not discriminate on the basis of race.

2. For purposes of subd. 1., beginning with the property tax assessments as of January 1, 2018, property owned by a church or religious association necessary for location and convenience of buildings includes property necessary for the location and convenience of a building that the church or religious association intends to construct to replace a building destroyed by fire, natural disaster, or criminal act, regardless of whether preconstruction planning or construction has begun. This subdivision applies only for the first 25 years after the year in which the building is destroyed.

(b) 1. Leasing a part of property described in par. (a) that is owned and operated by a nonprofit organization as a facility that is licensed, certified, or registered under ch. 50, as residential housing, does not render the property taxable, regardless of how the lessor uses the leasehold income.

2. Leasing a part of property described in par. (a) that is occupied by one or more individuals with permanent disabilities for whom evidence is available that demonstrates that such individuals meet the medical definition of permanent disability used to determine eligibility for programs administered by the federal social security administration, as residential housing, does not render the property taxable, regardless of how the lessor uses the leasehold income.

(4a) BENEVOLENT LOW−INCOME HOUSING. (a) Property owned by a nonprofit entity that is a benevolent association and used as low−income housing, including all common areas of a low−income housing project. Property used for a low−income housing project, including other low−income housing projects under common control with such project, and exempt under this subsection may not exceed 30 acres necessary for the location and convenience of buildings or 10 contiguous acres in any one municipality.

(b) For purposes of this subsection, "low−income housing" means any housing project described in sub. (4b) or any residential unit within a low−income housing project that is occupied by a low−income or very low−income person or is vacant and is only available to such persons.

(c) For purposes of this subsection, "low−income housing project" means a residential housing project for which all of the following apply:

1. At least 75 percent of the residential units are occupied by low−income or very low−income persons or are vacant and available only to low−income or very low−income persons.

2. At least one of the following applies:

a. At least 20 percent of the residential units are rented to persons who are very low−income persons or are vacant and are only available to such persons.

b. At least 40 percent of the residential units are rented to persons whose income does not exceed 120 percent of the very low−income limit or are vacant and only available to such persons.

(d) For purposes of this subsection, low−income persons and very low−income persons shall be determined in accordance with the income limits published by the federal department of housing and urban development for low−income and very low−income families under the National Housing Act of 1937.

(e) For purposes of this subsection, all properties included within the same federal department of housing and urban development contract or within the same federal department of agriculture, rural development, contract are considered to be one low−income housing project.

(f) Leasing property that is exempt from taxation under this subsection or sub. (4b) as low−income housing does not render it taxable, regardless of how the leasehold income is used.

(g) 1. Annually, no later than March 1, each person who owns a low−income housing project shall file with the assessor of the taxation district in which the project is located a statement that specifies which units were occupied on January 1 of that year by persons whose income satisfied the income limit requirements under par. (b), as certified by the property owner to the appropriate federal or state agency, and a copy of the federal department of housing and urban development contract or federal department of agriculture, rural development, contract, if applicable.

2. The format and distribution of statements under this paragraph shall be governed by s. 70.09 (3).

3. If the statement required under this paragraph is not received on or before March 1, the taxation district assessor shall send the property owner a notice, by certified mail to the owner's last−known address of record, stating that failure to file a statement is subject to the penalties under subd. 5.

4. In addition to the statement under subd. 1., the taxation district assessor may require that a property owner submit other information to prove that the person's property qualifies as low−income housing that is exempt from taxation under this subsection.

5. A person who fails to file a statement within 30 days after notification under subd. 3. shall forfeit $10 for each succeeding day on which the form is not received by the taxation district assessor, but not more than $500.

(4b) HOUSING PROJECTS FINANCED BY HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY. All property of a housing project that satisfies all of the following:

(a) It is owned by a corporation, organization, or association described in section 501 (c) (3) of the Internal Revenue Code that is exempt from taxation under section 501 (a) of the Internal Revenue Code.

(b) It is financed by the Housing and Economic Development Authority under s. 234.03 (13).

(c) The Housing and Economic Development Authority holds a first−lien mortgage security interest on it.

(d) It is in existence on January 1, 2008.

(4d) BENEVOLENT RETIREMENT HOMES FOR THE AGED. Property that is owned by a nonprofit entity that is a benevolent association and used as a retirement home for the aged, but not exceeding 30 acres of land necessary for the location and convenience of buildings, while such property is not used for profit, if the fair market value of the individual dwelling unit, as determined by the assessor for the taxation district in which the property is located, is less than 130 percent of the average equalized value under s. 70.57 of improved parcels of residential property located in the county in which the retirement home for the aged is located in the previous year, as determined by the assessor of the taxation district in which the property is located based on the sum of the average per parcel equalized value of residential land and the average per parcel equalized value of residential improvements, as determined by the department of revenue. For purposes of determining the fair market value of an individual dwelling unit under this subsection, the value of any common area is excluded. The common area of a retirement home for the aged is exempt from general property taxes if 50 percent or more of the home's individual dwelling units are exempt from general property taxes under this subsection. If less than 50 percent of the home's individual dwelling units are exempt from general property taxes under this subsection, the common area of the retirement home for the aged is subject to general property taxes. Leasing a part of property used as a retirement home for the aged, as described in this subsection, does not render it taxable, regardless of how the leasehold income is used.

(4g) REAL PROPERTY HELD FOR REHABILITATION OR FUTURE CONSTRUCTION AND LATER SALE TO LOW−INCOME PERSONS. Real property owned by a nonprofit organization if all of the following requirements are fulfilled:

(a) The nonprofit organization holds the property for the purpose of rehabilitating an existing structure or constructing a new structure on the property for sale to low−income persons for use as a personal residence.

(b) The nonprofit organization offers low−income persons loans to purchase the property for which no interest is charged.

(c) The nonprofit organization requires prospective purchasers to participate in the rehabilitation or construction of the property.

(d) The nonprofit organization acquired the property within 3 years before the assessment date.

(4m) NONPROFIT HOSPITALS. (a) Real property owned and used and personal property used exclusively for the purposes of any hospital of 10 beds or more devoted primarily to the diagnosis, treatment or care of the sick, injured, or disabled, which hospital is owned and operated by a corporation, voluntary association, foundation or trust, except an organization that is organized under s. 185.981 or ch. 611, 613 or 614 and that offers a health maintenance organization as defined in s. 609.01 (2) or a limited service health organization as defined in s. 609.01 (3) or an organization that is issued a certificate of authority under ch. 618 and that offers a health maintenance organization or a limited service health organization, no part of the net earnings of which inures to the benefit of any shareholder, member, director or officer, and which hospital is not operated principally for the benefit of or principally as an adjunct of the private practice of a doctor or group of doctors. This exemption does not apply to property used for commercial purposes, as a health and fitness center or as a doctor's office. The exemption for residential property shall be limited to dormitories

of 12 or more units which house student nurses enrolled in a state accredited school of nursing affiliated with the hospital.

(b) Real property leased by and used exclusively for the purposes of any hospital that has 10 beds or more, is devoted primarily to the diagnosis, treatment or care of the sick, injured or disabled and is owned and operated by a corporation, voluntary association, foundation or trust, except an organization that is organized under s. 185.981 or ch. 611, 613 or 614 and that offers a health maintenance organization as defined in s. 609.01 (2) or a limited service health organization as defined in s. 609.01 (3) or an organization that is issued a certificate of authority under ch. 618 and that offers a health maintenance organization or a limited service health organization, no part of the net earnings of which inures to the benefit of any shareholder, member, director or officer and is not operated principally for the benefit of or principally as an adjunct to the private practice of a doctor or group of doctors. This exemption applies only to real property leased from a nonprofit organization or nonprofit hospital that is exempt from taxation under this chapter and that uses the income derived from the lease only for maintenance of the leased property or construction debt retirement of the leased property or both. This exemption does not apply to property used for commercial purposes, as a health and fitness center or as a doctor's office.

(c) In this subsection, "health and fitness center" means an establishment the primary purpose of which is to provide recreational services or facilities that are purported to assist patrons in physical exercise, in weight control or in figure development, including but not limited to a health and fitness center, studio, salon or club. In this subsection, "health and fitness center" does not include a facility the primary purpose of which is to provide services or facilities that are primarily a part of a course of rehabilitation or therapy prescribed by a physician or physical therapist to treat a physical injury or dysfunction and that are aimed primarily at patients of the hospital or an affiliated entity and not at the general public and that is located within the physical confines of a hospital.

(5) AGRICULTURAL FAIRS. Property owned and used exclusively by any state or county agricultural society, or by any other domestic corporation formed to encourage agricultural and industrial fairs and exhibitions and necessary for fairgrounds or for exhibition and sale of agricultural and dairy property, not exceeding 80 acres. The use of such property for celebrations or as places of amusement shall not render it taxable.

(6) FIRE COMPANIES. Property of any fire company used exclusively for its purposes.

(7) LAND OF MILITARY ORGANIZATIONS. Land owned by military organizations and used for armories, public parks or monument grounds but not used for private gain.

(9) MEMORIALS. All memorial halls and the real estate upon which the same are located, owned and occupied by any organization of United States war veterans organized pursuant to act of congress and domesticated in this state pursuant to the laws of this state, containing permanent memorial tablets with the names of former residents of any given town, village, city or county who lost their lives in the military or naval service of the state or the United States in any war inscribed thereon, and all personal property owned by such organizations, and all buildings erected, purchased or maintained by any county, city, town or village as memorials under s. 45.72. The renting of such halls or buildings for public purposes shall not render them taxable, provided that all income derived therefrom be used for the upkeep and maintenance thereof. Where such hall or building is used in part for exempt purposes and in part for pecuniary profit, it shall be assessed for taxation to the extent of such use for pecuniary profit as provided in s. 70.1105 (1).

(10m) LIONS FOUNDATION CAMPS FOR CHILDREN WITH VISUAL IMPAIRMENTS. Lands not exceeding 40 acres and the buildings thereon owned by the Wisconsin Lions Foundation and used as camps for children with visual impairments, so long as the property is used for such purposes and not for pecuniary profit of any individual.

(11) BIBLE CAMPS. All real property not exceeding 40 acres and the personal property situated therein, of any Bible camp conducted by a religious nonprofit corporation organized under the laws of this state, so long as the property is used for religious purposes and not for pecuniary profit of any individual.

(12) CERTAIN CHARITABLE ORGANIZATIONS. (a) Property owned by units which are organized in this state of the following organizations: the Salvation Army; Goodwill Industries, not exceeding 10 acres of property in any municipality; the Boy Scouts of America; the Boys' Clubs of America; the Girl Scouts or Camp Fire Girls; the Young Men's Christian Association, not exceeding 40 acres for property that is located outside the limit of any incorporated city or village and not exceeding 10 acres for property that is located inside the limit of any incorporated city or village; the Young Women's Christian Association, not exceeding 40 acres for property that is located outside the limit of any incorporated city or village and not exceeding 10 acres for property that is located inside the limit of any incorporated city or village; Jewish Community Centers of North America, not exceeding 40 acres for property that is located outside the limit of any incorporated city or village and not exceeding 10 acres for property that is located inside the limit of any incorporated city or village; or any person as trustee for them of property used for the purposes of those organizations, provided no pecuniary profit results to any individual owner or member.

(b) Real property not exceeding 40 acres and the personal property located thereon owned by units which are not organized in this state of the organizations listed in par. (a). No such unit which is not organized in this state may claim an exemption for more than a total of 80 rods of shoreline on lakes, rivers and streams.

(c) All property of a resale store that is owned by a nonprofit organization that qualifies for the income tax exemption under section 501 (c) (3) of the Internal Revenue Code, if at least 50 percent of the revenue generated by the resale store is given to one other nonprofit organization located either in the same county where the resale store is located or in a county adjacent to the county where the resale store is located. In this paragraph, "resale store" means a store that primarily sells used tangible personal property at retail.

(13) CEMETERIES. Land owned by cemetery authorities, as defined in s. 157.061 (2), and used exclusively as public burial grounds and tombs and monuments therein, and privately owned burial lots; land adjoining such burial grounds, owned and occupied exclusively by the cemetery authority for cemetery purposes; personal property owned by any cemetery authority and necessary for the care and management of burial grounds; burial sites and contiguous lands which are cataloged under s. 157.70.

(13m) ARCHAEOLOGICAL SITES. Archaeological sites and contiguous lands identified under s. 44.02 (23) if the property is subject to a permanent easement, covenant or similar restriction running with the land and if that easement, covenant or restriction is held by the state historical society or by an entity approved by the state historical society and protects the archaeological features of the property.

(14) ART GALLERIES. Property of any public art gallery, if used exclusively for art exhibits and for art teaching, if public access to such gallery is free not less than 3 days in each week.

(15) MANURE STORAGE FACILITIES. Any manure storage facility used by a farmer. This exemption shall apply whether the facility is deemed personal property or is so affixed to the realty as to be classified as real estate.

(15m) SECONDARY CONTAINMENT STRUCTURES. Secondary containment structures used to prevent leakage of liquid fertilizer or pesticides.

(16) LABOR TEMPLES. Property owned and used exclusively by any labor organization or by any domestic corporation whose members are workmen associated according to crafts, trades or occupations or their authorized representatives or associations composed of members of different crafts, trades or occupations, provided no pecuniary profit results to any member.

(17) FARMERS' TEMPLES. Property owned and used exclusively for social and educational purposes and for meetings by any corporation, all of whose members are farmers; provided no pecuniary profit results to any member.

(18) HOUSING. Property of housing authorities exempt from taxation under s. 66.1201 (22).

(19) INSTITUTIONS AND CENTERS FOR DEPENDENT CHILDREN AND PERSONS WHO HAVE DEVELOPMENTAL DISABILITIES. The property of any residential care center for children and youth that is licensed under s. 48.60 for the care of dependent or neglected children or delinquent juveniles if that property is used for that purpose and the property of any nonprofit institution that is subject to examination under s. 46.03 (5) and that has a full−time population of at least 150 individuals who have developmental disabilities, as defined in s. 51.01 (5), if that property is used for that purpose.

(20) PROPERTY HELD IN TRUST IN PUBLIC INTEREST. Property that is owned by, or held in trust for, a nonprofit organization, if all of the following requirements are fulfilled:

(a) The property is used to preserve native wild plant or native wild animal life, Indian mounds or other works of ancient persons or geological or geographical formations of scientific interest.

(b) The property is open to the public subject to reasonable restrictions.

(c) No pecuniary profit accrues to any owner or member of the organization or to any associate of any such owner or member from the use or holding of the property.

(d) The county board of the county where the property is located has not determined that the property is not owned by, or held in trust for, a nonprofit organization and has not determined that at least one of the requirements under pars. (a) to (c) has not been fulfilled.

(21) TREATMENT PLANT AND POLLUTION ABATEMENT EQUIPMENT. (ab) In this subsection:

1. "Air contaminants" has the meaning given in s. 285.01 (1).

2. "Industrial waste" means waste resulting from any process of industry, trade, or business, or the development of any natural resource, that has no monetary or market value, except as provided in subd. 3. b., and that would otherwise be considered superfluous, discarded, or fugitive material. "Industrial waste" does not include other wastes, as defined in s. 281.01 (7).

3. "Used exclusively" means to the exclusion of all other uses except any of the following:

a. For other use not exceeding 5 percent of total use.

b. To produce heat or steam for a manufacturing process, if the fuel consists of either 95 percent or more industrial waste that would otherwise be considered superfluous, discarded, or fugitive material or 50 percent or more of wood chips, sawdust, or other wood residue from the paper and wood products manufacturing process, if the wood chips, sawdust, or other wood residue would otherwise be considered superfluous, discarded, or fugitive material.

(am) All property purchased or constructed as a waste treatment facility used exclusively and directly to remove, store, or cause a physical or chemical change in industrial waste or air contaminants for the purpose of abating or eliminating pollution of surface waters, the air, or waters of the state if that property is not used to grow agricultural products for sale and, if the property's owner is taxed under ch. 76, if the property is approved by the department of revenue. The department of natural resources and department of health services shall make recommendations upon request to the department of revenue regarding such property. All property purchased or upon which construction began prior to July 31, 1975, shall be subject to s. 70.11 (21), 1973 stats.

(b) The books and records of owners of property covered by this subsection shall be open to examination by representatives of the department of natural resources, department of health services and department of revenue.

(c) A prerequisite to exemption under this subsection for owners who are taxed under ch. 76 is the filing of a statement on forms prescribed by the department of revenue with the department of revenue. This statement shall be filed not later than January 15 of the year in which a new exemption is requested or in which a waste treatment facility that has been granted an exemption is retired, replaced, disposed of, moved to a new location, or sold.

(d) The department of revenue shall allow an extension to a date determined by the department by rule for filing the report form required under par. (c) if a written application for an extension, stating the reason for the request, is filed with the department of revenue before January 15.

(f) If property about which a statement has been filed under par. (c) is determined to be taxable, the owner may appeal that determination under s. 76.08.

(22) CAMPS FOR PERSONS WITH DISABILITIES. Lands not exceeding 10 acres and the buildings thereon owned by the Wisconsin Easter Seal Society for Crippled Children and Adults, Incorporated, and known as Camp Wawbeek, used for camps for children and adults with orthopedic impairments and not to exceed 371 acres of wooded and meadowland adjacent thereto used in connection therewith, excluding a caretaker's home and 10 acres of land in connection therewith, so long as the property is used solely for such purposes and not for pecuniary profit of any individual.

(25) NONPROFIT MEDICAL RESEARCH FOUNDATIONS. Property owned and operated by a corporation, voluntary association, foundation or trust, no part of the net earnings of which inure to the benefit of any shareholder, member, director or officer thereof, which property is used exclusively for the purposes of: medical and surgical research the knowledge derived from which is applied to the cures, prevention, relief and therapy of human diseases; providing instruction for practicing physicians and surgeons, promoting education, training, skill and investigative ability of physicians, scientists and individuals engaged in work in the basic sciences which bear on medicine and surgery; or providing diagnostic facilities and treatment for deserving destitute individuals not eligible for assistance from charitable or governmental institutions. Such corporation, voluntary association, foundation or trust must have received a certificate under section 501 (c) (3) of the internal revenue code as a nonprofit organization exempt for income tax purposes.

(26) PROPERTY OF INDUSTRIAL DEVELOPMENT AGENCIES. All real and personal property owned by an industrial development agency formed under s. 59.57 (2). Any such property subject to contract of sale or lease shall be taxed as personal property to the vendee or lessee thereof.

(27) MANUFACTURING MACHINERY AND SPECIFIC PROCESSING EQUIPMENT. (a) In this subsection:

1. "Building" means any structure used for sheltering people, machinery, animals or plants; storing property; or working, office, parking, sales or display space.

2. "Machinery" means a structure or assemblage of parts that transmits forces, motion or energy from one part to another in a predetermined way by electrical, mechanical or chemical means, but "machinery" does not include a building.

3. "Manufacturing" means engaging in an activity classified as manufacturing under s. 70.995.

4. "Power wiring" means bus duct, secondary service wiring or other wiring that is used exclusively to provide electrical ser-

vice to production machines that are exempt under par. (b). "Power wiring" does not include transformers.

5. "Production process" means the manufacturing activities beginning with conveyance of raw materials from plant inventory to a work point of the same plant and ending with conveyance of the finished product to the place of first storage on the plant premises, including conveyance of work in process directly from one manufacturing operation to another in the same plant, including the holding for 3 days or less of work in process to ensure the uninterrupted flow of all or part of the production process and including quality control activities during the time period specified in this subdivision but excluding storage, machine repair and maintenance, research and development, plant communication, advertising, marketing, plant engineering, plant housekeeping and employee safety and fire prevention activities; and excluding generating, transmitting, transforming and furnishing electric current for light or heat; generating and furnishing steam; supplying hot water for heat, power or manufacturing; and generating and furnishing gas for lighting or fuel or both.

6. "Specific processing equipment" means containers for chemical action, mixing or temporary holding of work in process to ensure the uninterrupted flow of all or part of the production process, process piping, tools, implements and quality control equipment.

6m. "Storage" means the holding or safekeeping of raw materials or components before introduction into the production process; the holding, safekeeping or preservation of work in process or of components outside the production process; and the holding or safekeeping of finished products or of components after completion of the production process; whether or not any natural processes occur during that holding, safekeeping or preservation; but "storage" does not include the holding for 3 days or less of work in process to ensure the uninterrupted flow of all or part of the production process.

7. "Used directly" means used so as to cause a physical or chemical change in raw materials or to cause a movement of raw materials, work in process or finished products.

8. "Used exclusively" means to the exclusion of all other uses except for other use not exceeding 5 percent of total use.

(b) Machinery and specific processing equipment; and repair parts, replacement machines, safety attachments and special foundations for that machinery and equipment; that are used exclusively and directly in the production process in manufacturing tangible personal property, regardless of their attachment to real property, but not including buildings. The exemption under this paragraph shall be strictly construed.

(28) HUMANE SOCIETIES. Property owned and operated by a humane society organized primarily for the care and shelter of homeless, stray or abused animals, on a nonprofit basis, no part of the net income of which inures to the benefit of any member, officer or shareholder, if the property is used exclusively for the primary purposes of the humane society.

(29) NONPROFIT RADIO STATIONS. Property owned by a radio station that is exempt from taxation under section 501 of the internal revenue code as amended to December 31, 1980, if the property is used for the purposes for which the exemption was granted.

(29m) NONPROFIT THEATERS. All of the property owned or leased by a corporation, organization or association exempt from taxation under section 501 (c) (3) of the internal revenue code, if all of the property is used for the purposes for which the exemption was granted, the property includes one or more buildings listed on the national register of historic places, the property includes one or more theaters for performing theater arts which have a total seating capacity of not less than 800 persons and the corporation, organization or association operates the theater or theaters.

(29p) NONPROFIT OUTDOOR THEATERS. All the property owned or leased by an organization that is exempt from taxation under section 501 (c) (3) of the Internal Revenue Code, as confirmed by a determination letter issued by the Internal Revenue Service no later than July 31, 1969, if all of the property is used for the purposes for which the exemption was granted, the property includes one or more outdoor theaters for performing theater arts which have a total seating capacity of not less than 400 persons, and the organization operates the theater or theaters.

(30) CROPS. All perennial plants that produce an annual crop.

(31) SPORTS AND ENTERTAINMENT FACILITIES. Real and personal property consisting of or contained in a sports and entertainment facility, including related or auxiliary structures, constructed by a nonprofit corporation for the purpose of donation to the state or to an instrumentality of the state, if the state indicates by legislative or executive action that it will accept the facility. This exemption shall apply during construction and operation if the facility is owned by a nonprofit corporation, the state or an instrumentality of the state.

(31m) RAILROAD HISTORICAL SOCIETIES. Right−of−way and rolling stock owned by railroad historical societies.

(32) NONPROFIT YOUTH HOCKEY ASSOCIATIONS. Land not exceeding 13 acres, the buildings on that land and personal property if the land is owned or leased by and the buildings and personal property are owned by, and all the property is used exclusively for the purposes of, a nonprofit youth hockey association, except that the exemption under this subsection does not apply to the property of a nonprofit youth hockey association if any of its property was funded in whole or in part by industrial revenue bonds unless that association's facilities were placed in operation after January 1, 1988. Leasing all or a portion of the property does not render that property taxable if all of the leasehold income is used for maintenance of the leased property.

(33) CAMPS FOR MENTALLY OR PHYSICALLY DISABLED PERSONS. Land, not exceeding 50 acres, and the buildings on that land used as a residential campground exclusively for mentally or physically disabled persons and their families as long as the property is used for that purpose and not for the pecuniary profit of any individual.

(34) HISTORIC PROPERTIES. (a) Real property all of which fulfills all of the following requirements:

1. Is listed on the national register of historic places in Wisconsin or the state register of historic places.

2. Is a public building, as defined in s. 101.01 (12).

3. Is owned or leased by an organization that is exempt from taxation under section 501 of the internal revenue code as amended to December 31, 1986.

4. Is used for civic, governmental, cultural or educational purposes.

5. Is subject to an easement, covenant or similar restriction running with the land that is held by or approved by the state historical society or by an entity approved by the state historical society, that protects the historic features of the property and that will remain effective for at least 20 years after January 1, 1989.

(35) CULTURAL AND ARCHITECTURAL LANDMARKS. Property described in s. 234.935 (1), 1997 stats.

(36) PROFESSIONAL SPORTS AND ENTERTAINMENT HOME STADIUMS. (a) Property consisting of or contained in a sports and entertainment home stadium, except a football stadium as defined in s. 229.821 (6); including but not limited to parking lots, garages, restaurants, parks, concession facilities, entertainment facilities, transportation facilities, and other functionally related or auxiliary facilities and structures; including those facilities and structures while they are being built; constructed by, leased to or primarily used by a professional athletic team that is a member of a league that includes teams that have home stadiums in other states, and the land on which that stadium and those structures and facilities are located. Leasing or subleasing the property; regardless of the lessee, the sublessee and the use of the leasehold income; does not render the property taxable.

(b) Property consisting of or contained in a football stadium, as defined in s. 229.821 (6), and related facilities and structures, including those facilities and structures while they are being built

or constructed, primarily used by a professional football team described in s. 229.823, and the land, including parking lots, on which that stadium and those facilities and structures are located. Related facilities and structures are limited to improvements that share common structural supports with the stadium or are physically attached to the stadium. Using the property for garages, restaurants, parks, concession facilities, entertainment facilities, transportation facilities, or other functionally related or auxiliary facilities does not render the property taxable. Leasing or subleasing the property; regardless of the lessee, the sublessee and the use of the leasehold income; does not render the property taxable.

(37) LOCAL EXPOSITION DISTRICT. The property of a local exposition district under subch. II of ch. 229, including sports and entertainment arena facilities, as defined in s. 229.41 (11g), except that any portion of the sports and entertainment arena facilities, excluding the outdoor plaza area, that is used, leased, or subleased for use as a restaurant or for any use licensed under ch. 125, and is regularly open to the general public at times when the sports and entertainment arena, as defined in s. 229.41 (11e), is not being used for events that involve the arena floor and seating bowl, is not exempt under this subsection.

(38) UNIVERSITY OF WISCONSIN HOSPITALS AND CLINICS AUTHORITY. Notwithstanding the provisions of s. 70.11 (intro.) that relate to leased property, all property owned by the University of Wisconsin Hospitals and Clinics Authority and all property leased to the University of Wisconsin Hospitals and Clinics Authority that is owned by the state, provided that use of the property is primarily related to the purposes of the authority.

(38m) WISCONSIN AEROSPACE AUTHORITY. Notwithstanding the provisions of s. 70.11 (intro.) that relate to leased property or that impose other limitations, all property owned or leased by the Wisconsin Aerospace Authority, provided that use of the property is primarily related to the purposes of the authority.

(38r) ECONOMIC DEVELOPMENT CORPORATION. All property owned by the Wisconsin Economic Development Corporation, provided that use of the property is primarily related to the purposes of the Wisconsin Economic Development Corporation.

(39) COMPUTERS. Mainframe computers, minicomputers, personal computers, networked personal computers, servers, terminals, monitors, disk drives, electronic peripheral equipment, tape drives, printers, basic operational programs, systems software, and prewritten software. The exemption under this subsection does not apply to custom software, fax machines, copiers, equipment with embedded computerized components or telephone systems, including equipment that is used to provide telecommunications services, as defined in s. 76.80 (3). For the purposes of s. 79.095, the exemption under this subsection does not apply to property that is otherwise exempt under this chapter.

(39m) Cash registers and fax machines, excluding fax machines that are also copiers.

(40) LOCAL CULTURAL ARTS DISTRICT. Property of a local cultural arts district under subch. V of ch. 229, except any of the following:

(a) Property that is not a part of the physical structure of a cultural arts facility, as defined under s. 229.841 (5), if that property is used for a retail business or a restaurant, unless the retail business or restaurant is operated by the local cultural arts district or by a corporation, organization or association described in section 501 (c) 3 of the Internal Revenue Code that is exempt from taxation under section 501 (a) of the Internal Revenue Code.

(b) A parking lot or parking structure that is not used to support the operation of a cultural arts facility, as defined under s. 229.841 (5).

(41) FOX RIVER NAVIGATIONAL SYSTEM AUTHORITY. All property owned by the Fox River Navigational System Authority, provided that use of the property is primarily related to the purposes of the authority.

(42) HUB FACILITY. (a) In this subsection:

1. "Air carrier company" means any person engaged in the business of transportation in aircraft of persons or property for hire on regularly scheduled flights. In this subdivision, "aircraft" has the meaning given in s. 76.02 (1).

2. "Hub facility" means any of the following:

a. A facility at an airport from which an air carrier company operated at least 45 common carrier departing flights each weekday in the prior year and from which it transported passengers to at least 15 nonstop destinations, as defined by rule by the department of revenue, or transported cargo to nonstop destinations, as defined by rule by the department of revenue.

b. An airport or any combination of airports in this state from which an air carrier company cumulatively operated at least 20 common carrier departing flights each weekday in the prior year, if the air carrier company's headquarters, as defined by rule by the department of revenue, is in this state.

(b) Property owned by an air carrier company that operates a hub facility in this state, if the property is used in the operation of the air carrier company.

(43) ART AND ARTS EDUCATION CENTERS. All of the property owned or leased by a corporation, organization, or association that is exempt from taxation under section 501 (c) (3) of the Internal Revenue Code, if the property satisfies the following conditions:

(a) It is used for the purposes for which the exemption under section 501 (c) (3) of the Internal Revenue Code is granted to the corporation, organization, or association that owns or leases the property.

(b) It includes one or more buildings that are owned or leased by the corporation, organization, or association and that are located within, or are surrounded by, a municipal park.

(c) It includes one or more theaters for the performing arts that are operated by the corporation, organization, or association and the seating capacity of the theater or theaters is not less than 600 persons.

(d) It includes facilities that are used for arts education.

(44) OLYMPIC ICE TRAINING CENTER. Beginning with the first assessment year in which the property would not otherwise be exempt from taxation under sub. (1), property owned by a nonprofit corporation that operates an Olympic Ice Training Center on land purchased from the state, if the property is located or primarily used at the center. Property that is exempt under this subsection includes property leased to a nonprofit entity, regardless of the use of the leasehold income, and up to 6,000 square feet of property leased to a for−profit entity, regardless of the use of the leasehold income.

(45) NONPROFIT COMMUNITY THEATER. All property owned or leased by a corporation, organization, or association that is exempt from taxation under section 501 (c) (3) of the Internal Revenue Code, if the property satisfies the following conditions:

(a) It is used for the purposes for which the exemption under section 501 (c) (3) of the Internal Revenue Code is granted to the corporation, organization, or association that owns or leases the property.

(b) It is located on land that the property owner owned prior to March 25, 2010, or on land donated by a local business owner or by a municipality.

(c) It is located on land that is within 20 miles of the Mississippi River.

(d) It is located on a parcel of land that is at least one−fourth of an acre, but no larger than 2 acres.

(e) It includes one or more theaters for the performing arts that are operated by the corporation, organization, or association and the seating capacity of the theater or theaters is not less than 450 persons.

(f) It includes facilities that are used for arts education.

(45m) SNOWMOBILE, ALL−TERRAIN VEHICLE, AND UTILITY TERRAIN VEHICLE CLUBS. Trail groomers owned by a snowmobile

club, an all−terrain vehicle club, a utility terrain vehicle club, or an off−highway motorcycle club that is exempt from taxation under section 501 (c) (3), (4), or (7) of the Internal Revenue Code.

(46) NONPROFIT YOUTH BASEBALL ASSOCIATIONS. Land not exceeding 6 acres, the buildings on that land, and personal property, if the land is owned or leased by, and the buildings and personal property are owned by, a nonprofit youth baseball association and used exclusively for the purposes of the association. Leasing all or a portion of the property does not render the property taxable if all of the leasehold income is used for maintaining the leased property.

History: 1971 c. 152, 154, 312; 1973 c. 90; 1973 c. 333 s. 201m; 1973 c. 335 s. 13; 1975 c. 39; 1975 c. 94 s. 91 (10); 1975 c. 199; 1977 c. 29 ss. 745m, 1646 (3), 1647 (5), (7); 1977 c. 83 s. 26; 1977 c. 273, 282, 391, 418, 447; 1979 c. 34 s. 2102 (39) (g); 1979 c. 221, 225; 1979 c. 310 s. 12; 1981 c. 20; 1983 a. 27 ss. 1177, 1178, 1179f; 1983 a. 189 s. 329 (16); 1983 a. 201, 327; 1985 a. 26, 29, 316, 332; 1987 a. 10, 27, 395, 399; 1987 a. 403 s. 256; 1989 a. 25, 31, 307; 1991 a. 37, 39, 269; 1993 a. 263, 307, 399, 490; 1995 a. 27 ss. 3344 to 3348m, 9126 (19); 1995 a. 201, 227, 247, 366; 1997 a. 27, 35, 134, 147, 164, 184, 237; 1999 a. 9, 32, 63, 65; 1999 a. 150 ss. 624, 672; 1999 a. 167, 185; 2001 a. 16, 38, 59, 103; 2003 a. 195, 291; 2005 a. 4, 22, 70, 74, 335; 2007 a. 19; 2007 a. 20 ss. 1932 to 1934f, 9121 (6) (a); 2009 a. 28, 152, 155; 2011 a. 7, 10, 32, 208; 2011 a. 260 s. 80; 2013 a. 20, 380; 2015 a. 60, 170; 2017 a. 59, 222.

Cross−reference: For other exemptions from property taxation, see s. 1.04, U.S. sites; s. 70.112, specially taxed property; s. 70.42, coal docks; s. 70.421, petroleum; s. 76.23, utilities.

A building used as a residence by various missionaries for rest and recreation falls within the housing exemption under sub. (4) [now sub. (4) (a)]. Evangelical Alliance Mission v. Williams Bay, 54 Wis. 2d 187, 194 N.W.2d 646 (1972).

Voting machines leased by a city with an option to purchase are city property and exempt. Milwaukee v. Shoup Voting Machine Corp. 54 Wis. 2d 549, 196 N.W.2d 694 (1972).

An educational institution under sub. (4) [now sub. (4) (a)] must be substantially and primarily devoted to educational purposes, the determination of which requires a careful analysis of the property's use. National Foundation v. Brookfield, 65 Wis. 2d 263, 222 N.W.2d 608 (1974).

"Owned" under sub. (2) cannot be equated with paper title only. When a corporate lessee was the beneficial and true owner of improvements made to a structure, the lessee was the owner for personal property assessment purposes. State ex rel. Mitchell Aero v. Bd. of Review, 74 Wis. 2d 268, 246 N.W.2d 521 (1976).

"Used exclusively" under sub. (4m) means to physically employ the tangible characteristics of the property. Although medical equipment was leased commercially, it was "used exclusively" for hospital purposes and was exempt. First National Leasing Corp. v. Madison, 81 Wis. 2d 205, 260 N.W.2d 251 (1977).

Religious persons whose housing is exempt under sub. (4) [now sub. (4) (a)] include only those who have official leadership roles in the activities of the congregation. Midtown Church of Christ v. City of Racine, 83 Wis. 2d 72, 264 N.W.2d 281 (1978).

Indicia of true and beneficial ownership of leased property under sub. (1) are discussed. Gebhardt v. City of West Allis, 89 Wis. 2d 103, 278 N.W.2d 465 (1979).

The residence of a hospital chaplain was exempt under sub. (4) [now sub. (4) (a)] as housing for a pastor and under sub. (4m) because it was reasonably necessary for the hospital to have a priest located near the hospital to serve the spiritual needs of its patients and staff. Sisters of St. Mary v. City of Madison, 89 Wis. 2d 372, 278 N.W.2d 814 (1979).

To qualify as an educational association under sub. (4) [now sub. (4) (a)], an organization must be devoted to "traditional" educational activities, which must include traditional charitable objectives and which must benefit the public directly and lessen the burden of government in some way. International Foundation v. City of Brookfield, 95 Wis. 2d 444, 290 N.W.2d 720 (Ct. App. 1980).

A "function or use" test, rather than a "physical appearance" test, was applied to determine whether building−like structures were eligible for the machinery and equipment exemption under sub. (27). Ladish Malting Co. v. DOR, 98 Wis. 2d 496, 297 N.W.2d 56 (Ct. App. 1980).

An organization that practices racial discrimination may not be granted preferential tax treatment. State ex rel. Palleon v. Musolf, 117 Wis. 2d 469, 345 N.W.2d 73 (Ct. App. 1984).

Affirmed. 120 Wis. 2d 545, 356 N.W.2d 487 (1984).

Under an "integrated plant test" for classifying property directly used in manufacturing, graving docks were exempt under sub. (27). The exemption was not destroyed by incidental use of the dock for a nonexempt purpose. Manitowoc Co., Inc. v. Sturgeon Bay, 122 Wis. 2d 406, 362 N.W.2d 432 (Ct. App. 1984).

Sub. (4) [now sub. (4) (a)] is constitutional. Evangelical Lutheran Synod v. Prairie du Chien, 125 Wis. 2d 541, 373 N.W.2d 78 (Ct. App. 1985).

Property leased by an institution for the care of dependent children was not exempt under sub. (19). Chileda Institute, Inc. v. La Crosse, 125 Wis. 2d 554, 373 N.W.2d 43 (Ct. App. 1985).

A day care center devoted primarily to educational purposes was exempt under sub. (4) [now sub. (4) (a)]. Janesville Community Day Care v. Spoden, 126 Wis. 2d 231, 376 N.W.2d 78 (Ct. App. 1985).

Property exempted under sub. (21) (a) need not have a "primary purpose" of eliminating pollution. Owens−Illinois v. Town of Bradley, 132 Wis. 2d 310, 392 N.W.2d 104 (Ct. App. 1986).

The burden of proving exempt status is on the taxpayer. Waushara County v. Graf, 166 Wis. 2d 442, 480 N.W.2d 16 (1992).

Non−adjoining property may constitute "grounds" of a college or university under sub. (3) (a). Indiana University v. Town of Rhine, 170 Wis. 2d 293, 488 N.W.2d 128 (Ct. App. 1992).

A benevolent association under sub. (4) [now sub. (4) (a)] is not required to provide free services or to be affordable by all in the community and may pay its officers reasonable compensation for their services. Friendship Village Milwaukee v. Milwaukee, 181 Wis. 2d 207, 511 N.W.2d 345 (Ct. App. 1993).

A lease provision between a county−lessor and a lessee that the lessee was responsible for taxes was not determinative of the taxability of buildings constructed on the leased premises. The county, as beneficial owner of the property, was exempt from taxation. City of Franklin v. Crystal Ridge, 180 Wis. 2d 561, 509 N.W.2d 730 (1994).

The legislature may not delegate the power to grant tax exemptions to a county board. UW−LaCrosse Foundation v. Town of Washington, 182 Wis. 2d 490, 513 N.W.2d 417 (Ct. App. 1994).

The determination of "land necessary for location and convenience of buildings" under sub. (4) [now sub. (4) (a)] is discussed. Friendship Village v. Milwaukee, 194 Wis. 2d 787, 535 N.W.2d 111 (Ct. App. 1995).

A youth soccer association failed to establish that it was substantially and primarily devoted to educational purposes. Although its program had educational elements, it was not entitled to tax exempt status under sub. (4) as an educational association. Kickers of Wisconsin, Inc. v. Milwaukee, 197 Wis. 2d 675, 541 N.W.2d 193 (Ct. App. 1995).

No notice of claim under s. 893.80 is ever required on a claim arising from a county board determination under sub. (20) (d). Little Sissabagama Lake Shore Owners Assoc. v. Town of Edgewater, 208 Wis. 2d 259, 559 N.W.2d 914 (Ct. App. 1997), 96−1800.

Whether a clinic building is a "doctor's office" under is sub. (4m) is not dependent on whether or not it is operated as part of a for profit practice owned by physicians or as a nonprofit corporation. A clinic operated by a nonprofit corporation that contains offices for doctors, provides outpatient care only, and is open for regular business hours is a "doctor's office." St. Clare Hospital v. City of Monroe, 209 Wis. 2d 364, 563 N.W.2d 170 (Ct. App. 1997), 96−0732.

The exemption under sub. (13m) will not be applied to reduce the value of a remaining taxable property not a part of the exempt archeological site. Wrase v. City of Neenah, 220 Wis. 2d 166, 582 N.W.2d 457 (Ct. App. 1998), 97−3457.

The exclusivity requirement under sub. (4) [now sub. (4) (a)] does not prohibit occasional commercial use. The question is how consequential the use is compared to the total use of the property. The party seeking the exemption must present more than "recollections" and "observations" of use. Deutsches Land, Inc. v. City of Glendale, 225 Wis. 2d 70, 591 N.W.2d 583 (1999), 96−2489.

The sub. (4) [now sub. (4) (a)] exemption of up to 10 acres of land is tied to and follows from the exemption of buildings. It does not allow for the exemption of buildings necessary for the use of the land. Deutsches Land, Inc. v. City of Glendale, 225 Wis. 2d 70, 591 N.W.2d 583 (1999), 96−2489.

Section 70.11 (intro.), and not s. 70.1105, applies if an exempt organization leases part of its property to a for−profit entity. Section 70.1105 applies when the exempt organization engages in for−profit activities. However the methodology for determining exemptions under each is the same. Deutsches Land, Inc. v. City of Glendale, 225 Wis. 2d 70, 591 N.W.2d 583 (1999), 96−2489.

Revisions to subs. (4) [now sub. (4) (a)] and (4m) by 1995 Act 27 were constitutional. Group Health Cooperative of Eau Claire v. DOR, 229 Wis. 2d 846, 601 N.W.2d 1 (Ct. App. 1999), 98−1264.

Property that on the assessment date was wholly vacant and unoccupied, and on which no construction had commenced, was not being readied for a benevolent use and was properly determined as not being used exclusively for benevolent purposes under sub. (4). Group Health Cooperative of Eau Claire v. DOR, 229 Wis. 2d 846, 601 N.W.2d 1 (Ct. App. 1999), 98−1264.

In applying the exempt lessee condition in the section introduction, a housing authority that subsidized low−income tenant's rent payments to a benevolent organization property owner cannot be found to be the tenant, which as a governmental entity would be entitled to property tax exemption. Under the established legal definition of lessee, the lessees are the low−income individuals to whom the benevolent organization rents. Columbus Park Housing Corp. v. City of Kenosha, 2003 WI 143, 267 Wis. 2d 59, 671 N.W.2d 633, 02−0699.

The standard under *Sisters of Saint Mary* that properties that are "reasonably necessary" to the operation of an exempt use are also exempt is restricted to hospitals subject to sub. (4m). UW Medical Foundation, Inc. v. City of Madison, 2003 WI App 204, 267 Wis. 2d 504, 671 N.W.2d 292, 02−1473.

Benevolent ownership of property is not enough to satisfy sub. (4) [now sub. (4) (a)]; benevolent use is also required. A property owner must detail its use of the property so that tax assessors know what type of activities, if any, are occurring on the property. Unsupported opinion testimony and generalized assertions about the purportedly benevolent use will not suffice. UW Medical Foundation, Inc. v. City of Madison, 2003 WI App 204, 267 Wis. 2d 504, 671 N.W.2d 292, 02−1473.

All provision of medical care is not "benevolent" merely because it makes the recipients better members of society by improving their physical and mental condition. A benevolent foundation that charged market rates for medical services, advertised extensively to promote them, and typically forbore collecting for its services only when accounts were deemed uncollectible was not engaged in a benevolent use of its clinic properties. UW Medical Foundation, Inc. v. City of Madison, 2003 WI App 204, 267 Wis. 2d 504, 671 N.W.2d 292, 02−1473.

For a claim under sub. (25) to survive summary judgment, the property owner must establish in the summary judgment record that there is, at a minimum, a factual dispute that the main purpose to which the properties were primarily devoted was one or more of medical research, physician education, or care for destitute individuals. UW Medical Foundation, Inc. v. City of Madison, 2003 WI App 204, 267 Wis. 2d 504, 671 N.W.2d 292, 02−1473.

"Commercial purposes" as used in sub. (4m) are those through which profits are made. Even if the property is reasonably necessary to the primary and secondary purposes of the hospital, a strict but reasonable construction of sub. (4m) indicates that property fails to qualify for the exemption if it nevertheless is used for a commercial purpose. FH Healthcare Development, Inc. v. City of Wauwatosa, 2004 WI App 182, 276 Wis. 2d 243, 687 N.W.2d 532, 03−2999.

A hospital seeking tax−exempt status for property under sub. (4m) (a) has the burden of showing a benefit to the functioning of the hospital, but no burden of showing that the benefit is not otherwise available. Assuming, without deciding, that partial exemptions are allowed, the portion of a hospital's child care center attributable to

use by hospital employees is tax exempt. Whether the portion attributable to children whose parents are not hospital employees is exempt depends on whether the childrens' parents are reasonably necessary to the efficient functioning of the hospital as an organization. Saint Joseph's Hospital of Marshfield, Inc. v. City of Marshfield, 2004 WI App 187, 276 Wis. 2d 574, 688 N.W.2d 658, 03−1006.

The portion of sub. (12) (a) exempting from taxation property owned by Young Men's Christian Associations is constitutional. Lake Country Racquet and Athletic Club, Inc. v. Morgan, 2006 WI App 25, 289 Wis. 2d 498, 710 N.W.2d 701, 04−3061.

Sub. (42) is constitutional. Northwest Airlines, Inc. v. Department of Revenue, 2006 WI 88, 293 Wis. 2d 202, 717 N.W.2d 280, 04−0319.

Retaining legal title to land does not guarantee that a municipality will remain the owner of property for tax exemption purposes. Taxation or exemption depends not upon legal title but on the status of the owner of the beneficial interest in the property. "Owned" in sub. (2) means beneficial ownership, not mere technical title. Milwaukee Regional Medical Center v. City of Wauwatosa, 2007 WI 101, 304 Wis. 2d 53, 735 N.W.2d 156, 05−1160.

To qualify for a property tax exemption under sub. (4) [now sub. (4) (a)], a property owner must pass the following 5−part test: 1) the owner must be an educational association; 2) the property at issue must be owned and used exclusively for the purposes of the association; 3) the property must be less than 10 acres; 4) the property must be necessary for location and convenience of the buildings; and 5) the property must not be used for profit. An educational association must be a nonprofit organization substantially and primarily devoted to educational purposes and to traditional educational activities. Milwaukee Regional Medical Center v. City of Wauwatosa, 2007 WI 101, 304 Wis. 2d 53, 735 N.W.2d 156, 05−1160.

The tax commission reasonably relied on nontechnical dictionary definitions of the computer−related terms in sub. (39). The commission aptly noted that the terms at issue "are within the common lexicon, familiar to most people" and that the statute had a "more colloquial than technical tone." Based on these observations, the commission reasonably concluded that the computer terms at issue are not technical, and reasonably applied the general rule of construing the language in accord with its common and approved usage. Xerox Corporation v. DOR, 2009 WI App 113, 321 Wis. 2d 181, 772 N.W.2d 677, 07−2884.

The tax commission's conclusion that, to be exempt under sub. (39), a device must be an exempt item under sub. (39) and not merely contain an exempt item was reasonable. Xerox Corporation v. DOR, 2009 WI App 113, 321 Wis. 2d 181, 772 N.W.2d 677, 07−2884.

An exemption under sub. (4) depends on: 1) whether the residence is owned and used exclusively by the church; and 2) whether it is housing for any of 4 listed categories of persons, namely, pastors, ordained assistants, members of religious orders and communities, or ordained teachers. The exemption applies to a limited group who are members of a religious group and integral to the functioning of the church. It is not enough under sub. (4) or *Midtown* that a custodian's employment serves the church or is integral to the functioning of the church. The person must serve a religious leadership purpose. Wauwatosa Avenue United Methodist Church v. City of Wauwatosa, 2009 WI App 171, 321 Wis. 2d 796, 776 N.W.2d 280, 09−0202.

In applying the sub. (4m) (a) exemption for nonprofit hospitals, when an off−site facility is engaged in the primary purpose of a parent hospital the court examines only whether the off−site facility is "used exclusively for the purposes of" that hospital. When the circuit court determined that an outpatient clinic effectively served as a department of the larger parent hospital, the outpatient clinic was used exclusively for the purposes of a hospital and therefore qualified for the exemption under sub. (4m) (a). Covenant Healthcare System, Inc. v. City of Wauwatosa, 2011 WI 80, 336 Wis. 2d 522, 800 N.W.2d 906, 09−1469.

The determination of whether property is used as a "doctor's office" under sub. (4m) (a) ultimately turns on the facts of each case. Factors to be considered are discussed. That a clinic does not provide inpatient services, and that most patients are seen by physicians at the clinic by appointment during regular business hours is not determinative of a "doctor's office." Covenant Healthcare System, Inc. v. City of Wauwatosa, 2011 WI 80, 336 Wis. 2d 522, 800 N.W.2d 906, 09−1469.

In the context of not−for−profit entities, the definition of "commercial purposes" in sub. (4m) (a) is not limited to those purposes that generate profits. The more appropriate definition of commercial for the purposes of the not−for−profit hospital exemption is having profit as the primary aim. Not−for−profit entities may operate in such a fashion that generates revenues in excess of expenses. Covenant Healthcare System, Inc. v. City of Wauwatosa, 2011 WI 80, 336 Wis. 2d 522, 800 N.W.2d 906, 09−1469.

Under the sub. (4m) (a) exemption of hospital property from taxation if "no part of the net earnings . . . inures to the benefit of any shareholder, member, director or officer . . . ," the term "member" does not include not−for−profit entities. Covenant Healthcare System, Inc. v. City of Wauwatosa, 2011 WI 80, 336 Wis. 2d 522, 800 N.W.2d 906, 09−1469.

A nonprofit entity that is "operated as a facility that is licensed, certified, or registered under ch. 50" is eligible for the exemption under sub. (4) (a), whether or not the facility is benevolent. The word "benevolent," found within the clause "including benevolent nursing homes," clearly modifies "nursing homes"; it does not modify "facility." Beaver Dam Community Hospitals, Inc. v. City of Beaver Dam, 2012 WI App 102, 344 Wis. 2d 278, 822 N.W.2d 491, 11−1479.

The purpose, and not the name it is given, determines whether a government charge constitutes a tax. The primary purpose of a tax is to obtain revenue for the government, while the primary purpose of a fee is to cover the expense of providing a service or of regulation and supervision of certain activities. The test is whether the primary purpose of the charge is to cover the expense of providing services, supervision, or regulation. Here, the town demonstrated that the primary purpose of a charge was to cover the expense of providing the service of fire protection to the properties within its geographic boundaries and, therefore, the charge was a fee rather than a tax and assessable against county property. Town of Hoard v. Clark County, 2015 WI App 100, 366 Wis. 2d 239, 873 N.W.2d 241, 15−0678.

The property tax exemption for pollution control facilities provided in sub. (21) (a) [now sub. (21) (am)] applies to pollution control facilities incorporated into new plants to be constructed, in addition to those installed to abate or eliminate existing pollution sources. 60 Atty. Gen. 154.

Preferential tax treatment may not be given to any organization that discriminates on the basis of race. Pitts v. DOR, 333 F. Supp. 662 (1971).

Tax exemption and religious freedom. 54 MLR 385.

What is Benevolence? Clarifying Wisconsin's Real Property Tax Exemption for Benevolent Organizations and the Argument for the "Retirement" of the Exemption for High−End Senior−Housing Complexes. Jaynes. 2006 WLR 1434.

70.1105 Taxed in part. (1) Property that is exempt under s. 70.11 and that is used in part in a trade or business for which the owner of the property is subject to taxation under sections 511 to 515 of the internal revenue code, as defined in s. 71.22 (4m), shall be assessed for taxation at that portion of the fair market value of the property that is attributable to the part of the property that is used in the unrelated trade or business. This section does not apply to property that is leased by an exempt organization to another person or to property that is exempt under s. 70.11 (34).

(2) Property, excluding land, that is owned or leased by a corporation that provides services pursuant to 15 USC 79 to a light, heat, and power company, as defined under s. 76.28 (1) (e), that is subject to taxation under s. 76.28 and that is affiliated with the corporation shall be assessed for taxation at the portion of the fair market value of the property that is not used to provide such services.

History: 1997 a. 35 s. 243; 2001 a. 16.

Section 70.11 (intro.), and not s. 70.1105, applies if an exempt organization leases part of its property to a for−profit entity. Section 70.1105 applies if the exempt organization engages in for−profit activities. However the methodology for determining exemptions under each is the same. Deutsches Land, Inc. v. City of Glendale, 225 Wis. 2d 70, 591 N.W.2d 583 (1999), 96−2489.

70.111 Personal property exempted from taxation. The property described in this section is exempted from general property taxes:

(1) JEWELRY, HOUSEHOLD FURNISHINGS AND APPAREL. Personal ornaments and jewelry, family portraits, private libraries, musical instruments other than pianos, radio equipment, household furniture, equipment and furnishings, apparel, motor bicycles, bicycles, and firearms if such items are kept for personal use by the owner and pianos if they are located in a residence.

(2) ANIMALS. Farm poultry, farm animals, bees and bee equipment and fur−bearing animals under 4 months of age and the hides and pelts of all farm and fur−bearing animals in the hands of the grower.

(3) BOATS. Watercraft employed regularly in interstate traffic, watercraft laid up for repairs, all pleasure watercraft used for recreational purposes, commercial fishing boats and equipment that is used by commercial fishing boats, charter sailboats and charter boats, other than sailboats, that are used for tours.

(3m) CHARTER SPORT FISHING BOATS. Motorboats, and the equipment used on them, which are regularly employed in carrying persons for hire for sport fishing in and upon the outlying waters, as defined in s. 29.001 (63), and the rivers and tributaries specified in s. 29.2285 (2) (a) 1. and 2. if the owner and all operators are licensed under s. 29.512 or under s. 29.514 or both and by the U.S. coast guard to operate the boat for that purpose.

(4) CROPS. Growing and harvested crops, and the seed, fertilizer and supplies used in their production or handling, in the hands of the grower, including nursery stock and trees growing for sale as such, medicinal plants, perennial plants that produce an annual crop and plants growing in greenhouses or under hotbeds, sash or lath. This exemption also applies to trees growing for sale as Christmas trees.

(5) FAMILY SUPPLIES. Provisions and fuel to sustain the owner's family; but no person paying board shall be deemed a member of a family.

(6) FEED. Feed and feed supplements owned by the operator or owner of a farm and used in feeding on the farm and not for sale.

(7) HORSES, ETC. All horses, mules, wagons, carriages, sleighs, harnesses.

(9) TOOLS AND GARDEN MACHINES. The tools of a mechanic if those tools are kept and used in the mechanic's trade; and garden machines and implements and farm, orchard and garden tools if those machines, implements and tools are owned and used by any person in the business of farming or in the operation of any

orchard or garden. In this subsection, "machine" has the meaning given in sub. (10) (a) 2.

(10) FARM MACHINERY AND EQUIPMENT. (a) In this subsection:

1. "Building" means any structure that is intended to be a permanent accession to real property; that is designed or used for sheltering people, animals or plants, for storing property or for working, office, parking, sales or display space, regardless of any contribution that the structure makes to the production process in it; that in physical appearance is annexed to that real property; that is covered by a roof or encloses space; that is not readily moved or disassembled; and that is commonly known to be a building because of its appearance and because of the materials of which it is constructed.

2. "Machine" means an assemblage of parts that transmits force, motion and energy from one part to another in a predetermined manner.

(b) Tractors and machines; including accessories, attachments, fuel and repair parts for them; whether owned or leased, that are used exclusively and directly in farming; including dairy farming, agriculture, horticulture, floriculture and custom farming services; but not including personal property that is attached to, fastened to, connected to or built into real property or that becomes an addition to, component of or capital improvement to real property and not including buildings or improvements to real property, regardless of any contribution that that personal property makes to the production process in them and regardless of the extent to which that personal property functions as a machine.

(c) For purposes of this subsection, the following items retain their character as tangible personal property, regardless of the extent to which they are fastened to, connected to or built into real property:

1. Auxiliary power generators.
2. Bale loaders.
3. Barn elevators.
4. Conveyors.
5. Feed elevators and augers.
6. Grain dryers and grinders.
7. Milk coolers.
8. Milking machines; including piping, pipeline washers and compressors.
9. Silo unloaders.
10. Powered feeders, but not including platforms or troughs constructed from ordinary building materials.

(11) CHEESE. Natural cheese owned by the Wisconsin primary manufacturer or by any other person while in storage for the purpose of further aging in preparation for cutting, packaging or other processing.

(14) MILKHOUSE EQUIPMENT. Milkhouse equipment used by a farmer, including mechanical can coolers, bulk tanks and hot water heaters. This exemption shall apply whether such equipment is deemed personal property or is so affixed to the realty as to be classified in the category of real estate.

(17) MERCHANTS' STOCK−IN−TRADE; MANUFACTURERS' MATERIALS AND FINISHED PRODUCTS; LIVESTOCK. As of January 1, 1981, merchants' stock−in−trade, manufacturers' materials and finished products and livestock.

(18) ENERGY SYSTEMS. Biogas or synthetic gas energy systems, solar energy systems, and wind energy systems. In this subsection, "biogas or synthetic gas energy system" means equipment which directly converts biomass, as defined under section 45K (c) (3) of the Internal Revenue Code, as interpreted by the Internal Revenue Service, into biogas or synthetic gas, equipment which generates electricity, heat, or compressed natural gas exclusively from biogas or synthetic gas, equipment which is used exclusively for the direct transfer or storage of biomass, biogas, or synthetic gas, and any structure used exclusively to shelter or operate such equipment, or the portion of any structure used in part to shelter or operate such equipment that is allocable to such use, if all such equipment, and any such structure, is located at the same site, and includes manure, substrate, and other feedstock collection and delivery systems, pumping and processing equipment, gasifiers and digester tanks, biogas and synthetic gas cleaning and compression equipment, fiber separation and drying equipment, and heat recovery equipment, but does not include equipment or components that are present as part of a conventional energy system. In this subsection, "synthetic gas" is a gas that qualifies as a renewable resource under s. 196.378 (1) (h) 1. h. In this subsection, "solar energy system" means equipment which directly converts and then transfers or stores solar energy into usable forms of thermal or electrical energy, but does not include equipment or components that would be present as part of a conventional energy system or a system that operates without mechanical means. In this subsection, "wind energy system" means equipment which converts and then transfers or stores energy from the wind into usable forms of energy, but does not include equipment or components that would be present as part of a conventional energy system. Until the tax incremental district terminates, the exemption under this subsection for biogas or synthetic gas energy systems does not apply to property in existence on January 1, 2014, and located in a tax incremental financing district in effect on January 1, 2014.

Cross−reference: See also s. Tax 12.50, Wis. adm. code.

(19) CAMPING TRAILERS, RECREATIONAL MOBILE HOMES, AND RECREATIONAL VEHICLES. (a) Camping trailers as defined in s. 340.01 (6m).

(b) Recreational mobile homes, as defined in s. 66.0435 (1) (hm), and recreational vehicles, as defined in s. 340.01 (48r). The exemption under this paragraph also applies to steps and a platform, not exceeding 50 square feet, that lead to a doorway of a recreational mobile home or a recreational vehicle, but does not apply to any other addition, attachment, deck, or patio.

(20) LOGGING EQUIPMENT. All equipment used to cut trees, to transport trees in logging areas or to clear land of trees for the commercial use of forest products.

(21) STRUCTURES FOR GINSENG. Any temporary structure in the hands of a grower of ginseng used or designed to be used to provide shade for ginseng plants.

(22) RENTED PERSONAL PROPERTY. (a) Except as provided in par. (b), personal property held for rental for periods of one month or less to multiple users for their temporary use, if the property is not rented with an operator, if the owner is not a subsidiary or affiliate of any other enterprise and the owner is engaged in the rental of the property subject to the exemption to the other enterprise, if the owner is classified in group number 735, industry number 7359 of the 1987 standard industrial classification manual published by the U.S. office of management and budget and if the property is equipment, including construction equipment but not including automotive and computer−related equipment, television sets, video recorders and players, cameras, photographic equipment, audiovisual equipment, photocopying equipment, sound equipment, public address systems and video tapes; party supplies; appliances; tools; dishes; silverware; tables; or banquet accessories.

(b) Personal property held primarily for rental for periods of 364 days or less to multiple users for their temporary use, if the property is not rented with an operator, if the owner is not a subsidiary or affiliate of any other enterprise and the owner is engaged in the rental of the property subject to the exemption to the other enterprise, if the owner is classified under 532412 of the North American Industry Classification System, 2012 edition, published by the U.S. bureau of the census, and if the property is heavy equipment used for construction, mining, or forestry, including bulldozers, earthmoving equipment, well−drilling machinery and equipment, or cranes.

(23) VENDING MACHINES. All machines that automatically dispense food and food ingredient, as defined in s. 77.51 (3t), upon

the deposit in the machines of specified coins or currency, or insertion of a credit card, in payment for the food and food ingredient, as defined in s. 77.51 (3t).

(24) MOTION PICTURE THEATER EQUIPMENT. Projection equipment, sound systems and projection screens that are owned and used by a motion picture theater.

(25) DIGITAL BROADCASTING EQUIPMENT. Digital broadcasting equipment owned and used by a radio station, television station, or video service network, as defined in s. 66.0420 (2) (zb).

(26) HIGH DENSITY SEQUENCING SYSTEMS. (a) In this subsection, "production process" has the meaning given in s. 70.11 (27) (a) 5., except that storage is not excluded.

(b) A high density sequencing system that by mechanical or electronic operation moves printed materials from one place to another within the production process, organizes the materials for optimal staging, or stores and retrieves the materials to facilitate the production or assembly of such materials.

(27) MACHINERY, TOOLS, AND PATTERNS. (a) In this subsection, "machinery" means a structure or assemblage of parts that transmits force, motion, or energy from one part to another in a predetermined way by electrical, mechanical, or chemical means. "Machinery" does not include a building.

(b) Beginning with the property tax assessments as of January 1, 2018, machinery, tools, and patterns, not including such items used in manufacturing.

(c) A taxing jurisdiction may include the most recent valuation of personal property described under par. (b) that is located in the taxing jurisdiction for purposes of complying with debt limitations applicable to the jurisdiction.

History: 1971 c. 315; 1973 c. 90; 1973 c. 336 s. 36; 1975 c. 39, 224; 1977 c. 29 ss. 746, 1646 (2), (3), (4); 1977 c. 142, 273; 1979 c. 3, 199, 349; 1981 c. 20, 221; 1983 a. 27 ss. 1179 to 1179m; 1983 a. 88, 201, 243, 276; 1985 a. 29; 1987 a. 387, 399; 1989 a. 31; 1991 a. 269; 1993 a. 85; 1995 a. 27; 1997 a. 248; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 30, 105; 2005 a. 298; 2007 a. 11, 20, 42, 97; 2009 a. 2; 2013 a. 20, 144, 193; 2015 a. 55; 2017 a. 59.

Personal property held out for rental is not "stock−in−trade" under sub. (17). Menomonee Falls v. Falls Rental World, 135 Wis. 2d 393, 400 N.W.2d 478 (Ct. App. 1986).

The exemption under sub. (9) applies only to personal property. Pulsfus v. Town of Leeds, 149 Wis. 2d 797, 440 N.W.2d 329 (1989).

"Interstate traffic" in sub. (3) means interstate commerce; what constitutes a boat in interstate commerce is discussed. Town of LaPointe v. Madeline Island Ferry, 179 Wis. 2d 726, 508 N.W.2d 440 (Ct. App. 1993).

A mobile home is an improvement to real property under s. 70.043 (1) when the home is resting for more than a temporary time, in whole or in part, on some other means of support than its wheels, but a mobile homes may be personal property and exempt under s. (19) (b) although it may have some weight off its wheels. Ahrens v. Town of Fulton, 2002 WI 29, 251 Wis. 2d 135, 641 N.W.2d 423, 99−2466.

In applying sub. (20), the use of the equipment rather than the primary purpose of the underlying business is the determining factor in deciding whether equipment is exempt from taxation. De minimis uses of the property are not sufficient to invoke this exemption. Village of Lannon v. Wood−Land Contractors, Inc. 2003 WI 150, 267 Wis. 2d 158, 672 N.W.2d 275, 02−0236.

Sub. (22) unambiguously expresses the legislature's clear intent to exempt rental property from taxation that is held for rental for one month or less and for property available for rental for more than one month to be taxed. There is no ambiguity in the statutory language such that it might possibly apply to property that is held for rental for one month or less and that is also available for rental for more than one month. United Rentals, Inc. v. City of Madison, 2007 WI App 131, 305 Wis. 2d 120, 741 N.W.2d 471, 05−1440.

As used in sub. (1), "kept for personal use" does not explicitly limit the use of personal property solely to personal use. The decisive question is whether the use is de minimus or inconsequential. Faydash v. City of Sheboygan, 2011 WI App 57, 332 Wis. 2d 397, 797 N.W.2d 540, 10−2073.

70.112 Property exempted from taxation because of special tax. The property described in this section is exempted from general property taxes:

(1) MONEY AND INTANGIBLE PERSONALTY. Money and all intangible personal property, such as credit, checks, share drafts, other drafts, notes, bonds, stocks and other written instruments.

(4) SPECIAL PROPERTY AND GROSS RECEIPTS TAXES OR LICENSE FEES. (a) All special property assessed under ss. 76.01 to 76.26 and property of any light, heat, and power company taxed under s. 76.28, car line company, and electric cooperative association that is used and useful in the operation of the business of such company or association. If a general structure for which an exemption is sought under this section is used and useful in part in the operation of any public utility assessed under ss. 76.01 to 76.26 or of the business of any light, heat, and power company taxed under s. 76.28, car line company, or electric cooperative association and in part for nonoperating purposes of the public utility or company or association, that general structure shall be assessed for taxation under this chapter at the percentage of its full market value that fairly measures and represents the extent of its use for nonoperating purposes. Nothing provided in this paragraph shall exclude any real estate or any property which is separately accounted for under s. 196.59 from special assessments for local improvements under s. 66.0705.

(b) If real or tangible personal property is used more than 50 percent, as determined by the department of revenue, in the operation of a telephone company that is subject to the tax imposed under s. 76.81, the department of revenue shall assess the property and that property shall be exempt from the general property taxes imposed under this chapter. If real or tangible personal property is used less than 50 percent, as determined by the department of revenue, in the operation of a telephone company that is subject to the tax imposed under s. 76.81, the taxation district in which the property is located shall assess the property and that property shall be subject to the general property taxes imposed under this chapter.

(5) MOTOR VEHICLES, BICYCLES, SNOWMOBILES. Every automobile, motor bicycle, motor bus, motorcycle, motor truck, moped, road tractor, school bus, snowmobile, truck tractor, or other similar motor vehicle, or trailer or semitrailer used in connection therewith.

(6) AIRCRAFT. Every aircraft.

(7) MOBILE HOMES AND MANUFACTURED HOMES. Every unit, as defined in s. 66.0435 (1) (j), that is subject to a monthly municipal permit fee under s. 66.0435 (3).

History: 1971 c. 221, 289; 1981 c. 20; 1983 a. 27, 243, 342, 368; 1999 a. 80; 1999 a. 150 s. 672; 2001 a. 16; 2007 a. 11.

70.113 State aid to municipalities; aids in lieu of taxes. **(1)** As soon after April 20 of each year as is feasible the department of natural resources shall pay to the city, village, or town treasurer all of the following amounts from the following appropriations for each acre situated in the municipality of state forest lands, as defined in s. 28.02 (1), state parks under s. 27.01 and state public shooting, trapping or fishing grounds and reserves or refuges operated thereon, acquired at any time under s. 29.10, 1943 stats., s. 23.09 (2) (d) or 29.749 (1) or from the appropriations made by s. 20.866 (2) (tp) by the department of natural resources or leased from the federal government by the department of natural resources:

(a) Eighty cents, to be paid from the appropriation under s. 20.370 (5) (da) or (dq).

(b) Eight cents, to be paid from the appropriation under s. 20.370 (5) (dq).

(2) (a) Towns, cities or villages shall be paid for forest lands as defined in s. 28.02 (1), state parks under s. 27.01 and other lands acquired under s. 23.09 (2) (d), 23.27, 23.29, 23.293, 23.31 or 29.749 (1) located within such municipality and acquired after June 30, 1969. Such payments shall be made from the appropriation under s. 20.370 (5) (da) or (dq) and remitted by the department of natural resources in the amounts certified by the department of revenue according to par. (b).

(b) Towns, cities or villages shall be paid aids in lieu of taxes for real estate specified in par. (a). The first payment on an acquisition after July 1, 1969, shall be determined on the basis of the January 1 local assessment following the acquisition multiplied by the county, local and school tax rate levied against all January 1 assessments for that year. The payment to the town, city or village shall be made after April 20 following the tax levy. Subsequent payments shall be made after April 20 following the levy date according to the following schedule:

1. For the 2nd year, 90 percent of the first year's payment.

2. For the 3rd year, 80 percent of the first year's payment.

3. For the 4th year, 70 percent of the first year's payment.

4. For the 5th year, 60 percent of the first year's payment.

5. For the 6th year, 50 percent of the first year's payment.

6. For the 7th year, 40 percent of the first year's payment.

7. For the 8th year, 30 percent of the first year's payment.

8. For the 9th year, 20 percent of the first year's payment.

9. For the 10th year and every year thereafter, 10 percent of the first year's payment.

10. In no year shall the amounts paid under the 10−year schedule fall below 50 cents per acre.

(3) The town, city or village authorized to receive payment under sub. (2) and the state may petition the department of revenue to review the assessment of the property upon which taxes were levied, the taxes now being the basis for payment under sub. (2). The petition to the department of revenue to review the assessment shall be due within 30 days of receipt of the assessment. In its review, the department of revenue shall determine if the assessment complained of is unreasonably out of proportion to the general average of the assessment of all other property in the taxation district, and if it finds the assessment high or low it shall lower or raise the assessment. The department of revenue shall make its determination not later than 60 days after the petition is received, and its decision shall be final and not subject to review.

(4) For land acquired after December 31, 1991, aids shall be paid under s. 70.114 and not under this section.

History: 1971 c. 125 s. 522 (1); 1973 c. 90; 1975 c. 39 s. 734; 1975 c. 198; 1977 c. 29 ss. 1646 (3), 1647 (10), (18); 1977 c. 224; 1979 c. 34 s. 2102 (39) (a); 1979 c. 175 s. 53; 1979 c. 355 s. 241; 1983 a. 27 s. 2202 (38); 1985 a. 29 s. 3202 (39) (b), (dm); 1987 a. 27, 399; 1989 a. 336; 1991 a. 39; 1995 a. 27, 417; 1997 a. 27, 248.

70.114 Aids on certain state lands equivalent to property taxes. (1) DEFINITIONS. In this section:

(a) "Department" means the department of natural resources.

(b) 1. For land purchased before July 1 2011, "estimated value," for the year during which land is purchased, means the purchase price and, for later years, means the value that was used for calculating the aid payment under this section for the prior year increased or decreased to reflect the annual percentage change in the equalized valuation of all property, excluding improvements, in the taxation district, as determined by comparing the most recent determination of equalized valuation under s. 70.57 for that property to the next preceding determination of equalized valuation under s. 70.57 for that property.

2. For land purchased on or after July 1, 2011, "estimated value," for the year during which land is purchased, means the lesser of the purchase price or the determination of the land's equalized valuation under s. 70.57 in the year before the year during which the land is purchased, increased or decreased to reflect the annual percentage change in the equalized valuation of all property, excluding improvements, in the taxation district, as determined by comparing the most recent determination of equalized valuation under s. 70.57 for that property, except that if the land was exempt from taxation in the year prior to the year during which the Department purchased the land, or enrolled in the forest cropland program under subch. I of ch. 77 or the managed forest land program under subch. VI of ch. 77 at the time of purchase, "estimated value," for the year during which the land is purchased means the lesser of the purchase price or an amount that would result in a payment under sub. (4) that is equal to $10 per acre. "Estimated value," for later years, means the value that was used for calculating the aid payment under this section for the prior year increased or decreased to reflect the annual percentage change in the equalized valuation of all property, excluding improvements, in the taxation district, as determined by comparing the most recent determination of equalized valuation under s. 70.57 for that property to the next preceding determination of equalized valuation under s. 70.57 for that property.

(c) "Land" means state forests, as defined in s. 28.02 (1), that are acquired after December 31, 1991, state parks that are acquired after December 31, 1991, under s. 27.01 and other areas that are acquired after December 31, 1991, under s. 23.09 (2) (d), 23.091, 23.27, 23.29, 23.293, 23.31 or 29.749 (1).

(d) "Purchase price" means the amount paid by the department for a fee simple interest in real property. "Purchase price" does not include administrative costs incurred by the department to acquire the land, such as legal fees, appraisal costs or recording fees. If real estate is transferred to the department by gift or is sold to the department for an amount that is less than the estimated fair market value of the property as shown on the property tax bill prepared for the prior year under s. 74.09, "purchase price" means an amount equal to the estimated fair market value of the property as shown on that tax bill. If the real estate is exempt from taxation at the time that it is transferred or sold to the department and if the property was not sold at an arm's−length sale, "purchase price" means the fair market value of the real estate at the time that the department takes title to it.

(e) "Taxation district" means a city, village or town, except that if a city or village lies in more than one county, the portions of that city or village that lie within each county are separate taxation districts.

(f) "Taxing jurisdiction" means any entity, not including the state, authorized by law to levy taxes on general property, as defined in s. 70.02, that are measured by the property's value.

(2) APPLICATION. For all land acquired after December 31, 1991, the department shall pay aids in lieu of taxes under this section and not under s. 70.113.

(3) ASCERTAINING RATE. Each year, the department shall ascertain the aggregate net general property tax rate for taxation districts to which aids are paid under this section.

(4) PAYMENT REQUIRED. (a) Except as provided under par. (c), on or before January 31, the department shall pay to each treasurer of a taxation district, with respect to each parcel of land acquired by the department within the taxation district on or before January 1 of the preceding year, an amount determined by multiplying each parcel's estimated value equated to the average level of assessment in the taxation district by the aggregate net general property tax rate that would apply to the parcel of land if it were taxable, as shown on property tax bills prepared for that year under s. 74.09.

(b) On or before February 15, the taxation district treasurer shall pay to the treasurer of each taxing jurisdiction, from the amount received under par. (a), the taxing jurisdiction's proportionate share of the tax that would be levied on the parcel if it were taxable.

(c) The department shall withhold from the payment amount determined under par. (a) the state's proportionate share of the tax that would be levied on the parcel if it were taxable and shall deposit that amount into the conservation fund.

History: 1989 a. 336; 1991 a. 39; 1997 a. 248; 2011 a. 32; 2013 a. 20.

70.115 Taxation of real estate held by investment board. All real estate owned or held by any of the funds invested by the investment board, other than the constitutional trust funds, shall be assessed and taxed in the same manner as privately owned real estate. Such taxes shall be paid out of the fund to which the lands belong or for whose benefit they are held. If such taxes are not paid, the real estate shall be subject to inclusion in a tax certificate under s. 74.57 as are privately owned lands.

History: 1987 a. 378; 1995 a. 225.

70.119 Payments for municipal services. (1) The state and the University of Wisconsin Hospitals and Clinics Authority shall make reasonable payments at established rates for water, sewer and electrical services and all other services directly provided by a municipality to state facilities and facilities of the University of Wisconsin Hospitals and Clinics Authority described in

s. 70.11 (38), including garbage and trash disposal and collection, which are financed in whole or in part by special charges or fees. Such payments for services provided to state facilities shall be made from the appropriations to state agencies for the operation of the facilities. Each state agency making such payments shall annually report the payments to the department.

(2) The department shall make reasonable payments for municipal services pursuant to the procedures specified in subs. (4), (5) and (6), except as provided in sub. (9).

(3) In this section:

(a) "Committee" means the joint committee on finance.

(b) "Department" means the department of administration.

(c) "Municipality" means cities, villages, towns, counties and metropolitan sewerage districts with general taxing authority.

(d) "Municipal services" means police and fire protection, garbage and trash disposal and collection not paid for under sub. (1) and, subject to approval by the committee, any other direct general government service provided by municipalities to state facilities and facilities of the University of Wisconsin Hospitals and Clinics Authority described in s. 70.11 (38).

(dm) "State agency" has the meaning given under s. 20.001 (1).

(e) "State facilities" means all property owned and operated by the state for the purpose of carrying out usual state functions, including the branch campuses of the university of Wisconsin system but not including land held for highway right−of−way purposes or acquired and held for purposes under s. 85.08 or 85.09.

(4) The department shall be responsible for negotiating with municipalities on payments for municipal services and may delegate certain responsibilities of negotiation to other state agencies or to the University of Wisconsin Hospitals and Clinics Authority. Prior to negotiating with municipalities the department shall submit guidelines for negotiation to the committee for approval.

(5) Upon approval of guidelines by the committee, the department shall proceed with negotiations. In no case may a municipality withhold services to the state or to the University of Wisconsin Hospitals and Clinics Authority during negotiations.

(6) No later than November 15 annually, the department shall report to the cochairpersons of the committee the results of its negotiations and the total payments proposed to be made in the subsequent calendar year. In computing the proposed payments to a municipality, the department shall base its calculations on the values of state facilities and facilities of the University of Wisconsin Hospitals and Clinics Authority described in s. 70.11 (38), as determined by the department for January 1 of the year preceding the year of the report, and the values of improvements to property in the municipality as determined under s. 70.57 (1) for January 1 of the year preceding the year of the report, and shall also base its calculations on revenues and expenditures of the municipality as reported under s. 73.10 (2) for the year preceding the year of the report.

(7) (a) The department shall make payment from the appropriation under s. 20.835 (5) (a) for municipal services provided by municipalities to state facilities. If the appropriation under s. 20.835 (5) (a) is insufficient to pay the full amount under sub. (6) in any one year, the department shall prorate payments among the municipalities entitled thereto. The University of Wisconsin Hospitals and Clinics Authority shall make payment for municipal services provided by municipalities to facilities of the authority described in s. 70.11 (38).

(b) The department shall determine the proportionate cost of payments for municipal services provided by a municipality for each program financed from revenues other than general purpose revenues and revenues derived from academic student fees levied by the board of regents of the University of Wisconsin System, and for each appropriation made from such revenues which finances the cost of such a program.

(c) The department shall assess to the appropriate program revenue and program revenue−service accounts and segregated funds the costs of providing payments for municipal services for the administration of programs financed from program revenues or segregated revenues, except program revenues derived from academic student fees levied by the board of regents of the University of Wisconsin System. If payments are prorated under par. (a) in any year, the department shall assess costs under this paragraph as affected by the proration. The department shall transfer to the general fund an amount equal to the assessments in each year from the appropriate program revenue, program revenue−service and segregated revenue appropriations.

(8) This section supersedes other statutes relating to payments for municipal services. Extraordinary police services provided to state facilities are subject to reimbursement under s. 16.008.

(9) The department shall not make payments for municipal services at the parking ramp located at 1 West Wilson Street in the city of Madison.

History: 1971 c. 328; 1973 c. 90; 1975 c. 39; 1977 c. 29; 1977 c. 418 ss. 470 to 473, 929 (1); 1979 c. 34 s. 2102 (58) (a); 1981 c. 20; 1987 a. 27, 399; 1989 a. 31; 1991 a. 269; 1995 a. 27; 2013 a. 20; 2015 a. 55.

70.12 Real property, where assessed. All real property not expressly exempt from taxation shall be entered upon the assessment roll in the assessment district where it lies.

History: 1981 c. 190.

70.13 Where personal property assessed. (1) All personal property shall be assessed in the assessment district where the same is located or customarily kept except as otherwise specifically provided. Personal property in transit within the state on the first day of January shall be assessed in the district in which the same is intended to be kept or located, and personal property having no fixed location shall be assessed in the district where the owner or the person in charge or possession thereof resides, except as provided in sub. (5).

(2) Saw logs or timber in transit, which are to be sawed or manufactured in any mill in this state, shall be deemed located and shall be assessed in the district in which such mill is located. Saw logs or timber shall be deemed in transit when the same are being transported either by water or rail, but when such logs or timber are banked, decked, piled or otherwise temporarily stored for transportation in any district, they shall be deemed located, and shall be assessed in such district.

(3) On or before the tenth day of January in each year the owner of logs or timber in transit shall furnish the assessor of the district in which the mill at which the logs or timber will be sawed or manufactured is located a verified statement of the amount, character and value of all the logs and timber in transit on the first day of January preceding, and the owner of the logs or timber shall furnish to the assessor of the district in which the logs and timber were located on the first day of January preceding, a like verified statement of the amount, character and value thereof. Any assessment made in accordance with the owner's statement shall be valid and binding on the owner notwithstanding any subsequent change as to the place where the same may be sawed or manufactured. If the owner of the logs or timber shall fail or refuse to furnish the statement herein provided for, or shall intentionally make a false statement, that owner shall be subject to the penalties prescribed by s. 70.36.

(5) As between school districts, the location of personal property for taxation shall be determined by the same rules as between assessment districts; provided, that whenever the owner or occupant shall reside upon any contiguous tracts or parcels of land which shall lie in 2 or more assessment districts, then the farm implements, livestock, and farm products of the owner or occupant used, kept, or being upon the contiguous tracts or parcels of land, shall be assessed in the assessment district where that personal property is customarily kept.

(6) No change of location or sale of any personal property after the first day of January in any year shall affect the assessment made in such year.

(7) Saw logs or timber removed from public lands during the year next preceding the first day of January or having been removed from such lands and in transit therefrom on the first day of January, shall be deemed located and assessed in the assessment district wherein such public lands are located and shall be assessed in no other assessment district. Saw logs or timber shall be deemed in transit when the same are being transported. On or before January 10 in each year the owner of such logs or timber shall furnish the assessor of the assessment district wherein they are assessable a verified statement of the amount, character and value of all such logs and timber. If the owner of any such logs or timber shall fail or refuse to furnish such statement or shall intentionally make a false statement, he or she is subject to the penalties prescribed by s. 70.36. This subsection shall supersede any provision of law in conflict therewith. The term "owner" as used in this subsection is deemed to mean the person owning the logs or timber at the time of severing. "Public lands" as used in this subsection shall mean lands owned by the United States of America, the state of Wisconsin or any political subdivision of this state.

History: 1977 c. 29 s. 1646 (3); 1977 c. 273; 1991 a. 316; 1993 a. 213; 1995 a. 225.

The situs for taxation assessment purposes of a movable bituminous plant was not in the town where the plant was physically present during most of the tax year because the property was neither "located" in the town nor "customarily kept" there. Wm. J. Kennedy & Son, Inc. v. Town of Albany, 66 Wis. 2d 447, 225 N.W.2d 624 (1975).

70.14 Incorporated companies. The residence of an incorporated company, for the purposes of s. 70.13, shall be held to be in the assessment district where the principal office or place of business of such company shall be.

70.15 Assessment of vessels. (1) That in consideration of an annual payment into the treasury of any town, village or city where such property is assessable by the owner of any steam vessel, barge, boat or other water craft, owned within this state, or hailing from any port thereof, and employed regularly in interstate traffic of a sum equal to one cent per net ton of the registered tonnage thereof, said steam vessel, barge, boat or other water craft shall be and the same is hereby made exempt from further taxation, either state or municipal.

(2) The owner of any steam vessel, barge, boat or other water craft, hailing from any port of this state, "and so employed regularly in interstate traffic," desiring to comply with the terms of this section, shall annually, on or before the first day of January, file with the clerk of such town, village or city a verified statement, in writing, containing the name, port of hail, tonnage and name of owner of such steam vessel, barge, boat or other water craft, and shall thereupon pay into the said treasury of such town, village or city a sum equal to one cent per net ton of the registered tonnage of said vessel, and the treasurer shall thereupon issue a receipt. All vessels, boats or other water craft not regularly employed in interstate traffic and all private yachts or pleasure boats belonging to inhabitants of this state, whether at home or abroad, shall be taxed as personal property.

History: 1977 c. 29 s. 1646 (3); 1977 c. 273.

70.17 Lands, to whom assessed; buildings on exempt lands. (1) Real property shall be entered in the name of the owner, if known to the assessor, otherwise to the occupant thereof if ascertainable, and otherwise without any name. The person holding the contract or certificate of sale of any real property contracted to be sold by the state, but not conveyed, shall be deemed the owner for such purpose. The undivided real estate of any deceased person may be entered to the heirs of such person without designating them by name. The real estate of an incorporated company shall be entered in the same manner as that of an individual. Improvements on leased lands may be assessed either as real property or personal property.

(2) All lands which have been or may be contracted for sale by any county shall be assessed and taxed to the parties contracting therefor.

The term "leased lands" should be construed broadly to include a number of situations in which the occupier of land not owned by him or her places improvements on the land; a formal lease is not required. Town of Menominee v. Skubitz, 53 Wis. 2d 430, 192 N.W.2d 887 (1972).

The tax lister may, but is not required to, change the ownership designation on joint property on the basis of notification other than formal procedures. 80 Atty. Gen. 73.

70.174 Improvements on government−owned land. Improvements made by any person on land within this state owned by the United States may be assessed either as real or personal property to the person making the same, if ascertainable, and otherwise to the occupant thereof or the person receiving benefits therefrom.

70.177 Federal property. Property the taxation of which the federal government has consented to is taxable under this chapter.

History: 1987 a. 10.

70.18 Personal property, to whom assessed. (1) Personal property shall be assessed to the owner thereof, except that when it is in the charge or possession of some person other than the owner it may be assessed to the person so in charge or possession of the same. Telegraph and telephone poles, posts, railroad ties, lumber and all other manufactured forest products shall be deemed to be in the charge or possession of the person in occupancy or possession of the premises upon which the same shall be stored or piled, and the same shall be assessed to such person, unless the owner or some other person residing in the same assessment district, shall be actually and actively in charge and possession thereof, in which case it shall be assessed to such resident owner or other person so in actual charge or possession; but nothing contained in this subsection shall affect or change the rules prescribed in s. 70.13 respecting the district in which such property shall be assessed.

(2) Goods, wares and merchandise in storage in a commercial storage warehouse or on a public wharf shall be assessed to the owner thereof and not to the warehouse or public wharf, if the operator of the warehouse or public wharf furnishes to the assessor the names and addresses of the owners of all goods, wares and merchandise not exempt from taxation.

History: 1981 c. 20; 2005 a. 253.

Property whose title and most of the indicia of ownership is in the U.S. government may not be taxed under sub. (1) since the tax is on ownership, not use. State ex rel. General Motors Corp. v. Oak Creek, 49 Wis. 2d 299, 182 N.W.2d 481 (1971).

A trial court's finding, on stipulated facts, that the U.S. government was the beneficial owner and not subject to the personal property tax under sub. (1) constituted a conclusion of law; hence the supreme court was not limited in its review to the finding. Teledyne Industries, Inc. v. Milwaukee, 65 Wis. 2d 557, 223 N.W.2d 586 (1974).

Decisions permitting local taxation of the possession of federal property. Van Cleve, 1959 WLR 190.

70.19 Assessment, how made; liability and rights of representative. (1) When personal property is assessed under s. 70.18 (1) to a person in charge or possession of the personal property other than the owner, the assessment of that personal property shall be entered upon the assessment roll separately from the assessment of that person's own personal property, adding to the person's name upon the tax roll words briefly indicating that the assessment is made to the person as the person in charge or possession of the property. The failure to enter the assessment separately or to indicate the representative capacity or other relationship of the person assessed shall not affect the validity of the assessment.

(2) The person assessed under sub. (1) and s. 70.18 (1) is personally liable for the tax on the property. The person assessed under sub. (1) and s. 70.18 (1) has a personal right of action against the owner of the property for the amount of the taxes; has a lien for that amount upon the property with the rights and remedies for the preservation and enforcement of that lien as provided in ss. 779.45 and 779.48; and is entitled to retain possession of the property until the owner of the property pays the tax on the property or reimburses the person assessed for the tax. The lien and right

of possession relate back and exist from the time that the assessment is made, but may be released and discharged by giving to the person assessed such undertaking or other indemnity as the person accepts or by giving the person assessed a bond in the amount and with the sureties as is directed and approved by the circuit court of the county in which the property is assessed, upon 8 days' notice to the person assessed. The bond shall be conditioned to hold the person assessed free and harmless from all costs, expense, liability or damage by reason of the assessment.

History: 1975 c. 94 s. 91 (13); 1975 c. 199; 1977 c. 449; 1979 c. 32 s. 92 (9); 2001 a. 102.

70.20 Owner's liability when personalty assessed to another; action to collect. (1) When personal property shall be assessed to some person in charge or possession thereof, other than the owner, such owner as well as the person so in charge or possession shall be liable for the taxes levied pursuant to such assessment; and the liability of such owner may be enforced in a personal action as for a debt. Such action may be brought in the name of the town, city or village in which such assessment was made, if commenced before the time fixed by law for the return of delinquent taxes, by direction of the treasurer or tax collector of such town, city or village. If commenced after such a return, it shall be brought in the name of the county or other municipality to the treasurer or other officer of which such return shall be made, by direction of such treasurer or other officer. Such action may be brought in any court of this state having jurisdiction of the amount involved and in which jurisdiction may be obtained of the person of such owner or by attachment of the property of such owner.

(2) The remedy of attachment may be allowed in such action upon filing an affidavit of the officer by whose direction such action shall be brought, showing the assessment of such property in the assessment district, the amount of tax levied pursuant thereto, that the defendant was the owner of such property at the time as of which the assessment thereof was made, and that such tax remains unpaid in whole or in part, and the amount remaining unpaid. The proceedings in such actions and for enforcement of the judgment obtained therein shall be the same as in ordinary actions for debt as near as may be, but no property shall be exempt from attachment or execution issued upon a judgment against the defendant in such action.

(3) The assessment and tax rolls in which such assessment and tax shall be entered shall be prima facie evidence of such assessment and tax and of the justice and regularity thereof; and the same, with proof of the ownership of such property by the defendant at the time as of which the assessment was made and of the nonpayment of such tax, shall be sufficient to establish the liability of the defendant. Such liability shall not be affected and such action shall not be defeated by any omission or irregularity in the assessment or tax proceedings not affecting the substantial justice and equity of the tax. The provisions of this section shall not impair or affect the remedies given by other provisions of law for the collection or enforcement of such tax against the person to whom the property was assessed.

70.21 Partnership; estates in hands of personal representative; personal property, how assessed. (1) Except as provided in sub. (2), the personal property of a partnership may be assessed in the names of the persons composing the partnership, so far as known or in the firm name or title under which the partnership business is conducted, and each partner shall be liable for the taxes levied on the partnership's personal property.

(1m) Undistributed personal property belonging to the estate of a decedent shall be assessed as follows:

(a) If a personal representative has been appointed and qualified, on the first day of January in the year in which the assessment is made, the property shall be assessed to the personal representative.

(b) If a personal representative has not been appointed and qualified, on the first day of January in the year in which the assessment is made, the property may be assessed to the decedent's estate. The tax on the property shall be paid by the personal representative if one is subsequently appointed, or by the person or persons in possession of the property at the time of the assessment if a personal representative is not appointed.

(2) The personal property of a limited liability partnership shall be assessed in the name of the partnership, and each partner shall be liable for the taxes levied thereon only to the extent permitted under s. 178.0306.

History: 1977 c. 29 s. 1646 (3); 1995 a. 97; 2001 a. 102; 2015 a. 295.

70.22 Personal property being administered, how assessed. (1) In case one or more of 2 or more personal representatives or trustees of the estate of a decedent who died domiciled in this state are not residents of the state, the taxable personal property belonging to the estate shall be assessed to the personal representatives or trustees residing in this state. In case there are 2 or more personal representatives or trustees of the same estate residing in this state, but in different taxation districts, the assessment of the taxable personal property belonging to the estate shall be in the names of all of the personal representatives or trustees of the estate residing in this state. In case no personal representative or trustee resides in this state, the taxable personal property belonging to the estate may be assessed in the name of the personal representative or trustee, or in the names of all of the personal representatives or trustees if there are more than one, or in the name of the estate.

(2) (a) The taxes imposed pursuant to an assessment under sub. (1) may be enforced as a claim against the estate, upon presentation of a claim for the taxes by the treasurer of the taxation district to the court in which the proceedings for the probate of the estate are pending. Upon due proof, the court shall allow and order the claim to be paid.

(b) Before allowing the final account of a nonresident personal representative or trustee, the court shall ascertain whether there are or will be any taxes remaining unpaid or to be paid on account of personal property belonging to the estate, and shall make any order or direction that is necessary to provide for the payment of the taxes.

(3) The provisions of this section shall not impair or affect any remedy given by other provisions of law for the collection or enforcement of taxes upon personal property assessed to personal representatives or trustees.

History: 1991 a. 316; 1997 a. 253; 2001 a. 102.

70.23 Duties of assessors; entry of parcels on assessment roll. (1) The assessor shall enter upon the assessment roll opposite to the name of the person to whom assessed, if any, as before provided in regular order as to lots and blocks, sections and parts of sections, a correct and pertinent description of each parcel of real property in the assessment district and the number of acres in each tract containing more than one acre.

(2) When 2 or more lots or tracts owned by the same person are considered by the assessor to be so improved or occupied with buildings as to be practically incapable of separate valuation, the lots or tracts may be entered as one parcel. Whenever any tract, parcel or lot of land has been surveyed and platted and a plat of the platted ground filed or recorded according to law, the assessor shall designate the several lots and subdivisions of the platted ground as the lots and subdivisions are fixed and designated by the plat.

History: 1971 c. 215; 1983 a. 532; 1993 a. 491; 1997 a. 35, 253; 1999 a. 96.

70.24 Public lands and land mortgaged to state. The secretary of state shall annually, before January 1, make and transmit to the county clerk of each county an abstract containing a correct and full statement and description of all public lands sold and not patented by the state, and of all lands mortgaged to the state lying in the county; and immediately on receipt thereof the county clerk shall make and transmit to the county assessor and to the clerk of each town, village or city in the county not under the assessment jurisdiction of the county assessor a list from said

abstract of such lands lying in such town, village or city. Every assessor shall enter on the assessment roll, in a separate column, under distinct headings, a list of all such public and mortgaged lands, and the same shall be assessed and taxed in the same manner as other lands, without regard to any balance of purchase money or loans remaining unpaid on the same.

History: 1977 c. 29 s. 1646 (3); 1977 c. 273.

70.25 Lands, described on rolls. In all assessments and tax rolls in all advertisements, certificates, papers, conveyances, or proceedings for the assessment and collection of taxes and in all related proceedings, except in tax bills, any descriptions of land that indicate the land intended with ordinary and reasonable certainty and that would be sufficient between grantor and grantee in an ordinary conveyance are sufficient. No description of land according to the United States survey is insufficient by reason of the omission of the word quarter or the figures or signs representing it in connection with the words or initial letters indicating any legal subdivision of lands according to government survey. Where a more complete description may not be practicable, and the deed or a mortgage describing any piece of real property is recorded in the office of the register of deeds for the county, an abbreviated description including the document number of the deed or mortgage or the volume and page where the deed or mortgage is recorded, and the section, village, or city where the property is situated, is sufficient. Where a more complete description may not be practicable, and the piece of property is described in any certificate, order, or judgment of a court of record in the county, an abbreviated description including the document number of the court record or the volume and page where the court record is recorded, and the section, village, or city where the property is situated, is sufficient. Descriptions in property tax bills shall be as provided under s. 74.09 (3) (a).

History: 1987 a. 378, 399, 403; 2017 a. 102.

70.27 Assessor's plat. (1) WHO MAY ORDER. Whenever any area of platted or unplatted land is owned by 2 or more persons in severalty, and when in the judgment of the governing body having jurisdiction, the description of one or more of the different parcels thereof cannot be made sufficiently certain and accurate for the purposes of assessment, taxation or tax title procedures without noting the correct metes and bounds of the same, or when such gross errors exist in lot measurements or locations that difficulty is encountered in locating new structures, public utilities or streets, such governing body may cause a plat to be made for such purposes. Such plat shall be called "assessor's plat," and shall plainly define the boundary of each parcel, and each street, alley, lane or roadway, or dedication to public or special use, as such is evidenced by the records of the register of deeds or a court of record. Such plats in cities may be ordered by the city council, in villages by the village board, in towns by the town board or the county board. A plat or part of a plat included in an assessor's plat shall be deemed vacated to the extent it is included in or altered by an assessor's plat. The actual and necessary costs and expenses of making assessors' plats shall be paid out of the treasury of the city, village, town or county whose governing body ordered the plat, and all or any part of such cost may be charged to the land, without inclusion of improvements, so platted in the proportion that the last assessed valuation of each parcel bears to the last assessed total valuation of all lands included in the assessor's plat, and collected as a special assessment on such land, as provided by s. 66.0703.

(2) CERTIFICATION, APPROVAL, RECORDING. Such plat, when completed and certified as provided by this section, and when approved by the governing body, shall be acknowledged by the clerk thereof and recorded in the office of the register of deeds. No plat may be recorded in the office of the register of deeds unless it is produced on media that is acceptable to the register of deeds.

(3) ASSESSMENT, TAXATION, CONVEYANCING. (a) Reference to any land, as it appears on a recorded assessor's plat is deemed sufficient for purposes of assessment and taxation. Conveyance may be made by reference to such plat and shall be as effective to pass title to the land so described as it would be if the same premises had been described by metes and bounds. Such plat or record thereof shall be received in evidence in all courts and places as correctly describing the several parcels of land therein designated. After an assessor's plat has been made and recorded with the register of deeds as provided by this section, all conveyances of lands included in such assessor's plat shall be by reference to such plat. Any instrument dated and acknowledged after September 1, 1955, purporting to convey, mortgage, or otherwise give notice of an interest in land that is within or part of an assessor's plat shall describe the affected land by the name of the assessor's plat, lot, block, or outlot.

(b) Notwithstanding par. (a), lands within an assessor's plat that are divided by a subdivision plat that is prepared, approved and recorded and filed in compliance with ch. 236 or a certified survey map that is prepared and recorded and filed in compliance with s. 236.34 shall be described for all purposes with reference to the subdivision plat or certified survey map, as provided in ss. 236.28 and 236.34 (3).

(4) AMENDMENTS. Amendments or corrections to an assessor's plat may be made at any time by the governing body by recording with the register of deeds a plat of the area affected by such amendment or correction, made and authenticated as provided by this section. It shall not be necessary to refer to any amendment of the plat, but all assessments or instruments wherein any parcel of land is described as being in an assessor's plat, shall be construed to mean the assessor's plat of lands with its amendments or corrections as it stood on the date of making such assessment or instrument, or such plats may be identified by number. This subsection does not prohibit the division of lands that are included in an assessor's plat by subdivision plat, as provided in s. 236.03, or by certified survey map, as provided in s. 236.34.

(5) SURVEYS, RECONCILIATIONS. The surveyor making the plat shall be a professional land surveyor licensed under ch. 443 and shall survey and lay out the boundaries of each parcel, street, alley, lane, roadway, or dedication to public or private use, according to the records of the register of deeds, and whatever evidence that may be available to show the intent of the buyer and seller, in the chronological order of their conveyance or dedication, and set temporary monuments to show the results of such survey which shall be made permanent upon recording of the plat as provided for in this section. The map shall be at a scale of not more than 100 feet per inch, unless waived in writing by the department of administration under s. 236.20 (2) (L). The owners of record of lands in the plat shall be notified by certified letter mailed to their last−known addresses, in order that they shall have opportunity to examine the map, view the temporary monuments, and make known any disagreement with the boundaries as shown by the temporary monuments. It is the duty of the professional land surveyor making the plat to reconcile any discrepancies that may be revealed so that the plat as certified to the governing body is in conformity with the records of the register of deeds as nearly as is practicable. When boundary lines between adjacent parcels, as evidenced on the ground, are mutually agreed to in writing by the owners of record, those lines shall be the true boundaries for all purposes thereafter, even though they may vary from the metes and bounds descriptions previously of record. Such written agreements shall be recorded in the office of the register of deeds. On every assessor's plat, as certified to the governing body, shall appear the document number of the record and, if given on the record, the volume and page where the record is recorded for the record that contains the metes and bounds description of each parcel, as recorded in the office of the register of deeds, which shall be identified with the number by which such parcel is designated on the plat, except that a lot that has been conveyed or otherwise acquired but upon which no deed is recorded in the office of register of deeds may be shown on an assessor's plat and when so shown shall contain a full metes and bounds description.

(6) MONUMENTS, PLAT REQUIREMENTS. The provisions of s. 236.15 as to monuments, and the provisions of s. 236.20 as to form and procedure, insofar as they are applicable to the purposes of assessors' plats, shall apply. Any stake or monument found and accepted as correct by a professional land surveyor laying out an assessor's plat shall be indicated as "stake found" or "monument found" when mapping the plat and such stake or monument shall not be removed or replaced even though it is inconsistent with the standards of s. 236.15.

(7) CERTIFICATE. When completed, the assessor's plat shall be filed with the clerk of the governing body that ordered the plat. On its title page shall appear the sworn certificate of the professional land surveyor who made the plat, which shall state and contain:

(a) The name of the governing body by whose order the plat was made, and the date of the order.

(b) A clear and concise description of the land so surveyed and mapped, by government lot, quarter quarter−section, township, range and county, or if located in a city or village or platted area, then according to the plat; otherwise by metes and bounds beginning with some corner marked and established in the United States land survey.

(c) A statement that the plat is a correct representation of all the exterior boundaries of the land surveyed and each parcel thereof.

(d) A statement that the professional land surveyor has fully complied with the provisions of this section in filing the same.

(8) PLAT FILED WITH GOVERNING BODY. Within 2 days after the assessor's plat is filed with the governing body, it shall be transmitted to the department of administration by the clerk of the governing body which ordered the plat. The department of administration shall review the plat within 30 days of its receipt. No such plat may be given final approval by the local governing body until the department of administration has certified on the face of the original plat that it complies with the applicable provisions of ss. 236.15 and 236.20. After the plat has been so certified the clerk shall promptly publish a class 3 notice thereof, under ch. 985. The plat shall remain on file in the clerk's office for 30 days after the first publication. At any time within the 30−day period any person or public body having an interest in any lands affected by the plat may bring a suit to have the plat corrected. If no suit is brought within the 30−day period, the plat may be approved by the governing body, and filed for record. If a suit is brought, approval shall be withheld until the suit is decided. The plat shall then be revised in accordance with the decision if necessary, and, without rereferral to the department of administration unless rereferral is ordered by the court. The plat may then be approved by the governing body and filed for record. When so filed the plat shall carry on its face the certificate of the clerk that all provisions of this section have been complied with. When recorded after approval by the governing body, the plat shall have the same effect for all purposes as if it were a land division plat made by the owners in full compliance with ch. 236. Before January 1 of each year, the register of deeds shall notify the town clerks of the recording of any assessors' plats made or amended during the preceding year, affecting lands in their towns.

History: 1977 c. 29 s. 1646 (3); 1979 c. 221, 248, 355, 361; 1983 a. 473; 1987 a. 172; 1989 a. 31, 56; 1991 a. 316; 1995 a. 27 ss. 3361, 3362, 9116 (5); 1997 a. 27, 99; 1999 a. 96; 1999 a. 150 s. 672; 2005 a. 41, 254; 2013 a. 358; 2017 a. 102.

Cross−reference: See also ch. Adm 49, Wis. adm. code.

The reference to s. 66.60 [now s. 66.0703] in sub. (1) refers only to the collection procedures; it does not make all of that section apply. Dittner v. Town of Spencer, 55 Wis. 2d 707, 201 N.W.2d 45 (1972).

The division of a lot within an assessor's plat is an amendment of the plat and must be made by following the procedure under this section. Ahlgren v. Pierce County, 198 Wis. 2d 576, 543 N.W.2d 812 (Ct. App. 1995), 95−2088.

The provisions of s. 236.41 relating to vacation of streets are inapplicable to assessors plats. Once properly filed and recorded, an assessor's plat becomes the operative document of record, and only sections specified in s. 236.03 (2) apply to assessor's plats. Schaetz v. Town of Scott, 222 Wis. 2d 90, 585 N.W.2d 889 (Ct. App. 1998), 98−0841.

Section 236.03 (2) sets forth the "applicable provisions" of ss. 236.15 and 236.20 with which assessors' plats must comply under s. 70.27 (8). A determination by the state under sub. (8) that an assessor's plat does not comply with the applicable provisions of ss. 236.15 and 236.20 may be reviewed under ch. 227. 58 Atty. Gen. 198.

The temporary survey monuments required to be set in the field prior to the submission of an assessor's plat for state level review are not made permanent until the recording of the assessor's plat. 59 Atty. Gen. 262.

Section 236.295 does not apply to assessors' plats. The amendment or correction of an assessor's plat under sub. (4) is an exercise of the police power that is accomplished for the same purposes and in the same manner as the original assessor's plat. The governing body involved is not required to conduct a public hearing concerning a proposed amendment or correction to an assessor's plat of record. Other questions concerning the amendment or correction of an assessor's plat are answered. 61 Atty. Gen. 25.

70.28 Assessment as one parcel. No assessment of real property which has been or shall be made shall be held invalid or irregular for the reason that several lots, tracts or parcels of land have been assessed and valued together as one parcel and not separately, where the same are contiguous and owned by the same person at the time of such assessment.

70.29 Personalty, how entered. The assessor shall place in one distinct and continuous part of the assessment roll all the names of persons assessed for personal property, with a statement of such property in each village in the assessor's assessment district, and foot up the valuation thereof separately; otherwise the assessor shall arrange all names of persons assessed for personal property on the roll alphabetically so far as convenient. The assessor shall also place upon the assessment roll, in a separate column and opposite the name of each person assessed for personal property, the number of the school district in which such personal property is subject to taxation.

History: 1991 a. 316.

70.30 Aggregate values. Every assessor shall ascertain and set down in separate columns prepared for that purpose on the assessment roll and opposite to the names of all persons assessed for personal property the number and value of the following named items of personal property assessed to such person, which shall constitute the assessed valuation of the several items of property therein described, to wit:

(9) The number and value of steam and other vessels.

(11) The value of machinery, tools and patterns.

(12) The value of furniture, fixture and equipment.

(13) The value of all other personal property except such as is exempt from taxation.

History: 1981 c. 20; 1983 a. 27 s. 2202 (45); 1983 a. 405; 1991 a. 39.

70.32 Real estate, how valued. (1) Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual provided under s. 73.03 (2a) from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefor at private sale. In determining the value, the assessor shall consider recent arm's−length sales of the property to be assessed if according to professionally acceptable appraisal practices those sales conform to recent arm's−length sales of reasonably comparable property; recent arm's−length sales of reasonably comparable property; and all factors that, according to professionally acceptable appraisal practices, affect the value of the property to be assessed.

(1g) In addition to the factors set out in sub. (1), the assessor shall consider the effect on the value of the property of any zoning ordinance under s. 59.692, 61.351, 61.353, 62.231, or 62.233, any conservation easement under s. 700.40, any conservation restriction under an agreement with the federal government and any restrictions under ch. 91. Beginning with the property tax assessments as of January 1, 2000, the assessor may not consider the effect on the value of the property of any federal income tax credit that is extended to the property owner under section 42 of the Internal Revenue Code.

(1m) In addition to the factors set out in sub. (1), the assessor shall consider the impairment of the value of the property because

of the presence of a solid or hazardous waste disposal facility or because of environmental pollution, as defined in s. 299.01 (4).

(2) The assessor, having fixed a value, shall enter the same opposite the proper tract or lot in the assessment roll, following the instruction prescribed therein.

(a) The assessor shall segregate into the following classes on the basis of use and set down separately in proper columns the values of the land, exclusive of improvements, and, except for subds. 5., 5m., and 6., the improvements in each class:

1. Residential.
2. Commercial.
3. Manufacturing.
4. Agricultural.
5. Undeveloped.

5m. Agricultural forest.

6. Productive forest land.
7. Other.

(c) In this section:

1d. "Agricultural forest land" means land that is producing or is capable of producing commercial forest products, if the land satisfies any of the following conditions:

a. It is contiguous to a parcel that has been classified in whole as agricultural land under this subsection, if the contiguous parcel is owned by the same person that owns the land that is producing or is capable of producing commercial forest products. In this subdivision, "contiguous" includes separated only by a road.

b. It is located on a parcel that contains land that is classified as agricultural land in the property tax assessment on January 1, 2004, and on January 1 of the year of assessment.

c. It is located on a parcel at least 50 percent of which, by acreage, was converted to land that is classified as agricultural land in the property tax assessment on January 1, 2005, or thereafter.

1g. "Agricultural land" means land, exclusive of buildings and improvements and the land necessary for their location and convenience, that is devoted primarily to agricultural use.

1i. "Agricultural use" means agricultural use as defined by the department of revenue by rule and includes the growing of short rotation woody crops, including poplars and willows, using agronomic practices.

1k. "Agronomic practices" means agricultural practices generally associated with field crop production, including soil management, cultivation, and row cropping.

1m. "Other," as it relates to par. (a) 7., means buildings and improvements; including any residence for the farm operator's spouse, children, parents, or grandparents; and the land necessary for the location and convenience of those buildings and improvements.

2. "Productive forest land" means land that is producing or is capable of producing commercial forest products and is not otherwise classified under this subsection.

3. "Residential" includes any parcel or part of a parcel of untilled land that is not suitable for the production of row crops, on which a dwelling or other form of human abode is located and which is not otherwise classified under this subsection.

4. "Undeveloped land" means bog, marsh, lowland brush, uncultivated land zoned as shoreland under s. 59.692 and shown as a wetland on a final map under s. 23.32 or other nonproductive lands not otherwise classified under this subsection.

(2r) Agricultural land shall be assessed according to the income that could be generated from its rental for agricultural use.

(3) Manufacturing property subject to assessment under s. 70.995 shall be assessed according to that section.

(4) Beginning with the assessments as of January 1, 2004, agricultural forest land shall be assessed at 50 percent of its full value, as determined under sub. (1), and undeveloped land shall be assessed at 50 percent of its full value, as determined under sub. (1).

(5) Beginning with the assessments as of January 1, 2017, the assessor shall assess the land within a district corridor described under s. 88.74 in the same class under sub. (2) (a) as the land adjoining the corridor, if the adjoining land and the land within the corridor are owned by the same person.

History: 1973 c. 90; 1977 c. 29, 418; 1979 c. 34; 1981 c. 20, 390; 1983 a. 36; 1983 a. 275 s. 15 (8); 1983 a. 410; 1985 a. 54, 153; 1991 a. 39, 316; 1993 a. 337; 1995 a. 27, 201, 227; 1999 a. 9; 2001 a. 109; 2003 a. 33, 230; 2009 a. 177, 235, 276, 401; 2013 a. 80; 2017 a. 115.

Cross−reference: See also ch. Tax 18, Wis. adm. code.

When market value is established by a fair sale of the property or sales of reasonably comparable property are available, it is error for an assessor to resort to other factors to determine fair market value, although such factors in the absence of such sales would have a bearing on market value. Rules on judicial review of valuation presuppose that the method of evaluation is in accordance with the statutes; hence errors of law should be corrected by the court on certiorari and the failure to make an assessment on the statutory basis is an error of law. State ex rel. Markarian v. Cudahy, 45 Wis. 2d 683, 173 N.W.2d 627 (1970).

While a sale establishes value, the assessment still has to be equal to that on comparable property. Sub. (2) requires the assessor to fix a value before classifying the land; it does not prohibit the assessor from considering the zoning of the property when it is used for some other purpose. State ex rel. Hensel v. Town of Wilson, 55 Wis. 2d 101, 197 N.W.2d 794 (1972).

In making an assessment based on a recent sale of the property, the assessor cannot increase the value because no commission was paid to a broker. Lincoln Fireproof Warehouse v. Milwaukee Board of Review 60 Wis. 2d 84, 208 N.W.2d 380 (1973).

Under an option agreement, the sellers' right to repurchase their homestead and their right of first refusal for the purchase of industrial buildings to be constructed on the property were factors going only to the willingness of the parties to deal, not their compulsion to do so; the value of these rights, together with the monetary amount per acre, comprised the total sale price of the land. Geipel v. Milwaukee, 68 Wis. 2d 726, 229 N.W.2d 585 (1975).

Evidence of net income from unique property was admissible to show market value. An assessor's unconfirmed valuation based on estimated replacement cost less depreciation could not stand alone because of uncontroverted evidence of actual costs of recent construction. Rosen v. Milwaukee, 72 Wis. 2d 653, 242 N.W.2d 681 (1976).

When there are no actual sales, cost, depreciation, replacement value, income, industrial conditions, location and occupancy, sales of like property, book value, insurance carried, value asserted in a prospectus, and appraisals are all relevant to determination of market value for assessment purposes. Mitchell Aero, Inc. v. Milwaukee Board of Review, 74 Wis. 2d 268, 246 N.W.2d 521 (1976).

District−wide use of comparative sales statistics to determine annual percentage increases of assessments was invalid under sub. (1). Kaskin v. Board of Review, 91 Wis. 2d 272, 282 N.W.2d 620 (Ct. App. 1979). See also Lloyd v. Board of Review of City of Stoughton, 179 Wis. 2d 33, 505 N.W.2d 465 (Ct. App. 1993).

An assessor erred in failing to consider disadvantages and liabilities that affect the fair market value of dams. Wisconsin Edison Corp. v. Robertson, 99 Wis. 2d 561, 299 N.W.2d 626 (Ct. App. 1980).

The lease of comparable property constituted the "best information" regarding fair market value of leasehold improvements. Keane v. Bd. of Review, 99 Wis. 2d 584, 299 N.W.2d 638 (Ct. App. 1980).

Sub. (1) requires the use of a cash equivalency adjustment in assessing property based upon the sale of comparable properties. Flint v. Kenosha County Rev. Bd. 126 Wis. 2d 152, 376 N.W.2d 364 (Ct. App. 1985).

An assessment largely based upon consideration of equalized value was invalid. The court erred by remanding with the requirement that a new assessment consider the actual subsequent sale of the subject property. Kesselman v. Sturtevant, 133 Wis. 2d 122, 394 N.W.2d 745 (Ct. App. 1986).

The board of review erred as a matter of law by basing an assessment on "market" rental income when there was a recent arms−length sale of the property. Darcel v. Manitowoc Review Board, 137 Wis. 2d 623, 405 N.W.2d 344 (1987).

In determining market value under sub. (1), the board of review must determine whether financing arrangements between the seller and buyer affected the sale price; sub. (1) prohibits assessment exceeding market value. Flood v. Lomira Board of Review, 153 Wis. 2d 428, 451 N.W.2d 422 (1990).

A tax assessment under sub. (1) may include as a component of value the property's transferable income−producing capacity that is reflected by a recent sale. The key of the analysis is whether the value is appended to the property and is thus transferable with the property or whether it is, in effect, independent of the property so that the value either stays with the seller or dissipates upon sale. In this case, a shopping mall's reason for existence—namely, the leasing of space to tenants and related activities such as trash disposal, baby stroller rentals, etc.—was a transferable value that was inextricably intertwined with the land, just as the transferable value of a farm—the growing of crops—is inextricably intertwined with the property from which the farm operates. State ex rel. N/S Associates v. Board of Review of Village of Greendale, 164 Wis. 2d 31, 473 N.W.2d 554 (Ct. App. 1991).

Section 70.32 establishes a unitary taxing scheme; mineral rights are taxed as an element of the real estate and not separately. Cornell University v. Rusk County, 166 Wis. 2d 811, 481 N.W.2d 485 (Ct. App. 1992).

The capitalization of income method, based on estimated market rents rather than on actual rent, was an improper method of assessing subsidized rental property. Metro. Holding v. Milwaukee Review Bd. 173 Wis. 2d 626, 495 N.W.2d 314 (1993).

Compliance with the s. 73.03 (2a) assessment manual is not a defense when the method of assessment violates s. 70.32 (1). Metropolitan Holding Co. v. Milwaukee Board of Review, 173 Wis. 2d 626, 495 N.W.2d 314 (1993).

When an assessor disavows the correctness of a valuation of comparable property shown on the tax roll, the burden is on the assessor to explain why the assessment is

incorrect. Brighton Square Co. v. Madison, 178 Wis. 2d 577, 504 N.W.2d 436 (Ct. App. 1993).

A taxpayer challenging an assessment has the burden of proving that a sale was an arm's−length transaction. The taxpayer has the burden of proof on each assessment manual condition that must be met. Doneff v. Review Board of Two Rivers, 184 Wis. 2d 203, 516 N.W.2d 383 (1994).

The use of owner−operator income to value property is allowed if the net income reflects the property's chief source of value, the income is produced without skill of the owner, or the owner's skill and labor are factored out and other valuation approaches are considered. Waste Management v. Kenosha County Board of Review, 184 Wis. 2d 541, 516 N.W.2d 695 (1994).

There is no bright line rule for the number of comparable properties that must be shown to prove that the rule of uniformity is being violated. Assessments that are discriminatory and made based on arbitrary and improper considerations cannot stand. Levine v. Fox Point Board of Review, 191 Wis. 2d 363, 528 N.W.2d 424 (1995).

Property that is encumbered by a bundle of rights must be appraised at its value using the current value of that bundle of rights. City of West Bend v. Continental IV Fund, 193 Wis. 2d 481, 535 N.W.2d 24 (Ct. App. 1995).

Real property shall be valued based on the best information available. The best information is a recent arms−length sale of the property, followed by recent sales of comparable property. If either of those are not available the assessor may look to all factors that collectively have a bearing on the value of the property. Campbell v. Town of Delavan, 210 Wis. 2d 239, 565 N.W.2d 209 (Ct. App. 1997), 96−1291.

Equalized value is not a measure of fair market value of individual properties; it is improper for an assessor to take it into account in valuing property. Noah's Ark Family Park v. Village of Lake Delton, 210 Wis. 2d 301, 565 N.W.2d 230 (Ct. App. 1997), 96−1074.

Affirmed. 216 Wis. 2d 387, 573 N.W.2d 852 (1998), 96−1074.

For purposes of the uniformity clause, there is only one class of property. The burden of taxation must be borne as nearly as practicable among all property, based on value. Compliance with the requirement of s. 70.05 (5) that property be assessed at fair value at least once every 5 years is not a substitute for compliance with the uniformity clause and sub. (1). Approving an increased assessment for only one property despite evidence that it and other properties had recent sales at a price above prior assessments violated the law, and its approval by the board of review was arbitrary. Noah's Ark Family Park v. Village of Lake Delton, 210 Wis. 2d 301, 565 N.W.2d 230 (Ct. App. 1997), 96−1074.

Affirmed. 216 Wis. 2d 387, 573 N.W.2d 852 (1998), 96−1074.

It was improper to rely solely on insurance replacement value to set the valuation of low income apartments encumbered with income and rental restrictions, although it is a relevant factor. Walworth Affordable Housing, LLC v. Village of Walworth, 229 Wis. 2d 797, 601 N.W.2d 325 (Ct. App. 1999), 98−2535.

Income that is attributable to land, rather than personal to the owner, is inextricably intertwined with the land and is transferable to future owners. This income may be included in the land's assessment because it appertains to the land. Income from managing separate off−site property may be inextricably intertwined with land and subject to assessment if the income is generated primarily on the assessed property itself. ABKA Ltd. v. Fontana−On−Geneva−Lake, 231 Wis. 2d 328, 603 N.W.2d 217 (1999), 98−0851.

The requirement to use the "best information" does not require that an assessor use actual figures in the absence of a sale. An assessor acted properly in using estimated expense figures when actual figures did not reflect regular expenses. ABKA Ltd. v. Fontana−On−Geneva−Lake, 231 Wis. 2d 328, 603 N.W.2d 217 (1999), 98−0851.

It is clear from the Assessor's Manual that assessors should consider many market factors from a variety of sources when gathering and applying comparable sales information. Even sales prices of similar properties need some adjustment in order to arrive at an estimate of value for a different property. Joyce v. Town of Tainter, 2000 WI App 15, 232 Wis. 2d 349, 605 N.W.2d 284, 99−0324.

When valuing subsidized housing, assessors are required to consider the effects the property's restrictions have on value. Bloomer Housing Limited Partnership v. City of Bloomer, 2002 WI App 252, 257 Wis. 2d 883, 653 N.W.2d 309, 01−3495. See also Northland Whitehall Apartments Limited Partnership v. City of Whitehall, 2004 WI App 60, 290 Wis. 2d 488, 713 N.W.2d 646, 04−2941.

An assessor cannot be free to choose between the mortgage subsidy rate and the mortgage market rate when using the income approach to valuing federally subsidized housing. If the use of a market rate was proper in *City of Bloomer*, the use of a subsidized interest rate cannot be. Mineral Point Valley Limited Partnership v. City of Mineral Point, 2004 WI App 158, 275 Wis. 2d 784, 686 N.W.2d 697, 03−1857

When a property carries with it a bundle of rights, an assessment must be based on the property at its value using the current value of that bundle of rights. A buyer necessarily acquires the right to the rents guaranteed in long−term leases. The goal of assessment is to ascertain what an investor would pay for the property, and contract rents, not market rents, whether above or below market rent, are the clearest indicator of what the investor would pay. Walgreen Co. v. City of Madison, 2007 WI App 153, 303 Wis. 2d 620, 735 N.W.2d 543, 06−1859.

A property tax assessment of retail property leased at above−market rent values should be based on market rents and not on the above−market rental terms of the actual lease. Walgreen Co. v. City of Madison, 2008 WI 80, 311 Wis. 2d 158, 752 N.W.2d 687, 06−1859.

When an assessor only after looking at prevailing market conditions and all variables determined that the market for lakefront property had grown so strong that factors other than beach length and beach quality were being ignored by the marketplace, the approach was not formulaic and is not in violation of *Campbell*. Anic v. Board of Review of the Town of Wilson, 2008 WI App 71, 311 Wis. 2d 701, 751 N.W.2d 870, 07−0761.

An assessment based on a Department of Revenue analysis of the sale of a mining company that owned the land was not based upon a recent arm's−length sale of the property. A value derived by analyzing a complex corporate transaction involving the sale of a variety of assets, tangible and intangible, independent and interdependent, is not equivalent to the price obtained in a sale of one component of that transaction. Forest County Potawatomi Community v. Township of Lincoln, 2008 WI App 156, 314 Wis. 2d 363, 761 N.W.2d 31, 07−2523.

The Assessment Manual and case law set forth a 3−tier system for determining the fair market value of property. A recent arm's−length sale of the property is the best evidence of value, and is the basis for an assessment under tier one. If there has been no recent sale, an assessor must consider sales of reasonably comparable properties, which is the tier 2 approach. In the absence of comparable sales data, the assessor determines the value under tier 3, which permits consideration of all the factors collectively that have a bearing on value of the property in order to determine its fair market value. Nestle USA, Inc. v. DOR, 2009 WI App 159, 322 Wis. 2d 156, 776 N.W.2d 589, 08−0322.

Affirmed. 2011 WI 4, 331 Wis. 2d 256, 795 N.W.2d 46, 08−0322.

Absent sufficient proof that no market existed for a property having a specialized use, an assessment under the tier 2 comparable sales approach based on an expanded definition of highest and best use to include a use for which a market exists would be contrary to sub. (1). The taxpayer has the burden of proving the absence of a market for the property with its current specialized use. That there were no known sales of properties put to that special use merely suggests that such properties are rarely bought and sold. It does not necessarily indicate that the taxpayer would be unable to find a buyer who intended to maintain the property as its current use. Nestle USA, Inc. v. DOR, 2009 WI App 159, 322 Wis. 2d 156, 776 N.W.2d 589, 08−0322.

Affirmed. 2011 WI 4, 331 Wis. 2d 256, 795 N.W.2d 46, 08−0322.

When there are no sales of the property itself or of reasonably comparable properties, an assessment cannot be made under a tier one or tier 2 methodology. The assessment is then made using a tier 3 methodology. The cost of replacement approach is the preferred tier 3 method of valuation when, as here, the property has a highly specialized use resulting in there being no comparable properties. Nestle USA, Inc. v. DOR, 2009 WI App 159, 322 Wis. 2d 156, 776 N.W.2d 589, 08−0322.

Affirmed. 2011 WI 4, 331 Wis. 2d 256, 795 N.W.2d 46, 08−0322.

In situations when it has been determined that there is no potential market for the subject property, it is contrary to sub. (1) to conclude that the highest and best use of the property should remain the same. That was not the case when there was at least a limited market for powdered infant formula production facilities. Nestle USA, Inc. v. DOR, 2011 WI 4, 331 Wis. 2d 256, 795 N.W.2d 46, 08−0322.

Reassessing one property at a significantly higher rate than comparable properties using a different methodology and then declining to reassess the comparable properties by that methodology violates the uniformity clause. U.S. Oil Co., Inc. v. City of Milwaukee, 2011 WI App 4, 331 Wis. 2d 407, 794 N.W.2d 904, 09−2260.

Comparing a taxpayer's appraised value to lower values assigned to a relatively small number of other properties has long been rejected as a claimed violation of the uniformity clause. Lack of uniformity must be established by showing a general undervaluation of properties within a district when the subject property has been assessed at full market value. Great Lakes Quick Lube, LP v. City of Milwaukee, 2011 WI App 7, 331 Wis. 2d 137, 794 N.W.2d 510, 09−2775.

A property's assessed value is based on fair market value but a property's assessed value is not necessarily equal to its fair market value. Assessors must base assessments of real property on the property's fair market value. However, as the plain language of the Property Assessment Manual makes clear, a property's fair market value is not synonymous with its assessed value. In most cases individual property assessments are different than the property's fair market value. Stupar River LLC v. Town of Linwood Board of Review, 2011 WI 82, 336 Wis. 2d 562, 800 N.W.2d 468, 09−0191.

The taxpayer challenging an assessment and classification has the burden of proving at the board hearing that the assessment and classification of property are erroneous; that the taxpayer did not meet his burden of proof; and that the board's determination to maintain the assessment is supported by a reasonable view of the evidence. Sausen v. Town of Black Creek Board of Review, 2014 WI 9, 352 Wis. 2d 576, 843 N.W.2d 39, 10−3015.

Except for sub. (2) (c) 3., every subdivision of sub. (2) (c) uses the verb "means" instead of "includes" when defining a property classification. "Means" clearly limits the classes of property defined in those subdivisions to the specific types of property described therein. If the legislature intended the residential class to be restricted to the type of property described in sub. (2) (c) 3., it would have used the verb "means" instead of "includes." Aside from the property specifically described in sub. (2) (c) 3., any other property included in the residential class must fall within the ordinary meaning of the term "residential." West Capitol, Inc. v. Village of Sister Bay, 2014 WI App 52, 354 Wis. 2d 130, 848 N.W.2d 875, 13−1458.

Nothing in s. 70.10 requires a property to be classified based on its actual use or prevents an assessor from considering a property's most likely use. An owner's subjective expression of intent is not dispositive of a property's most likely use. The Assessment Manual directs assessors to consider whether the property owner's actions are consistent with an intent for residential use, but that is only one of 7 factors the Manual directs assessors to consider. West Capitol, Inc. v. Village of Sister Bay, 2014 WI App 52, 354 Wis. 2d 130, 848 N.W.2d 875, 13−1458.

A property need not be zoned residential in order to be classified as residential for property tax purposes, as long as residential use is likely to be allowed. West Capitol, Inc. v. Village of Sister Bay, 2014 WI App 52, 354 Wis. 2d 130, 848 N.W.2d 875, 13−1458.

Under sub. (2) (c) 4., land is nonproductive when it is neither producing nor capable of productive use. Property that is capable of productive use is not nonproductive and not entitled to the 50−percent assessment reduction under sub. (4). West Capitol, Inc. v. Village of Sister Bay, 2014 WI App 52, 354 Wis. 2d 130, 848 N.W.2d 875, 13−1458.

An appraiser must not value federally regulated housing as if it were market−rate property. Doing so causes the assessor to pretend that the subject property is not hindered by federal restrictions. The restrictions and underlying agreements implicit in federally regulated housing will affect the property's value. Regency West Apartments LLC v. City of Racine, 2016 WI 99, 372 Wis. 2d 282, 888 N.W.2d 611, 14−2947.

Because of the difficulty in appraising subsidized properties under other appraisal methods, the income approach may be the best determiner of value. The property assessment manual does not preclude appraisers from relying solely on the income approach when valuing subsidized properties. *Metropolitan Holding,* 173 Wis. 2d 626, unambiguously requires assessors to use income and expenses for the subject property when valuing subsidized housing under the income approach. Regency West Apartments LLC v. City of Racine, 2016 WI 99, 372 Wis. 2d 282, 888 N.W.2d 611, 14−2947.

Sub. (1) requires assessors to value property based on "the best information that the assessor can practicably obtain." In this case, projected expenses and income for this newly opened property were available to the assessor. When an assessor calculated the net operating income for an income−based valuation through mass

appraisal techniques that were not particularized to the assessed property, the assessment did not comply with sub. (1) because it did not use the "best information" that was available. Regency West Apartments LLC v. City of Racine, 2016 WI 99, 372 Wis. 2d 282, 888 N.W.2d 611, 14−2947.

In addition to calculating a net operating income (NOI) for the subject property, an income−based valuation requires determining the applicable capitalization rate. The capitalization rate expresses the rate of return an investor would expect to receive from an investment in the subject property. The value of a subject property is determined by dividing its NOI by the applicable capitalization rate. Capitalization rates from the marketplace are usually derived from the sale of market−rate projects. Such capitalization rates do not reflect the unique characteristics of subsidized housing. Regency West Apartments LLC v. City of Racine, 2016 WI 99, 372 Wis. 2d 282, 888 N.W.2d 611, 14−2947.

If there are no reasonably comparable properties, the comparable sales approach cannot be used. The property assessment manual explicitly states that when subsidized properties are reasonably comparable, properties being compared must have restrictions similar to the subject property. To determine if properties have similar restrictions, an appraiser must examine the specific restrictions that apply to each property, as well as the differences between these restrictions. Regency West Apartments LLC v. City of Racine, 2016 WI 99, 372 Wis. 2d 282, 888 N.W.2d 611, 14−2947.

Sub. (1) explicitly directs that property be assessed in the manner specified "in the Wisconsin property assessment manual . . .from actual view or from the best information that the assessor can practicably obtain." The manual provides that "commercial property can be valued by either single property or mass appraisal techniques." The manual makes clear that mass appraisal is accepted at the initial assessment stage and sets forth when a single property appraisal is necessary after the initial mass appraisal has been challenged by the taxpayer or if the property being valued is a special−purpose property that does not lend itself well to mass appraisal. The express language of the manual indicates that mass appraisal is a proper method of valuation in all other circumstances. Metropolitan Associates v. City of Milwaukee, 2018 WI 4, 379 Wis. 2d 141, 905 N.W.2d 784, 16−0021.

Under the inextricably intertwined test, the income−generating capability of the oil terminals was inextricably intertwined with the land and was thus transferable to future purchasers of the land. Therefore, that income was included in the land's assessment because it appertained to the land. Marathon Petroleum Company LP v. City of Milwaukee, 2018 WI App 22, 381 Wis. 2d 180, 912 N.W.2d 117, 16−0939.

The inextricably intertwined test applies to a tier 2 comparable sales approach for assessing real estate. Marathon Petroleum Company LP v. City of Milwaukee, 2018 WI App 22, 381 Wis. 2d 180, 912 N.W.2d 117, 16−0939.

To qualify for the agricultural classification, it is sufficient that land is devoted primarily to growing qualifying crops, whether or not those crops are grown for a business purpose. The plain language of "agricultural use" under sub. (2) (c) 1i. and Department of Revenue rules refers to growing crops—not marketing, selling, or profiting from them. Peter Ogden Family Trust of 2008 v. Board of Review for Town of Delafield, 2018 WI App 26, 381 Wis. 2d 180, 912 N.W.2d 117, 17−0516.

Classification of real property for tax purposes is based on the actual use of the property. Although an injunction, contract, or ordinance may be presented to argue how the property is supposed to be used, none can be the decisive factor for tax assessment purposes. Thoma v. Village of Slinger, 2018 WI 45, 381 Wis. 2d 311, 912 N.W.2d 56, 15−1970.

Using a property only for maintaining ground cover does not fall within the statutory definition of agricultural use. When the property owner adamantly denied any farming took place at all on the land and insisted that he was maintaining ground cover only, the property owner failed to present any evidence that his use qualified as agricultural for tax assessment purposes. Thoma v. Village of Slinger, 2018 WI 45, 381 Wis. 2d 311, 912 N.W.2d 56, 15−1970.

Taxation of undeveloped real property in Wisconsin. Hack, Sullivan, 1974 WBB No. 1.

70.323 Assessment of divided parcel. (1) DETERMINATION OF VALUE. (a) If a parcel of real property is divided, the owner of a divided parcel may request a valuation of the divided parcels. A request shall be in writing and submitted to the treasurer of the taxation district in which the property is located. If the taxation district treasurer is in possession of the tax roll, the treasurer shall make the requested valuation. If the tax roll has been returned under s. 74.43, the taxation district treasurer shall forward the request to the county treasurer, who shall make the requested valuation.

(b) The appropriate treasurer shall, with the assistance of the assessor of the taxation district, attribute to each new parcel its value for the year of division. The value of each new parcel shall represent a reasonable apportionment of the valuation of the original undivided parcel, and the total of the new valuations shall equal the valuation of the original undivided parcel on January 1 of that year. The value of a new parcel as determined under this subsection is the value of that property for purposes of s. 70.32 for the year of division.

(2) APPEAL. A determination under sub. (1) may be appealed by bringing an action in circuit court within 60 days after the determination is made. The court shall determine whether the value determined under sub. (1) represents a reasonable apportionment of the valuation of the original undivided parcel on January 1 of that year. If the court determines that the value does not represent a reasonable apportionment, the court shall redetermine the parcels' values, the total of which shall equal the valuation of the original undivided parcel on January 1 of that year.

(3) LIEN EXTINGUISHED. Payment of all real estate taxes based on the value determined under sub. (1) or (2) extinguishes the lien against the parcel created under s. 70.01.

(4) COOPERATION OF ASSESSOR. The assessor of the taxation district shall assist the treasurer of the taxation district or of the county under sub. (1).

(5) NOT APPLICABLE WHERE WRITTEN AGREEMENT. This section does not apply if there is a written agreement providing for the payment of real property taxes on the divided parcels in the year of division.

History: 1987 a. 378.

70.327 Valuation and assessment of property with contaminated wells. In determining the market value of real property with a contaminated well or water system, the assessor shall take into consideration the time and expense necessary to repair or replace the well or private water system in calculating the diminution of the market value of real property attributable to the contamination.

History: 1983 a. 410; 1995 a. 378.

70.337 Tax exemption reports. (1) By March 31 of each even−numbered year, the owner of each parcel of property that is exempt under s. 70.11 shall file with the clerk of the taxation district in which the property is located a form containing the following information:

(a) The name and address of the owner of the property and, if applicable, the type of organization that owns the property.

(b) The legal description and parcel number of the property as shown on the assessment roll.

(c) The date of acquisition of the property.

(d) A description of any improvements on the land.

(e) A statement indicating whether or not any portion of the property was leased to another person during the preceding 2 years. If the property was leased, the statement shall identify the portion of the property that was leased, identify the lessee and describe the ways in which the lease payments were used by the owner of the property.

(f) The owner's estimate of the fair market value of the property on January 1 of the even−numbered year. The owner shall provide this estimate by marking one of a number of value ranges provided on the form prepared under sub. (2). The assessor for the taxation district within which the property is located may review the owner's estimate of the fair market value of the property and adjust it if necessary to reflect the correct fair market value.

(2) By July 1 of each even−numbered year, the clerk of each taxation district shall complete and deliver to the department of revenue a form on which the clerk estimates the value of tax−exempt property, classified by type of owner, within the taxation district.

(3) The department of revenue shall prescribe the contents of the form for reporting the information required under sub. (1), including the categories of value of property that the department of revenue determines will result in the best estimate of the value of tax−exempt property in this state. The department of revenue shall also prescribe the contents of the form under sub. (2). The form under sub. (2) shall provide for estimates of the value of tax−exempt property in the taxation district that is owned by various categories of owners, including property that is owned by the benevolent and educational associations; fraternal and labor organizations; nonprofit hospitals; private colleges; and churches and religious associations. The forms under subs. (1) and (2) shall be prepared and distributed under s. 70.09 (3).

(4) The department of revenue shall tabulate data from the forms received under sub. (2) and prepare an estimate of the value of tax−exempt property in this state by category of owner. The department shall include this information in the summary of tax exemption devices prepared under s. 16.425 (3).

(5) Each person that is required to file a report under sub. (1) shall pay a reasonable fee that is sufficient to defray the costs to the taxation district of distributing and reviewing the forms under sub. (1) and of preparing the form for the department of revenue under sub. (2). The amount of the fee shall be established by the governing body of the taxation district. This subsection does not apply to a church that is required to file a report under sub. (1).

(6) If the form under sub. (1) is not received by March 31 of the even−numbered year, the taxation district clerk shall send the owner of the property a notice, by certified mail, stating that the property for which the form is required will be appraised at the owner's expense if a completed form is not received by the taxation district clerk within 30 days after the notice is sent. If the completed form is not received by the taxation district clerk within 30 days after the notice is sent, the property shall be appraised either by the taxation district assessor or by a person hired by the taxation district to conduct the appraisal.

(7) This section does not apply to property that is exempt under s. 70.11 (1), (2), (13), (13m), (15), (15m), (21) or (30), property that is exempt under s. 70.11 (18) if a payment in lieu of taxes is made for that property, lake beds owned by the state, state forests under s. 28.03 or 28.035, county forests under s. 28.10, property acquired by the department of transportation under s. 85.08 or 85.09 or highways, as defined in s. 340.01 (22).

History: 1971 c. 215; 1973 c. 90; 1977 c. 29 ss. 749, 1647 (4), (9); 1977 c. 273, 418; 1983 a. 27; 1991 a. 39, 269; 1995 a. 113, 136, 417; 1999 a. 9.

70.339 Reporting requirements. (1) By March 15 each person that owns property that is exempt under s. 70.11, except s. 70.11 (1) and (2), and that was used in the most recently ended taxable year in a trade or business for which the owner of the property was subject to taxation under sections 511 to 515 of the internal revenue code, as defined in s. 71.22 (4m), shall file with the clerk of the taxation district in which the property is located a statement containing the following information:

(a) The name, address and telephone number of the owner of the property.

(b) The name, address and telephone number of a person who can be contacted concerning the use of the property in a trade or business.

(c) A general description of the activities engaged in to conduct the trade or business.

(d) The location and a description of the property that is used in the trade or business including, if applicable, the specific portion of a building that is used to conduct the trade or business.

(2) The format and distribution of statements under this section shall be governed by s. 70.09 (3).

(3) If the statement required under this section is not received by the due date, the taxation district clerk shall send the owner of the property a notice, by certified mail, stating that failure to file a statement is subject to the penalties under sub. (4).

(4) A person who fails to file a statement within 30 days after notification under sub. (3) shall forfeit $10 for each succeeding day on which the form is not received by the taxation district clerk, but not more than $500.

History: 1991 a. 39, 269.

70.34 Personalty. All articles of personal property shall, as far as practicable, be valued by the assessor upon actual view at their true cash value; and after arriving at the total valuation of all articles of personal property which the assessor shall be able to discover as belonging to any person, if the assessor has reason to believe that such person has other personal property or any other thing of value liable to taxation, the assessor shall add to such aggregate valuation of personal property an amount which, in the assessor's judgment, will render such aggregate valuation a just and equitable valuation of all the personal property liable to taxation belonging to such person. In carrying out the duties imposed on the assessor by this section, the assessor shall act in the manner specified in the Wisconsin property assessment manual provided under s. 73.03 (2a).

History: 1973 c. 90; 1991 a. 316.

"True cash value" is not a figure that can be determined by bargaining with the taxpayer, and such an agreement would be void. The unsupported statement of the taxpayer has no probative value. Berg Equipment Corp. v. Spencer Board of Review 53 Wis. 2d 233, 191 N.W.2d 892 (1971).

When there are no actual sales, cost, depreciation, replacement value, income, industrial conditions, location and occupancy, sales of like property, book value, insurance carried, value asserted in a prospectus, and appraisals are all relevant to determination of market value for assessment purposes. Mitchell Aero, Inc. v. Milwaukee Board of Review, 74 Wis. 2d 268, 246 N.W.2d 521 (1976).

A market data or sales approach was proper when 94 percent of machines were leased and only 6 percent were sold. An income capitalization approach has been used only when no sales exist. Xerox Corp. v. Department of Revenue, 114 Wis. 2d 522, 339 N.W.2d 357 (Ct. App. 1983).

70.345 Legislative intent; department of revenue to supply information. The assessor shall exercise particular care so that personal property as a class on the assessment rolls bears the same relation to statutory value as real property as a class. To assist the assessor in determining the true relationship between real estate and personal property the department of revenue shall make available to local assessors information including figures indicating the relationship between personal property and real property on the last assessment rolls.

70.35 Taxpayer examined under oath or to submit return. (1) To determine the amount and value of any personal property for which any person, firm, or corporation should be assessed, any assessor may examine such person or the managing agent or officer of any firm or corporation under oath as to all such items of personal property, the taxable value thereof as defined in s. 70.34 if the property is taxable. In the alternative the assessor may require such person, firm, or corporation to submit a return of such personal property and of the taxable value thereof. There shall be annexed to such return the declaration of such person or of the managing agent or officer of such firm or corporation that the statements therein contained are true.

(2) The return shall be made and all the information therein requested given by such person on a form prescribed by the assessor with the approval of the department of revenue which shall provide suitable schedules for such information bearing on value as the department deems necessary to enable the assessor to determine the true cash value of the taxable personal property that is owned or in the possession of such person on January 1 as provided in s. 70.10. The return may contain methods of deriving assessable values from book values and for the conversion of book values to present values, and a statement as to the accounting method used. No person shall be required to take detailed physical inventory for the purpose of making the return required by this section.

(3) Each return shall be filed with the assessor on or before March 1 of the year in which the assessment provided by s. 70.10 is made. The assessor, for good cause, may allow a reasonable extension of time for filing the return. All returns filed under this section shall be the confidential records of the assessor's office, except that the returns shall be available for use before the board of review as provided in this chapter. No return required under this section is controlling on the assessor in any respect in the assessment of any property.

(4) Any person, firm or corporation who refuses to so testify or who fails, neglects or refuses to make and file the return of personal property required by this section shall be denied any right of abatement by the board of review on account of the assessment of such personal property unless such person, firm or corporation shall make such return to such board of review together with a statement of the reasons for the failure to make and file the return in the manner and form required by this section.

(5) In the event that the assessor or the board of review should desire further evidence they may call upon other persons as witnesses to give evidence under oath as to the items and value of the personal property of any such person, firm or corporation.

(6) The return required by this section shall not be demanded by the assessor from any farmer, or from any firm or corporation assessed under ch. 76 or from any person, firm or corporation whose personal property is not used for the production of income in industry, trade, commerce or professional practice.

(8) This section shall not be applicable to farm products as defined by s. 93.01 (5) when owned and possessed by the original producer.

History: 1977 c. 29 ss. 750, 1646 (3); 1983 a. 189 s. 329 (20); 1997 a. 237; 2001 a. 16; 2017 a. 59.

Cross−reference: See also s. Tax 12.10, Wis. adm. code.

70.36 False statement; duty of district attorney. **(1)** Any person in this state owning or holding any personal property that is subject to assessment, individually or as agent, trustee, guardian, personal representative, assignee, or receiver or in some other representative capacity, who intentionally makes a false statement to the assessor of that person's assessment district or to the board of review of the assessment district with respect to the property, or who omits any property from any return required to be made under s. 70.35, with the intent of avoiding the payment of the just and proportionate taxes on the property, shall forfeit the sum of $10 for every $100 or major fraction of $100 so withheld from the knowledge of the assessor or board of review.

(2) It is hereby made the duty of the district attorney of any county, upon complaint made to the district attorney by the assessor or by a member of the board of review of the assessment district in which it is alleged that property has been so withheld from the knowledge of such assessor or board of review, or not included in any return required by s. 70.35, to investigate the case forthwith and bring an action in the name of the state against the person, firm or corporation so complained of. All forfeitures collected under the provisions of this section shall be paid into the treasury of the taxation district in which such property had its situs for taxation.

(3) The word assessor whenever used in ss. 70.35 and 70.36 shall, in 1st class cities, be deemed to refer also to the commissioner of assessments of any such city and, where applicable, shall be deemed also to refer to the department of revenue responsible for the manufacturing property assessment under s. 70.995.

History: 1973 c. 90; 1991 a. 156, 316; 1997 a. 237; 2001 a. 16, 102; 2017 a. 59.

70.365 Notice of changed assessment. When the assessor assesses any taxable real property, or any improvements taxed as personal property under s. 77.84 (1), and arrives at a different total than the assessment of it for the previous year, the assessor shall notify the person assessed if the address of the person is known to the assessor, otherwise the occupant of the property. If the assessor determines that land assessed under s. 70.32 (2r) for the previous year is no longer eligible to be assessed under s. 70.32 (2r), and the current classification under s. 70.32 (2) (a) is not undeveloped, agricultural forest, productive forest land, or other, the assessor shall notify the person assessed if the assessor knows the person's address, or otherwise the occupant of the property, that the person assessed may be subject to a conversion charge under s. 74.485. Any notice issued under this section shall be in writing and shall be sent by ordinary mail at least 15 days before the meeting of the board of review or before the meeting of the board of assessors in 1st class cities and in 2nd class cities that have a board of assessors under s. 70.075, except that, in any year in which the taxation district conducts a revaluation under s. 70.05, the notice shall be sent at least 30 days before the meeting of the board of review or board of assessors. The notice shall contain the amount of the changed assessment and the time, date, and place of the meeting of the local board of review or of the board of assessors. However, if the assessment roll is not complete, the notice shall be sent by ordinary mail at least 15 days prior to the date to which the board of review or board of assessors has adjourned, except that, in any year in which the taxation district conducts a revaluation under s. 70.05, the notice shall be sent at least 30 days prior to the date to which the board of review or board of assessors has adjourned. The assessor shall attach to the assessment roll a statement that the notices required by this section have been mailed and failure to receive the notice shall not affect the validity of the changed assessment, the resulting changed tax, the procedures of the board of review or of the board of assessors or the enforcement of delinquent taxes by statutory means. After the person assessed or the occupant of the property receives notice under this section, if the assessor changes the assessment as a result of the examination of the rolls as provided in s. 70.45 and the person assessed waives, in writing and on a form prescribed or approved by the department of revenue, the person's right to the notice of the changed assessment under this section, no additional notice is required under this section. The secretary of revenue shall prescribe the form of the notice required under this section. The form shall include information notifying the taxpayer of the procedures to be used to object to the assessment. The form shall also indicate whether the person assessed may be subject to a conversion charge under s. 74.485.

History: 1977 c. 418; 1981 c. 20; 1983 a. 490; 1991 a. 248; 1997 a. 237; 2007 a. 210; 2013 a. 228.

Under s. 74.37 (4), a taxpayer must challenge an assessment in front of the board of review before filing an excessive assessment claim, unless the taxing authority failed to provide a notice of assessment under circumstances where notice was required. Under s. 70.365, a notice of assessment is required only when the property's assessed value has changed. After reading these statutes, it should have been clear to the taxpayer that: 1) because it did not receive a notice of assessment, its property's assessed value for 2011 would be unchanged from 2010; and 2) if the taxpayer wanted to challenge the 2011 assessment, it needed to object before the board of review. These requirements did not violate the taxpayer's rights to due process. Northbrook Wisconsin, LLC v. City of Niagara, 2014 WI App 22, 352 Wis. 2d 657, 843 N.W.2d 851, 13−1322.

70.37 Net proceeds occupation tax on persons extracting metalliferous minerals in this state. **(1)** LEGISLATIVE FINDINGS. The legislature finds that:

(a) The existence has been announced of several economically significant ore bodies containing copper, zinc, lead, taconite and other metalliferous minerals in this state, including one of the largest zinc deposits in North America.

(b) Metalliferous minerals are valuable, irreplaceable natural resources which, once removed, are forever lost as an economic asset to the state.

(c) The activity of mining metalliferous minerals creates jobs, economic activity, tax revenues and other valuable benefits to the economy and residents of this state.

(d) The activity of mining metalliferous minerals creates additional costs to the state and municipalities for highways, sewers, schools and other improvements which are necessary to accommodate the development of a metalliferous mining industry.

(e) The activity of mining metalliferous minerals has a permanent and often damaging effect on the environment of the state.

(f) The activity of mining metalliferous minerals significantly alters the quality of life in communities directly affected by mining.

(g) As the size of a mining operation increases, the cost to the state and municipalities to support the operation increases, as does the damage to the environment. Furthermore, as the size of a mining operation increases, the person mining metalliferous minerals benefits from economies of scale in the mining operation.

(h) A graduated net proceeds occupational tax, by taxing profitability at rates which vary with the level of profitability, encourages important state goals, such as:

1. Gradual, continuous and complete extraction of metalliferous minerals.

2. Continued stable employment.

3. Taxation according to ability to pay.

4. Taxation based on the privileges enjoyed by persons mining metalliferous metallic minerals.

(i) Municipalities incur long−term economic costs as a result of metalliferous mineral mining after the mining operation shuts down. An impact fund, in which is deposited a portion of the tax revenues, should assure that moneys will be available to such

municipalities for long− and short−term costs associated with social, educational, environmental and economic impacts of metalliferous mineral mining.

(2) LEGISLATIVE INTENT. It is the declared intent of the legislature to establish a net proceeds occupation tax on persons engaged in the activity of mining metalliferous minerals in this state. The tax is established in order that the state may derive a benefit from the extraction of irreplaceable metalliferous minerals and in order to compensate the state and municipalities for costs, past, present and future, incurred or to be incurred as a result of the loss of valuable irreplaceable metallic mineral resources.

History: 1977 c. 31.

70.375 Net proceeds occupation tax on mining of metallic minerals; computation. (1) DEFINITIONS. In ss. 70.37 to 70.3965:

(ab) "Controlled entity" means a person at least 50 percent of the voting stock of which is owned directly or indirectly by another person who is engaged in mining metalliferous minerals.

(ad) "Controlling entity" is a person who owns directly or indirectly at least 50 percent of the voting stock of another person who is engaged in mining metalliferous minerals.

(ae) "Department" means the department of revenue.

(ag) "Extraction of ores or minerals from the ground" includes the extraction, by owners or operators of mines, of ores or minerals from the waste or residue of prior mining unless the extraction is made by a purchaser of waste or residue or by a purchaser of the rights to extract ores or minerals from the waste or residue.

(ai) "Gross income from mining" means that amount of income which is attributable to the processes of extraction of ores or minerals from the ground and the application of mining processes, including mining transportation and as further defined in 26 CFR section 1.613−4. In this paragraph "income" means the actual amount for which ore or mineral, less trade and cash discounts actually allowed, is sold if the taxpayer sells the ore or mineral after the application of mining processes. If ore or minerals are sold after the application of nonmining processes, gross income from mining shall be computed as provided in 26 CFR section 1.613−4.

(am) "Gross proceeds" means gross income from mining except as provided under sub. (3).

(ar) "Internal Revenue Code" means the federal Internal Revenue Code, as amended, and applicable federal regulations adopted by the federal department of the treasury.

(as) "Mine" means an excavation in or at the earth's surface made to extract metalliferous minerals for which a permit has been issued under s. 293.49 or 295.58.

(av) "Mine site" means the underground and surface area disturbed by a mine, including the locations from which the minerals or refuse or both have been removed, the surface area covered by refuse, and any surface areas in which structures, haulageways, pipelines, equipment, materials and any other things used directly in connection with the mine are situated.

(b) 1. "Mining" has the meaning under section 613 (c) of the internal revenue code and includes the extraction of ores or minerals from the ground, the transportation of ores or minerals from the point of extraction to the plants or mills at which the treatment processes are applied and the following treatment processes applied to an ore or mineral for which the owner or operator is entitled to a deduction for depletion under section 611 of the internal revenue code:

a. In the case of iron ore, bauxite and other ores or minerals that are customarily sold in the form of a crude mineral product; sorting, concentrating, sintering and substantially equivalent processes that bring the ore or mineral to shipping grade and form, and loading for shipment.

b. In the case of lead, zinc, copper, gold, silver, uranium and other ores or minerals that are not customarily sold in the form of the crude mineral product; crushing, grinding and beneficiation by concentration by means of gravity, flotation, amalgamation, electrostatic or magnetic processes, cyanidation, leaching, crystallization or precipitation; not including electrolytic deposition, roasting, thermal or electric smelting or refining; or by substantially equivalent processes or by a combination of processes used in the separation or extraction of the products from other material taken out of the mine or out of another natural deposit.

c. The furnacing of quicksilver ores.

d. Treatment processes necessary or incidental to the processes under subd. 1. a. to c.

e. Any treatment processes provided for by rules promulgated by the department.

2. For purposes of this section, "mining" does not include the extraction or beneficiation of sand or gravel or the following treatment processes unless they are provided for under subd. 1. d.: electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other materials, treatment effecting a chemical change, thermal action, molding and shaping.

(bm) "Mining−related purposes" means activities which are directly in response to the application for a mining permit under s. 293.37 or 295.47; directly in response to construction, operation, curtailment of operation or cessation of operation of a metalliferous mine site; or directly in response to conditions at a metalliferous mine site which is not in operation. "Mining−related purposes" also includes activities which anticipate the economic and social consequences of the cessation of mining. "Mining−related purposes" also includes the purposes under s. 70.395 (2) (g).

(c) "Municipality" means any county, city, village, town or school district.

(d) "Person" means a sole proprietorship, partnership, limited liability company, association or corporation and includes a lessee engaged in mining metalliferous minerals.

(e) "Secretary" means the secretary of revenue.

(2) TAX IMPOSED. (a) In respect to mines not in operation on November 28, 1981, there is imposed upon persons engaged in mining metalliferous minerals in this state a net proceeds occupation tax effective on the date on which extraction begins to compensate the state and municipalities for the loss of valuable, irreplaceable metalliferous minerals. The amount of the tax shall be determined by applying the rates established under sub. (5) to the net proceeds of each mine. The net proceeds of each mine for each year are the difference between the gross proceeds and the deductions allowed under sub. (4) for the year.

(b) The secretary may promulgate any rules necessary to implement the tax under ss. 70.37 to 70.39 and 70.395 (1e). In respect to mines not in operation on November 28, 1981, ss. 71.10 (1), 71.30 (1) and (2), 71.74 (2), (3), (9), (11) and (15), 71.77, 71.78, 71.80 (6), 71.83 (1) (a) 1. and 2. and (b) 2. and (2) (a) 3. and (b) 1. and 71.85 (2) apply to the administration of this section.

(2m) TAX IMPOSED. (a) There is imposed upon persons engaged in mining metalliferous minerals in this state in respect to mines in operation on November 28, 1981, a net proceeds occupation tax effective on the date on which extraction begins to January 1, 1991, to compensate the state and municipalities for the loss of valuable, irreplaceable metalliferous minerals. The amount of the tax shall be determined by applying the rates established under sub. (5) to the average of the net proceeds of the person for the preceding 3−year period. The net proceeds of a person for each year shall be the difference between the gross proceeds, computed under sub. (3) for the year, and the deductions allowed under sub. (4) for the year.

(b) In respect to mines in operation on November 28, 1981, ss. 71.10 (1), 71.30 (1), 71.74 (2), (3), (7), (9) and (11), 71.76 and 71.77 (1) to (8) apply to the administration of this section to January 1, 1991.

(3) ALTERNATE COMPUTATION OF GROSS PROCEEDS. If products are sold or transferred to a person operating a smelting, refining

or other processing or marketing facility which is located outside of the United States or to a controlled entity or controlling entity of the seller or transferor and if the secretary determines that the gross proceeds under sub. (1) (am) do not reflect or demonstrate the gross proceeds that would have been received from an unrelated purchaser for the product under similar circumstances, the gross proceeds shall be computed under this subsection. For the purpose of this subsection "control" means direct or indirect ownership of at least 50 percent of the total combined voting stock of the corporation. The gross proceeds shall be computed by multiplying that part of the production of recovered metalliferous minerals which were sold or transferred during the taxable year by the average price of that mineral for the taxable year and then subtracting the cost of postmining processes, including the cost of capital (interest and earnings) imputed to that production. The average price shall be computed from the monthly prices published in the engineering and mining journal as follows:

(a) Taconite pellets, lower lake ports price, net of unloading charges.

(b) Copper, United States producer price, F.O.B. refinery.

(c) Lead, United States producer price.

(d) Zinc, United States prime western price.

(e) Silver, United States producer price.

(f) Gold, London final price.

(g) Other metalliferous minerals or other forms of metalliferous minerals not including mineral aggregates such as stone, sand and gravel, at a price determined by the secretary, by rule, from a nationally known publication or other nationally known source listing prices of metalliferous minerals.

(4) DEDUCTIONS. If the costs are not excluded in determining gross proceeds and are actually incurred or accrued, there shall be allowed to persons subject to the tax under sub. (2) or (2m) the following deductions:

(a) The actual and necessary expenses incurred during the taxable year for labor, tools, appliances and supplies used in mining metalliferous minerals, including the labor of the lessee and the lessee's employees and the amount expended by the lessee for tools, appliances and supplies used by the lessee in the mining operation. The personal labor of the lessee shall be computed at the prevailing wage rate.

(b) The actual and necessary expenses for mining including extracting, transporting, milling, concentrating, smelting, refining, reducing, assaying, sampling, inventorying and handling the ore and for further processing and transferring related to the product for which gross proceeds are received, including the cost of capital (interest and earnings) imputed to smelting and refining expenses.

(c) The actual and necessary expenses for administrative, appraising, accounting, legal, medical, engineering, clerical and technical services directly related to mining metalliferous minerals in this state, excluding salaries and expenses for corporate officers and for lobbying, as defined in s. 13.62 (10).

(d) The actual and necessary expenses directly related to the repair and maintenance of any machinery, mills, reduction works, buildings, structures, other necessary improvements, tools, appliances and supplies used in mining metalliferous minerals extracted in this state.

(e) Except as provided in par. (em), federal income taxes paid, state income or franchise taxes paid, property taxes, sales taxes and use taxes paid and other taxes paid and deductible by corporations in computing net income under s. 71.26 (2) which are allocable to the mine, excluding the tax under this section.

(em) In the case of a mine owned by a corporation that owns other business operations or is part of an affiliated group of corporations eligible to file consolidated federal income tax returns, the determination of deductible state income or franchise taxes and federal income taxes shall be made by calculating the taxable income from the mine as though the mine were a separate entity and applying the federal income tax laws and state income or franchise tax laws to this income as though the mine were filing a separate income or franchise tax return. To calculate taxable income, federal taxable income as it applies to the depletion deduction under section 613 of the internal revenue code shall be adjusted to reflect the difference between Wisconsin income or franchise tax law and federal income tax law.

(f) Rents paid on personal property used in mining metalliferous minerals.

(g) The cost of relocating employees within this state.

(h) The cost of premiums for bonds required under s. 293.26 (9), 293.51, 295.45 (5), or 295.59.

(i) The cost of premiums for insurance on persons or tangible assets relating to mining metalliferous minerals.

(j) Losses from uninsured casualty losses and the sale of personal property used in mining metalliferous minerals.

(k) Depreciation or amortization on property used in connection with mining. With respect to property first eligible for depreciation or amortization before January 1, 1981, the deduction shall be limited to the deduction under s. 70.375 (4) (k), 1979 stats. With respect to property first eligible for depreciation or amortization on or after January 1, 1981, the deduction shall be limited to the amount allowable as a deduction to corporations in computing net income under s. 71.26 (2). The following assets may be depreciated or amortized:

1. Machinery, mills and reduction works.

2. Buildings, structures and other improvements.

3. Permit fees, license fees and any other fees for formal written authorization required by a department or instrumentality of the state.

4. Development of the mine after the date on which extraction begins.

(L) Royalties paid to owners of the mineral rights to the lands where the mine or an extension of the mine is located. In this paragraph, "owners" does not include the person mining or a controlled entity or controlling entity of the person mining.

(m) Amortization by a straight−line method over the life of the mine commencing with production of premining costs, including costs for drilling, geological and engineering studies, design of facilities, pilot mines, mine testing, environmental surveys, facilities siting surveys and other exploration and development activities.

(n) Expenses under par. (m) incurred after mining begins, those costs to be expensed currently.

(o) Actual and necessary reclamation and restoration costs associated with a mine in this state, including payments for future reclamation and postmining costs which are required by law or by department of natural resources order and fees and charges under chs. 281, 285 or 289 to 299 not otherwise deductible under this section. Any refunds of escrowed or reserve fund payments allowed as a deduction under this paragraph shall be taxed as net proceeds at the average effective tax rate for the years the deduction was taken.

(p) Interest determined as follows:

1. If the interest is specifically allocable to the development or operation of a mine or beneficiation facility from which net proceeds are derived, all of the interest is deductible.

2. If the interest is not specifically allocable to the development or operation of a mine or beneficiation facility, the proportion of the interest that equals the proportion of the capital investment in the mine and beneficiation facilities as compared to the taxpayer's total capital investment.

3. If a mine is owned by a corporation that is part of an affiliated group of corporations, "interest" means the interest paid to nonmembers of the group.

4. The deduction for interest under this paragraph shall not exceed 5 percent of the total gross proceeds for the taxable year.

(q) An allowance for depletion of ores on the basis of their actual original cost in cash or the equivalent of cash.

(r) Administrative fees under s. 70.3965.

(4m) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. Except as otherwise provided under this section, a person subject to the tax imposed under sub. (2), shall use generally accepted accounting principles to determine the person's net proceeds occupation tax liability under this section.

(5) RATES. The tax to be assessed, levied and collected upon persons engaging in mining metalliferous minerals in this state shall be computed at the following rates:

(a) On the amount from $250,001 to $5,000,000, at a rate of 3 percent.

(b) On the amount from $5,000,001 to $10,000,000, at a rate of 7 percent.

(c) On the amount from $10,000,001 to $15,000,000, at a rate of 10 percent.

(d) On the amount from $15,000,001 to $20,000,000, at a rate of 13 percent.

(e) On the amount from $20,000,001 to $25,000,000, at a rate of 14 percent.

(f) On the amount exceeding $25,000,000, at a rate of 15 percent.

(6) INDEXING. For calendar year 1983 and corresponding fiscal years and thereafter, the dollar amounts in sub. (5) and s. 70.395 (1) and (2) (d) 1m. and 5. a. shall be changed to reflect the percentage change between the gross national product deflator for June of the current year and the gross national product deflator for June of the previous year, as determined by the U.S. department of commerce as of December 30 of the year for which the taxes are due, except that no annual increase may be more than 10 percent. For calendar year 1983 and corresponding fiscal years and thereafter until calendar year 1997 and corresponding fiscal years, the dollar amounts in s. 70.395 (1m), 1995 stats., shall be changed to reflect the percentage change between the gross national product deflator for June of the current year and the gross national product deflator for June of the previous year, as determined by the U.S. department of commerce as of December 30 of the year for which the taxes are due, except that no annual increase may be more than 10 percent. The revised amounts shall be rounded to the nearest whole number divisible by 100 and shall not be reduced below the amounts under sub. (5) on November 28, 1981. Annually, the department shall adopt any changes in dollar amounts required under this subsection and incorporate them into the appropriate tax forms.

History: 1977 c. 31, 272; 1979 c. 32 s. 92 (1); 1981 c. 86, 314; 1983 a. 27 ss. 1184b to 1184m, 1803g, 1803r, 2202 (45); 1985 a. 29; 1987 a. 27; 1987 a. 312 ss. 1, 17; 1991 a. 39; 1993 a. 112; 1995 a. 27, 225, 227; 1997 a. 27, 237; 2005 a. 347; 2013 a. 1; 2015 a. 55; 2017 a. 134.

Cross−reference: See also s. Tax 12.20, 12.21, and 12.23, Wis. adm. code.

NOTE: 2005 Wis. Act 347, which affected this section, contains extensive explanatory notes.

70.38 Reports, appeals, estimated liability. **(1)** REPORTS. On or before June 15, persons mining metalliferous minerals shall file with the department a true and accurate report in the form the department deems necessary to administer the tax under s. 70.375. The books and records of the person shall be open to inspection and examination to employees of the department designated by the secretary and to the state geologist.

(1m) ESTIMATED LIABILITY. Upon written request and for sufficient reason shown, the department shall allow a person subject to the tax under s. 70.375 to file, on or before June 15, a net proceeds tax return and to pay that tax based upon estimated tax liability. On or before September 15, that person shall file a final report and pay any additional tax due along with interest at the rate of 1 percent per month from June 15 until the date of payment. If the additional tax exceeds 10 percent of the person's tax under s. 70.375 for the previous year, the penalty and interest under s. 70.39 (1) apply. If the final report indicates that the person overpaid the person's liability, the department shall refund the overpayment.

(2) COMBINED REPORTING. If the same person extracts metalliferous minerals from different sites in this state, the net proceeds for each site for which a permit has been issued under s. 293.49 or 295.58 shall be reported separately for the purposes of computing the amount of the tax under s. 70.375 (5).

(4) APPEALS. (a) Any person feeling aggrieved by the assessment notice shall, within 60 days after the receipt of the notice, file with the department a petition for redetermination setting forth the person's objections to the assessment. The person may request an informal conference with representatives of the department prior to September 15. The request shall be indicated in the petition. The secretary shall act on the petition on or before October 1. On or before November 1, the person shall pay the amount determined by the secretary pursuant to the secretary's action on the petition. If the person is aggrieved by the secretary's denial of the petition the person may appeal to the tax appeals commission if the appeal is filed with the commission on or before December 1.

(b) Determinations of the tax appeals commission shall be subject to judicial review under ch. 227.

History: 1977 c. 31; 1981 c. 86; 1983 a. 27; 1995 a. 227; 2013 a. 1.

Cross−reference: See also ch. TA 1 and s. Tax 12.25, Wis. adm. code.

70.385 Collection of the tax. All taxes as evidenced by the report under s. 70.38 (1) are due and payable to the department on or before June 15, and shall be deposited by the department with the secretary of administration.

History: 1977 c. 31; 1981 c. 86; 1983 a. 27; 2003 a. 33.

70.39 Collection of delinquent tax. **(1)** Taxes due and unpaid on June 15 shall be deemed delinquent as of that date, and when delinquent shall be subject to a penalty of 4 percent of the tax and interest at the rate of 1.5 percent per month until paid. The parent shall be liable for any delinquent taxes of a subsidiary person. The department shall immediately proceed to collect the tax due, penalty, interest and costs. For the purpose of collection the department or its duly authorized agent has the same powers as conferred by law upon the county treasurer, county clerk, sheriff and district attorney.

(2) Any part of an assessment which is contested before the tax appeals commission or the courts, which after hearing shall be ordered to be paid, shall be considered as a delinquent tax if unpaid on the 10th day following the date of the final order and shall be subject to the penalty and interest provisions under sub. (1).

(3) After the tax becomes delinquent, the department shall issue a warrant to the sheriff of any county of the state in which the metalliferous mineral property is located in total or in part. The warrant shall command the sheriff to levy upon and sell sufficient of the person's metalliferous mineral property found within the sheriff's county, to pay the tax with the penalties, interest and costs, and to proceed in the same manner as upon an execution against property issued out of a court of record, and to return the warrant to the department and pay to it the money collected, or the part thereof as may be necessary to pay the tax, penalties, interest and costs, within 60 days after the receipt of the warrant, and deliver the balance, if any, after deduction of lawful charges to the person.

(4) (a) Within 5 days after the receipt of the warrant the sheriff shall file a copy of it with the clerk of circuit court of the county, unless the person makes satisfactory arrangements for payment with the department, in which case, the sheriff shall, at the direction of the department, return the warrant to it.

(b) The clerk of circuit court shall enter the warrant as a delinquent income or franchise tax warrant as required under s. 806.11. The clerk of circuit court shall accept, file, and enter the warrant without prepayment of any fee, but shall submit a statement of the proper fees within 30 days to the department of revenue. Upon audit by the department of administration on the certificate of the secretary of revenue, the secretary of administration shall pay the

fees and the fees shall be charged to the proper appropriation for the department of revenue.

(c) The sheriff shall be entitled to the same fees for executing upon the warrant as upon an execution against property issued out of a court of record, to be collected in the same manner.

(d) Upon the sale of any real estate the sheriff shall execute a deed of the real estate, and the person may redeem the real estate as from a sale under an execution against property upon a judgment of a court of record. No public official may demand prepayment of any fee for the performance of any official act required in carrying out this section.

History: 1977 c. 31; 1983 a. 27; 1991 a. 39; 1995 a. 224; 2003 a. 33.

70.395 Distribution and apportionment of tax. (1) DEFINITION. In this section, "first−dollar payment" means an amount equal to $100,000 adjusted as provided in s. 70.375 (6).

(1e) DISTRIBUTION. Fifteen days after the collection of the tax under ss. 70.38 to 70.39, the department of administration, upon certification of the department of revenue, shall transfer the amount collected in respect to mines not in operation on November 28, 1981, to the investment and local impact fund, except that, after the payments are made under sub. (2) (d) 1., 2., and 2m., the department of administration shall transfer 60 percent of the amount collected from each person extracting ferrous metallic minerals to the investment and local impact fund and 40 percent of the amount collected from any such person to the general fund.

(2) INVESTMENT AND LOCAL IMPACT FUND. (b) There is created an investment and local impact fund under the jurisdiction and management of the investment and local impact fund board, as created under s. 15.435.

(c) The board shall, according to procedures established by rule:

1. Certify to the department of administration the amount of funds to be distributed under pars. (d) to (g) and to be paid under par. (j).

2. Determine the amount which is not distributed under subd. 1. which shall be invested under s. 25.17 (1) (jc).

(d) Annually on the first Monday in January, except as provided in subd. 5. b. and c., the department of administration shall distribute, upon certification by the board:

1. To each county in which metalliferous minerals are extracted, the first−dollar payment.

1m. To each county in which metalliferous minerals are extracted, 20 percent of the tax collected annually under ss. 70.38 to 70.39 from persons extracting metalliferous minerals in the county or $250,000, whichever is less, to be used for mining−related purposes.

2. To each city, town or village in which metalliferous minerals are extracted, the first−dollar payment minus any payment during that year under par. (d) (intro.) or subd. 5. If the minable ore body is located in 2 contiguous municipalities and if at least 15 percent of the minable ore body is in each municipality, each qualifying municipality shall receive a full payment specified in this subdivision as if the ore body were located solely within that municipality. The department of revenue shall annually change the dollar amount specified in this subdivision as specified in s. 70.375 (6) except that the dollar amount may not be reduced below the dollar amount under this subdivision on November 28, 1981.

2m. To any Native American community that has tribal lands within a municipality qualified to receive a payment under this section, an amount equal to $100,000 minus any payments during that year under par. (d) (intro.) or subd. 5. Annually, the dollar amount in this subdivision shall be adjusted as specified under s. 70.375 (6).

3. Where the tax under ss. 70.37 to 70.39 is in respect to a mining site which is located in more than one county or municipality the distribution under subds. 1. and 2. shall be as follows:

a. On or before February 10 of each year persons extracting metalliferous minerals in this state shall report to the department the amount of crude ore extracted from each municipality and county in the state in the previous year. The data shall detail the total amount of crude ore extracted from each mine and the portion of the total taken from each municipality and county. This data shall be included in the report required by s. 70.38 (1) and (2).

c. Each county's proportion of the amount determined under subd. 1. shall be equal to the ratio of the amount of crude ore extracted from the mine in that county to the total amount of crude ore extracted from the mine multiplied by the amount determined under subd. 1.

4. To the investment and local impact fund an amount equal to 10 percent of the taxes paid by each mine plus all accrued interest on that amount for a project reserve fund. The funds shall be withdrawn by the investment and local impact fund board to be used for the following purposes in respect to the municipality or municipalities in which the mine is located:

a. To ensure an annual payment to each municipality under subds. 1. and 2. in an amount equal to the average payment for the 3 previous years to that municipality.

b. To reimburse municipalities for costs associated with the cessation of mining operations.

c. To indemnify municipalities for reclamation expenses.

5. a. To each municipality that contains a metalliferous mining site in respect to which an application for a mining permit has been made prior to January 1, 1986, until a final decision is made on that application or for 4 years, whichever is the shorter period, $100,000 annually. To each municipality that contains a metalliferous mining site at which construction has begun prior to January 1, 1989, but at which extraction has not been engaged in for at least 3 years, $100,000 annually. The funds under this subdivision shall be used only for mining−related purposes. Payments under this subdivision are payable 30 days following submission of the application or commencement of construction. Payments shall be made on a project fiscal year basis commencing on the date of submission or commencement of construction. In this subdivision, "municipality" means a city, town or village and any Native American community contained within such a city, town or village.

b. Annually, after the board has determined that the use of the funds is for mining−related purposes associated with construction of the specific project in the project fiscal year, to each county that contains a metalliferous mining site at which construction is begun prior to January 1, 1989, but at which extraction has not been engaged in, $300,000 annually reduced by the amount of property taxes paid to the county during the current fiscal year on improvements and also reduced by any payments received under subds. 1. and 1m. The funds under this subparagraph shall be used only for mining−related purposes. Payments shall be made on a project fiscal year basis commencing on the date of commencement of construction, and are payable 30 days following the close of the fiscal year.

c. To each Native American community, county, city, town and village that contains at least 15 percent of a minable ore body in respect to which construction has begun at a metalliferous mining site but in respect to which extraction has not begun, $100,000 as a one−time payment. Those payments shall be made on or before the date 30 days after the beginning of construction.

(dc) 1. Each person intending to submit an application for a mining permit under s. 293.37 or 295.47 shall pay $75,000 to the department of revenue for deposit in the investment and local impact fund at the time that the person notifies the department of natural resources under s. 293.31 (1) or 295.465 of that intent.

2. A person making a payment under subd. 1. shall pay an additional $75,000 upon notification by the board that the board has distributed 50 percent of the payment under subd. 1.

3. A person making a payment under subd. 2. shall pay an additional $75,000 upon notification by the board that the board has distributed all of the payment under subd. 1. and 50 percent of the payment under subd. 2.

4. Six months after the signing of a local agreement under s. 293.41 or 295.443 for the proposed mine for which the payment is made, the board shall refund any funds paid under this paragraph but not distributed under par. (fm) from the investment and local impact fund to the person making the payment under this paragraph.

(dg) Each person constructing a metalliferous mining site shall pay to the department of revenue for deposit in the investment and local impact fund, as a construction fee, an amount sufficient to make the construction period payments under par. (d) 5. in respect to that site. Any person paying a construction fee under this paragraph may credit against taxes due under s. 70.375 an amount equal to the payments that the taxpayer has made under this paragraph, provided that the credit does not reduce the taxpayer's liability under s. 70.375 below the amount needed to make the first−dollar payments under par. (d) 1., 2. and 2m. for that year in respect to the taxpayer's mine. Any amount not creditable because of that limitation in any year may be carried forward.

(e) If the appropriations under ss. 20.566 (7) (e) and (v) in any year are insufficient to make all payments under par. (d), full payments shall be made in the order listed in subds. 1. to 4., except that construction period payments under par. (d) 5. for which a person mining has made a construction fee payment under par. (dg) shall be made first. If funds are insufficient to pay the full amounts payable at a particular priority level listed in subds. 1. to 4., payments shall be prorated among the entities entitled to payments at that level:

1. Payments under par. (d) 1., 2. and 2m.
2. Payments under par. (d) 1m.
3. Payments under par. (d) 4.
4. Mining permit application payments under par. (d) 5.

(f) A school district may apply to the board for payments from the fund in an amount equal to the school district's nonshared costs. If the board finds that the school district has incurred costs attributable to enrollment resulting from the development and operation of metalliferous mineral mining and if the board and the school board of the school district reach an agreement on a payment schedule, the board shall certify to the department of administration for payment to the school district an amount equal to all or part of the nonshared costs of the school district in the year in which the initial agreement was reached. The board and the school district may, by mutual consent, modify the provisions of the agreement at any time. The payment shall be considered a nondeductible receipt for the purposes of s. 121.07 (6). In this paragraph, "nonshared costs" means the amount of the school district's principal and interest payments on long−term indebtedness and annual capital outlay for the current school year, which is not shared under s. 121.07 (6) (a) or other nonshared costs and which is attributable to enrollment increases resulting from the development of metalliferous mineral mining operations.

(fm) The board may distribute a payment received under par. (dc) to a county, town, village, city, tribal government or local impact committee authorized under s. 293.41 (3) or 295.443 only for legal counsel, qualified technical experts in the areas of transportation, utilities, economic and social impacts, environmental impacts and municipal services and other reasonable and necessary expenses incurred by the recipient that directly relate to the good faith negotiation of a local agreement under s. 293.41 or 295.443 for the proposed mine for which the payment is made.

(g) The board may distribute the revenues received under sub. (1e) or proceeds thereof in accordance with par. (h) for the following purposes, with a preference to private sector economic development projects under subd. 3., as the board determines necessary:

1. Protective services, such as police and fire services associated with the construction and operation of the mine site.

2. Highways, as defined in s. 990.01 (12), repaired or constructed as a consequence of the construction and operation of the mine site.

3. Studies and projects for local private sector economic development.

4. Monitoring the effects of the mining operation on the environment.

5. Extraordinary community facilities and services provided as a result of mining activity.

6. Legal counsel and technical consultants to represent and assist municipalities appearing before state agencies on matters relating to metalliferous mineral mining.

7. Other expenses associated with the construction, operation, cessation of operation or closure of the mine site.

8. The preparation of areawide community service plans for municipalities applying for funds under par. (h) which identify social, economic, educational and environmental impacts associated with mining and set forth a plan for minimizing the impacts.

9. Provision of educational services in a school district.

10. Expenses attributable to a permanent or temporary closing of a mine including the cost of providing retraining and other educational programs designed to assist displaced workers in finding new employment opportunities and the cost of operating any job placement referral programs connected with the curtailment of mining operations in any area of this state.

(h) Distribution under par. (g) shall be as follows:

1. Distribution shall first be made to those municipalities in which metalliferous minerals are extracted or were extracted within 3 years previous to December 31 of the current year, or in which a permit has been issued under s. 293.49 or 295.58 to commence mining;

2. Distribution shall next be made to those municipalities adjacent to municipalities in which metalliferous minerals are extracted or were extracted more than 3 years, but less than 7 years previous to December 31 of the current year;

3. Distribution shall next be made to those municipalities which are not adjacent to municipalities in which metalliferous minerals are extracted and in which metalliferous minerals are not extracted.

(hg) The board shall, by rule, establish fiscal guidelines and accounting procedures for the use of payments under pars. (d), (f), (fm) and (g), sub. (3) and ss. 293.65 (5) and 295.61 (9).

(hr) The board shall, by rule, establish procedures to recoup payments made, and to withhold payments to be made, under pars. (d), (f), (fm) and (g), sub. (3) and ss. 293.65 (5) and 295.61 (9) for noncompliance with this section or rules adopted under this section.

(hw) A recipient of a discretionary payment under par. (f) or (g), sub. (3) or ss. 293.65 (5) and 295.61 (9) or any payment under par. (d) that is restricted to mining−related purposes who uses the payment for attorney fees may do so only for the purposes under par. (g) 6. and for processing mining−related permits or other approvals required by the municipality. The board shall recoup or withhold payments that are used or proposed to be used by the recipient for attorney fees except as authorized under this paragraph. The board may not limit the hourly rate of attorney fees for which the recipient uses the payment to a level below the hourly rate that is commonly charged for similar services.

(i) The board may require financial audits of all recipients of payments made under pars. (d) to (g). The board shall require that all funds received under pars. (d) to (g) be placed in a segregated account. The financial audit may be conducted as part of a municipality's or county's annual audit, if one is conducted. The cost of the audits shall be paid by the board from the appropriation under s. 20.566 (7) (g).

(j) Prior to the beginning of a fiscal year, the board shall certify to the department of administration for payment from the investment and local impact fund any sum necessary for the department of natural resources to make payments under s. 289.68 (3) for the long−term care of mining waste sites, if moneys in the waste management fund are insufficient to make complete payments during that fiscal year, but this sum may not exceed the balance in the waste management fund at the beginning of that fiscal year or 50 percent of the balance in the investment and local impact fund at the beginning of that fiscal year, whichever amount is greater.

(k) Prior to the beginning of each fiscal year, the board shall certify to the department of administration for payment from the investment and local impact fund any sum necessary for the department of natural resources to make payments under s. 292.31 for the environmental repair of mining waste sites, if moneys in the environmental fund that are available for environmental repair are insufficient to make complete payments during that fiscal year. This sum may not exceed the balance in the environmental fund at the beginning of that fiscal year or 50 percent of the balance in the investment and local impact fund at the beginning of that fiscal year, whichever amount is greater.

(3) FEDERAL REVENUE DISTRIBUTION. The investment and local impact fund board shall distribute federal mining revenue received by the state from the sales, bonuses, royalties and rentals of federal public lands located within the state. The distribution of such federal revenues by the board shall give priority to those municipalities socially or economically impacted by mining on such federal lands and shall be used for planning, construction and maintenance of public facilities or provision of public services. The funds distributed under this subsection may be used only for mining−related purposes.

History: 1977 c. 31, 185, 423; 1979 c. 34 s. 2102 (46) (c); 1979 c. 63; 1979 c. 175 s. 53; 1981 c. 86 ss. 27 to 36, 71; 1981 c. 374 s. 150; 1983 a. 27 ss. 1184u to 1185r, 2202 (38) and (45); 1983 a. 410 ss. 22, 2202 (38); 1985 a. 29 ss. 1214s to 1214z, 3200 (46) (a); 1985 a. 332 s. 253; 1987 a. 399; 1989 a. 31; 1991 a. 39, 259; 1995 a. 27, 227; 1997 a. 27; 1999 a. 32; 2013 a. 1.

Cross−reference: See also ch. Tax 13, Wis. adm. code.

The legislature has vested the board with the power to make discretionary distributions under sub. (2) (g). Kammes v. Wisconsin Mining Investment & Local Impact Fund Board, 115 Wis. 2d 144, 340 N.W.2d 206 (Ct. App. 1983).

Grants under this section would not violate the public purpose doctrine and the internal improvements clause of the Wisconsin Constitution. 70 Atty. Gen. 48.

70.396 Use of metalliferous mining tax payments by counties. Counties receiving payments under s. 70.395 (2) (d) 1. shall expend the funds for any or all of the following uses:

(1) For mining−related purposes.

(2) Funds may be placed in the county mining investment fund for investment by the state investment board or may be placed in a segregated account with a financial institution located in the state. The funds may be withdrawn only at a later date to alleviate impacts associated with the closing of a metalliferous mine in the county or the curtailment of metalliferous mining activity in the county. If a county deposits mining impact funds in the county mining investment fund, withdrawals from the fund shall be subject to the restrictions described under s. 25.65 (4). If a county deposits mining impact funds with a financial institution located in this state, withdrawals made within 10 years of deposit shall be subject to the review and approval of the investment and local impact fund board. The county shall notify the board of withdrawals made 10 years after deposit. The county shall report annually to the impact board any deposits, withdrawals and use of mining impact funds in that year.

(3) A maximum of $25,000 annually may be distributed by a county to any town, city or village in the county where the extraction of metalliferous minerals is occurring.

History: 1977 c. 423; 1981 c. 87; 1985 a. 29; 1991 a. 259.

70.3965 Fund administrative fee. There is imposed an investment and local impact fund administrative fee on each person that has gross proceeds. On or before July 31 the department shall calculate the fee imposed on each such person by dividing the person's gross proceeds for the previous year by the total gross proceeds of all persons for that year and by multiplying the resulting fraction by the amount expended under s. 20.566 (7) (g) for the previous fiscal year. Each person who is subject to a fee under this section shall pay that fee on or before August 15.

History: 1995 a. 27.

70.397 Oil and gas severance tax. (1) DEFINITIONS. In this section:

(a) "Department" means the department of revenue.

(b) "Market value" means the sales price or market value of oil or gas at the mouth of the well, except that if the oil or gas is exchanged for something other than cash, if there is no sale between the time of severance and the due date of the tax or if the department determines that the oil or gas was not sold in an arm's length transaction, "market value" means the value determined by the department based upon a consideration of the sales price of oil or gas of similar quality.

(c) "Producer" means any person owning, controlling, managing or leasing any oil or gas property, any person who severs oil or gas from the soil or water and any person owning a royalty or other interest in oil or gas.

(2) IMPOSITION. A severance tax is imposed upon each producer who severs oil or gas from the soil or water of this state. The amount of the tax is 7 percent of the market value of the total production of oil or gas during the previous year. If more than one producer severs oil or gas at a location, the tax imposed under this section is levied upon the producers of oil or gas in the proportion of their ownership at the time of severance but shall be paid by the person in charge of the production operation, who may deduct the amount of tax imposed upon a producer from the payments due that producer.

(3) REPORTS; ADMINISTRATION. (a) Sections 70.38 (1), 70.385 and 70.39, as they apply to the tax under s. 70.375 (2m), apply to the tax under this section. If a producer severs oil or gas from more than one location in this state, the producer shall submit a report for each location separately.

(b) Sections 71.74 (2), (9), (11), (14) and (15), 71.77, 71.78, 71.80 (6), 71.83 (1) (a) 1. and 2. and (2) (a) 2. and 3. and 71.85 (2), as they apply to the taxes under ch. 71, apply to the tax under this section.

(c) Any person feeling aggrieved by an assessment notice under this section may, within 60 days after receipt of the notice, file with the department a petition for redetermination setting forth the person's objections to the assessment. In the petition, the person may request an informal conference with representatives of the department. The secretary of revenue shall act on the petition within 90 days after receipt of the petition for redetermination. If the person is aggrieved by the secretary's denial of the petition, the person may appeal to the tax appeals commission if the appeal is filed with the commission within 30 days after the petition is denied.

(d) No petition for redetermination may be filed, acted upon or appealed unless the tax objected to is paid by the due date.

(e) The department shall administer the tax under this section.

History: 1991 a. 262.

70.40 Occupational tax on iron ore concentrates. (1) Every person operating an iron ore concentrates dock in this state shall on or before January 31 of each year pay an annual occupational tax equal to 5 cents per ton upon all iron ore concentrates handled by or over the dock during the year ending on the December 31 which is 2 years prior to the payment due date. In this section "dock" means a wharf or platform for the loading or unloading of materials to or from ships.

(2) Every person on whom a tax is imposed by sub. (1) shall, on May 1 of each year, furnish to the assessor of the town, city or village in which the dock is situated, a full and true list or statement of all iron ore concentrates received or handled by the person during the year ending on April 30 of such year. Beginning in 1979, the list shall be furnished on February 1 and apply to the year

ending on the preceding December 31. Any such person who willfully fails or refuses to furnish the list or statement or who knowingly makes or furnishes a false or incorrect list or statement, shall be fined not exceeding $1,000.

(3) The tax provided for in this section shall be separately assessed to the person chargeable therewith by the assessor and shall be included in the assessment roll annually submitted by the assessor to the town, village or city clerk and shall be entered by the clerk on the tax roll. The tax is a special tax under ch. 74 and shall be deductible from gross income for income or franchise tax purposes as personal property taxes are deductible by corporations in computing net income under s. 71.26 (2). Taxes collected under this section shall be divided as follows: 30 percent to the state general fund and 70 percent to the town, city or village in which the taxes are collected, which shall be remitted and accounted for in the same manner as the state and county taxes collected from property are remitted and paid.

(4) If the assessor or board of review has reason to believe that the list or statement made by any person is incorrect, or when any such person fails or refuses to furnish a list or statement as required by law, the assessor or board of review shall place on the assessment roll such assessment against the person as they deem true and just. If such change or assessment is made by the assessor, the assessor shall give written notice of the amount of the assessment at least 6 days before the first or some adjourned meeting of the board of review. If such change or assessment is made by the board of review, notice shall be given in time to allow the person to appear and be heard before the board of review in relation to the assessment. Notice may be served as a circuit court summons is served or by registered mail.

(5) All laws not in conflict with this section relating to the assessment, collection and payment of personal property taxes and the correction of errors in assessment and tax rolls, shall apply to the tax imposed in this section.

History: 1977 c. 29, 418; 1985 a. 29; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 378, 403; 1991 a. 39.

Imposition by a city of a tax under s. 70.40 was precluded by federal law as being discriminatory against railroads. Burlington Northern v. City of Superior, 932 F.2d 1185 (1991).

70.42 Occupation tax on coal. (1) Every person operating a coal dock in this state, other than a dock used solely in connection with an industry and handling no coal except that consumed by the industry, shall on or before January 31 of each year pay an annual occupation tax of a sum equal to 5 cents per ton upon all bituminous and subbituminous coal, coke and briquettes, and upon all petroleum carbon, coke and briquettes, and 7 cents per ton upon all anthracite coal, coke and briquettes handled by or over such coal dock, during the preceding year ending April 30 except that as of December 15, 1979, such tax shall apply to the year ending on the December 31 which is 2 years prior to the payment due date. Such coal, petroleum carbon, coke and briquettes shall be exempt from all other taxation, either state or municipal.

(2) Every person on whom a tax is imposed by sub. (1) shall on February 1 of each year furnish to the assessor of the town, city or village within which the coal dock is situated, a full and true list or statement of all coal, specifying the respective amounts and different kinds, received in or on, or handled by or over the coal dock during the year immediately preceding January 1 of the year in which the list or statement is to be made. Any operator of a coal dock who fails or refuses to furnish the list or statement or who knowingly makes or furnishes a false or incorrect list or statement, shall be fined not exceeding $1,000.

(3) The tax provided for in this section shall be separately assessed to the person chargeable therewith by the assessor and shall be included in the assessment roll annually submitted by the assessor to the town, village or city clerk and shall be entered by the clerk on the tax roll. The tax is a special tax under ch. 74 and when paid shall be deductible from gross income for income or franchise tax purposes as personal property taxes are deductible by corporations in computing net income under s. 71.26 (2). Taxes collected under this section shall be divided as follows: 10 percent to the state, 20 percent to the county, and 70 percent to the town, city or village in which the taxes are collected, which shall be remitted and accounted for in the same manner as the state and county taxes collected from property are remitted and paid.

(4) If the assessor or board of review has reason to believe that the list or statement made by any person is incorrect, or when any such person has failed or refused to furnish a list or statement as required by law, the assessor or board of review shall place on the assessment roll such taxes against such person as they deem true and just, and in case such change or assessment is made by the assessor, the assessor shall give written notice of the amount of such assessment at least 6 days before the first or some adjourned meeting of the board of review; in case such change or assessment is made by the board of review, notice shall be given in time to allow such person to appear and be heard before the board of review in relation to said assessment; said notice may be served as a circuit court summons is served or by registered mail.

(5) All laws not in conflict with this section relating to the assessment, collection and payment of personal property taxes, the correction of errors in assessment and tax rolls, shall apply to the tax imposed under this section.

History: 1977 c. 29; 1979 c. 89; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 378, 403; 1991 a. 39.

70.421 Occupational tax on petroleum and petroleum products refined in this state. (1) Every person operating a crude oil refinery in this state, shall on or before January 31 of each year pay an annual occupation tax of a sum equal to 5 cents per ton upon all crude oil handled during the preceding year ending April 30 except that as of December 15, 1979, such tax shall apply to the year ending the December 31 which is 2 years prior to the payment due date. All such crude oil so handled and all petroleum products refined therefrom, in the possession of the refinery, shall be exempt from all personal property taxation, either state or municipal.

(2) Every person on whom a tax is imposed by sub. (1) shall on February 1 of each year furnish to the assessor of the town, city or village within which the refinery is situated, a full and true list or statement of all crude oil handled and all petroleum products refined specifying the respective amounts and different kinds, refined by the refinery during the year immediately preceding January 1 of the year in which the list or statement is to be made. Any operator of a refinery who fails or refuses to furnish the list or statement or who knowingly makes or furnishes a false or incorrect list or statement, shall be fined not exceeding $1,000.

(3) The tax provided for shall be separately assessed to the person chargeable therewith by the assessor and shall be included in the assessment roll annually submitted by such assessor to the town, village or city clerk and shall be entered by said clerk on the tax roll. Such tax shall be paid and collected in the taxing district where such refinery is situated, and shall be deductible from gross income for income or franchise tax purposes in the same manner as personal property taxes are deductible by corporations in computing net income under s. 71.26 (2). Such tax is a special tax under ch. 74 and the entire proceeds of such tax shall be retained by such taxing district.

(4) If the assessor or board of review has reason to believe that the list or statement made by any person is incorrect, or when any such person has failed or refused to furnish a list or statement as required by law, the assessor or board of review shall place on the assessment roll such taxes against such person as the assessor or board of review deems true and just, and in case such change or assessment is made by the assessor, the assessor shall give written notice of the amount of such assessment at least 6 days before the first or some adjourned meeting of the board of review; in case such change or assessment is made by the board of review, notice shall be given in time to allow such person to appear and be heard before the board of review in relation to said assessment; said

notice may be served as a circuit court summons is served or by registered mail.

(5) All laws not in conflict with this section relating to the assessment, collection and payment of personal property taxes and the correction of errors in assessment and tax rolls, shall apply to the tax herein imposed.

(6) This section shall apply to the year ending April 30, 1957, and subsequent years.

History: 1977 c. 29; 1979 c. 89; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 378, 403; 1991 a. 39, 316.

70.43 Correction of errors by assessors. (1) In this section, "palpable error" means an error under s. 74.33 (1).

(2) If the assessor discovers a palpable error in the assessment of a tract of real estate or an item of personal property that results in the tract or property having an inaccurate assessment for the preceding year, the assessor shall correct that error by adding to or subtracting from the assessment for the preceding year. The result shall be the true assessed value of the property for the preceding year. The assessor shall make a marginal note of the correction on that year's assessment roll.

(3) The dollar amount of the adjustment determined in the correction under sub. (2) shall be referred to the board of review and, if certified by that board, shall be entered in a separate section of the current assessment roll, as prescribed by the department of revenue, and shall be used to determine the amount of additional taxes to be collected or taxes to be refunded. The dollar amount of the adjustment may be appealed to the board of review in the same manner as other assessments. The taxes to be collected or refunded shall be determined on the basis of the net tax rate of the previous year, taking into account credits under s. 79.10. The taxes to be collected or refunded shall be reflected on the tax roll in the same manner as omitted property under s. 70.44, but any such adjustment may not be carried forward to future years. The governing body of the taxation district shall proceed under s. 74.41.

(4) As soon as practicable, the assessor shall provide written notice of the correction to the person assessed. That notice shall include information regarding that person's appeal rights to the board of review.

History: 1983 a. 300; 1987 a. 378; 1991 a. 39.

This section provides a taxpayer with a substantive right and procedure to recover unlawful taxes. IBM Credit Corp. v. Village of Allouez, 188 Wis. 2d 143, 524 N.W.2d 132 (Ct. App. 1993).

70.44 Assessment; property omitted. (1) Real or personal property omitted from assessment in any of the 2 next previous years, unless previously reassessed for the same year or years, shall be entered once additionally for each previous year of such omission, designating each such additional entry as omitted for the year of omission and affixing a just valuation to each entry for a former year as the same should then have been assessed according to the assessor's best judgment, and taxes shall be apportioned, using the net tax rate as provided in s. 70.43, and collected on the tax roll for such entry. This section shall not apply to manufacturing property assessed by the department of revenue under s. 70.995.

(2) Any property assessment increased by a local board of review under s. 70.511 shall be entered in the assessment roll as prescribed under sub. (1).

(3) As soon as practicable, the assessor shall provide written notice concerning the discovery of property omitted from assessment and concerning that person's appeal rights to the board of review to the owner of the property.

History: 1975 c. 39; 1983 a. 300; 1987 a. 378; 1991 a. 316; 1997 a. 35, 250; 1999 a. 32.

70.45 Return and examination of rolls. When the assessment rolls have been completed in cities of the 1st class, they shall be delivered to the commissioner of assessments, in all other cities to the city clerk, in villages to the village clerk and in towns to the town clerk. At least 15 days before the first day on which the assessment rolls are open for examination, these officials shall have published a class 1 notice if applicable, or posted notice, under ch. 985, in anticipation of the roll delivery as provided in s. 70.50, that on certain days, therein named, the assessment rolls will be open for examination by the taxable inhabitants, which notice may assign a day or days for each ward, where there are separate assessment rolls for wards, for the inspection of rolls. The assessor shall be present for at least 2 hours while the assessment roll is open for inspection. Instructional material under s. 73.03 (54) shall be available at the meeting. On examination the commissioner of assessments, assessor or assessors may make changes that are necessary to perfect the assessment roll or rolls, and after the corrections are made the roll or rolls shall be submitted by the commissioner of assessments or clerk of the municipality to the board of review.

History: 1981 c. 20; 1991 a. 156; 1997 a. 237; 1999 a. 32.

70.46 Boards of review; members; organization. (1) Except as provided in sub. (1m) and s. 70.99, the supervisors and clerk of each town, the mayor, clerk and such other officers, other than assessors, as the common council of each city by ordinance determines, the president, clerk and such other officers, other than the assessor, as the board of trustees of each village by ordinance determines, shall constitute a board of review for the town, city or village. In cities of the 1st class the board of review shall by ordinance in lieu of the foregoing consist of 5 to 9 residents of the city, none of whom may occupy any public office or be publicly employed. The members shall be appointed by the mayor of the city with the approval of the common council and shall hold office as members of the board for staggered 5−year terms. Subject to sub. (1m), in all other towns, cities and villages the board of review may by ordinance in lieu of the foregoing consist of any number of town, city or village residents and may include public officers and public employees. The ordinance shall specify the manner of appointment. The town board, common council or village board shall fix, by ordinance, the salaries of the members of the board of review. No board of review member may serve on a county board of review to review any assessment made by a county assessor unless appointed as provided in s. 70.99 (10).

(1a) Whenever the duties of assessor are performed by one of the officers named to the board of review by sub. (1) then the governing body shall by ordinance designate another officer to serve on the board instead of the officer who performs the duties of assessor.

(1m) (a) A person who is appointed to the office of town clerk, town treasurer or to the combined office of town clerk and town treasurer under s. 60.30 (1e) may not serve on a board of review under sub. (1).

(b) If a town board of review under sub. (1) had as a member a person who held the elective office of town clerk, town treasurer or the combined office of town clerk and town treasurer, and the town appoints a person to hold one or more of these offices under s. 60.30 (1e), the town board shall fill the seat on the board of review formerly held by an elective office holder by an elector of the town.

(2) The town, city or village clerk on such board of review and in cities of the first class the commissioner of assessments on such board of review or any person on the commissioner's staff designated by the commissioner shall be the clerk thereof and keep an accurate record of all its proceedings.

(3) The members of such board, except members who are full time employees or officers of the town, village or city, shall receive such compensation as shall be fixed by resolution or ordinance of the town board, village board or common council.

(4) No board of review may be constituted unless it includes at least one voting member who, within 2 years of the board's first meeting, has attended a training session under s. 73.03 (55) and unless that member is the municipality's chief executive officer or

that officer's designee. The municipal clerk shall provide an affidavit to the department of revenue stating whether the requirement under this subsection has been fulfilled.

History: 1971 c. 180; 1973 c. 90; 1975 c. 427; 1979 c. 58; 1991 a. 156, 316; 1995 a. 34; 1997 a. 237; 1999 a. 32.

Prejudice of a board of review is not shown by the fact that the members are taxpayers. Berg Equipment Corp. v. Spencer Board of Review, 53 Wis. 2d 233, 191 N.W.2d 892 (1971).

A town clerk's compensation may be increased for service on the board of review if the clerk has been designated part−time by the town meeting. 79 Atty. Gen. 176.

70.47 Board of review proceedings. (1) TIME AND PLACE OF MEETING. The board of review shall meet annually at any time during the 45−day period beginning on the 4th Monday of April, but no sooner than 7 days after the last day on which the assessment roll is open for examination under s. 70.45. In towns and villages the board shall meet at the town or village hall or some place designated by the town or village board. If there is no such hall, it shall meet at the clerk's office, or in towns at the place where the last annual town meeting was held. In cities the board shall meet at the council chamber or some place designated by the council and in cities of the 1st class in some place designated by the commissioner of assessments of such cities. A majority shall constitute a quorum except that 2 members may hold any hearing of the evidence required to be held by such board under subs. (8) and (10), if the requirements of sub. (9) are met.

(2) NOTICE. At least 15 days before the first session of the board of review, or at least 30 days before the first session of the board of review in any year in which the taxation district conducts a revaluation under s. 70.05, the clerk of the board shall publish a class 1 notice, place a notice in at least 3 public places and place a notice on the door of the town hall, of the village hall, of the council chambers or of the city hall of the time and place of the first meeting of the board under sub. (3) and of the requirements under sub. (7) (aa) and (ac) to (af). A taxpayer who shows that the clerk failed to publish the notice under this subsection may file a claim under s. 74.37.

(2m) OPEN MEETINGS. All meetings of the board of review shall be publicly held and open to all citizens at all times. No formal action of any kind shall be introduced, deliberated upon or adopted at any closed session or meeting of a board of review.

(3) SESSIONS. (a) At its first meeting, the board of review:

1. Shall receive the assessment roll and sworn statements from the clerk.

2. Shall be in session at least 2 hours for taxpayers to appear and examine the assessment roll and other assessment data.

3. Shall schedule for hearing each written objection that it receives during the first 2 hours of the meeting or that it received prior to the first meeting.

4. Shall grant a waiver of the 48−hour notice of an intent to file a written or oral objection if a property owner who does not meet the notice requirement appears before the board during the first 2 hours of the meeting, shows good cause for failure to meet the 48−hour notice requirement and files a written objection.

5. May hear any written objections if the board gave notice of the hearing to the property owner and the assessor at least 48 hours before the beginning of the scheduled meeting or if both the property owner and the assessor waive the 48−hour notice requirement.

(ag) The assessor shall be present at the first meeting of the board of review.

(ah) For each properly filed written objection that the board receives and schedules during its first meeting, but does not hear at the first meeting, the board shall notify each objector and the assessor, at least 48 hours before an objection is to be heard, of the time of that hearing. If, during any meeting, the board determines that it cannot hear some of the written objections at the time scheduled for them, it shall create a new schedule, and it shall notify each objector who has been rescheduled, at least 48 hours before the objection is to be heard, of the new time of the hearing.

(ak) If an objector fails to provide written or oral notice of an intent to object 48 hours before the first scheduled meeting, fails to request a waiver of the notice requirement under par. (a) 4., appears before the board at any time up to the end of the 5th day of the session or up to the end of the final day of the session if the session is less than 5 days, files a written objection and provides evidence of extraordinary circumstances; the board of review may waive all notice requirements and hear the objection.

(aL) If the assessment roll is not completed at the time of the first meeting, the board shall adjourn for the time necessary to complete the roll, and shall post a written notice on the outer door of the place of meeting stating the time to which the meeting is adjourned.

(ar) With respect to the assessment rolls of taxing districts prepared by a county assessor, the board of review as constituted under s. 70.99 (10) shall schedule a meeting in each taxing jurisdiction on specific dates and shall comply with the provisions of this subsection and sub. (2) in each taxing district.

(b) The municipal governing body may by ordinance or resolution designate hours, other than those set forth in par. (a), during which the board shall hold its first meeting, but not fewer than 2 hours on the first meeting day between 8 a.m. and midnight. Such change in the time shall not become effective unless notice thereof is published in the official newspaper if in a city, or posted in not less than 3 public places if in any other municipality, at least 15 days before such first meeting.

(4) ADJOURNMENT. The board may adjourn from time to time until its business is completed. If an adjournment be had for more than one day, a written notice shall be posted on the outer door of the place of meeting, stating to what time said meeting is adjourned.

(5) RECORDS. The clerk shall keep a record in the minute book of all proceedings of the board.

(6) BOARD'S DUTY. The board shall carefully examine the roll or rolls and correct all apparent errors in description or computation, and shall add all omitted property as provided in sub. (10). The board shall not raise or lower the assessment of any property except after hearing as provided in subs. (8) and (10).

(6m) REMOVAL OF A MEMBER. (a) A municipality, except a 1st class city or a 2nd class city, shall remove, for the hearing on an objection, a member of the board of review if any of the following conditions applies:

1. A person who is objecting to a valuation, at the time that the person provides written or oral notice of an intent to file an objection and at least 48 hours before the first scheduled session of the board of review or at least 48 hours before the objection is heard if the objection is allowed under sub. (3) (a), requests the removal, except that no more than one member of the board of review may be removed under this subdivision.

2. A member of the board of review has a conflict of interest under an ordinance of the municipality in regard to the objection.

3. A member of the board of review has a bias in regard to the objection and, if a party requests the removal of a member for a bias, the party submits with the request an affidavit stating that the party believes that the member has a personal bias or prejudice against the party and stating the nature of that bias or prejudice.

(b) A member of a board of review who would violate s. 19.59 by hearing an objection shall recuse himself or herself from that hearing. The municipal clerk shall provide to the department of revenue an affidavit declaring whether the requirement under this paragraph is fulfilled.

(c) If a member or members are removed under par. (a) or are recused under par. (b), the board may replace the member or members or its remaining members may hear the objection, except that no fewer than 3 members may hear the objection.

(6r) COMMENTS. Any person may provide to the municipal clerk written comments about valuations, assessment practices

and the performance of an assessor. The clerk shall provide all of those comments to the appropriate municipal officer.

(7) OBJECTIONS TO VALUATIONS. (a) The board of review may not hear an objection to the amount or valuation of property unless, at least 48 hours before the board's first scheduled meeting, the objector provides to the board's clerk written or oral notice of an intent to file an objection, except that, upon a showing of good cause and the submission of a written objection, the board shall waive that requirement during the first 2 hours of the board's first scheduled meeting, and the board may waive that requirement up to the end of the 5th day of the session or up to the end of the final day of the session if the session is less than 5 days with proof of extraordinary circumstances for failure to meet the 48−hour notice requirement and failure to appear before the board of review during the first 2 hours of the first scheduled meeting. Objections to the amount or valuation of property shall first be made in writing and filed with the clerk of the board of review within the first 2 hours of the board's first scheduled meeting, except that, upon evidence of extraordinary circumstances, the board may waive that requirement up to the end of the 5th day of the session or up to the end of the final day of the session if the session is less than 5 days. The board may require such objections to be submitted on forms approved by the department of revenue, and the board shall require that any forms include stated valuations of the property in question. Persons who own land and improvements to that land may object to the aggregate valuation of that land and improvements to that land, but no person who owns land and improvements to that land may object only to the valuation of that land or only to the valuation of improvements to that land. No person shall be allowed in any action or proceedings to question the amount or valuation of property unless such written objection has been filed and such person in good faith presented evidence to such board in support of such objections and made full disclosure before said board, under oath of all of that person's property liable to assessment in such district and the value thereof. The requirement that it be in writing may be waived by express action of the board.

(aa) No person shall be allowed to appear before the board of review, to testify to the board by telephone or to contest the amount of any assessment of real or personal property if the person has refused a reasonable written request by certified mail of the assessor to enter onto property to conduct an exterior view of the real or personal property being assessed.

(ab) For the purpose of this section, the managing entity, as defined in s. 707.02 (15), or its designees, may be considered the taxpayer as an agent for the time−share owner, as defined in s. 707.02 (31), and may file one objection and make one appearance before the board of review concerning all objections relating to a particular real property improvement and the land associated with it. A time−share owner may file one objection and make one appearance before the board of review concerning the assessment of the building unit in which he or she owns a time share.

(ac) After the first meeting of the board of review and before the board's final adjournment, no person who is scheduled to appear before the board of review may contact, or provide information to, a member of the board about that person's objection except at a session of the board.

(ad) No person may appear before the board of review, testify to the board by telephone or contest the amount of any assessment unless, at least 48 hours before the first meeting of the board or at least 48 hours before the objection is heard if the objection is allowed under sub. (3) (a), that person provides to the clerk of the board of review notice as to whether the person will ask for removal under sub. (6m) (a) and if so which member will be removed and the person's reasonable estimate of the length of time that the hearing will take.

(ae) When appearing before the board, the person shall specify, in writing, the person's estimate of the value of the land and of the improvements that are the subject of the person's objection and specify the information that the person used to arrive at that estimate.

(af) No person may appear before the board of review, testify to the board by telephone or object to a valuation; if that valuation was made by the assessor or the objector using the income method; unless no later than 7 days before the first meeting of the board of review the person supplies to the assessor all of the information about income and expenses, as specified in the manual under s. 73.03 (2a), that the assessor requests. The municipality or county shall provide by ordinance for the confidentiality of information about income and expenses that is provided to the assessor under this paragraph and shall provide exceptions for persons using the information in the discharge of duties imposed by law or of the duties of their office or by order of a court. The information that is provided under this paragraph is not subject to the right of inspection and copying under s. 19.35 (1) unless a court determines before the first meeting of the board of review that the information is inaccurate.

(bb) Upon receipt of an objection with respect to the assessment rolls of taxation districts prepared by a county assessor the board of review as constituted under s. 70.99 (10) may direct such objection to be investigated by the county board of assessors if such board has been established under s. 70.99 (10m). If such objection has been investigated by the county board of assessors as provided by s. 70.99 (10m), the county board of review may adopt the determination of county board of assessors unless the objector requests or the board of review orders a hearing. At least 2 days' notice of the time fixed for such hearing shall be given to the objector or the objector's attorney and to the corporation counsel. If the county board of review adopts the determination of the county board of assessors and no further hearing is held, the clerk of the board of review shall record the adoption in the minutes of the board and shall correct the assessment roll as provided by s. 70.48.

(8) HEARING. The board shall hear upon oath all persons who appear before it in relation to the assessment. Instead of appearing in person at the hearing, the board may allow the property owner, or the property owner's representative, at the request of either person, to appear before the board, under oath, by telephone or to submit written statements, under oath, to the board. The board shall hear upon oath, by telephone, all ill or disabled persons who present to the board a letter from a physician, osteopath, physician assistant, as defined in s. 448.01 (6), or advanced practice nurse prescriber certified under s. 441.16 (2) that confirms their illness or disability. At the request of the property owner or the property owner's representative, the board may postpone and reschedule a hearing under this subsection, but may not postpone and reschedule a hearing more than once during the same session for the same property. The board at such hearing shall proceed as follows:

(a) The clerk shall swear all persons testifying before it or by telephone in relation to the assessment.

(b) The owner or the owner's representatives and the owner's witnesses shall first be heard.

(c) The board may examine under oath such persons as it believes have knowledge of the value of such property.

(d) It may and upon request of the assessor or the objector shall compel the attendance of witnesses, except objectors who may testify by telephone, and the production of all books, inventories, appraisals, documents and other data which may throw light upon the value of property.

(e) All proceedings shall be taken in full by a stenographer or by a recording device, the expense thereof to be paid by the district. The board may order that the notes be transcribed, and in case of an appeal or other court proceedings they shall be transcribed. If the proceedings are taken by a recording device, the clerk shall keep a list of persons speaking in the order in which they speak.

(f) The clerk's notes, written objections and all other material submitted to the board of review, tape recordings of the proceedings and any other transcript of proceedings shall be retained for at least 7 years, shall be available for public inspection and copies of these items shall be supplied promptly at a reasonable time and place to anyone requesting them at the requester's expense.

(g) All determinations of objections shall be by roll call vote.

(h) The assessor shall provide to the board specific information about the validity of the valuation to which objection is made and shall provide to the board the information that the assessor used to determine that valuation.

(i) The board shall presume that the assessor's valuation is correct. That presumption may be rebutted by a sufficient showing by the objector that the valuation is incorrect.

(8m) HEARING WAIVER. The board may, at the request of the taxpayer or assessor, or at its own discretion, waive the hearing of an objection under sub. (8) or, in a 1st class city, under sub. (16) and allow the taxpayer to have the taxpayer's assessment reviewed under sub. (13). For purposes of this subsection, the board shall submit the notice of decision under sub. (12) using the amount of the taxpayer's assessment as the finalized amount. For purposes of this subsection, if the board waives the hearing, the waiver disallows the taxpayer's claim on excessive assessment under s. 74.37 (3) and, notwithstanding the time period under s. 74.37 (3) (d), the taxpayer has 60 days from the notice of the hearing waiver in which to commence an action under s. 74.37 (3) (d).

(9) CORRECTION OF ASSESSMENTS. (a) From the evidence before it the board shall determine whether the assessor's assessment is correct. If the assessment is too high or too low, the board shall raise or lower the assessment accordingly and shall state on the record the correct assessment and that that assessment is reasonable in light of all of the relevant evidence that the board received. A majority of the members of the board present at the meeting to make the determination shall constitute a quorum for purposes of making such determination, and a majority vote of the quorum shall constitute the determination. In the event there is a tie vote, the assessment shall be sustained.

(b) A board member may not be counted in determining a quorum and may not vote concerning any determination unless, concerning such determination, such member:

1. Attended the hearing of the evidence; or

2. Received the transcript of the hearing no less than 5 days prior to the meeting and read such transcript; or

3. Received a mechanical recording of the evidence no less than 5 days prior to the meeting and listened to such recording; or

4. Received a copy of a summary and all exceptions thereto no less than 5 days prior to the meeting and read such summary and exceptions. In this subdivision "summary" means a written summary of the evidence prepared by one or more board members attending the hearing of evidence, which summary shall be distributed to all board members and all parties to the contested assessment and "exceptions" means written exceptions to the summary of evidence filed by parties to the contested assessment.

(10) ASSESSMENT BY BOARD. If the board has reason to believe, upon examination of the roll and other pertinent information, that other property, the assessment of which is not complained of, is assessed above or below the general average of the assessment of the taxation district, or is omitted, the board shall:

(a) Notify the owner, agent or possessor of such property of its intention to review such assessment or place it on the assessment roll and of the time and place fixed for such hearing in time to be heard before the board in relation thereto, provided the residence of such owner, agent or possessor be known to any member of the board or the assessor.

(b) Fix the day, hour and place at which such matter will be heard.

(c) Subpoena such witnesses, except objectors who may testify by telephone, as it deems necessary to testify concerning the value of such property and, except in the case of an assessment made by a county assessor pursuant to s. 70.99, the expense incurred shall be a charge against the district.

(d) At the time appointed proceed to review the matter as provided in sub. (8).

(11) PARTIES. In all proceedings before the board the taxation district shall be a party in interest to secure or sustain an equitable assessment of all the property in the taxation district.

(12) NOTICE OF DECISION. Prior to final adjournment, the board of review shall provide the objector, or the appropriate party under sub. (10), notice by personal delivery or by mail, return receipt required, of the amount of the assessment as finalized by the board and an explanation of appeal rights and procedures under sub. (13) and ss. 70.85, 74.35 and 74.37. Upon delivering or mailing the notice under this subsection, the clerk of the board of review shall prepare an affidavit specifying the date when that notice was delivered or mailed.

(13) CERTIORARI. Except as provided in s. 70.85, appeal from the determination of the board of review shall be by an action for certiorari commenced within 90 days after the taxpayer receives the notice under sub. (12). The action shall be given preference. If the court on the appeal finds any error in the proceedings of the board which renders the assessment or the proceedings void, it shall remand the assessment to the board for further proceedings in accordance with the court's determination and retain jurisdiction of the matter until the board has determined an assessment in accordance with the court's order. For this purpose, if final adjournment of the board occurs prior to the court's decision on the appeal, the court may order the governing body of the assessing authority to reconvene the board.

(14) TAX PAYMENTS. In the event the board of review has not completed its review or heard an objection to an assessment on real or personal property prior to the date the taxes predicated upon such assessment are due, or in the event there is an appeal as provided in sub. (13) and s. 74.37 from the correction of the board of review to the court, the time for payment of such taxes as levied is the same as provided in ch. 74 and if not paid in the time prescribed, such taxes are delinquent and subject to the same provisions as other delinquent taxes.

(15) SAVING CLAUSE. Nothing herein contained shall be construed to alter or repeal any of the provisions of s. 70.35.

(16) FIRST CLASS CITY, FILING OBJECTIONS, PROCEEDINGS, APPEAL. (a) In 1st class cities all objections to the amount or valuation of real or personal property shall be first made in writing and filed with the commissioner of assessments on or before the 3rd Monday in May. No person may, in any action or proceeding, question the amount or valuation of real or personal property in the assessment rolls of the city unless objections have been so filed. The board may not waive the requirement that objections be in writing. Persons who own land and improvements to that land may object to the aggregate valuation of that land and improvements to that land, but no person who owns land and improvements to that land may object only to the valuation of that land or only to the valuation of improvements to that land. If the objections have been investigated by a committee of the board of assessors under s. 70.07 (6), the board of review may adopt the recommendation of the committee unless the objector requests or the board orders a hearing. At least 2 days' notice of the time fixed for the hearing shall be given to the objector or attorney and to the city attorney of the city. The provisions of the statutes relating to boards of review not inconsistent with this subsection apply to proceedings before the boards of review of 1st class cities, except that the board need not adjourn until the assessment roll is completed by the commissioner of assessments, as required in s. 70.07 (6), but may immediately hold hearings on objections filed with

the commissioner of assessments, and the changes, corrections and determinations made by the board acting within its powers shall be prima facie correct. Appeal from the determination shall be by an action for certiorari commenced within 90 days after the taxpayer receives the notice under sub. (12). The action shall be given preference.

(b) In 1st class cities if an assessment valuation for taxes based on the value of real property is the same for the current year as for the preceding year and ownership of the property is unchanged, and if an objection had been filed to the assessment valuation for the preceding year and the assessed valuation by the assessor was sustained by the board of review or the courts, an objection filed under sub. (7) to the assessment valuation on the same property for the current year shall be subject to a fee not to exceed $10 payable to the city at the time of filing the objection or within 3 days thereafter, and the fee shall be a condition for the hearing of the objection before the board of review.

(17) SUMMARY OF PROCEEDINGS. After the board of review has completed its determinations, the clerk shall prepare a summary of the proceedings and determinations, on forms prescribed by the department of revenue, which shall include the following information:

(a) Name of taxpayer;

(b) Description or designation of the property subject to the objection;

(c) Amount of the assessment about which taxpayer objected;

(d) Names of any persons who appeared on behalf of taxpayer; and

(e) Board's determination on taxpayer's objection.

(18) TAMPERING WITH RECORDS. (a) Whoever with intent to injure or defraud alters, damages, removes or conceals any of the items specified under subs. (8) (f) and (17) is guilty of a Class I felony.

(b) Whoever intentionally alters, damages, removes or conceals any public notice, posted as required by sub. (2), before the expiration of the time for which the notice was posted, may be fined not more than $200 or imprisoned not more than 6 months or both.

History: 1973 c. 90; 1975 c. 151, 199, 427; 1977 c. 29 ss. 755, 1647 (8); 1977 c. 273; 1977 c. 300 ss. 2, 8; 1977 c. 414; 1979 c. 34 ss. 878 to 880, 2102 (46) (b); 1979 c. 95, 110, 355; 1981 c. 20, 289; 1983 a. 192, 219, 432; 1985 a. 39; 1985 a. 120 ss. 155, 3202 (46); 1985 a. 188 s. 16; 1987 a. 27, 139, 254, 378, 399; 1989 a. 31; 1991 a. 39, 156, 218, 315, 316; 1993 a. 82, 307; 1997 a. 237, 252, 283; 2001 a. 109; 2005 a. 187; 2007 a. 86; 2011 a. 161; 2013 a. 228; 2017 a. 68, 358.

Judicial Council Note, 1981: References in subs. (13) and (16) (a) to "writs" of certiorari have been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto. [Bill 613−A]

A board of review may deny a taxpayer a hearing if the taxpayer's objections are not stated on an approved form; the board is not required to accept information submitted in a different form. Certiorari review under this section is limited to the action of the board. Bitters v. Newbold, 51 Wis. 2d 493, 187 N.W.2d 339 (1971).

Board of review consideration of testimony by the village assessor at an executive session subsequent to the presentation of evidence by the taxpayer was contrary to the open meeting law, s. 66.77 [now ss. 19.81 to 19.98]. Although it was permissible for the board to convene a closed session for the purpose of deliberating after a quasi−judicial hearing, the proceedings did not constitute mere deliberations but were a continuation of the hearing without the presence of or notice to the objecting taxpayer. Dolphin v. Butler Board of Review, 70 Wis. 2d 403, 234 N.W.2d 277 (1975).

A circuit court's retained jurisdiction in board of review certiorari actions under s. 70.47 (13) does not affect the finality of an order for appeal purposes. Steenberg v. Town of Oakfield, 157 Wis. 2d 674, 461 N.W.2d 148 (Ct. App. 1990).

On certiorari review of a board of review decision only whether the board acted: 1) within its jurisdiction; 2) according to law; 3) arbitrarily, oppressively, or unreasonably; or 4) without evidence to make the order or determination in question is considered. Metropolitan Holding Co. v. Milwaukee Board of Review, 173 Wis. 2d 626, 495 N.W.2d 314 (1993).

When a board disregards uncontroverted evidence, its determination must be set aside. Campbell v. Town of Delavan, 210 Wis. 2d 239, 565 N.W.2d 209 (Ct. App. 1997), 96−1291.

Approving an increased assessment for only one property, despite evidence that it and other properties had recent sales at a price above prior assessments, violated the law; its approval by the board of review was arbitrary. Noah's Ark Family Park v. Village of Lake Delton, 210 Wis. 2d 301, 565 N.W.2d 230 (Ct. App. 1997), 96−1074. Affirmed. 216 Wis. 2d 387, 573 N.W.2d 852 (1998), 96−1074.

A board's across the board 3 percent assessment reduction of all lots in a developer's subdivision was not arbitrary and capricious when the board was presented with conflicting credible evidence. Whitecaps Homes v. Kenosha County Board of Review, 212 Wis. 2d 714, 569 N.W.2d 714 (Ct. App. 1997), 96−1913.

Sections 70.47 (13), 70.85, and 74.37 provide the exclusive methods to challenge a municipality's bases for assessment of individual parcels. All require appeal to the board of review prior to court action. There is no alternative procedure to challenge an assessment's compliance with the uniformity clause. Hermann v. Town of Delavan, 215 Wis. 2d 370, 572 N.W.2d 855 (1998), 96−0171.

It was not improper for an assessor to testify as a witness and also to ask questions of other witnesses at a board of review hearing. Rite−Hite Corp. v. Brown Deer Board of Review, 216 Wis. 2d 189, 575 N.W.2d 721 (Ct. App. 1997), 96−3178.

A landowner who has in the immediately previous year already objected to the board regarding an unchanged assessment is relieved from filing another objection to the current assessment prior to commencing an action. Duesterbeck v. Town of Koshkonong, 2000 WI App 6, 232 Wis. 2d 16, 605 N.W.2d 904, 98−3048.

When after hearing a taxpayer's complaint the board approved the assessor's valuation by giving notice affirming the assessment under sub. (1), the board waived the requirement under sub. (7) (a) that the taxpayer's objection be in writing. Fee v. Town of Florence Board of Review, 2003 WI App 17, 259 Wis. 2d 868, 657 N.W.2d 112, 02−1758.

Neither sub. (7) nor *Hermann* stand for the proposition that a property owner may not raise any issue with the trial court that was not fully argued before the board of review. Rather, *Hermann* explains that under sub. (7) any property owner wishing to challenge a property tax assessment, whether via certiorari review, written complaint to the department of revenue, or a claim filed under s. 74.37, must first file an objection before the board of review. U.S. Oil Co., Inc. v. City of Milwaukee, 2011 WI App 4, 331 Wis. 2d 407, 794 N.W.2d 904, 09−2260.

Hermann makes clear that exhaustion of remedies before the board of review is required unless the property taxed is exempt or lies outside of the taxing district. An assertion that a city's assessment process was flawed and unconstitutional, if true, would make the levy merely voidable, not void *ab initio.* Clear Channel Outdoor, Inc. v. City of Milwaukee, 2011 WI App 117, 336 Wis. 2d 707, 805 N.W.2d 582, 10−1809.

A taxpayer who objects to an assessment on the basis of the classification of the property has the burden of proving that the classification is erroneous. In this case, the taxpayer did not meet his burden of proof, and the board of review's determination to maintain the assessment was supported by a reasonable view of the evidence. Sausen v. Town of Black Creek Board of Review, 2014 WI 9, 352 Wis. 2d 576, 843 N.W.2d 39, 10−3015. See also Thoma v. Village of Slinger, 2018 WI 45, 381 Wis. 2d 311, 912 N.W.2d 56, 15−1970.

A property owner is absolved from complying with sub. (7)'s objection requirements when: 1) the property owner has filed a procedurally correct sub. (7) objection to the property's assessment in the prior year; 2) the assessment has not changed between the prior year and the current year; and 3) the prior year's objection is still unresolved as of the date of the first meeting of the board of review for the current year's assessments. Walgreen Co. v. City of Oshkosh, 2014 WI App 54, 354 Wis. 2d 17, 848 N.W.2d 314, 13−1610.

The plaintiffs were entitled to a hearing to contest their tax assessment even though they did not permit a tax assessor to enter the interior of their home. Milewski v. Town of Dover, 2017 WI 79, 377 Wis. 2d 38, 899 N.W.2d 303, 15−1523.

Boards of review cannot rely on exemptions in s. 19.85 (1) to close any meeting in view of explicit requirements in s. 70.47 (2m). 65 Atty. Gen. 162.

Wisconsin's Property Tax Assessment Appeal System. Ardern. Wis. Law. March 1996.

Over Assessed? Appealing Home Tax Assessments. McAdams. Wis. Law. July 2011.

Boards of Review: How to Contest Property Taxes. Drea. Wis. Law. May 2018.

70.48 Assessor to attend board of review. The assessor or the assessor's authorized representative shall attend without order or subpoena all hearings before the board of review and under oath submit to examination and fully disclose to the board such information as the assessor may have touching the assessment and any other matters pertinent to the inquiry being made. All part−time assessors shall receive the same compensation for such attendance as is allowed to the members of the board but no county assessor or member of a county assessor's staff shall receive any compensation other than that person's regular salary for attendance at a board of review. The clerk shall make all corrections to the assessment roll ordered by the board of review, including all changes in the valuation of real property. When any valuation of real property is changed the clerk shall enter the valuation fixed by the board in red ink in the proper class above the figures of the assessor, and the figures of the assessor shall be crossed out with red ink. The clerk shall also enter upon the assessment roll, in the proper place, the names of all persons found liable to taxation on personal property by the board of review, setting opposite such names respectively the aggregate valuation of such property as determined by the assessor, after deducting exemptions and making such corrections as the board has ordered. All changes in valuation of personal property made by the board of review shall be made in the same manner as changes in real estate.

History: 1991 a. 316.

70.49 Affidavit of assessor. (1) Before the meeting of the board of review, the assessor shall attach to the completed assessment roll an affidavit in a form prescribed by the department of revenue.

(2) The value of all real and personal property entered into the assessment roll to which such affidavit is attached by the assessor shall, in all actions and proceedings involving such values, be presumptive evidence that all such properties have been justly and equitably assessed in proper relationship to each other.

(3) No assessor shall be allowed in any court or place by oath or testimony to contradict or impeach any affidavit or certificate made or signed by the assessor as assessor.

(4) In this section "assessor" means an assessor or any person appointed or designated under s. 70.055 or 70.75.

History: 1991 a. 316; 1993 a. 307.

70.50 Delivery of roll. Except in counties that have a county assessment system under s. 70.99 and in cities of the 1st class and in 2nd class cities that have a board of assessors under s. 70.075 the assessor shall, on or before the first Monday in May, deliver the completed assessment roll and all the sworn statements and valuations of personal property to the clerk of the town, city or village, who shall file and preserve them in the clerk's office. On or before the first Monday in April, a county assessor under s. 70.99 shall deliver the completed assessment roll and all sworn statements and valuations of personal property to the clerks of the towns, cities and villages in the county, who shall file and preserve them in the clerk's office.

History: 1977 c. 29; 1977 c. 300 ss. 3, 8; 1981 c. 20; 1987 a. 139.

70.501 Fraudulent valuations by assessor. Any assessor, or person appointed or designated under s. 70.055 or 70.75, who intentionally fixes the value of any property assessed by that person at less or more than the true value thereof prescribed by law for the valuation of the same, or intentionally omits from assessment any property liable to taxation in the assessment district, or otherwise intentionally violates or fails to perform any duty imposed upon that person by law relating to the assessment of property for taxation, shall forfeit to the state not less than $50 nor more than $250.

History: 1991 a. 316.

70.502 Fraud by member of board of review. Any member of the board of review of any assessment district who shall intentionally fix the value of any property assessed in such district, or shall intentionally agree with any other member of such board to fix the value of any of such property at less or more than the true value thereof prescribed by law for the valuation of the same, or shall intentionally omit or agree to omit from assessment, any property liable to taxation in such assessment district, or shall otherwise intentionally violate or fail to perform any duty imposed upon the member by law relating to the assessment of property for taxation, shall forfeit to the state not less than $50 nor more than $250.

History: 1991 a. 316.

70.503 Civil liability of assessor or member of board of review. If any assessor, or person appointed or designated under s. 70.055 or 70.75, or any member of the board of review of any assessment district is guilty of any violation or omission of duty as specified in ss. 70.501 and 70.502, such persons shall be liable in damages to any person who may sustain loss or injury thereby, to the amount of such loss or injury; and any person sustaining such loss or injury shall be entitled to all the remedies given by law in actions for damages for tortious or wrongful acts. This section does not apply to the department of revenue or its employees when appointed or designated under s. 70.055 or 70.75.

History: 1977 c. 29.

70.51 Assessment review and tax roll in first class cities. (1) The board of review in all 1st class cities, after they have examined, corrected and completed the assessment roll of said city and not later than the first Monday in November, shall deliver the same to the commissioner of assessments, who shall thereupon reexamine and perfect the same and make out therefrom a complete tax roll in the manner and form provided by law. All laws applicable to any such city relating to the making of such tax rolls shall apply to the making of the tax roll by said commissioner of assessments, except that the work of making said rolls shall be performed by the assessors and such other employees in the commissioner of assessments' office as the commissioner of assessments shall designate. After the completion of said tax roll in the manner provided by law, the commissioner of assessments shall deliver the tax roll to the city treasurer of such city on the 3rd Monday of December in each year.

(1a) If the board of review has not completed its work within the time limited by the first Monday in November, it shall nevertheless deliver the assessment roll to the commissioner of assessments as therein required, and the commissioner of assessments shall thereupon perfect the same as though the board of review had fully completed its work thereon. In any case wherein the board of review alters the assessment after the first Monday of November and before the treasurer is required to make the return of delinquent taxes, the assessment roll and the tax roll may be corrected accordingly in the manner provided in s. 74.05, except that the consent of the treasurer shall not be required.

(2) The county clerk of any county having a population of 750,000 or more and containing a city of the 1st class shall deliver the county clerk's certificates of apportionment of taxes to the commissioner of assessments instead of the city clerk of such city.

History: 1975 c. 39, 199; 1977 c. 29 s. 1647 (19); 1977 c. 273; 1983 a. 192, 220; 1987 a. 378; 1991 a. 39, 156, 189, 315, 316; 2017 a. 207 s. 5.

70.511 Delayed action of reviewing authority. (1) VALUE TO BE USED IN SETTING TAX RATE. If the reviewing authority has not completed its work prior to the time set by a municipality for establishing its current tax rate, the municipality shall use the total value, including contested values, shown in the assessment roll in setting its tax rate.

(2) TAX LEVIES, REFUNDS. (a) If the reviewing authority has not made a determination prior to the time of the tax levy with respect to a particular objection to the amount, valuation or taxability of property, the tax levy on the property or person shall be based on the contested assessed value of the property. A tax bill shall be sent to, and paid by, the person subject to the tax levy as though there had been no objection filed, except that the payment shall be considered to be made under protest. The entire tax bill shall be paid when due under s. 74.11, 74.12 or 74.87 even though the reviewing authority has reduced the assessment prior to the time for full payment of the tax billed.

(b) If the reviewing authority reduces the value of the property in question, or determines that manufacturing property is exempt, the taxpayer may file a claim for refund of taxes resulting from the reduction in value or determination that the property is exempt. If claim for refund is filed with the clerk of the municipality on or before the November 1 following the decision of the reviewing authority, the claim shall be payable to the taxpayer from the municipality no later than January 31 of the succeeding year. A claim filed after November 1 shall be paid to the taxpayer by the municipality no later than the 2nd January 31 after the claim is filed. Interest on the claim shall be paid to the taxpayer when the claim is paid at the average annual discount rate determined by the last auction of 6−month U.S. treasury bills before the objection per day for the period of time between the time when the tax was due and the date that the claim was paid. If the taxpayer requests a postponement of proceedings before the reviewing authority, interest on the claim shall permanently stop accruing at the date of the request. If the hearing is postponed at the request of the taxpayer, the reviewing authority shall hold a hearing on the appeal within 30 days after the postponement is requested unless the taxpayer agrees to a longer delay. If the reviewing authority postpones the hearing without a request by the taxpayer, interest on the claim shall continue to accrue. No interest may be paid if the reviewing authority determines under s. 70.995 (8) (a) that the value of the property was reduced because the taxpayer supplied false or incomplete information. If taxes are refunded, the municipality may proceed under s. 74.41.

(bm) No later than July 1 of each year, each municipality that pays a refund under par. (b) for property that is assessed under s. 70.995 shall notify the department of administration of the amount of all such refunds paid by the municipality in the previous fiscal year. Annually, no later than the 3rd Monday in November, from the appropriation account under s. 20.835 (2) (br), the department of administration shall pay to each municipality that pays a refund under par. (b) for property that is assessed under s. 70.995 an amount that is equal to 20 percent of the interest on such refunds paid by the municipality in the previous fiscal year and that has accrued up to the date of the determination by the tax appeals commission of the municipality's obligation.

(c) If the reviewing authority increases the value of the property in question, the increase in value shall in the case of manufacturing property assessed by the department of revenue under s. 70.995 be assessed as omitted property as prescribed under s. 70.995 (12). In the case of all other property s. 70.44 shall apply.

History: 1975 c. 39; 1977 c. 29; 1979 c. 34, 221; 1981 c. 20, 132, 391; 1983 a. 27, 300; 1987 a. 378, 399, 403; 1989 a. 104; 1991 a. 39; 2005 a. 405; 2007 a. 96.

70.52 Clerks to examine and correct rolls. Each city, village, and town clerk upon receipt of the assessment roll shall carefully examine the roll. The clerk shall correct all double assessments, imperfect descriptions, and other errors apparent on the roll, and correct the value of parcels of real property not liable to taxation. The clerk shall add to the roll any parcel of real property not listed on the assessment roll or item of personal property omitted from the roll and immediately notify the assessors of the additions and omissions. The assessors shall immediately view and value the omitted property and certify the valuation to the clerk. The clerk shall enter the valuation and property classification on the roll, and the valuation shall be final. To enable the clerk to properly correct defective descriptions, the clerk may request aid, when necessary, from the county surveyor, whose fees for the services rendered shall be paid by the city, village, or town.

History: 1977 c. 29, 203, 273; 2001 a. 107; 2017 a. 17.

A municipality is entitled to rely on the address provided on the transfer tax return until it is provided with information reasonably calculated to inform of a new address. Pocius v. Kenosha County, 231 Wis. 2d 596, 605 N.W.2d 915 (Ct. App. 1999), 98−3176.

70.53 Statement of assessment and exemptions. (1) Upon the correction of the assessment roll under s. 70.52, each city, village, and town clerk shall prepare and, on or before the 2nd Monday in June, transmit to the department of revenue all of the following:

(a) A detailed statement of the aggregate of each of the several items of taxable property specified in s. 70.30.

(b) A detailed statement of each of the several classes of taxable real estate, entering land and improvements separately, as prescribed in s. 70.32 (2).

(c) A detailed statement of the aggregate of all taxable property by elementary and high school district and by technical college district.

(d) A detailed statement of the aggregate of each of the several items of exempt real property as specified by the department of revenue, entering land and improvements separately.

(2) The city, village, or town clerk shall make available to the department of revenue at its request a copy of the corrected assessment roll from which the statements required under sub. (1) are prepared. Failure to comply with this section subjects the taxation district to the penalty provisions under s. 73.03 (6). The department of revenue shall review and correct the statements.

(3) Every county clerk shall, at the expense of the county, annually procure and furnish to each city, village, and town clerk forms for the statements required under sub. (1), the form of which shall be prescribed by the department of revenue.

History: 1971 c. 65, 215; 1973 c. 61, 90, 243; 1977 c. 29 s. 1647 (9); 1977 c. 300 ss. 4, 8; 1979 c. 34, 216, 221; 1983 a. 275 ss. 6, 16; 1987 a. 399; 1993 a. 399; 2001 a. 107.

70.55 Special messenger. Whenever any town, city or village clerk shall have failed to transmit any such statement within the time fixed as aforesaid, the county treasurer or the department of revenue shall send a messenger therefor, who shall be paid and the expenses charged back as provided in s. 69.67 or 73.03 (6), respectively; and whenever any county treasurer shall have failed to transmit any such statement, within the time fixed as aforesaid, the department of revenue may send a messenger therefor, who shall be paid and the expenses therefor charged back to the county.

History: 1975 c. 295 s. 9; 1991 a. 39.

70.555 Provisions directory. The directions herein given for the assessing of lands and personal property and levying and collecting taxes shall be deemed directory only, and no error or informality in the proceedings of any of the officers entrusted with the same, not affecting the substantial justice of the tax, shall vitiate or in anywise affect the validity of such tax or assessment.

70.56 Lost roll. (1) NEW ASSESSMENT. Whenever the assessment roll of any assessment district shall be lost or destroyed before the second Monday of October in any year and before the tax roll therefrom has been completed the assessor of such district shall immediately prepare a new roll and as soon thereafter as practicable make a new assessment of the property in the assessor's district. If the board of review for such district shall have adjourned without day before such new assessment is completed such board shall again meet at a time fixed by the clerk of the town, city or village, not later than the fourth Monday in October, and like proceedings shall be had, as near as may be, in reference to such new assessment and assessment roll as in case of other assessments, and such clerk shall give notice of the time and place of such meeting of the board of review as is provided in s. 70.47 (2). Such new assessment and assessment roll shall be deemed the assessment and assessment roll of such assessment district to all intents and purposes. In case the assessor shall fail to make such new assessment or the board of review shall fail to meet and review the same, or any assessment roll is lost or destroyed after the second Monday in October in any year and before the tax roll therefrom is completed, or both the assessment roll and tax roll are lost or destroyed, then the county clerk shall make out and deliver a tax roll in the manner and with like effect as provided in s. 70.71.

(2) SAME. Whenever a tax roll in any town, city or village shall be lost or destroyed before it has been returned by the treasurer or sheriff holding the same, a new roll shall be prepared in like manner as the first, and delivered to such treasurer or sheriff, who shall complete the collection of the taxes and return such new tax roll in the manner provided for the original tax roll.

History: 1977 c. 29 s. 1647 (19); 1987 a. 378; 1991 a. 316.

70.57 Assessment of counties and taxation districts by department. (1) (a) The department of revenue before August 15 of each year shall complete the valuation of the property of each county and taxation district of the state. From all the sources of information accessible to it the department shall determine and assess by class the value of all property subject to general property taxation in each county and taxation district. If the department is satisfied that the assessment by a county assessor under s. 70.99 is at full value, it may adopt that value as the state's full value.

(b) The department shall set down a list of all the counties and taxation districts and opposite to the name of each county and taxation district the valuation determined by the department, which shall be the full value according to its best judgment.

(c) There shall also be prepared a list of all the counties of the state with the valuation determined for each county listed opposite the name of the county. The list shall be certified by the secretary of revenue as the assessment of the counties of the state made by the department and be delivered to the department of administration.

(d) In any case where the department, through mistake or inadvertence, has assessed to any county or taxation district, in the current year or in the previous year, a greater or less valuation for any year than should have been assessed, it shall correct the error. The department shall add or subtract, as the case may be, from the valuation of the county or taxation district, as determined by the department at the assessment in the year after the error is discovered, the amount omitted from or added to the true valuation of the county in the former assessment in consequence of the error. The result shall be taken as the full value of the county for the latter year and a final correction of the error.

(1b) On or before August 1 of each year, the department of revenue shall publish on its Internet site for each county and taxation district a preliminary determination of its equalized value, tax incremental finance district values as provided under s. 66.1105 (5) (g) and (6), and net new construction value as provided under ss. 66.0602 and 79.05. If a county or taxation district discovers a clerical, arithmetic, transpositional, or similar error in the department's determination that would result in the overvaluation or undervaluation of the property located in the county or taxation district, the county or taxation district shall notify the department of the error no later than August 7. The department shall correct, as provided in sub. (1) (d), any error reported and verified by the department under this subsection that results in an overvaluation or undervaluation of the property located in the taxation district greater than 2 percent. The correction shall be reflected in the equalized value provided to the county or taxation district under sub. (1m), except that amended assessment reports filed after the 2nd Monday in June shall not be subject to correction by the department as provided in this subsection.

(1m) On August 15 the department of revenue shall notify each county and taxation district of its equalized value. The department of revenue shall make available to each taxation district a list of sales within the taxation district and shall indicate whether or not those sales were used or rejected in establishing equalized value. If insufficient residential and agricultural sales in a taxation district require the department to use sales information from other taxation districts in establishing equalized value, the department shall so notify the affected taxation district and, upon written request from that taxation district, shall make available to the taxation district the sales information from other taxation districts and other information used to establish the equalized value. Upon resolution by the governing body of a county or taxation district, the department shall review the equalized value established for the county or taxation district.

(2) (a) If the state board of assessors, the tax appeals commission or a court makes a final redetermination on the assessment of property subject to taxation under s. 70.995 that is higher or lower than the previous assessment, the department of revenue shall recertify the equalized value of the school district in which the property subject to taxation under s. 70.995 is located.

(b) If a court makes a final redetermination on the assessment of telephone company property subject to taxation under s. 70.112 (4) and subch. IV of ch. 76 that is lower than the previous assessment, the department of revenue shall recertify the equalized value of the school district in which such property is located.

(3) (a) In determining the value of agricultural land under sub. (1), the department shall fulfill the requirements under s. 70.32 (2r).

(b) In determining the value under sub. (1) of agricultural forest land, as defined in s. 70.32 (2) (c) 1d., and undeveloped land, as defined in s. 70.32 (2) (c) 4., the department shall fulfill the requirements under s. 70.32 (4).

(4) (a) From the appropriation under s. 20.566 (2) (b), the department shall provide payments to any taxation district that certifies to the department, in the manner prescribed by the department, that the most recent valuation of the taxation district's property under this section is greater than it should be because of a clerical, arithmetic, transpositional, or similar error made by the department, as confirmed by the department, and that the amount of the overvaluation represents 7.5 percent or more of the taxation district's valuation under this section in the year prior to the year in which the error occurred.

(b) If property tax bills for the assessment year in which the error relates have been distributed to property owners, the taxation district receiving payments under par. (a) shall use the payments to make loans to persons who own property located in the taxation district and who are paying more property taxes than they should be as a result of the error. A person may receive a loan by applying, in the manner prescribed by the department, to the taxation district in which the person's property is located no later than June 15 of the year following the error. The state shall collect the amount of any loan issued under this paragraph as a state special charge against the taxation district for the year after the year in which the error occurred and the special charge shall not be included in the taxation district's levy. The taxation district shall assess the loan amount as a special charge against the property for which the loan was made on the property tax bill succeeding the loan, as provided under ch. 74 and s. 66.0627 (1) (c). Except for interest and penalties, as provided under s. 74.47, that apply to any delinquent special charge based on the loan amount, neither the department nor the taxation district may charge interest on any loan issued under this paragraph. The maximum loan amount that a person may receive under this paragraph shall be calculated by multiplying the assessed value of the person's property by a decimal determined by the department as follows:

1. For the year in which the error occurred, apportion county, school district, technical college district, and metropolitan sewerage district property taxes to the taxation district using the taxation district's erroneous valuation.

2. For the year in which the error occurred, apportion county, school district, technical college district, and metropolitan sewerage district property taxes to the taxation district using the taxation district's correct valuation.

3. Subtract the amount determined under subd. 2. from the amount determined under subd. 1.

4. Divide the amount determined under subd. 3. by the taxation district's assessed value for the year in which the error occurred and express the result as a decimal.

(c) With regard to loans made under par. (b), the department shall make the payments under par. (a) monthly, based on the amounts requested in loan applications to the taxation district each month, except that the department shall make no payments to a taxation district after June 30 of the year following the year in which the error occurred.

(d) If property tax bills for the assessment year in which the error relates have not been distributed to property owners, the department may make one payment from the appropriation under s. 20.566 (2) (b) to the taxation district to reduce the property taxes that would otherwise be imposed as a result of the error. The department shall confirm the amount of the payment and provide guidance to the taxation district in allocating the amount to specific parcels. In the year following the error, the taxation district, with the guidance of the department, shall collect from property owners in the taxation district an amount equal to the amount of the payment and shall remit the amount collected to the department. The department may not charge interest for any payment under this paragraph. Notwithstanding s. 66.0602 or 79.05, payments under this paragraph in both the year the payment is made to the taxation district and the year the taxation district returns the payment to the department shall not be included in determining the taxation district's or the county's levy, or allowable levy under s. 66.0602, or in determining the taxation district's eligibility for, and calculation of payments, under s.79.05. Solely for purposes of relating annual revenue to estimated expenses, the amounts collected and remitted to the state under this paragraph shall be deemed accrued receipts as of the close of the fiscal year, but no

revenue shall be deemed accrued receipts unless it is deposited by this state on or before August 31.

History: 1973 c. 90, 336; 1977 c. 29 ss. 761, 762, 1647 (12); 1977 c. 300 ss. 5, 8; 1981 c. 20; 1983 a. 372; 1985 a. 29, 54, 153, 246, 332, 399; 1991 a. 39; 1995 a. 27, 225; 2003 a. 33; 2007 a. 4; 2009 a. 11; 2011 a. 64; 2015 a. 321; 2017 a. 59.

Cross−reference: See also ch. Tax 18, Wis. adm. code.

"Taxation under s. 70.995" as used in sub. (2) means "assessment under s. 70.995". 73 Atty. Gen. 119.

70.575 State assessment, time. The department, not later than August 15 in each year, shall total the assessments of counties made by the department of revenue under s. 70.57, and the total shall be known as the state assessment and shall be the full market value of all general property of the state liable to state, county and local taxes in the then present year. The department shall enter upon its records such state assessment.

History: 1977 c. 29 ss. 763, 1647 (17); 1977 c. 300 ss. 6, 8.

70.58 Forestation state tax. (1) Except as provided in subs. (2) and (3), there is levied an annual tax of two−tenths of one mill for each dollar of the assessed valuation of the property of the state as determined by the department of revenue under s. 70.57, for the purpose of acquiring, preserving and developing the forests of the state and for the purpose of forest crop law and county forest law administration and aid payments, for grants to forestry cooperatives under s. 36.56, and for the acquisition, purchase and development of forests described under s. 25.29 (7) (a) and (b), the proceeds of the tax to be paid into the conservation fund. The tax shall not be levied in any year in which general funds are appropriated for the purposes specified in this section, equal to or in excess of the amount which the tax would produce and no tax shall be levied under this section beginning with the property tax assessments as of January 1, 2017.

(2) In each of 3 years beginning with the property tax assessments as of January 1, 2005, the department of revenue shall adjust the rate of the tax imposed under this section so that the percentage increase from the previous year in the total amount levied under this section does not exceed 2.6 percent. The rate determined by the department of revenue for the property tax assessment as of January 1, 2007, shall be the rate of the tax imposed under this section for all subsequent years, ending with the property tax assessments as of January 1, 2017.

(3) In fiscal year 2017−18, and in each fiscal year thereafter, an amount equal to 0.1697 mills for each dollar of the assessed valuation of the property of the state as determined by the department of revenue under s. 70.57 shall be transferred from the general fund to the conservation fund for the purposes described under sub. (1).

History: 1975 c. 39 s. 734; 1977 c. 29, 418; 1979 c. 34; 1983 a. 27; 1989 a. 359; 1999 a. 9; 2005 a. 25; 2017 a. 59.

70.60 Apportionment of state tax to counties. (1) The department of administration shall compute the state tax chargeable against each county basing such computation upon the valuation of the taxable property of the county as determined by the department of revenue pursuant to s. 70.57. On or before the 4th Monday of August in each year the department of administration shall certify to the county clerk of each county the amount of the taxes apportioned to and levied upon the county, and all special charges which the county clerk is required by law to make in any year to any such county to be collected with the state tax. The county clerk shall then charge to each county the whole amount of such taxes and charges, and the same shall be paid into the state treasury as provided by law.

History: 1977 c. 29 s. 1647 (14); 1977 c. 273; 1997 a. 35.

70.62 County tax rate. (1) COUNTY BOARD TO DETERMINE. The county board shall determine by resolution the amount of taxes to be levied in its county for the year.

(3) OMITTED TAX. Whenever the county board of any county shall fail to apportion against any town, city or village thereof in any year any state, county or school tax or any part thereof properly chargeable thereto, such county board shall, in any succeeding year, apportion such taxes against such town, city or village and add the proper amount thereof to the amount of the current annual tax then apportioned thereto.

(4) EXEMPTION FROM LEVY. (a) If a county levies a tax under sub. (1) for operating or maintaining, or providing services to, an airport, for public health services, or economic development services, a town located in the county, and on Madeline Island, shall be exempt from the taxes levied for such purposes if the town applies to the county for an exemption no later than September 1 of the year to which the exemption relates and the town provides documentation with the application that indicates that the town levies a tax for the same purpose that is at least equal to the amount calculated as follows:

1. Divide the amount of tax the county levied in the prior year for operating or maintaining, or providing services to, an airport, for public health services, or economic development services, less any amount levied for capital expenditures, by the equalized valuation of property in that area of the county that was subject to the county property tax levy for such services in the prior year.

2. Multiply the amount determined under subd. 1. by the equalized valuation of property in the town for the current year.

(am) The county board shall make a decision to approve or disapprove an application received under par. (a), and notify the applicant of its decision, no later than 30 days after the date on which it receives the application. If the county board disapproves an application under par. (a) the town may appeal the county board's decision to the circuit court of the county.

(b) For purposes of par. (a), "public health services" includes emergency fire, ambulance, and medical services and operating or maintaining a community health care clinic. For purposes of par. (a), "economic development services" includes providing community, business, and economic development information and assistance services and programs, loans, surveys, design assistance, site preparation and infrastructure for brownfield development, administrative assistance, and permitting assistance.

(c) No county may increase its levy on any municipality to compensate for granting the exemption under par. (a).

History: 1973 c. 90, 333; 1975 c. 39, 80, 200, 224; 1977 c. 113 ss. 5, 6; 1977 c. 142; 1977 c. 418 ss. 482 to 487, 929 (42); 1979 c. 34, 122; 1979 c. 175 s. 51; 1979 c. 346 s. 15; 1981 c. 20, 61, 93; 1983 a. 27, 275; 1985 a. 29; 1997 a. 35; 2013 a. 282.

70.63 Apportionment of county and state taxes to municipalities. (1) BY COUNTY CLERK. The county clerk shall apportion the county tax and the whole amount of state taxes and charges levied upon the county, as certified by the department of administration, among the towns, cities and villages of the county, according and in proportion to the valuation thereof as determined by the department of revenue. The county clerk shall carry out in the record book, opposite the name of each in separate columns, the amount of state taxes and charges and the amount of county taxes so apportioned thereto, and the amount of all other special taxes or charges apportioned or ordered, or which the clerk is required by law to make in any year to any town, city or village, to be collected with the annual taxes. The clerk shall certify to the clerk of and charge to each town, city and village, except in cities of the 1st class, the amount of all such taxes so apportioned to and levied upon it, and shall, at the same time, file with the county treasurer a certified copy of each apportionment.

(2) CITY OF FIRST CLASS. The county clerk shall certify in a similar manner to the commissioner of assessments of each city of the first class located within the limits of the county.

History: 1973 c. 90; 1981 c. 20; 1991 a. 156; 1997 a. 35.

The statutory duties of the county clerk under ch. 70 may not be transferred to the county auditor, but the county auditor may be granted supervisory authority over the manner in which such duties are exercised. OAG 6−08.

70.64 Review of equalized values. (1) BY TAX APPEALS COMMISSION. The assessment and determination of the relative value of taxable general property in any county or taxation district, made by the department of revenue under s. 70.57, may be reviewed, and a redetermination of the value of such property may be made by the tax appeals commission, upon appeal by the

county or taxation district. The filing of such appeal in the manner provided in this section by any county or taxation district shall impose upon the commission the duty, under the powers conferred upon it by s. 73.01 (4) (a), to review the assessment complained of. If, in its judgment based upon the testimony, evidence and record made on the preliminary hearing of such appeal, the commission finds such assessment to be unequal and discriminatory, it shall determine to correct such assessment to bring it into substantial compliance with law. Except as provided in this section, the appeal shall be taken and such review and redetermination shall be made as provided in ss. 73.01 and 73.015 and under the rules governing the procedure of the commission.

(2) AUTHORIZATION OF APPEALS. To authorize such appeal an order or resolution directing the same to be taken shall be adopted by the governing body of the county or taxation district taking the appeal at a lawful meeting of the governing body. When an appeal shall have been authorized the prosecution of it shall be in charge of the chairperson of the county board or county administrator or of the chairperson, mayor or president of the taxation district taking the appeal unless otherwise directed by the governing body. The officers or committee in charge of the appeal may employ attorneys to conduct the appeal. After authorizing an appeal as provided in this subsection, any 2 or more taxation districts in the same county may join in taking and prosecuting an appeal.

(3) FORM OF APPEAL. To accomplish an appeal there shall be filed with the tax appeals commission on or before October 15 an appeal in writing setting forth:

(a) That the county or taxation district, naming the same, appeals to the tax appeals commission from the assessment made by the department of revenue under s. 70.57, specifying the date of such assessment.

(b) Whether the appeal is to obtain a review and redetermination of the assessment of all the taxation districts of the county or of particular districts only, therein specified.

(c) Whether review and redetermination is desired as to real estate, or personal property, or both.

(d) That the appeal has been authorized by an order or resolution of the county board or governing body of the taxation district in whose behalf the appeal is taken.

(e) A plain and concise statement, without unnecessary repetition, of the facts constituting the grievance sought to be remedied upon appeal, which shall specifically allege in what respects the assessment is in error.

(f) The appeal shall be verified by a member of the governing body of the county or taxation district authorizing the appeal in the manner that pleadings in courts of record are verified. When 2 or more taxation districts join in taking such appeal the verification may be made by the proper officer of any one of them.

(4) CERTIFIED COPIES. Upon the filing of such appeal, the clerk of the county or taxation district, without delay, shall prepare certified copies of it, together with certified copies of the value established by the department of revenue from which the appeal is taken and a complete list showing the clerk of each taxation district within the county and the post−office address of each. The clerk shall mail by certified mail 4 sets of certified copies to the tax appeals commission and one set of the copies to the department of revenue, the county clerk and the clerk of each taxation district within the county.

(5) APPEARANCE. Not later than 30 days after the clerk of the county or taxation district has mailed the certified copies, unless the time is extended by order of the tax appeals commission, any county, town, city or village may cause an appearance to be entered in its behalf before the commission in support of the appeal and uniting with the appellant for the relief demanded; and by verified petition or statement showing grounds therefor may apply for other or further review and redetermination than that demanded in the appeal. Within the same time the county, town, city or village in the county may in the same manner have its appearance entered in opposition to the appeal and to the relief demanded. Such appearances shall be authorized in the manner for authorizing an appeal under sub. (2). When so authorized the interests of the county, town, city or village authorizing it shall be in the charge of the chairperson, mayor or president thereof unless otherwise directed by the body authorizing such appearance; and attorneys may be employed in that behalf. In such appearances any 2 or more of the towns, cities and villages of the county may join if united in support of or in opposition to the appeal. Four copies of each appearance, petition or statement mentioned in this subsection shall be filed in the offices of the tax appeals commission and a copy of each mailed by certified mail to the department of revenue, to the county clerk, and to the clerk of each town, city and village within the county, and a copy to the attorney authorized to appear on behalf of the county or any town, city or village within the county.

(6) HEARING. As soon as practicable, the commission shall set a time and place for preliminary hearing of such appeal. At least 10 days before the time set for such hearing, the commission shall cause notice thereof to be mailed by certified mail to the county clerk and to the attorney or the clerk of each town, city and village in whose behalf an appearance has been entered in the matter of such appeal, and to the clerk of each town, city or village which has not appeared, and mail a like notice to the clerk of the taxation district taking such appeal and to the department of revenue. The department of revenue shall be prepared to present to the commission at such time during the course of the hearings as the commission requires, the full value of all property subject to general property taxation in each town, village and city of the county, as determined by the department according to s. 70.57 (1) or in the case of a complaint by a taxation district under a county assessor such information as the department has in its possession. Said hearing may be adjourned, in the discretion of the tax appeals commission, as often and to such times and places as may be necessary in order to determine the facts. If satisfied that no substantial injustice has been done in the taxation district assessment appealed from, the commission in its discretion may dismiss such appeal. If satisfied that substantial injustice has been done in the taxation district assessment, the commission shall determine to revalue any or all of the taxation districts in the county, which it deems necessary, in a manner which in its judgment is best calculated to secure substantial justice.

(7) REDETERMINATION. The commission shall then proceed to redetermine the value of the taxable general property in such of the taxation districts in the county as it deems necessary. It may include in such redetermination other taxation districts than first determined upon and may include all of the taxation districts in said county, if at any time during the progress of its investigations or revaluations it is satisfied that such course is necessary in order to accomplish substantial justice and to secure relative equality as between all the taxation districts in such county. It shall make careful investigation of the value of taxable general property in the several taxation districts to which such review and redetermination shall extend, in any manner which in its judgment is best calculated to obtain the fair, full value of such property. The commission may employ such experts and other assistants as may be necessary, and fix their compensation. In making such investigations the commission and all persons employed therein by the commission shall have all the authority possessed by assessors so far as applicable, including authority to administer oaths and to examine property owners and witnesses under oath as to the quantity and value of the property subject to assessment belonging to any person or within any taxation district to which the investigation shall extend.

(8) HEARING. The commission may at any time before its final determination appoint a time and place at which it will hear evidence and arguments relevant to the matters under consideration upon such appeal. The time to be devoted to such hearings may be limited as the commission directs. At least 10 days before the time fixed for such hearings, the commission shall cause notice thereof to be mailed by certified mail to the county clerk and to the

attorney or other representative of each town, city and village in whose behalf an appearance has been entered in the matter of such appeal, and a like copy to the department of revenue.

(9) TESTIMONY. The tax appeals commission may take testimony. Witnesses summoned at the instance of said commission shall be compensated at the rates provided by law for witnesses in courts of record, the same to be audited and paid the same as other claims against the state, upon the certificate of said commission. If any property owner or other person makes any false statement to said commission or to any person employed by it upon any matter under investigation that person shall be subject to all the forfeitures and penalties imposed by law for false statements to assessors and boards of review.

(10) DETERMINATION. The tax appeals commission shall make its determination upon such appeal without unreasonable delay and shall file a copy thereof in the office of the county clerk and mail by certified mail a like copy to the department of revenue and to the clerk and attorney of the taxation district appealing, and a copy to the clerk and attorney of each taxation district having appeared. In such determination the commission shall set forth the relative value of the taxable general property in each town, city and village of such county as found by them, and what sum, if any, shall be added to or deducted from the aggregate value of taxable property in each such taxation district as fixed in the determination of the department of revenue from which such appeal was taken in order to produce a relatively just and equitable taxation district assessment. Such determination shall be final.

(11) COMPUTATION. The determination of the commission shall not affect the validity of taxes apportioned in accordance with the taxation district assessment from which such appeal was taken; but if it is determined upon such appeal that such taxation district assessment is relatively unequal, such inequality shall be remedied and compensated in the apportionment of state and county taxes in such county next following the determination of said commission in the following manner: Each town, city and village whose valuation in such taxation district assessment was determined by said commission to be relatively too high shall be credited a sum equal to the amount of taxes charged to it upon such unequal assessment in excess of the amount equitably chargeable thereto according to the determination of the commission; and each town, city and village whose valuation in such taxation district assessment was determined by said commission to be relatively too low shall be charged, in addition to all other taxes, a sum equal to the difference between the amount charged thereto upon such unequal assessment and the amount which should have been charged thereto according to the determination of the commission. The department of revenue shall aid the county clerk in making proper computations.

(12) EXPENSES. The tax appeals commission shall transmit to the county clerk with its determination on such appeal a statement of all expenses incurred therein by or at the instance of the commission, which shall include the actual expenses of the commission and regular employees of the commission, the compensation and actual expenses of all other persons employed by it and the fees of officers employed and witnesses summoned at its instance. A duplicate of such statement shall be filed in the office of the department of administration. Such expenses shall be audited upon the certificate of the commission, and paid out of the state treasury, in the first instance, as other claims against the state are audited and paid. The amount of such expenses shall be a special charge against such county and shall be included in the next apportionment and certification of state taxes and charges, and collected from such county, as other special charges are certified and collected. Unless otherwise directed by the commission in its determination upon such appeal, the county clerk, in the next apportionment of state and county taxes, shall apportion the amount of such special charges to and among the towns, cities and villages in such county whose relative valuations were increased in the determination of the commission in proportion to the amount of such increase in each of them respectively. The apportionment of such expenses shall be set forth in the determination of the commission. The amount so apportioned to each such town, city and village shall be charged upon its tax roll and shall be collected and paid over to the county treasurer as other state taxes and special charges are collected and paid.

(13) PROCEDURES. The provisions of s. 73.01, insofar as consistent with this section, shall be applicable to proceedings under this section.

History: 1973 c. 90; 1981 c. 20; 1983 a. 275; 1989 a. 56 s. 258; 1991 a. 316.
Cross−reference: See also s. TA 1, Wis. adm. code.

70.65 Tax roll. (1) CLERK TO PREPARE. Annually the clerk of the taxation district shall prepare a tax roll. The clerk shall begin preparation of the tax roll at a time sufficient to permit timely delivery of the tax roll under s. 74.03.

(2) CONTENT. The tax roll shall do all of the following:

(a) As shown on the assessment roll:

1. Identify all the real property within the taxation district and, with respect to each description of real property, the name and address of the owner and the assessed value.

2. Identify the name and address of the owners of all taxable personal property within the taxation district and the assessed value of each owner's taxable personal property.

(b) With respect to each description of real property and each owner of taxable personal property:

1. Show the total amount of taxes levied against the property by all taxing jurisdictions to which the property is subject.

2. Show all other taxes, assessments and charges against the property which are authorized by law to be collected as are taxes levied against property.

(c) Set forth the taxes, assessments and charges against property in the tax roll in a manner sufficiently organized and apportioned to permit collection and settlement of the taxes, assessments and charges under ch. 74.

(d) Show the total amount of taxes, assessments and charges to be collected against property within the taxation district.

(e) Direct the treasurer of the taxation district and the county treasurer to collect, under s. 74.07, the amount of taxes, assessments and charges under par. (d).

(f) Set forth any other information required by law or determined necessary by the department of revenue.

(3) CERTIFICATION OF CORRECTNESS. The clerk of the taxation district shall certify, on the tax roll, that the information contained in the tax roll is accurate, to the clerk's best knowledge.

(4) FORM. The format of the tax roll shall be prescribed by the department of revenue under s. 70.09 (3).

(5) DELIVERY. The clerk of the taxation district shall transfer the tax roll under s. 74.03.

History: 1981 c. 20; 1983 a. 300, 532; 1985 a. 29; 1987 a. 27, 378.
A municipality is entitled to rely on the address provided on the transfer tax return until it is provided with information reasonably calculated to inform of a new address. Pocius v. Kenosha County, 231 Wis. 2d 596, 605 N.W.2d 915 (Ct. App. 1999), 98−3176.

70.67 Municipal treasurer's bond; substitute for. (1) The treasurer of each town, city, or village shall, unless exempted under sub. (2), execute and deliver to the county treasurer a bond, with sureties, to be approved, in case of a town treasurer, by the chairperson of the town, and in case of a city or village treasurer by the county treasurer, conditioned for the faithful performance of the duties of the office and that the treasurer will account for and pay over according to law all taxes of any kind which are received and which are required to be paid to the county treasurer. If such bond is executed the amount of the bond shall be no less than the amount of state and county taxes apportioned to the town, village, or city. The county treasurer shall give to the town, city, or village treasurer a receipt for the bond, and shall file and safely keep the bond in the county treasurer's office.

(2) The treasurer of any municipality shall not be required to give such bond if the governing body thereof shall by ordinance

obligate such municipality to pay, in case the treasurer thereof shall fail so to do, all taxes of any kind required by law to be paid by such treasurer to the county treasurer. Such governing body is authorized to so obligate such municipality. If the governing body of the municipality has adopted an ordinance as specified in this subsection, it may demand from its treasurer, in addition to the official bond required of all municipal treasurers, a fidelity or surety bond in an amount and upon such terms as may be determined by the governing body. Such bond shall run to the town or village board or the city council, as the case may be, and shall be delivered to the clerk of the municipality. A certified copy of such ordinance filed with the county treasurer shall be accepted by the county treasurer in lieu of the bond required by sub. (1). Such ordinance shall remain in effect until a certified copy of its repeal shall be filed with the county clerk and the county treasurer. The official bond executed pursuant to s. 19.01, required of municipal treasurers, shall extend to and include the liability incurred by any town, city or village whose governing board shall adopt and certify to the county treasurer an ordinance in accordance with this subsection.

History: 1975 c. 375 s. 44; 1975 c. 421; 1989 a. 56 s. 258; 1991 a. 316; 2017 a. 52.

For purposes of sub. (2), the town board is the governing body of the town. 63 Atty. Gen. 10.

70.68 Collection of taxes. (1) COLLECTION IN CERTAIN CITIES. In cities authorized to act under s. 74.87, the chief of police shall collect all state, county, city, school and other taxes due on personal property as shall then remain unpaid, and the chief of police shall possess all the powers given by law to town treasurers for the collection of such taxes, and be subject to the liabilities and entitled to the same fees as town treasurers in such cases, but such fees shall be turned over to the city treasurer and become a part of the general fund.

(2) BOND OF CHIEF OF POLICE. The chief of police shall give a bond to the city, in such sum and with such sureties as the council may prescribe, for the payment to the city treasurer of all taxes collected by the chief of police.

History: 1985 a. 135; 1987 a. 378; 1991 a. 316.

70.71 Proceedings if roll not made. (1) Whenever any town, city or village clerk neglects or refuses to make and deliver the tax roll within the time required by law the county clerk shall, at any time after such neglect or refusal, demand and summarily obtain the assessment roll for such year, and make, in the same manner as required of the town clerk, a tax roll for such town, city or village and deliver the same to the county treasurer for collection.

(2) If the assessment roll cannot be obtained the county clerk may use a copy thereof if obtainable. If the clerk can obtain neither original nor copy the clerk shall make out, to the best of the clerk's ability, a tax roll from the last assessment or tax roll on file in the clerk's office or in the office of the county treasurer, which shall then be taken and deemed conclusively the legal tax roll of such town for all purposes whatever. For all such services the county clerk shall be allowed by the county board and paid from the county treasury a reasonable compensation, which shall be charged to the town in the next apportionment of taxes.

History: 1975 c. 324; 1987 a. 378; 1991 a. 316.

70.72 Clerical help on reassessment. Whenever a reassessment or reassessments of taxes shall hereafter be ordered in any town, the town board of such town may employ such additional clerical help for the purpose of preparing the tax rolls upon such reassessment as in its judgment shall be necessary.

70.73 Correction of tax roll. (1) BEFORE DELIVERY. (a) If it is discovered by any town, village or city clerk or treasurer that any parcel of land has been erroneously described on the tax roll the clerk or treasurer shall correct the description.

(b) If a town, village or city clerk or treasurer discovers that personal property has been assessed to the wrong person, or 2 or more parcels of land belonging to different persons have been erroneously assessed together on the tax roll, the clerk or treasurer shall notify the assessor and all parties interested, if the parties are residents of the county, by notice in writing to appear at the clerk's office at some time, not less than 5 days thereafter, to correct the assessment roll.

(c) At the time and place designated in the notice given under par. (b), the assessment roll shall be corrected by entering the correct names of the persons liable to assessment, both as to real and personal property, describing each parcel of land and giving the proper valuation to each parcel separately owned. The total valuation given to the separate tracts of real estate shall be equal to the valuation given to the same property when the several parcels were assessed together.

(d) The valuation of parcels of land or correction of names of persons whose personal property is assessed under this subsection may be made at any time before the tax roll is returned to the county treasurer for the year in which the tax is levied. The valuation or correction of names, when made under this subsection, shall be held just and correct and be final and conclusive.

(1m) AFTER BOARD OF REVIEW. If a town, village, or city clerk or treasurer discovers a palpable error, as described under s. 74.33 (1), in the assessment roll after the board of review has adjourned for the year under s. 70.47 (4), the clerk or treasurer shall correct the assessment roll before calculating the property taxes that are due on the property related to the error and notify the department of revenue of the correction under s. 70.57.

(3) NOTICE OF CORRECTION. When the assessment roll shall have been so corrected the clerk shall enter a marginal note on the roll stating when the correction was made by the assessor; and if the taxes shall have been extended against the property previously the clerk shall correct the tax roll in the same manner that the assessment roll was corrected, and extend against each tract the proper amount of tax to be collected.

History: 1987 a. 378; 1991 a. 316; 1997 a. 253; 2001 a. 16; 2015 a. 317.

70.74 Lien of reassessed tax. (1) Whenever any tax or assessment or any part thereof levied on real estate, whether heretofore or hereafter levied, shall have been set aside or determined to be illegal or void or the collection thereof prevented by the judgment of a court or the action of the county board; or whenever any town, city or village treasurer shall have been prevented by injunction from collecting or returning as delinquent any such tax or assessment in consequence of any irregularity or error in any of the proceedings in the assessment of such real estate, the levy of such tax or the proceedings for its collection, or of any erroneous or imperfect description of such real estate, or of any omission to comply with any form or step required by law, or of the affixing of a revenue stamp to the tax certificate, and including the amount thereof in the same, or the including of any illegal addition with the lawful tax, or for any other cause, then, if the real estate was properly taxable or assessable, if it be not a proper case to collect by inclusion of the land in the tax certificate next issued under s. 74.57, such tax, or so much thereof as shall not have been collected and as may be taxable or assessable thereto may be reassessed or relevied upon such real estate at any time within 3 years after such judgment or such action of the county board or the dissolution of such injunction; and the proper town board, village board, board of trustees or common council shall make an order directing the same to be reassessed upon such real estate, and the clerk shall insert the same in the tax roll, opposite such real estate, in a separate column, as an additional tax, and the same shall be collected as a part of the tax for the year when so placed on the roll. Any such school district tax shall be so reassessed and relevied on the order of the town board; but the provisions of this section shall not be construed as conflicting with, limiting or in any way affecting the reassessment provided for in ss. 75.54 and 75.55. The lien of any tax reassessed as provided in this section shall attach to the land as of the date when such tax as originally levied became a lien

and shall continue and constitute the lien of any tax certificate issued which includes such lands for such reassessed tax.

(2) Whenever any tax or assessment or any part thereof levied on real estate shall have been set aside or determined to be illegal or void or the collection thereof prevented by the judgment of a court or the action of the county board and such tax or assessment shall not be justly reassessable, the county board may order such tax or assessment to be charged back to the respective town, city or village wherein such lands are situated in the next apportionment of county taxes, provided that the amount so charged back shall not include any tax or assessment the illegality of which is solely attributable to erroneous action by the county or its officers.

History: 1987 a. 378.

70.75 Reassessments. (1) REASSESSMENTS, HOW MADE. (a) 1. The owners of taxable property in any taxation district, other than an assessment district within the corporate limits of any 1st class city, whose property has an aggregate assessed valuation of not less than 5 percent of the assessed valuation of all of the property in the district according to the assessment sought to be corrected, may submit to the department of revenue a written petition concerning the assessed valuation of their property. Subject to subd. 2. and sub. (1m), if the department finds that the assessment of property in the taxation district is not in substantial compliance with the law and that the interest of the public will be promoted by a reassessment, the department may order a reassessment of all or of any part of the taxable property in the district to be made by one or more persons appointed for that purpose by the department.

2. The department may dismiss any petition for reassessment if, prior to the entry of a reassessment order under subd. 1., the taxation district involved determines under s. 70.055 that employing expert help to aid in assessing property would be in the public interest and if, after receiving departmental approval, the taxation district does employ expert help for either of the 2 years following the assessment year complained of.

3. If the department performs the reassessment or special supervision under sub. (3), the department shall designate the person responsible for the reassessment. If the department appoints a corporation for the reassessment or special supervision under sub. (3), the corporation shall designate the person responsible for the reassessment. The corporate or departmental designee shall file the official oath under s. 19.01.

4. If a petition under subd. 1. is filed in the office of the department the department shall, under the powers conferred by s. 73.03 (1), review the assessment complained of. If the department finds the assessment is not in substantial compliance with law and that public interest will be promoted by a reassessment, it shall correct such assessment by a reassessment as provided in this section. The department's duty to reassess is not impaired by any action, subsequent to such filing, of any taxpayer represented in the application.

5. As a part of its investigation of the assessment complained of, the department shall hold a hearing at some convenient place within or near the taxation district which is sought to be reassessed. At such hearing testimony may be offered as to the inequality or equality of the assessment, whether or not the public interest will be promoted by a reassessment and as to such other matters as may be desired by the department. Notice of the hearing specifying the time and place of the hearing shall be mailed to the clerk of the taxation district and the first signer of the application for reassessment, not less than 8 days before the time fixed for the hearing.

6. The department shall keep on file its order directing such reassessment and naming the persons appointed to make the reassessment. In addition, the department shall transmit a copy of the order to the clerk of the taxation district, to the supervisor of equalization of the county in which the district is located and to each of the persons appointed to make such reassessment and serve on the board for the review of the reassessment. Service of a copy of the order is legal notice to these people of their appointment. No person may be authorized by the department to make a reassessment or to provide special supervision instead of reassessment unless the person is willing and able to use the assessment manual.

(b) All assessment personnel appointed under this section in 1974 and thereafter shall have passed an examination and have been certified by the department of revenue as qualified for performing the functions of the office to which appointed. Any person appointed under par. (a) or sub. (3) shall be certified as an expert appraiser as provided in s. 70.055 (1).

(1m) ADDITIONAL REQUIREMENTS. The department may not proceed under sub. (1) (a) with respect to a petition filed by a property owner who owns more than 5 percent of the assessed valuation of all the property in a taxation district if within the 3 years preceding the date of the petition that person petitioned for reassessment and the department of revenue did not order a reassessment under sub. (1) or special supervision under sub. (3) unless, in addition to that property owner, an owner or owners of an additional 5 percent of the assessed valuation of the taxation district join in the petition. If a petition is denied under this subsection, the property owner who petitioned twice within a 3−year period shall pay 75 percent of the department of revenue's costs in respect to that petition. Payments under this subsection shall be made to the department of revenue for deposit in the appropriation under s. 20.566 (2) (h).

(2) PERSONS APPOINTED TO REASSESS, POWERS AND DUTIES. The person or persons appointed under sub. (1) to make a reassessment, without delay, shall severally take and subscribe an oath or affirmation to support the constitution of the United States and of the state of Wisconsin and to faithfully perform the duties imposed upon that person in respect to the reassessment to the best of that person's ability, and shall file the same with the department of revenue. Thereupon the person or persons appointed to make the reassessment shall proceed with diligence to make a reassessment of all the taxable property in the affected district. For that purpose the person or persons appointed to make the reassessment shall have all the power and authority given by law to assessors in the district and shall perform all the duties and be subject to all restrictions and penalties imposed by law upon assessors in the district. The person or persons appointed to make the reassessment shall have access to all public records and files which may be necessary or useful in the performance of the reassessment, and while engaged therein shall be entitled to have custody and possession of the roll containing the original assessment in the district and all property and other statements and memoranda relating thereto. A blank assessment roll and all property statements and other blank forms necessary for the purposes of the reassessment shall be furnished by the county clerk at the expense of the county upon the application of the department of revenue.

(3) SPECIAL SUPERVISION INSTEAD OF REASSESSMENT. Whenever the department determines, after the hearing provided for in sub. (1) or in the determination under s. 70.05 (5) (d), that the assessment complained of was not made in substantial compliance with law but that the interests of all the taxpayers of such district will best be promoted by special supervision of succeeding assessments to the end that the assessment of such district shall thereafter be lawfully made, it may proceed as follows: It may designate one or more employees of the department or appoint one or more other qualified persons to assist the local assessor in making the assessments to be thereafter made in such district. Any person so appointed may give all or such part of that person's time to such supervision as, in the judgment of the department, is necessary to complete such assessment in substantial compliance with the law, and in performing such task shall have all the powers given by law to any person designated to make a reassessment and together with the assessor shall constitute an assessment board as defined in s. 70.055.

(4) COSTS. Except as provided in sub. (1m), all costs of the department of revenue in connection with reassessment or special supervision under this section shall be borne by the taxation dis-

trict. These receipts shall be credited to the appropriation under s. 20.566 (2) (h). Past due accounts shall be certified on or before the 4th Monday of August of each year and included in the next apportionment of state special charges to local units of government.

(5) DEFINITIONS. In this section, for those taxation districts that are under a county assessor system, the terms "local assessor" and "board of review" include the county assessor and the county board of review, respectively.

History: 1973 c. 90; 1977 c. 29; 1981 c. 20; 1983 a. 27, 241; 1983 a. 275 s. 15 (1), (3); 1991 a. 316.

70.76 Board of correction. (1) NOTICE, PROOF. (a) In the order for reassessment the department of revenue shall designate 3 persons to serve as a board for the correction and review of the reassessment. As soon as practicable the person making the reassessment shall inform the clerk of the district of the date on which the reassessment will be ready for the consideration of the board. The information shall be given in time to enable the clerk to give the notice required in this subsection.

(b) The clerk shall give notice that the board will meet on the date at the place provided by law for the meeting of the regular board of review of the district, specifying the place. The clerk shall record the notice in the record book of proceedings of the board of review of the district after first recording the order for reassessment. The clerk shall post the notice in 3 conspicuous public places in the district and shall also serve a copy of the notice upon each of the persons named to act as the board and upon the department of revenue if the reassessment is not made by the department. The posting and service shall be at least one week before the day designated for the meeting.

(c) In case of the failure or refusal of the clerk to give and serve the notice in the manner prescribed within 5 days after being requested to do so by the person making the reassessment, the department of revenue may give and serve the notice with the same force and effect as if given and served by the clerk. The service may be by personal delivery to the person to be served or by leaving the copy at the person's usual place of abode or by mailing it in a sealed envelope postpaid and directed to the person at the person's post−office address.

(d) A memorandum stating the time and place of posting and the time and manner of service shall be entered by the clerk in the record. The memorandum, authenticated by the signature of the clerk, is presumptive evidence of the facts stated. The fact, time and manner of posting and service may be proved by any person having knowledge of the facts even though no entry of a memorandum is made.

(2) HEARING. The persons designated to serve as a board to review the reassessment shall attend at the time and place specified in the notice. A majority of them constitutes a quorum. Before proceeding in the review they shall be sworn by the clerk or by some other person authorized by law to administer oaths, to faithfully and impartially perform their duties in respect to the reassessment. The clerk of the district shall attend and serve as the clerk of the board at all its sessions and shall perform all the duties required of clerks at meetings of the regular board of review of the district, except that the clerk shall have no voice in the determinations of the board.

(3) EVIDENCE. The person making the reassessment shall attend the meeting, shall present before the board the roll containing the reassessment of property made by the person and all property statements, affidavits, and other memoranda in relation to it, shall furnish the board all information in the person's possession which may be useful in the work of the board, and may give testimony of any facts within the person's knowledge pertinent to any matter under the consideration of the board.

History: 1983 a. 275; 1985 a. 135.

70.77 Proceedings; inspection. Such board shall carefully examine and consider such reassessment roll and all statements and other information accompanying the same or given in relation thereto. They shall review and correct such reassessment in like manner as the regular board of review of such district is required to review assessments therein and for that purpose they may adjourn from time to time and shall otherwise have and exercise all the power and authority given by law to boards of review and shall be subject to all the rules and restrictions imposed upon such boards. Any owner of taxable property in such district shall have the right to examine such reassessment and shall have all the rights and privileges before such board in respect to such reassessment that are given by law in respect to any assessment of property in such district.

History: 1999 a. 83.

70.78 Affidavit; filing. Upon the completion of the work of such board and the incorporation in such reassessment roll of any corrections and changes ordered by such board, the person or persons making such reassessment shall make and annex to such roll an affidavit conforming as nearly as may be to the affidavit required by law to be annexed to assessment rolls in such district. Such reassessment roll when completed shall be filed in the office of the clerk of such district and shall take the place of the original assessment made in such district for said year for all purposes and shall be prima facie evidence of the facts therein stated and of the regularity of all the proceedings culminating therein.

70.79 Power of supervisor of equalization. If the reassessment is made by a person other than the supervisor of equalization of the county in which the district is located the supervisor of equalization has the same authority as in other assessments in the county and shall render assistance to the person making the reassessment and to the reviewing board and shall attend the meeting of the reviewing board. The district attorney of the county in which the reassessment is made shall give legal assistance in relation to the reassessment or the review upon the request of the supervisor of equalization.

History: 1983 a. 275 s. 15 (3); 1983 a. 538.

70.80 Compensation; fees. The person or persons making such reassessment and the persons serving upon the board for review thereof shall receive such compensation for their services and expenses as may be designated by the department of revenue in the order directing such reassessment. Any witness directed to be summoned by such board shall be entitled to fees for travel and attendance at the rates allowed by law to witnesses in the circuit court, but shall not be entitled to such fees prior to attendance and the giving of testimony. Supervisors of equalization may be appointed to make reassessments, but in no case shall a supervisor of equalization be appointed to reassess a district when the complaint was made or the proceedings instituted by that supervisor of equalization.

History: 1983 a. 275 s. 15 (3), (4); 1983 a. 538 s. 269 (3); 1991 a. 316.

70.81 Statement of expenses. Upon completion of the review of such reassessment, each person entitled to compensation for services in respect thereto as provided in s. 70.80 shall make out a statement of the person's claim therefor against the state of Wisconsin and execute a voucher for the payment thereof upon blank forms to be furnished by the department of revenue. Such statement shall show the number of days for which compensation is claimed, the rate per day, the character of the service, the total amount claimed, the address of the claimant, and, in case of witnesses, the number of miles traveled, which statement shall be verified by the affidavit of the claimant or of some person having knowledge of the facts. Each such claim shall be approved, if correct, by a member of such board and by the supervisor of equalization. A memorandum of all such claims, showing the number of days and character of service and amount due to each person, shall be entered at the foot of the record of the proceedings of such board.

History: 1983 a. 275 s. 15 (3); 1991 a. 316.

70.82 Review of claims; payment. The statements and vouchers mentioned in s. 70.81 shall be promptly transmitted by the supervisor of equalization to the department of revenue, which shall have authority to review the statements and vouchers and determine the number of days to be allowed. After such review and determination and after procuring any needed corrections therein said department shall endorse their approval of such statements and file the same and such vouchers in the office of the department of administration. Such claims shall thereupon be audited by the department of administration and paid out of the state treasury in like manner that other claims against the state are audited and paid. The amount so paid shall constitute an indebtedness of the district in which such reassessment was made to the state of Wisconsin, and such indebtedness with interest thereon at 6 percent per year shall be a special charge upon such district to be certified to and collected from such district in the then next levy and certification of state taxes and special charges, in like manner that other indebtedness of cities, towns, and villages to the state are certified and collected.

History: 1979 c. 110 s. 60 (13); 1983 a. 275 s. 15 (3); 2009 a. 177.

70.83 Deputies; neglect; reassessment. If any person appointed or required to perform any duty under ss. 70.75 and 70.76 shall be unable or neglect to do so, that person's place may be filled by appointment by said department. If any person required to perform any duty under ss. 70.75 to 70.84 shall willfully neglect or refuse to do so, that person shall forfeit to the state not less than $50 nor more than $250. In the appointment of persons to perform services under ss. 70.75 to 70.84 the department of revenue shall not be required to select any of such persons from the residents of the district in which the reassessment is to be made. It shall not be necessary for the said department to wait until the assessment in any district is completed before making an order for reassessment therein under ss. 70.75 to 70.84; but it shall be entitled to make such order whenever it shall be satisfied from the work already done upon such assessment that when completed it will not be in substantial compliance with law.

History: 1991 a. 316.

70.84 Inequalities may be corrected in subsequent year. If any such reassessment cannot be completed in time to take the place of the original assessment made in such district for said year, the clerk of the district shall levy and apportion the taxes for that year upon the basis of the original assessment roll, and when the reassessment is completed the inequalities in the taxes levied under the original assessment shall be remedied and compensated in the levy and apportionment of taxes in such district next following the completion of said reassessment in the following manner: Each tract of real estate, and, as to personal property, each taxpayer, whose tax shall be determined by such reassessment to have been relatively too high, shall be credited a sum equal to the amount of taxes charged on the original assessment in excess of the amount which would have been charged had such reassessment been made in time; and each tract of real estate, and, as to personal property, each taxpayer, whose tax shall be determined by such reassessment to have been relatively too low, shall be charged, in addition to all other taxes, a sum equal to the difference between the amount of taxes charged upon such unequal original assessment and the amount which would have been charged had such reassessment been made in time. The department of revenue, or its authorized agent, shall at any time have access to all assessment and tax rolls herein referred to for the purpose of assisting the local clerk and in order that the results of the reassessment may be carried into effect.

70.85 Review of assessment by department of revenue. (1) COMPLAINT. A taxpayer may file a written complaint with the department of revenue alleging that the assessment of one or more items or parcels of property in the taxation district the value of which, as determined under s. 70.47, does not exceed $1,000,000 is radically out of proportion to the general level of assessment of all other property in the district.

(2) BOARD OF REVIEW; TIMING. A complaint under this section may be filed only if the taxpayer has contested the assessment of the property for that year under s. 70.47. The complaint shall be filed with the department of revenue within 20 days after receipt of the board of review's determination or within 30 days after the date specified on the affidavit under s. 70.47 (12) if there is no return receipt.

(3) FEE. A taxpayer filing a complaint under this section shall pay a filing fee of $100 to the department of revenue, which shall be credited to the appropriation under s. 20.566 (2) (h).

(4) REVALUATION. (a) In this subsection, "the property" means the items or parcels of property which are the subject of the written complaint filed under sub. (1).

(b) The department of revenue may revalue the property and adjust the assessment of the property to the assessment ratio of other property within the taxation district, if the department of revenue determines that:

1. The assessment of the property is not within 10 percent of the general level of assessment of all other property in the taxation district.

2. The revaluation of the property can be satisfactorily completed without a reassessment of all property within the taxation district.

3. The revaluation can be accomplished before November 1 of the year in which the assessment is made or within 60 days of the receipt of the written complaint, whichever is later.

(c) Appeal of the determination of the department of revenue shall be by an action for certiorari in the circuit court of the county in which the property is located.

(5) OTHER PROPERTY. In determining whether to revalue property under sub. (4), the department of revenue may examine the valuation of other property in the taxation district which is owned by the person filing the complaint.

(6) TAX COMPUTED ON REVALUED AMOUNT. The valuation fixed by the department of revenue under this section shall be substituted for the assessed value of the property shown on the tax roll, and the tax shall be computed on the amount of the valuation determined by the department of revenue.

(7) DELAY IN REVALUATION. (a) If the department of revenue has not completed the revaluation prior to the time established by a taxation district for fixing its tax rate, the taxation district shall base its tax rate on the total value of property contained in the assessment roll, including property whose valuation is contested under this section.

(b) If the department of revenue has not completed the revaluation prior to the time of the tax levy, the tax upon property with respect to which the revaluation has not been completed shall be computed on the basis of the contested value of the property. The taxpayer shall pay in full the tax based upon the contested valuation. If the department of revenue reduces the valuation of the property, the taxpayer may file a claim under s. 70.511 (2) (b) for a refund of taxes resulting from the reduction in value.

(8) COSTS. If the department of revenue determines that no change in the assessment of the property is required, the costs related to the department's determination shall be paid by the department. If the department of revenue changes the property assessment, costs related to the department's determination that the assessment of that property should be changed, but not more than $300, shall be paid by the taxation district and shall be credited to the appropriation under s. 20.566 (2) (h). Past due accounts for costs shall be certified by the department of revenue on or before the 4th Monday of August of each year and included in the next apportionment of state special charges to local units of government.

(9) COUNTY ASSESSOR SYSTEM. In this section, for those taxation districts that are under a county assessor system, the term "local assessor" includes the county assessor and the term "board of review" includes the county board of review.

History: 1987 a. 27, 378; 1991 a. 39; 1995 a. 408.

Sections 70.47 (13), 70.85, and 74.37 provide the exclusive methods to challenge a municipality's bases for assessment of individual parcels. All require appeal to the board of review prior to court action. There is no alternative procedure to challenge an assessment's compliance with the uniformity clause. Hermann v. Town of Delavan, 215 Wis. 2d 370, 572 N.W.2d 855 (1998), 96–0171.

Wisconsin's Property Tax Assessment Appeal System. Ardern. Wis. Law. March 1996.

Over Assessed? Appealing Home Tax Assessments. McAdams. Wis. Law. July 2011.

70.855 State assessment of commercial property. (1) APPLICABILITY. The department of revenue shall assess real and personal property assessed as commercial property under s. 70.32 (2) (a) 2. if all of the following apply:

(a) The property owner and the governing body of the municipality where the property is located submit a written request to the department on or before March 1 of the year of the assessment to have the department assess the property owner's real and personal commercial property located in the municipality.

(b) The written request submitted under par. (a) specifies the items of personal property and parcels of real property for the department's assessment.

(c) The assessed value of the property owner's commercial property in the municipality in the previous year, as specified under par. (b), is at least $24,000,000.

(d) The assessed value of the property owner's commercial property in the municipality in the previous year, as specified under par. (b), represents at least 9 percent of the total assessed value of all property in the municipality.

(e) The property is located in a 4th class city.

(2) VALUATION. (a) The department of revenue shall determine the full market value of the property subject to the request under sub. (1). The department may request from the property owner or the municipality where the property is located any information that the department considers necessary to perform its duties under this section. Failure to submit the requested information to the department shall result in denial of any right of redetermination by the tax appeals commission by the party failing to provide the requested information.

(b) The department shall determine the value of the property subject to the request under sub. (1) no later than June 1 and shall provide written notice to the property owner and the governing body of the municipality of its findings and the value it has determined for the affected property.

(c) Appeal of the determination of the department under this subsection shall be made to the tax appeals commission.

(3) ASSESSOR DUTY. The assessor of the municipality where the property is located shall use the department's valuation of the property under sub. (2) for determining the property's value on the assessment roll, adjusted, to the best of the assessor's ability, to reflect the assessment ratio of other property located in the municipality.

(4) COSTS. (a) The department of revenue shall impose a fee on each municipality in which commercial property is assessed under this section equal to the cost of the department's assessment of that property under this section. Except as provided in par. (b), each municipality that is assessed a fee under this paragraph shall collect the amount of the fee as a special charge against the taxable property located in the municipality, except that no municipality may apply the special charge disproportionately to owners of commercial property relative to owners of other property.

(b) If the department of revenue does not receive the fee imposed on a municipality under par. (a) by March 31 of the year following the department's determination under sub. (2) (b), the department shall reduce the distribution made to the municipality under s. 79.02 (2) (b) by the amount of the fee and shall transfer that amount to the appropriation under s. 20.566 (2) (ga).

History: 2013 a. 20.

70.86 Descriptions, simplified system. The governing body of any city, village or town may at its option adopt a simplified system of describing real property in either the assessment roll or the tax roll or in both the assessment roll and tax roll of such city, village or town, and may from time to time amend or change such simplified system. Descriptions in property tax bills shall be as provided under s. 74.09 (3) (a).

History: 1987 a. 378; 1993 a. 246.

70.99 County assessor. (1) A county assessor system may be established for any county by passage of a resolution or ordinance adopting such a system by an approving vote of 60 percent of the entire membership of the county board. After passage of this enabling resolution or ordinance by the county board, the county executive, or the county administrator, or the chairperson of the county board with the approval of the county board, shall appoint a county assessor from a list of candidates provided by the department of revenue who have passed an examination and have been certified by the department of revenue as qualified for performing the functions of the office. Certification shall be granted to all persons demonstrating proficiency by passing an examination administered by the department. The persons selected for listing shall first have been given a comprehensive examination, approved by the department of revenue, relating to the work of county assessor. A person appointed as county assessor shall thereafter have permanent tenure, after successfully serving the probationary period in effect in the county, and may be removed or suspended only for the reasons named in s. 17.14 (1) or for such cause as would sustain the suspension or removal of a state employee under state civil service rules. If employees of a county are under a county civil service program, the county assessor may, and any person appointed as a member of his or her staff shall, be incorporated into the county civil service program but tenure is dependent on the foregoing provision.

(1m) Upon request of a county that is considering the creation of an assessment system under this section, the department of revenue may study the feasibility of that creation. The county shall reimburse the department for the costs of the study.

(3) (a) The division of personnel management in the department of administration shall recommend a reasonable salary range for the county assessor for each county based upon pay for comparable work or qualifications in that county. If, by contractual agreement under s. 66.0301, 2 or more counties join to employ one county assessor with the approval of the secretary of revenue, the division of personnel management shall recommend a reasonable salary range for the county assessor under the agreement. The department of revenue shall assist the county in establishing the budget for the county assessor's offices, including the number of personnel and their qualifications, based on the anticipated workload.

(b) The department of revenue shall establish levels of proficiency for all appraisal personnel to be employed in offices of county assessors.

(5) The county assessor and the county assessor's staff shall be supplied suitable quarters, equipment and supplies by the county.

(6) In respect of any assessment made by a county assessor, the county assessor shall perform all the functions and acts heretofore required to be performed by the local assessor of the taxation district and shall have the same authority, responsibility and status, privileges and obligations of the assessor the county assessor displaces, except as clearly inconsistent with this section.

(7) The county assessor may designate one member of the county assessor's staff as deputy county assessor who shall have full power to act for the county assessor in the event of the inability

of the county assessor to act through absence, incapacity, resignation or otherwise.

(8) Each city, town and village assessor duly appointed or elected and qualified to make the assessment for a city, town or village shall continue in office for all purposes of completing the functions of assessor with respect to such current year's assessment, but is divested of all authority in respect to the January 1 assessment that comes under the jurisdiction of the county assessor.

(9) In making the first assessment of any city, town or village the county assessor shall equalize the assessment of property within each taxation district. Thereafter, the county assessor shall revalue each year as many taxation districts under the county assessor's jurisdiction within the county as the county assessor's available staff will permit so as to bring and maintain each such taxation district at a full value assessment. The county assessor shall proceed with such work so as to complete the revaluation of all taxation districts under the county assessor's jurisdiction within 4 years. Such revaluation shall be made according to the procedures and manuals established by the department of revenue for the use of assessors.

(10) (a) There shall be one board of review for each county under the county assessor system. The board of review in any county having a county executive shall be appointed by the county executive from the cities or villages or towns under the county assessor. The board of review of all other counties shall be appointed by the chairperson of the county board from the tax districts under the county assessor. County board of review appointments in all counties shall be subject to approval by the county board. The board of review shall have 5 to 9 members, no more than 2 of whom may reside in the same city, town or village, and shall hold office as members of said board for staggered 5−year terms and until their successors are appointed and qualified. In counties other than Milwaukee County at least one member shall be from a town. The compensation and reimbursement of expenses of members of the board of review shall be fixed by the county board and shall be borne by the county. Each such board of review shall appoint one of its members present at the hearing as clerk and such clerk shall keep an accurate record of its proceedings. The provisions of s. 70.47, not in conflict with this section, shall be applicable to procedure for review of assessments by county boards of review and to appeals from determinations of county boards of review.

(b) Two members of the board of review may hold the hearing of the evidence but a majority of the board members must be present to constitute a quorum at the meeting at which the determination of the issue is made. A majority vote of the quorum shall constitute the determination. In the event there is a tie vote, the assessor's valuation shall be sustained.

(c) A board member may not be counted in determining a quorum and may not vote concerning any determination unless, concerning such determination, such member:

1. Attended the hearing of the evidence; or

2. Received the transcript of the hearing no less than 5 days prior to the meeting and read such transcript; or

3. Received a mechanical recording of the evidence no less than 5 days prior to the meeting and listened to such recording; or

4. Received a copy of a summary and all exceptions thereto no less than 5 days prior to the meeting and read such summary and exceptions. In this subdivision "summary" means a written summary of the evidence prepared by one or more board members attending the hearing of evidence, which summary shall be distributed to all board members and all parties to the contested assessment and "exceptions" means written exceptions to the summary of evidence filed by parties to the contested assessment.

(10m) The county board may by resolution establish a county board of assessors, which board shall be comprised of the county assessor or the deputy county assessor and such other members of the county assessor's staff as the county assessor annually designates. If so established the county board of assessors shall investigate any objection referred to it by direction of the county board of review. The county board of assessors shall, after having made the investigation notify the person assessed or that person's agent of its determination by first class mail, and a copy of such determination shall be transmitted to the county board of review. The person assessed having been notified of the determination of the county board of assessors shall be deemed to have accepted such determination unless that person notifies the county assessor in writing, within 10 days, of that person's desire to present testimony before the county board of review.

(10p) In counties that enter into a compact for a county assessor system, the board of review shall consist of 2 members appointed by each county with one additional member appointed by the county having the greatest full value.

(11) The county assessor shall annually submit a budget request for funds to cover the operation of the county assessor system for the ensuing year to the county office responsible for preparing the county budget.

(13) (a) 1. The department of revenue shall prescribe the due dates, the forms, and the format of information transmitted by the county assessor to the department as to the assessment of property and any other information that may be needed in the department's work. The department of revenue shall also prescribe the form of assessment rolls, forms, books, and returns required for the assessment and collection of general property taxes by the county. The county shall submit material on or before the due dates that the department prescribes and shall use all of the material that the department prescribes.

2. The department of revenue shall design and make available to any county, basic computer programs for the preparation of assessment rolls, tax rolls and tax receipts which are deemed necessary by the secretary of revenue to the utilization of automatic data processing in the administration of the property tax.

(b) The department of revenue shall prescribe minimum specifications for assessment maps. Any county whose assessment maps do not meet the department's specifications at the time of converting to the county assessment system shall have 4 years from the first countywide January 1 assessment date to bring its maps in conformance with the department's specifications.

(c) The department of revenue shall determine the minimum number of staff members required for each county assessor's office and the level of certification under sub. (3) required for each position.

(d) In order to effect the orderly transition of local property assessment to the county assessor system, as soon as practicable after the effective date of the resolution or ordinance adopting such system, all assessment records, books, maps, aerial photographs, appraisal cards and any other data currently in the possession of any town, village or city shall be made available to and become the property of the county assessor.

(14) A county may discontinue a county assessor system by passage of a resolution or ordinance by an approving vote of a majority of the entire membership of the county board. The effective date of the resolution or ordinance shall be December 31. A county shall, on or before October 31 of the year when the resolution or ordinance is effective, notify all municipalities in the county of its intent to discontinue its county assessor system. As soon as practicable after the effective date of the resolution or ordinance, the county shall transfer to the proper municipality all assessment records, books, maps, aerial photographs, appraisal cards and other assessment data in its possession.

History: 1971 c. 40 s. 93; 1973 c. 90; 1975 c. 427; 1977 c. 29 ss. 1646 (3), 1647 (15); 1977 c. 196 s. 130 (10); 1977 c. 273; 1979 c. 34 s. 2102 (58) (a); 1979 c. 177, 221; 1981 c. 20; 1983 a. 27 s. 2200 (15); 1983 a. 192 s. 303 (2); 1987 a. 27; 1989 a. 31; 1991 a. 316; 1993 a. 16; 1995 a. 27; 1997 a. 253; 1999 a. 150 s. 672; 2001 a. 107; 2003 a. 33 ss. 1558, 9160; 2015 a. 55.

The constitutionality of this section is upheld. This section does not allow county boards to appoint officers of cities, towns, and villages in violation of art. IV, sec. 23, illegally deprive villages and cities of the right to determine their own affairs in violation of art. XI, sec. 3, or create a nonuniform system of town government in violation

of art. XIII, s. 9. Thompson v. Kenosha County, 64 Wis. 2d 673, 221 N.W.2d 845 (1973).

This section must be read in conjunction with s. 70.32 (1). Kaskin v. Kenosha Board of Review, 91 Wis. 2d 272, 282 N.W.2d 620 (Ct. App. 1979).

The offices of county assessor and town supervisor are compatible. 63 Atty. Gen. 599.

70.995 State assessment of manufacturing property.

(1) APPLICABILITY. (a) In this section "manufacturing property" includes all lands, buildings, structures and other real property used in manufacturing, assembling, processing, fabricating, making or milling tangible personal property for profit. Manufacturing property also includes warehouses, storage facilities and office structures when the predominant use of the warehouses, storage facilities or offices is in support of the manufacturing property, and all personal property owned or used by any person engaged in this state in any of the activities mentioned, and used in the activity, including raw materials, supplies, machinery, equipment, work in process and finished inventory when located at the site of the activity. Establishments engaged in assembling component parts of manufactured products are considered manufacturing establishments if the new product is neither a structure nor other fixed improvement. Materials processed by a manufacturing establishment include products of agriculture, forestry, fishing, mining and quarrying. For the purposes of this section, establishments which engage in mining metalliferous minerals are considered manufacturing establishments.

(b) Materials used by a manufacturing establishment may be purchased directly from producers, obtained through customary trade channels or secured without recourse to the market by transfer from one establishment to another under the same ownership. Manufacturing production is usually carried on for the wholesale market, for interplant transfer or to order for industrial users rather than for direct sale to a domestic consumer.

(c) Manufacturing shall not include the following agricultural activities:

1. Processing on farms if the raw materials are grown on the farm.
2. Custom gristmilling.
3. Threshing and cotton ginning.

(d) Except for the activities under sub. (2), activities not classified as manufacturing in the standard industrial classification manual, 1987 edition, published by the U.S. office of management and budget are not manufacturing for this section.

(2) FURTHER CLASSIFICATION. In addition to the criteria set forth in sub. (1), property shall be deemed prima facie manufacturing property and eligible for assessment under this section if it is included in one of the following major group classifications set forth in the standard industrial classification manual, 1987 edition, published by the U.S. office of management and budget. For the purposes of this section, any other property described in this subsection shall also be deemed manufacturing property and eligible for assessment under this section:

(a) 10 — Metal mining.

(b) 14 — Mining and quarrying of nonmetallic minerals, except fuels.

(c) 20 — Food and kindred products.

(d) 21 — Tobacco manufacturers.

(e) 22 — Textile mill products.

(f) 23 — Apparel and other finished products made from fabrics and similar materials.

(g) 24 — Lumber and wood products, except furniture.

(h) 25 — Furniture and fixtures.

(i) 26 — Paper and allied products.

(j) 27 — Printing, publishing and allied industries.

(k) 28 — Chemicals and allied products.

(L) 29 — Petroleum refining and related industries.

(m) 30 — Rubber and miscellaneous plastic products.

(n) 31 — Leather and leather products.

(o) 32 — Stone, clay, glass and concrete products.

(p) 33 — Primary metal industries.

(q) 34 — Fabricated metal products, machinery and transportation equipment.

(r) 35 — Machinery, except electrical.

(s) 36 — Electrical and electronic machinery, equipment and supplies.

(t) 37 — Transportation equipment.

(u) 38 — Measuring, analyzing and controlling instruments; photographic, medical and optical goods; watches and clocks.

(v) 39 — Miscellaneous manufacturing industries.

(w) 7384 — Photofinishing laboratories.

(x) Scrap processors using large machines processing iron, steel or nonferrous scrap metal and whose principal product is scrap iron and steel or nonferrous scrap metal for sale for remelting purposes.

(y) Processors of waste paper, fibers or plastics using large machines for recycling purposes.

(z) Hazardous waste treatment facility, as defined in s. 291.01 (22), unless exempt under s. 70.11 (21).

(3) For purposes of subs. (1) and (2) "manufacturing, assembling, processing, fabricating, making or milling" includes the entire productive process and includes such activities as the storage of raw materials, the movement thereof to the first operation thereon, and the packaging, bottling, crating or similar preparation of products for shipment.

(4) Whenever real property or tangible personal property is used for one, or some combination, of the processes mentioned in sub. (3) and also for other purposes, the department of revenue, if satisfied that there is substantial use in one or some combination of such processes, may assess the property under this section. For all purposes of this section the department of revenue shall have sole discretion for the determination of what is substantial use and what description of real property or what unit of tangible personal property shall constitute "the property" to be included for assessment purposes, and, in connection herewith, the department may include in a real property unit, real property owned by different persons. Vacant property designed for use in manufacturing, assembling, processing, fabricating, making or milling tangible property for profit may be assessed under this section or under s. 70.32 (1), and the period of vacancy may not be the sole ground for making that determination. In those specific instances where a portion of a description of real property includes manufacturing property rented or leased and operated by a separate person which does not satisfy the substantial use qualification for the entire property, the local assessor shall assess the entire real property description and all personal property not exempt under s. 70.11 (27). The applicable portions of the standard manufacturing property report form under sub. (12) as they relate to manufacturing machinery and equipment shall be submitted by such person.

(5) The department of revenue shall assess all property of manufacturing establishments included under subs. (1) and (2) as of the close of January 1 of each year, if on or before March 1 of that year the department has classified the property as manufacturing or the owner of the property has requested, in writing, that the department make such a classification and the department later does so. A change in ownership, location, or name of the manufacturing establishment does not necessitate a new request. In assessing lands from which metalliferous minerals are being extracted and valued for purposes of the tax under s. 70.375, the value of the metalliferous mineral content of such lands shall be excluded.

(6) Prior to February 15 of each year the department of revenue shall notify each municipal assessor of the manufacturing property within the taxation district that, as of that date, will be assessed by the department during the current assessment year.

(7) (a) Each manufacturing property assessed by the department of revenue shall be entered on a state manufacturing prop-

erty assessment roll for each municipality that has manufacturing property as set forth in subs. (1) and (2). Notification of the individual manufacturing property assessments contained in the roll shall be furnished by the department to the municipal clerk.

(b) Each 5 years, or more frequently if the department of revenue's workload permits and if in the department's judgment it is desirable, the department of revenue shall complete a field investigation or on−site appraisal at full value under ss. 70.32 (1) and 70.34 of all manufacturing property in this state.

(8) (a) The secretary of revenue shall establish a state board of assessors, which shall be comprised of the members of the department of revenue whom the secretary designates. The state board of assessors shall investigate any timely objection filed under par. (c) or (d) if the fee under that paragraph is paid. The state board of assessors, after having made the investigation, shall notify the person assessed or the person's agent and the appropriate municipality of its determination by 1st class mail or electronic mail. Beginning with objections filed in 1989, the state board of assessors shall make its determination on or before April 1 of the year after the filing. If the determination results in a refund of property taxes paid, the state board of assessors shall include in the determination a finding of whether the refund is due to false or incomplete information supplied by the person assessed. The person assessed or the municipality having been notified of the determination of the state board of assessors shall be deemed to have accepted the determination unless the person or municipality files a petition for review with the clerk of the tax appeals commission as provided in s. 73.01 (5) and the rules of practice promulgated by the commission. If an assessment is reduced by the state board of assessors, the municipality affected may file an appeal seeking review of the reduction, or may, within 30 days after the person assessed files a petition for review, file a cross−appeal, before the tax appeals commission even though the municipality did not file an objection to the assessment with the board. If the board does not overrule a change from assessment under this section to assessment under s. 70.32 (1), the affected municipality may file an appeal before the tax appeals commission. If an assessment is increased by the board, the person assessed may file an appeal seeking review of the increase, or may, within 30 days after the municipality files a petition for review, file a cross−appeal, before the commission even though the person did not file an objection to the assessment with the board.

(b) 1. The department of revenue shall annually notify each manufacturer assessed under this section and the municipality in which the manufacturing property is located of the full value of all real and personal property owned by the manufacturer. The notice shall be in writing and shall be sent by 1st class mail or electronic mail. In addition, the notice shall specify that objections to valuation, amount, or taxability must be filed with the state board of assessors no later than 60 days after the date of the notice of assessment, that objections to a change from assessment under this section to assessment under s. 70.32 (1) must be filed no later than 60 days after the date of the notice, that the fee under par. (c) 1. or (d) must be paid and that the objection is not filed until the fee is paid. For purposes of this subdivision, an objection is considered timely filed if received by the state board of assessors no later than 60 days after the date of the notice or sent to the state board of assessors by certified mail in a properly addressed envelope, with postage paid, that is postmarked before midnight of the last day for filing. A statement shall be attached to the assessment roll indicating that the notices required by this section have been mailed and failure to receive the notice does not affect the validity of the assessments, the resulting tax on real or personal property, the procedures of the tax appeals commission or of the state board of assessors, or the enforcement of delinquent taxes by statutory means.

2. If a municipality files an objection to the amount, valuation, taxability, or change from assessment under this section and the person assessed does not file an objection, the person assessed may file an appeal within 15 days after the municipality's objection is filed.

(c) 1. All objections to the amount, valuation, taxability, or change from assessment under this section to assessment under s. 70.32 (1) of property shall be first made in writing on a form prescribed by the department of revenue that specifies that the objector shall set forth the reasons for the objection, the objector's estimate of the correct assessment, and the basis under s. 70.32 (1) for the objector's estimate of the correct assessment. An objection shall be filed with the state board of assessors within the time prescribed in par. (b) 1. A $45 fee shall be paid when the objection is filed unless a fee has been paid in respect to the same piece of property and that appeal has not been finally adjudicated. The objection is not filed until the fee is paid. Neither the state board of assessors nor the tax appeals commission may waive the requirement that objections be in writing. Persons who own land and improvements to that land may object to the aggregate value of that land and improvements to that land, but no person who owns land and improvements to that land may object only to the valuation of that land or only to the valuation of improvements to that land.

2. A manufacturer who files an objection under subd. 1. may file supplemental information to support the manufacturer's objection no later than 60 days from the date the objection is filed. The state board of assessors shall notify the municipality in which the manufacturer's property is located of supplemental information filed by the manufacturer under this subdivision, if the municipality has filed an appeal related to the objection.

(d) A municipality may file an objection with the state board of assessors to the amount, valuation, or taxability under this section or to the change from assessment under this section to assessment under s. 70.32 (1) of a specific property having a situs in the municipality, whether or not the owner of the specific property in question has filed an objection. Objection shall be made on a form prescribed by the department and filed with the board within the time prescribed in par. (b) 1. If the person assessed files an objection and the municipality affected does not file an objection, the municipality affected may file an appeal to that objection within 15 days after the person's objection is filed. A $45 filing fee shall be paid when the objection is filed unless a fee has been paid in respect to the same piece of property and that appeal has not been finally adjudicated. The objection is not filed until the fee is paid. The board shall forthwith notify the person assessed of the objection filed by the municipality.

(dm) The department shall refund filing fees paid under par. (c) 1. or (d) if the appeal in respect to the fee is denied because of lack of jurisdiction.

(e) Upon completion of and review by the tax appeals commission and receipt of the statement of assessments required under s. 70.53, the department of revenue shall be responsible for equating all full−value manufacturing property assessments entered in the manufacturing property assessment roll to the general level of assessment of all other property within the individual taxation district. Thereafter, the manufacturing property assessment roll shall be delivered to the municipal clerk and annexed to the municipal assessment roll containing all other property.

(f) No manufacturing property assessment may be reviewed in a proceeding under s. 70.75 or 70.85, but such assessment may be reviewed in reassessment proceedings under s. 70.75 (1).

Cross−reference: See also ch. TA 1, Wis. adm. code.

(9) Any aggrieved party may appeal a determination by the tax appeals commission under sub. (8) to the circuit court for Dane County under s. 73.015 or to the circuit court for the county where the taxpayer's commercial domicile, as defined in s. 71.01 (1b), is located, where the taxpayer owns other property, or where the taxpayer transacts business in this state.

(10) Municipalities, and counties with a county assessor system, shall have access to all manufacturing property for the pur-

pose of making appraisals of valuation of such property and may employ appraisal personnel, who need not be certified under s. 70.05 (4), for such purpose.

(11) If any county appoints a county assessor under s. 70.99, the department of revenue shall nevertheless assess the property described in subs. (1) and (2) and shall continue to assess such property when required by this section, and the notice to the municipal assessor required by sub. (6) shall, in such case be made directly to the county assessor.

(12) (a) The department of revenue shall prescribe a standard manufacturing property report form that shall be submitted annually for each real estate parcel and each personal property account on or before March 1 by all manufacturers whose property is assessed under this section. The report form shall contain all information considered necessary by the department and shall include, without limitation, income and operating statements, fixed asset schedules and a report of new construction or demolition. Failure to submit the report shall result in denial of any right of redetermination by the state board of assessors or the tax appeals commission. If any property is omitted or understated in the assessment roll in any of the next 5 previous years, the assessor shall enter the value of the omitted or understated property once for each previous year of the omission or understatement. The assessor shall affix a just valuation to each entry for a former year as it should have been assessed according to the assessor's best judgment. Taxes shall be apportioned and collected on the tax roll for each entry, on the basis of the net tax rate for the year of the omission, taking into account credits under s. 79.10. In the case of omitted property, interest shall be added at the rate of 0.0267 percent per day for the period of time between the date when the form is required to be submitted and the date when the assessor affixes the just valuation. In the case of underpayments determined after an objection under s. 70.995 (8) (d), interest shall be added at the average annual discount interest rate determined by the last auction of 6−month U.S. treasury bills before the objection per day for the period of time between the date when the tax was due and the date when it is paid.

(b) The department of revenue shall allow an extension to April 1 of the due date for filing the report forms required under par. (a) if a written application for an extension, stating the reason for the request, is filed with the department on or before March 1.

(c) Unless the taxpayer shows that the failure is due to reasonable cause, if a taxpayer fails to file any form required under par. (a) for property that the department of revenue assessed during the previous year by the due date or by any extension of the due date that has been granted, the taxpayer shall pay to the department of revenue a penalty of $25 if the form is filed 1 to 10 days late; $50 or 0.05 percent of the previous year's assessment, whichever is greater, but not more than $250, if the form is filed 11 to 30 days late; and $100 or 0.1 percent of the previous year's assessment, whichever is greater, but not more than $750, if the form is filed more than 30 days late. Penalties are due 30 days after they are assessed and are delinquent if not paid on or before that date. The department may refund all or part of any penalty it assesses under this paragraph if it finds reasonable grounds for late filing.

(d) Sections 71.82 (2) (a) and 71.91 (4) to (6), as they apply to the taxes under ch. 71, apply to the penalties under par. (c).

(12m) Any property assessment increased by the reviewing authority under s. 70.511 shall be entered in the assessment roll as prescribed under sub. (12).

(12r) The department of revenue shall calculate the value of property that is used in manufacturing, as defined in this section, and that is exempt under s. 70.11 (39) and (39m).

(13) In the sections of this chapter relating to assessment of property, when the property involved is a manufacturing property subject to assessment under this section, the terms "local assessor" or "assessor" shall be deemed to refer also to the department of revenue except as provided in sub. (10).

(14) (a) Beginning with the property tax assessments as of January 1, 2003, the department of revenue shall annually impose on each municipality in which manufacturing property is located a fee in an amount that is equal to the equalized value of the manufacturing property located in the municipality multiplied by a rate that is determined annually by the department so that the total amount collected under this paragraph is sufficient to pay for 50 percent of the budgeted costs to the department in the current state fiscal year associated with the assessment of manufacturing property under this section. Except as provided in par. (b), each municipality that is assessed a fee under this paragraph shall collect the amount of the fee as a special charge against the taxable property located in the municipality, except that no municipality may apply the special charge disproportionately to owners of manufacturing property relative to owners of other property.

(b) If the department of revenue does not receive the fee imposed on a municipality under par. (a) by March 31 of each year, the department shall reduce the distribution made to the municipality under s. 79.02 (2) (b) by the amount of the fee.

History: 1973 c. 90, 283, 333; 1975 c. 39, 144, 199, 200, 213, 224; 1977 c. 29 ss. 776 to 782, 1646 (3), 1647 (5m), 1656 (38); 1977 c. 31, 142, 272; 1977 c. 300 ss. 7, 8; 1977 c. 328, 377, 418, 447; 1979 c. 34 ss. 883m, 2102 (39) (g); 1979 c. 221; 1981 c. 20; 1983 a. 27; 1983 a. 275 s. 15 (8); 1985 a. 29; 1985 a. 120 s. 3202 (46); 1987 a. 27, 196, 399; 1989 a. 31; 1991 a. 39, 269; 1993 a. 307, 391; 1995 a. 227, 408; 1997 a. 35, 237, 250; 1999 a. 32; 2001 a. 16, 109; 2003 a. 33, 170; 2013 a. 20, 54.

Cross−reference: See also s. Tax 12.10, Wis. adm. code.

The board of assessors committed jurisdictional error by disregarding market adjustments that were not disputed during assessment review proceedings. This section does not contravene either the uniform taxation or equal protection clauses. Fort Howard Paper Co. v. Wisconsin Lake District Board, 82 Wis. 2d 491, 263 N.W.2d 172 (1978).

Sub. (1) (a) does not include all structures used predominantly in support of manufacturing as manufacturing property but limits qualifying support structures to warehouses, storage facilities, and office structures. Sub. (2) defines activities or industries that are considered manufacturing but does not create a category of manufacturing property independent of sub. (1) (a). S.C. Johnson, Inc. v. DOR, 202 Wis. 2d 714, 552 N.W.2d 102 (Ct. App. 1996), 95−3215.

If a business does not fit within a category listed in the manual under sub. (1) or is not listed under sub. (2), the assessment manual may be looked to, to determine if property is manufacturing property. The manual provides that the general definition under sub. (1) (a) and (b) is to be considered and supplies 3 questions to be used in applying the definition. Zip Sort, Inc. v. DOR, 2001 WI App 185, 247 Wis. 2d 295, 634 N.W.2d 99, 00−2824.

That the taxpayer was a wholesaler of fresh fruits and vegetables did not mean that its ripening chambers could not qualify as manufacturing property under this section. The 1987 SIC Manual, and not subsequently revised versions of the manual, must be followed under sub. (2) until the legislature directs otherwise. When the taxpayer's activities did not fit squarely into a particular SIC Manual category, the commission then reasonably looked to the general definition of manufacturing in the SIC Manual to assist it in classifying the facility. DOR v. A. Gagliano Co., Inc. 2005 WI App 170, 284 Wis. 2d 741, 702 N.W.2d 834, 03−3538.

CHAPTER 74

PROPERTY TAX COLLECTION

NOTE: 1987 Wisconsin Act 378, which repealed and recreated Chapter 74, contains notes explaining the revision.

SUBCHAPTER I

DEFINITIONS

74.01 Definitions. In this chapter:

(1) "General property taxes" means taxes levied upon general property, as defined in s. 70.02, and measured by the property's value.

(2) "Proportionate share of general property taxes", for any taxing jurisdiction, means the amount resulting from multiplying the total general property tax levy of the taxing jurisdiction, as reflected in the tax roll, by the percentage which results from dividing:

(a) The amount of general property taxes collected by the taxation district treasurer or county treasurer, through the last day of the month preceding the date upon which settlement is required, minus amounts previously settled or settled in full, by

(b) The amount of the total general property taxes levied on the taxation district tax roll.

(3) "Special assessment" means an amount entered in the tax roll as an assessment against real property to compensate for all or part of the costs of public work or improvements which benefit the property. "Special assessment" includes any interest and penalties assessed for nonpayment of the special assessment before it is placed in the tax roll.

(4) "Special charge" means an amount entered in the tax roll as a charge against real property to compensate for all or part of the costs to a public body of providing services to the property. "Special charge" includes any interest and penalties assessed for nonpayment of the special charge before it is placed in the tax roll. "Special charge" also includes penalties under s. 70.995 (12).

(5) "Special tax" means any amount entered in the tax roll which is not a general property tax, special assessment or special charge. "Special tax" includes any interest and penalties assessed for nonpayment of the tax before it is placed in the tax roll and any charge under s. 287.093 (1) (a) 2. that is placed on the tax roll under s. 287.093 (2).

(6) "Taxation district" means a city, village or town or, if a city or village lies in more than one county, that portion of the city or village which lies within a county.

(7) "Taxing jurisdiction" means any entity authorized by law to levy taxes on general property which is located within its boundaries.

History: 1987 a. 378; 1989 a. 335; 1999 a. 150 s. 672.

SUBCHAPTER II

COMMENCEMENT OF COLLECTION PROCESS

74.03 Delivery of tax rolls. (1) Except as provided in sub. (2), the clerk of the taxation district shall transfer the tax roll, prepared under s. 70.65, to the treasurer of the taxation district by December 8.

(2) The clerk of the taxation district shall transfer the tax roll, prepared under s. 70.65, to the treasurer of the taxation district by the 3rd Monday in December if the taxation district has in effect a policy under which it issues a check for the excess of the amount escrowed by a taxpayer and paid to the taxation district by December 31 over the amount of taxes due within 15 business days after the amount is paid to the taxation district.

History: 1987 a. 378; 1997 a. 315.

74.05 Correction of tax roll information. (1) DEFINITION. In this section, "error in the tax roll" means an error in the description of any real or personal property, in the identification of the owner or person to whom the property is assessed or in the amount of the tax or an error resulting from a palpably erroneous entry in the assessment roll.

(2) DUTY TO CORRECT. If the taxation district treasurer discovers an error in the tax roll after the tax roll has been transferred under s. 74.03, the clerk of the taxation district shall correct the error. The clerk shall keep a record identifying the place on the tax roll where each correction is made, briefly describing the correction and specifying the date when the correction was made.

History: 1987 a. 378.

74.07 Treasurers responsible for collection. The taxation district treasurer and the county treasurer shall collect the general property taxes, special assessments, special taxes and special charges shown in the tax roll.

History: 1987 a. 378.

74.09 Property tax bill and related information. (1) DEFINITION. In this section, "estimated fair market value" means a property's assessed value divided by the assessment ratio of all of the taxable property in the taxation district where the property is located.

(2) PREPARATION. The clerk of the taxation district shall prepare the real and personal property tax bills. The form of the property tax bill shall be prescribed by the department of revenue and shall be uniform.

(3) REQUIRED INFORMATION. The property tax bill shall:

(a) Include the real property description shown in the tax roll. If the description in the tax roll is longer than the space provided for it on the property tax bill, the bill may include as a substitute for the complete description as much of the description as fits in the space. If an incomplete description is used, the bill shall include a notice to that effect and to the effect that the complete description is contained in the tax roll and may be reviewed.

(b) Except as provided in sub. (3m), show all of the following:

1. For real property, the estimated fair market value of the land, except agricultural land, as defined in s. 70.32 (2) (c) 1g., and the assessed value of the land and the estimated fair market value and assessed value of the improvements.

2. For all property, the total estimated fair market value, except that the estimated fair market value of agricultural land, as defined in s. 70.32 (2) (c) 1g., shall be excluded, and the total assessed value.

3. The tax levied on the property by the school district where the property is located minus the credit under s. 79.10 (4) allocable to the property, for the previous year and the current year, and the percentage change in that net tax between those years.

4. The tax levied on the property by each taxing jurisdiction where the property is located, other than the school district, for the previous year and the current year, and the percentage change in each of those taxes between those years.

5. The sum of the taxes levied under subds. 3. and 4. for the previous year and the current year, and the percentage change in that sum between those years.

6. The amount of the credit under s. 79.10 (5) allocable to the property for the previous year and the current year, and the percentage change between those years.

6m. The amount of the credit under s. 79.10 (5m) allocable to the property for the previous year and the current year, and the percentage change between those years.

7. The amount obtained by subtracting the amounts under subds. 6. and 6m. from the amount under subd. 5., for the previous year and the current year, and the percentage change in that amount between those years.

8. The net tax rate for the property.

(d) Indicate whether there are delinquent general property taxes, special taxes, special charges or special assessments allocable to the property.

(db) 1. Indicate, in a section of the bill that is separate from the billing information, the total amount of tax levied by a taxing jurisdiction on all property of the taxing jurisdiction and on the property for which the bill is prepared that is the result of a referendum to exceed, on a nonpermanent basis, a school district revenue limit, a technical college district revenue limit, or a county or municipal levy limit and indicate the year in which the authorization to exceed the limit no longer applies. A separate listing is required for each such authorization.

2. Indicate, in a section of the bill that is separate from the billing information, the total amount of the tax levied by a town on all property of the town and on the property for which the bill is prepared that is the result of the town voting at a town meeting to exceed its levy limit, on a nonpermanent basis, and indicate the year in which the authorization to exceed the limit no longer applies. A separate listing is required for each such authorization.

3. This paragraph applies to increases in revenue and tax levy limits approved after December 31, 2014, and to property tax bills sent in December 2015, and in each December thereafter.

(dm) Indicate the amount of assessment issued by a drainage board, based on the information provided under s. 88.212 (3). If no assessment was issued, the property tax bill shall indicate that information.

(f) Include a notice, prescribed by the department of revenue, of the property tax credits available to taxpayers.

(g) Include a notice to the effect that the person to whom the bill is sent may request that a copy of the tax receipt prepared under s. 74.19 be mailed to that person. This paragraph does not apply if the taxation district mails or tenders a tax receipt prepared under s. 74.19 in all cases of payment of taxes.

(h) State when the taxes are due and to whom they shall be paid.

(3m) INFORMATION EXCEPTION. If the property has a different parcel identification number for the current year than it had for the previous year or if the property is not substantially the same in those years, the property tax bill need not indicate any tax allocable to the property for the previous year or the percentage change in any tax allocable to the property between the previous year and the current year.

(4m) REQUIRED BILL, WAIVER. Each taxation district shall use a property tax bill that the department of revenue prescribes unless that department permits the district to use another bill that provides the information under sub. (3).

(5) MAILING. Each taxing jurisdiction located in the taxation district shall submit all information related to the taxing jurisdiction's property tax levy to the taxation district no later than December 1. No later than the 3rd Monday in December, the taxation district clerk or the clerk's designee shall mail the property tax bill to each property taxpayer of the taxation district or the taxpayer's designee. If the property tax bill is mailed to the taxpayer's designee, the designee shall furnish the taxpayer with a copy of the bill. Failure to meet the deadline under this subsection is not a violation of s. 946.12 (1).

(6) EFFECT OF FAILURE TO RECEIVE. Failure to receive a property tax bill does not affect the validity of the general property taxes, special taxes, special charges and special assessments levied or the collection of delinquent general property taxes, special taxes, special charges and special assessments.

History: 1987 a. 378; 1989 a. 31; 1991 a. 39, 60; 1993 a. 399; 1995 a. 27, 454; 1997 a. 27; 2003 a. 33, 95; 2007 a. 20, 121; 2015 a. 55.

Cross−reference: See also s. Tax 12.073, Wis. adm. code.

74.10 Agreements on payments. A county and a taxation district in that county may contract under s. 66.0301 for the county to receive all payments of property taxes for which the taxation district has sent bills under s. 74.09. A contract under this section

may provide for reimbursement to the county of its expenses and shall provide for prompt deposit of the amounts collected into an account of the taxation district and for possession by the taxation district of the interest credited to that account.

History: 1991 a. 39; 1999 a. 150 s. 672.

SUBCHAPTER III

PAYMENT OF TAXES

74.11 Dates for payment of taxes, special assessments and special charges. (1) APPLICABILITY. General property taxes, special assessments, special charges and special taxes collectible under this chapter are payable as provided in this section, except as provided in ss. 74.12, 74.125, and 74.87.

(2) REAL PROPERTY AND LEASED IMPROVEMENT TAXES. All taxes on real property and on improvements on leased land shall be paid in one of the following ways:

(a) In full on or before January 31.

(b) In 2 equal installments, unless subject to sub. (5), with the first installment payable on or before January 31 and the 2nd installment payable on or before July 31.

(3) SPECIAL ASSESSMENTS, SPECIAL CHARGES AND OTHER TAXES. All special assessments, special charges and special taxes that are placed in the tax roll shall be paid in full on or before January 31, except that the governing body of a taxation district may, by ordinance, on or before August 15 of the year before the ordinance is effective, authorize the payment of special assessments in installments. That ordinance shall specify that special assessments are due on the same dates and in the same percentages as installments of real property taxes and that if the total special assessment is less than $100, it shall be paid in full on or before January 31.

(4) PERSONAL PROPERTY TAXES. All taxes on personal property, except those on improvements on leased land, shall be paid in full on or before 5 working days after January 31.

(5) WHEN NO INSTALLMENTS. If the total real property tax levied on a parcel of property is less than $100, or if the total property tax levied on an improvement on leased land is less than $100, it shall be paid in full on or before January 31.

(6) TO WHOM PAYMENTS MADE. (a) Payments made on or before January 31 and payments of taxes on improvements on leased land that are assessed as personal property shall be made to the taxation district treasurer.

(b) All other payments shall be made to the county treasurer.

(7) DELINQUENT FIRST INSTALLMENT. If the first installment of taxes on real property or improvements on leased land is not paid on or before 5 working days after January 31, the entire amount of the taxes remaining unpaid is delinquent as of February 1.

(8) DELINQUENT 2ND INSTALLMENT. If the 2nd installment of taxes on real property or improvements on leased land is not paid on or before 5 working days after July 31, the entire amount of the taxes remaining unpaid is delinquent as of August 1 and interest and penalties are due under sub. (11).

(10) DELINQUENT ANNUAL PAYMENT. (a) If all special assessments, special charges, special taxes and personal property taxes due under sub. (3) or (4) are not paid in full on or before the due date, the amounts unpaid are delinquent as of the day after the due date of the first installment or of the lump−sum payment.

(b) If any special assessments, special charges and special taxes are entered in the tax roll as charges against a parcel of real property and are delinquent under par. (a), the entire annual amount of real property taxes on that parcel which is unpaid is delinquent as of the day after the due date of the first installment or of the lump−sum payment.

(11) PAYMENT OF DELINQUENT PAYMENTS, INTEREST AND PENALTY. (a) All real property taxes, special charges and special taxes that become delinquent shall be paid, together with interest and penalties charged from the preceding February 1, to the county treasurer. All special assessments that become delinquent shall be paid, together with interest and penalties charged from the day after the due date of the first installment or of the lump−sum payment.

(b) All personal property taxes that become delinquent shall be paid, together with interest and penalties charged from the preceding February 1, to the taxation district treasurer.

(12) PAYMENT PRIORITY. (a) Except as provided in pars. (c) and (d), if a taxation district treasurer or county treasurer receives a payment from a taxpayer which is not sufficient to pay all amounts due, the treasurer shall apply the payment to the amounts due, including interest and penalties, in the following order:

1g. Personal property taxes.

1m. Delinquent utility charges.

1r. Special charges.

2. Special assessments.

3. Special taxes.

4. Real property taxes.

(b) The allocation under par. (a) 1g. to 4. is conclusive for purposes of settlement under ss. 74.23 to 74.29 and for determining delinquencies under this section.

(c) Paragraph (a) is not applicable to settlements with respect to payments received by a county treasurer after the county has settled in full for special charges, special assessments, special taxes and real property taxes.

(d) A treasurer, upon receipt of a written request by a taxpayer to do so, shall apply any remaining portion of the payment to personal property taxes after satisfying all other amounts due.

History: 1987 a. 378; 1989 a. 104, 336; 1991 a. 39, 293; 1993 a. 330; 2003 a. 94; 2005 a. 349.

74.12 Multiple installments payment option. (1) AUTHORITY. (a) The governing body of any taxation district, except a taxation district under s. 74.87, may, by ordinance, authorize the payment of taxes on real property and improvements on leased land or special assessments or both those taxes and assessments in 3 or more installments. An ordinance enacted under this paragraph, or any repeal of, or amendment to, such an ordinance applies to the collections of a calendar year only if it is enacted on or before August 15 of the preceding calendar year.

(b) In any taxation district which has enacted an ordinance under par. (a), all general property taxes, special assessments, special charges and special taxes shall be collected as provided in this section, rather than as provided in s. 74.11 and except as provided in s. 74.125.

(2) REQUIRED PROVISIONS OF ORDINANCE. An ordinance enacted under sub. (1) (a) shall provide that:

(a) Any kind of obligation to which the installment option pertains may be paid in 3 or more installments. Each installment is due on the last day of the month designated.

(b) The first installment shall be paid on or before January 31 and at least 50 percent of the obligation to which the installment option pertains shall be paid on or before April 30.

(c) All obligations to which the installment option pertains shall be paid by July 31.

(d) Installments of special assessments are due on the same dates and in the same percentages as installments of real property taxes and if the total special assessment is less than $100, it shall be paid in full on or before January 31.

(3) MINIMUM PAYMENT, BALANCE PAYABLE. An ordinance enacted under sub. (1) (a) may establish a minimum payment amount for installments and shall authorize a taxpayer to pay the remaining unpaid balance on any installment payment date.

(4) PAYMENT DATES UNDER AN ORDINANCE. All obligations to which the installment option pertains shall be paid in one of the following ways:

(a) In full on or before January 31.

(b) In installments under the ordinance.

(5) PAYMENT DATES NOT UNDER AN ORDINANCE. All special assessments to which an installment option does not pertain, special charges and special taxes that are placed in the tax roll shall be paid in full on or before January 31.

(6) PERSONAL PROPERTY TAXES. All personal property taxes, except those on improvements on leased land, shall be paid in full on or before 5 working days after January 31.

(6m) WHEN NO INSTALLMENTS. If the total real property tax is less than $100, or if the total property tax levied on an improvement on leased land is less than $100, it shall be paid in full on or before January 31.

(7) DELINQUENT FIRST INSTALLMENT. If the first installment of real property taxes, personal property taxes on improvements on leased land or special assessments to which an installment option pertains is not paid on or before 5 working days after January 31, the entire amount of the remaining unpaid taxes or special assessments to which an installment option pertains on that parcel is delinquent as of February 1.

(8) DELINQUENT 2ND OR SUBSEQUENT INSTALLMENT. If the 2nd or any subsequent installment payment of real property taxes, personal property taxes on improvements on leased land or special assessments to which an installment option pertains is not paid by 5 working days after the due date specified in the ordinance, the entire amount of the remaining unpaid taxes or special assessments to which an installment option pertains on that parcel is delinquent as of the first day of the month after the payment is due and interest and penalties are due under sub. (10).

(9) DELINQUENT ANNUAL PAYMENT. (a) If all special assessments to which an installment option does not pertain, special charges, special taxes and personal property taxes that are due under sub. (5) or (6) are not paid in full on or before 5 working days after January 31, the amounts unpaid are delinquent as of February 1.

(b) If any special assessments, special charges or special taxes are entered in the tax roll as charges against a parcel of real property and are delinquent, the entire annual amount of real property taxes on that parcel which is unpaid is delinquent as of February 1.

(10) PAYMENT OF DELINQUENT PAYMENTS, INTEREST AND PENALTY. (a) All real property taxes, special assessments, special charges and special taxes that become delinquent and are paid on or before July 31, and all delinquent personal property taxes, whenever paid, shall be paid, together with interest and penalties charged from the preceding February 1, to the taxation district treasurer.

(b) All real property taxes, special assessments, special charges and special taxes that become delinquent and are not paid under par. (a) shall be paid, together with interest and penalties charged from the preceding February 1, to the county treasurer.

(11) PAYMENT PRIORITY. (a) Except as provided in pars. (c) and (d), if a taxation district treasurer or county treasurer receives a payment from a taxpayer which is not sufficient to pay all amounts due, the treasurer shall apply the payment to the amounts due, including interest and penalties, in the following order:

1g. Personal property taxes.

1m. Delinquent utility charges.

1r. Special charges.

2. Special assessments.

3. Special taxes.

4. Real property taxes.

(b) The allocation under par. (a) 1g. to 4. is conclusive for purposes of settlement under ss. 74.29 and 74.30 and for determining delinquencies under this section.

(c) Paragraph (a) is not applicable to settlements with respect to payments received by a county treasurer after the county has settled in full for special charges, special assessments, special taxes and real property taxes.

(d) A treasurer, upon receipt of a written request by a taxpayer to do so, shall apply any remaining portion of the payment to personal property taxes after satisfying all other amounts due.

(12) DELINQUENT TAXES RETURNED; COLLECTION BY COUNTY. (a) The taxation district treasurer shall retain the tax roll and make collections through July 31. On or before August 15, the taxation district treasurer shall return the tax roll to the county treasurer. The county treasurer shall collect all returned delinquent real property taxes, special assessments, special charges and special taxes, together with interest and penalty assessed from the previous February 1, as provided under s. 74.47.

(b) The taxation district treasurer shall forward to the county treasurer all real property taxes, special assessments, special charges and special taxes received which were not settled for or retained for the taxation district under s. 74.30.

History: 1987 a. 378; 1989 a. 104, 336; 1991 a. 39, 293; 2003 a. 94; 2005 a. 349.

74.125 Public depositories. The taxation district treasurer or county treasurer, as appropriate, may designate one or more public depositories, among those previously designated under s. 34.05, to which taxpayers may make payments under ss. 74.11 and 74.12. A receipt for such payments issued by a designated public depository has the same legal status as a receipt issued by the taxation district treasurer or county treasurer.

History: 2003 a. 94.

74.13 Taxes paid in advance of levy. (1) TREASURER SHALL ACCEPT. The taxation district treasurer shall accept payment of general property taxes, special assessments, special charges and special taxes in advance of the tax levy, subject to the following:

(a) General property taxes, special assessments, special charges and special taxes may be paid in advance of the levy either by single payment or payment in installments of not less than $100. The total taxes paid in advance of the levy may not exceed the total taxes previously levied against the property, as shown on the previous tax roll.

(b) Except as provided in sub. (3), general property taxes, special assessments, special charges and special taxes may be paid in advance of the levy during the period from August 1 until the 3rd Monday in December.

(c) The taxation district treasurer shall hold general property taxes, special assessments, special charges and special taxes paid in advance of the levy. Those taxes, assessments and charges are subject to settlement under s. 74.23. Any interest earned prior to settlement under s. 74.23 on general property taxes, special assessments, special charges or special taxes paid in advance of the levy accrues to the taxation district to which the general property taxes, special assessments, special charges or special taxes were paid.

(d) Upon receipt of the tax roll, general property taxes, special assessments, special charges and special taxes which have been paid in advance shall be credited against the general property taxes, special assessments, special charges and special taxes against the property shown in the tax roll. If the total paid general property taxes, special assessments, special charges and special taxes paid in advance exceeds the total shown in the tax roll, the taxation district treasurer shall return the excess to the person who made the advance payment.

(2) ADVANCE PAYMENT DEPOSITORIES. The taxation district treasurer may designate one or more public depositories, among those previously designated under s. 34.05, to which taxpayers may make payments in advance of the tax levy. A receipt for a payment in advance of the levy issued by a designated public depository has the same legal status as a receipt issued by the taxation district treasurer.

(3) ADVANCE PAYMENT WHEN CEASING BUSINESS. Personal property taxes on property used in a commercial enterprise which is ceasing business may be paid in advance of the tax levy at any time before the 3rd Monday in December of the year in which business ceases.

History: 1987 a. 378.

74.15 Payment of real property taxes by grantor and grantee. If real property is conveyed and there is no valid written agreement between the grantor and the grantee concerning the payment of real property taxes for the year in which the conveyance is made, the grantor shall pay to the grantee an amount equal to one−twelfth of the taxes assessed against the property for the calendar year preceding the year in which the conveyance is made multiplied by the number of months in the calendar year of the conveyance which have elapsed before the date of the conveyance, including the month in which the conveyance is made if the conveyance occurs after the 15th day of the month.

History: 1987 a. 378; 1989 a. 104.

74.19 Tax receipts. The county clerk, unless a different official is designated by the county board, shall procure and furnish tax receipts, prescribed under s. 70.09 (3), to each taxation district treasurer in the county. The taxation district treasurer shall use the tax receipts so furnished. If requested under s. 74.09 (3) (g), the taxation district treasurer shall mail a copy of the tax receipt to the requester. This section does not apply to cities authorized to proceed under s. 74.87 or to counties having a population of 750,000 or more.

History: 1987 a. 378; 2017 a. 207 s. 5.

74.21 Notification of payment of taxes from escrowed funds. If a person other than the property owner pays to a taxation district or county, from an escrow account funded by the property owner, the real property taxes levied against owner−occupied residential property containing not more than 4 dwelling units, the payer annually shall send written notification of payment of real property taxes to the property owner. The notification shall be sent within 30 days after the last payment of real property taxes by the payer for any year. The notification shall state when the real property taxes were paid and the amount paid.

History: 1987 a. 378.

SUBCHAPTER IV

SETTLEMENT

74.23 January settlement. (1) SETTLEMENT. On or before January 15, the treasurer of each taxation district, except the treasurer of a city authorized to act under s. 74.87, shall settle for all collections received through the last day of the preceding month as follows:

(a) *Special assessments, special charges and special taxes.* The taxation district treasurer shall:

1. Pay to the county treasurer all collections of special assessments or special charges levied under ch. 88.

2. Pay to the proper treasurer all collections of special assessments, special charges and special taxes, except that occupational taxes under ss. 70.40 to 70.421 and forest cropland and managed forest land taxes under ch. 77 shall be settled for under s. 74.25 (1) (a) 1. to 8.

3. Retain all collections of special assessments, special charges and special taxes due to the taxation district.

4. Retain all collections of omitted property taxes under s. 70.44, except those subject to sharing under subd. 5.

5. Pay to each taxing jurisdiction within the district its proportionate share of the taxes and interest under s. 70.995 (12) (a) and the taxes under s. 74.315.

(b) *General property taxes.* After making the distribution under par. (a), the taxation district treasurer shall pay to each taxing jurisdiction within the district its proportionate share of general property taxes, except that the treasurer shall pay the state's proportionate share to the county. As part of that distribution, the taxation district treasurer shall retain for the taxation district and for each tax incremental district within the taxation district and each environmental remediation tax incremental district created by the taxation district its proportionate share of general property taxes. The taxation district treasurer shall also distribute to the county the proportionate share of general property taxes for each environmental remediation tax incremental district created by the county.

(2) APPROVAL OF PAYMENT NOT REQUIRED. The taxation district treasurer shall make payments required under sub. (1) whether or not the governing body of the taxation district has approved those payments. Following a payment required under sub. (1), the taxation district treasurer shall prepare and transmit a voucher for that payment to the governing body of the taxation district.

History: 1987 a. 378; 1989 a. 104; 1991 a. 39; 2001 a. 16; 2005 a. 418; 2009 a. 171; 2015 a. 191, 216.

74.25 February settlement. (1) SETTLEMENT. On or before February 20, the taxation district treasurer, except the treasurer of a city authorized to proceed under s. 74.87 or the treasurer of a taxation district that has adopted an ordinance under s. 74.12, shall settle for all collections received through the last day of the preceding month and all amounts timely paid under s. 74.69 (1) which were not settled for under s. 74.23 as follows:

(a) *Special assessments, special charges and special taxes.* The taxation district treasurer shall:

1. Pay to the county treasurer all collections of special assessments or special charges levied under ch. 88.

2. Pay to the proper treasurer all collections of special assessments, special charges and special taxes, except that occupational taxes under ss. 70.40 to 70.421 and forest cropland and managed forest land taxes under ch. 77 shall be settled for under subds. 5. to 8.

3. Retain all collections of special assessments, special charges and special taxes due to the taxation district, except that occupational taxes under ss. 70.40 to 70.421 and forest cropland and managed forest land taxes under ch. 77 shall be settled for under subds. 5. to 8.

4. Retain all collections of omitted property taxes under s. 70.44, except those subject to sharing under subd. 4m.

4m. Pay to each taxing jurisdiction within the district its proportionate share of the taxes and interest under s. 70.995 (12) (a) and the taxes under s. 74.315.

5. Pay to the secretary of administration all collections of occupational taxes on mink farms, 30 percent of collections of occupational taxes on iron ore concentrates, and 10 percent of collections of occupational taxes on coal docks.

6. Pay to the county treasurer 20 percent of collections of occupational taxes on coal docks, 20 percent of collections of the taxes imposed under ss. 77.04 and 77.84 (2) (a), (am), and (bp), and 20 percent of collections of payments for lands under s. 77.84 (2) (b) and (bm).

7. Retain for the taxation district all collections of occupational taxes on grain storage and petroleum and petroleum products and 70 percent of collections of occupational taxes on iron ore concentrates and coal docks.

8. Retain for the taxation district 80 percent of collections of the taxes imposed under ss. 77.04 and 77.84 (2) (a) and (am).

(b) *General property taxes.* After making the distribution under par. (a), the taxation district treasurer shall do all of the following:

1. Except as provided in subd. 3., pay in full to each taxing jurisdiction within the district all personal property taxes included in the tax roll which have not previously been paid to, or retained by, that taxing jurisdiction, except that the treasurer shall pay the state's proportionate share to the county. As part of that distribution, the taxation district treasurer shall allocate to each tax incre-

mental district within the taxation district and each environmental remediation tax incremental district created by the taxation district its proportionate share of personal property taxes. The taxation district treasurer shall also distribute to the county the proportionate share of personal property taxes for each environmental remediation tax incremental district created by the county.

2. Pay to each taxing jurisdiction within the district its proportionate share of real property taxes, except that the treasurer shall pay the state's proportionate share to the county. As part of that distribution, the taxation district treasurer shall retain for the taxation district and for each tax incremental district within the taxation district and each environmental remediation tax incremental district created by the taxation district its proportionate share of real property taxes. The taxation district treasurer shall also distribute to the county the proportionate share of real property taxes for each environmental remediation tax incremental district created by the county.

3. Pay to each taxing jurisdiction within the district its proportionate share of taxes on improvements on leased land, except that the treasurer shall pay the state's proportionate share to the county and except the taxation district may pay in full all taxes on improvements on leased land, as provided with subd. 1. As part of that distribution, the taxation district treasurer shall allocate to each tax incremental district within the taxation district its proportionate share of taxes on improvements on leased land.

(2) APPROVAL OF PAYMENT NOT REQUIRED. The taxation district treasurer shall make payments required under sub. (1) whether or not the governing body of the taxation district has approved those payments. Following a payment required under sub. (1), the taxation district treasurer shall prepare and transmit a voucher for such payment to the governing body of the taxation district.

(3) RETURN OF TAX ROLL. After completing the settlement procedures required under sub. (1), the taxation district treasurer shall transfer the tax roll to the county treasurer as provided under s. 74.43 (1).

(4) AMOUNTS NOT TIMELY RECEIVED FORWARDED TO COUNTY TREASURER. The taxation district treasurer shall forward to the county treasurer all real property taxes, special assessments, special charges and special taxes received which were not settled for or retained for the taxation district.

History: 1987 a. 378; 1989 a. 56, 104; 1991 a. 39; 2001 a. 16; 2003 a. 33, 228; 2005 a. 241, 418; 2007 a. 97; 2009 a. 171; 2013 a. 54, 81; 2015 a. 191, 216, 358.

74.27 March settlement between counties and the state. On or before March 15, the county treasurer shall send to the secretary of administration the state's proportionate shares of taxes under ss. 74.23 (1) (b) and 74.25 (1) (b) 1. and 2.

History: 1991 a. 39; 2003 a. 33.

74.29 August settlement. (1) On or before August 20, the county treasurer shall pay in full to the proper treasurer all real property taxes, including taxes offset by the credit under s. 79.10 (5), and special taxes included in the tax roll which have not previously been paid to, or retained by, the proper treasurer. A county may, by resolution adopted by the county board, direct the county treasurer to pay in full to the proper treasurer all special assessments and special charges included in the tax roll which have not previously been paid to, or retained by, the proper treasurer.

(2) On or before August 20, a taxation district treasurer who has not paid in full all taxes on improvements on leased land under s. 74.25 (1) (b) 1. or under s. 74.30 (1) or (2) shall pay in full to each taxing jurisdiction within the district all taxes on improvements on leased land included in the tax roll which have not previously been paid to, or retained by, the taxing jurisdiction, except that the treasurer shall pay the state's proportionate share to the county. As part of that distribution, the taxation district treasurer shall allocate to each tax incremental district within the taxation district its proportionate share of taxes on improvements on leased land.

History: 1987 a. 378; 1991 a. 39, 269; 2005 a. 241.

74.30 Settlement in certain taxation districts. The treasurer of a taxation district which has enacted an ordinance under s. 74.12 shall settle under this section.

(1) FEBRUARY SETTLEMENT. On or before February 20, the taxation district treasurer shall do all of the following:

(a) Pay to the county treasurer all collections of special assessments or special charges levied under ch. 88.

(b) Pay to the proper treasurer all collections of special assessments, special charges and special taxes, except that occupational taxes under ss. 70.40 to 70.421 and forest cropland and managed forest land taxes under ch. 77 shall be settled for under pars. (e) to (h).

(c) Retain all collections of special assessments, special charges and special taxes due to the taxation district, except that occupational taxes under ss. 70.40 to 70.421 and forest cropland and managed forest land taxes under ch. 77 shall be settled for under pars. (e) to (h).

(d) Retain all collections of omitted property taxes under s. 70.44, except those subject to sharing under par. (dm).

(dm) Pay to each taxing jurisdiction within the district its proportionate share of the taxes and interest under s. 70.995 (12) (a) and the taxes under s. 74.315.

(e) Pay to the secretary of administration all collections of occupational taxes on mink farms, 30 percent of collections of occupational taxes on iron ore concentrates, and 10 percent of collections of occupational taxes on coal docks.

(f) Pay to the county treasurer 20 percent of collections of occupational taxes on coal docks, 20 percent of collections of the taxes imposed under ss. 77.04 and 77.84 (2) (a), (am), and (bp), and 20 percent of collections of payments for lands under s. 77.84 (2) (b) and (bm).

(g) Retain for the taxation district all collections of occupational taxes on grain storage and petroleum and petroleum products and 70 percent of collections of occupational taxes on iron ore concentrates and coal docks.

(h) Retain for the taxation district 80 percent of collections of the taxes imposed under ss. 77.04 and 77.84 (2) (a) and (am).

(i) Except as provided in par. (k), pay in full to each taxing jurisdiction within the district all personal property taxes included in the tax roll which have not previously been paid to, or retained by, each taxing jurisdiction, except that the treasurer shall pay the state's proportionate share to the county. As part of that distribution, the taxation district treasurer shall allocate to each tax incremental district within the taxation district and each environmental remediation tax incremental district created by the taxation district its proportionate share of personal property taxes. The taxation district treasurer shall also distribute to the county the proportionate share of personal property taxes for each environmental remediation tax incremental district created by the county.

(j) Pay to each taxing jurisdiction within the district its proportionate share of real property taxes, except that the treasurer shall pay the state's proportionate share to the county. As part of that distribution, the taxation district treasurer shall retain for the taxation district and for each tax incremental district within the taxation district and each environmental remediation tax incremental district created by the taxation district its proportionate share of real property taxes. The taxation district treasurer shall also distribute to the county the proportionate share of real property taxes for each environmental remediation tax incremental district created by the county.

(k) Pay to each taxing jurisdiction within the district its proportionate share of taxes on improvements on leased land, except that the treasurer shall pay the state's proportionate share to the county. As part of that distribution, the taxation district treasurer shall allocate to each tax incremental district within the taxation district its proportionate share of taxes on improvements on leased land.

(1m) MARCH SETTLEMENT BETWEEN COUNTIES AND THE STATE. On or before March 15, the county treasurer shall send to the secretary of administration the state's proportionate shares of taxes under sub. (1) (i) and (j).

(2) SUBSEQUENT SETTLEMENTS. On or before the 15th day of each month following the month in which an installment payment of real property taxes is required by the ordinance, the taxation district treasurer shall do all of the following:

(a) Pay to the proper treasurer all collections of delinquent special assessments, special charges and special taxes not previously settled for, as directed by sub. (1) (a) to (h).

(b) Pay to each taxing jurisdiction within the district its proportionate share of real property taxes collected, except that the taxation district treasurer shall pay the state's proportionate share to the county, and the county treasurer shall settle for that share under s. 74.29. As part of that distribution, the taxation district treasurer shall retain for the taxation district and for each tax incremental district within the taxation district and each environmental remediation tax incremental district created by the taxation district its proportionate share of real property taxes. The taxation district treasurer shall also distribute to the county the proportionate share of real property taxes for each environmental remediation tax incremental district created by the county.

(c) Pay to each taxing jurisdiction within the district its proportionate share of taxes on improvements on leased land, except that the treasurer shall pay the state's proportionate share to the county. As part of that distribution, the taxation district treasurer shall allocate to each tax incremental district within the taxation district its proportionate share of taxes on improvements on leased land.

(3) APPROVAL OF PAYMENT NOT REQUIRED. The taxation district treasurer shall make payments required under subs. (1) and (2) whether or not the governing body of the taxation district has approved those payments. Following a payment required under subs. (1) and (2), the taxation district treasurer shall prepare and transmit a voucher for that payment to the governing body of the taxation district.

History: 1987 a. 378; 1991 a. 39; 1995 a. 408; 2001 a. 16; 2003 a. 33, 228; 2005 a. 241, 418; 2007 a. 97; 2009 a. 171; 2013 a. 54, 81; 2013 a. 151 s. 28; 2015 a. 191, 216, 358.

74.31 Failure to settle timely. If the taxation district treasurer or county treasurer does not settle as required under ss. 74.23 to 74.30:

(1) INTEREST CHARGE. The taxation district or county which has not settled shall pay 12 percent annual interest on the amount not timely paid to the taxing jurisdiction, including this state, to which money is due, calculated from the date settlement was required.

(2) PENALTY. The taxing jurisdiction, including this state, to which money is due may demand, in writing, payment from the taxation district or county which has not settled. If, within 3 days after receipt of a written demand, settlement is not made, the taxation district or county shall pay the taxing jurisdiction, including this state, making the demand a 5 percent penalty on the amount remaining unpaid.

History: 1987 a. 387; 1991 a. 39.

74.315 Omitted property. (1) SUBMISSION. No later than October 1 of each year, the taxation district clerk shall submit to the department of revenue, on a form prescribed by the department, a listing of all the omitted taxes under s. 70.44 to be included on the taxation district's next tax roll, if the total of all such taxes exceeds $5,000.

(2) EQUALIZED VALUATION. After receiving the form under sub. (1), but no later than November 15, the department of revenue shall determine the amount of any change in the taxation district's equalized valuation that results from considering the valuation represented by the taxes described under sub. (1). The department's determination under this subsection is subject to review only under s. 227.53.

(3) NOTICE AND DISTRIBUTION. If the department of revenue determines under sub. (2) that the taxation district's equalized valuation changed as a result of considering the valuation represented by the taxes described under sub. (1), the department shall notify the taxation district and the taxation district shall distribute the resulting collections under ss. 74.23 (1) (a) 5., 74.25 (1) (a) 4m., and 74.30 (1) (dm).

History: 2009 a. 171.

SUBCHAPTER V

ADJUSTMENT

74.33 Sharing and charging back of taxes due to palpable errors. (1) GROUNDS. After the tax roll has been delivered to the treasurer of the taxation district under s. 74.03, the governing body of the taxation district may refund or rescind in whole or in part any general property tax shown in the tax roll, including agreed−upon interest, if:

(a) A clerical error has been made in the description of the property or in the computation of the tax.

(b) The assessment included real property improvements which did not exist on the date under s. 70.10 for making the assessment.

(c) The property is exempt by law from taxation, except as provided under sub. (2).

(d) The property is not located in the taxation district for which the tax roll was prepared.

(e) A double assessment has been made.

(f) An arithmetic, transpositional or similar error has occurred.

(2) EXCEPTIONS. The governing body of a taxation district may not refund or rescind any tax under this section if the alleged error may be appealed under s. 70.995 (8) (c) or if the alleged error is solely that the assessor placed a valuation on the property that is excessive.

(3) CHARGING BACK AND SHARING TAXES. If an error under sub. (1) has been discovered, the governing body of the taxation district shall proceed under s. 74.41.

History: 1987 a. 378; 1991 a. 39; 1993 a. 307; 1995 a. 408.

A potential error in classifying a mobile home as real, not personal, property was not a clerical error under sub. (1) (a), nor could it be considered to be the inclusion of a real property improvement that did not exist under sub. (1) (b), as the property did exist. Ahrens v. Town of Fulton, 2000 WI App 268, 240 Wis. 2d 124, 621 N.W.2d 643, 99−2466.

Affirmed on other grounds. 2002 WI 29, 251 Wis.2d 135, 641 N.W.2d 423, 99−2466.

74.35 Recovery of unlawful taxes. (1) DEFINITIONS. In this section "unlawful tax" means a general property tax with respect to which one or more errors specified in s. 74.33 (1) (a) to (f) were made. "Unlawful tax" does not include a tax in respect to which the alleged defect is solely that the assessor placed a valuation on the property that is excessive.

(2) CLAIM AGAINST TAXATION DISTRICT. (a) A person aggrieved by the levy and collection of an unlawful tax assessed against his or her property may file a claim to recover the unlawful tax against the taxation district which collected the tax.

(b) A claim filed under this section shall meet all of the following conditions:

1. Be in writing.

2. State the alleged circumstances giving rise to the claim, including the basis for the claim as specified in s. 74.33 (1) (a) to (e).

3. State as accurately as possible the amount of the claim.

4. Be signed by the claimant or his or her agent.

5. Be served on the clerk of the taxation district in the manner prescribed in s. 801.11 (4).

(2m) EXCLUSIVE PROCEDURE. A claim that property is exempt, other than a claim that property is exempt under s. 70.11 (21) or (27), may be made only in an action under this section. Such a

claim may not be made by means of an action under s. 74.33 or an action for a declaratory judgment under s. 806.04.

(3) ACTION ON CLAIM. (a) In this subsection, to "disallow" a claim means either to deny the claim in whole or in part or to fail to take final action on the claim within 90 days after the claim is filed.

(b) The taxation district shall notify the claimant by certified or registered mail whether the claim is allowed or disallowed within 90 days after the claim is filed.

(c) If the governing body of the taxation district determines that an unlawful tax has been paid and that the claim for recovery of the unlawful tax has complied with all legal requirements, the governing body shall allow the claim. The taxation district treasurer shall pay the claim not later than 90 days after the claim is allowed.

(d) If the taxation district disallows the claim, the claimant may commence an action in circuit court to recover the amount of the claim not allowed. The action shall be commenced within 90 days after the claimant receives notice by certified or registered mail that the claim is disallowed.

(4) INTEREST. The amount of a claim filed under sub. (2) or an action commenced under sub. (3) may include interest computed from the date of filing the claim against the taxation district, at the rate of 0.8 percent per month.

(5) LIMITATIONS ON BRINGING CLAIMS. (a) Except as provided under par. (b), a claim under this section shall be filed by January 31 of the year in which the tax is payable.

(b) A claim under this section for recovery of taxes paid to the wrong taxation district shall be filed within 2 years after the last date specified for timely payment of the tax under s. 74.11, 74.12 or 74.87.

(c) No claim may be filed or maintained under this section unless the tax for which the claim is filed, or any authorized installment payment of the tax, is timely paid under s. 74.11, 74.12 or 74.87.

(d) No claim may be made under this section based on the contention that the tax was unlawful because the property is exempt from taxation under s. 70.11 (21) or (27).

(6) COMPENSATION FOR TAXATION DISTRICT. If taxes are refunded under sub. (3), the governing body of the taxation district may proceed under s. 74.41.

History: 1987 a. 378; 1989 a. 104; 1991 a. 39; 1997 a. 237; 2007 a. 19.

This section only authorizes courts to determine whether a taxpayer is exempt from taxes already paid, not taxes that might be assessed in the future. Tax exempt status, once granted, is not automatic. It is subject to continuing review, a notion inconsistent with a declaration that property is exempt from future property taxes. Northwest Wisconsin Community Services Agency, Inc. v. City of Montreal, 2010 WI App 119, 328 Wis. 2d 760, 789 N.W.2d 392, 09−2568.

74.37 Claim on excessive assessment.

(1) DEFINITION. In this section, a "claim for an excessive assessment" or an "action for an excessive assessment" means a claim or action, respectively, by an aggrieved person to recover that amount of general property tax imposed because the assessment of property was excessive.

(2) CLAIM. (a) A claim for an excessive assessment may be filed against the taxation district, or the county that has a county assessor system, which collected the tax.

(b) A claim filed under this section shall meet all of the following conditions:

1. Be in writing.
2. State the alleged circumstances giving rise to the claim.
3. State as accurately as possible the amount of the claim.
4. Be signed by the claimant or his or her agent.
5. Be served on the clerk of the taxation district, or the clerk of the county that has a county assessor system, in the manner prescribed in s. 801.11 (4) by January 31 of the year in which the tax based upon the contested assessment is payable.

(3) ACTION ON CLAIM. (a) In this subsection, to "disallow" a claim means either to deny the claim in whole or in part or to fail to take final action on the claim within 90 days after the claim is filed.

(b) The taxation district or county that has a county assessor system shall notify the claimant by certified or registered mail whether the claim is allowed or disallowed within 90 days after the claim is filed.

(c) If the governing body of the taxation district or county that has a county assessor system determines that a tax has been paid which was based on an excessive assessment, and that the claim for an excessive assessment has complied with all legal requirements, the governing body shall allow the claim. The taxation district or county treasurer shall pay the claim not later than 90 days after the claim is allowed.

(d) If the taxation district or county disallows the claim, the claimant may commence an action in circuit court to recover the amount of the claim not allowed. The action shall be commenced within 90 days after the claimant receives notice by registered or certified mail that the claim is disallowed.

(4) CONDITIONS. (a) No claim or action for an excessive assessment may be brought under this section unless the procedures for objecting to assessments under s. 70.47, except under s. 70.47 (13), have been complied with. This paragraph does not apply if notice under s. 70.365 was not given.

(b) No claim or action for an excessive assessment may be brought or maintained under this section unless the tax for which the claim is filed, or any authorized installment of the tax, is timely paid under s. 74.11 or 74.12.

(c) No claim or action for an excessive assessment may be brought or maintained under this section if the assessment of the property for the same year is contested under s. 70.47 (13) or 70.85. No assessment may be contested under s. 70.47 (13) or 70.85 if a claim is brought and maintained under this section based on the same assessment.

(5) INTEREST. The amount of a claim filed under sub. (2) or an action commenced under sub. (3) may include interest at the average annual discount rate determined by the last auction of 6−month U.S. treasury bills before the objection per day for the period of time between the time when the tax was due and the date that the claim was paid.

(7) COMPENSATION. If taxes are refunded under sub. (3), the governing body of the taxation district or county that has a county assessor system may proceed under s. 74.41.

History: 1987 a. 378; 1989 a. 104; 1993 a. 292; 1995 a. 408; 2007 a. 86; 2017 a. 207 s. 5; 2017 a. 358.

Sections 70.47 (13), 70.85, and 74.37 provide the exclusive method to challenge a municipality's bases for assessment of individual parcels. All require appeal to the board of review prior to court action. There is no alternative procedure to challenge an assessment's compliance with the uniformity clause. Hermann v. Town of Delavan, 215 Wis. 2d 370, 572 N.W.2d 855 (1998), 96−0171.

Claimants who never received notice of a changed assessment under s. 70.365 were exempt from the obligation to proceed before the board of review. However, they were required to meet the January 31 filing date in sub. (2), regardless of the fact that they never received the notice. Reese v. City of Pewaukee, 2002 WI App 67, 252 Wis. 2d 361, 642 N.W.2d 596, 01−0850.

While certiorari review of an assessment is limited to the review of the board of assessment's record, sub. (3) (d) allows the court to proceed without regard to any determination made at an earlier proceeding. The assessor's assessment is presumed correct only if the challenging party does not present significant contrary evidence. The court may hear new evidence and can enter a judgment if it is in the best interest of the parties. Bloomer Housing Limited Partnership v. City of Bloomer, 2002 WI App 252, 257 Wis. 2d 883, 653 N.W.2d 309, 01−3495.

After *Nankin,* the state−wide application of this section must prevail over any statutes that would defeat its implementation. Special rules help harmonize provisions that were once fully compatible with this section but, as a result of Nankin, conflict with this section. U.S. Bank National Association v. City of Milwaukee, 2003 WI App 220, 267 Wis. 2d 718, 672 N.W.2d 722, 03−0724.

When a taxpayer brings an action to recover excessive taxes under this section, the least favorable outcome for the taxpayer, and the best possible outcome for the taxation authority, is for the court to conclude there were no excessive taxes. The court cannot impose a greater tax burden than the one the taxation authority already agreed to when it accepted the taxpayer's payment. Although the court need not defer to the board of review's determination, and there is a statutory presumption that the assessor's determination is correct, when the board of review reduces the original assessment the court cannot reinstate the assessor's original assessment. Trailwood Ven-

tures, LLC v. Village of Kronenwetter, 2009 WI App 18, 315 Wis. 2d 791, 762 N.W.2d 841, 08−1221.

When a city assessor correctly applies the Property Assessment Manual and statutes, and there is no significant evidence to the contrary, courts will reject a party's challenge to the assessment. Allright Properties, Inc. v. City of Milwaukee, 2009 WI App 46, 317 Wis. 2d 228, 767 N.W.2d 567, 08−0510.

Under s. 70.49 (2), each assessment "shall, in all actions and proceedings involving such values, be presumptive evidence that all such properties have been justly and equitably assessed." For a taxpayer to challenge the assessment, the taxpayer is required to present sufficient evidence to persuade the circuit court that the assessed value is probably not the fair market value of the property. A failure to provide that persuasive evidence would entitle the city to judgment based on the statutory presumption. Bonstores Realty One, LLC v. City of Wauwatosa, 2013 WI App 131, 351 Wis. 2d 439, 839 N.W.2d 893, 12−1754.

Under sub. (4), a taxpayer must challenge an assessment in front of the board of review before filing an excessive assessment claim, unless the taxing authority failed to provide a notice of assessment under circumstances where notice was required. Under s. 70.365, a notice of assessment is required only when the property's assessed value has changed. After reading these statutes, it should have been clear to the taxpayer that: 1) because it did not receive a notice of assessment, its property's assessed value for 2011 would be unchanged from 2010; and 2) if the taxpayer wanted to challenge the 2011 assessment, it needed to object before the board of review. These requirements did not violate the taxpayer's rights to due process. Northbrook Wisconsin, LLC v. City of Niagara, 2014 WI App 22, 352 Wis. 2d 657, 843 N.W.2d 851, 13−1322.

Under sub. (3) (b), a taxing district has 90 days after a claim for excessive assessment has been filed to either allow it or disallow it. If the taxing authority fails to act on the claim within 90 days, the claim is deemed disallowed under sub. (3) (a). A statutory limitation period does not commence once a claim is deemed disallowed under a statute that requires receipt of notice of the disallowance to trigger the limitation period. As the claimant in this case never received notice of the disallowance of its claim by certified or registered mail, the 90−day limitation period was not triggered and the action was timely commenced. Walgreen Co. v. City of Oshkosh, 2014 WI App 54, 354 Wis. 2d 17, 848 N.W.2d 314, 13−1610.

The plaintiffs were entitled to a hearing to contest their tax assessment even though they did not permit a tax assessor to enter the interior of their home. Milewski v. Town of Dover, 2017 WI 79, 377 Wis. 2d 38, 899 N.W.2d 303, 15−1523.

Over Assessed? Appealing Home Tax Assessments. McAdams. Wis. Law. July 2011.

74.39 Court−ordered reassessment. (1) COURT MAY ORDER. Except as provided in sub. (3), in any action under s. 74.35 (3) or 74.37 (3), if the court determines that a reassessment of the property upon which the taxes were paid is necessary, the court, before entering judgment, shall continue the action to permit reassessment of the property. If, based on the reassessment, the court determines that the amount of taxes paid by the plaintiff is not excessive, judgment shall be entered for the defendant. If, based on the reassessment, the court determines that the amount of taxes paid by the plaintiff is excessive, judgment shall be entered for the plaintiff for the amount of the excessive taxes paid.

(2) CHALLENGE OF REASSESSMENT. The validity of a reassessment under sub. (1) may be challenged under s. 75.54. A reassessment under s. 75.54 shall be made by the assessor of the assessment district in which the property to be reassessed is located.

(3) EXCEPTION. The court may proceed to judgment without ordering a reassessment under sub. (1), if the court finds that to do so is in the best interests of all parties to the action and if the court is able to determine the amount of unlawful taxes with reasonable certainty.

History: 1987 a. 378.

When a court finds an assessment excessive, under sub. (3) it must order a reassessment unless it finds that: 1) proceeding to judgment is in the parties' best interests; and 2) the court is able to determine the amount of unlawful taxes with reasonable certainty. In this case, the circuit court made both of these findings but failed to explain the reasoning behind its decision. When a circuit court fails to explain its reasoning, the appellate court may search the record to determine whether it supports the court's discretionary decision. West Capitol, Inc. v. Village of Sister Bay, 2014 WI App 52, 354 Wis. 2d 130, 848 N.W.2d 875, 13−1458.

74.41 Charging back refunded or rescinded taxes; sharing certain collected taxes. (1) SUBMISSION OF REFUNDED OR RESCINDED TAXES TO DEPARTMENT. By October 1 of each year, the clerk of a taxation district may submit to the department of revenue, on a form prescribed by the department of revenue, a listing of all general property taxes on the taxation district's tax roll that, subject to subs. (1m) and (2), meet any of the following conditions:

(a) Have been refunded to taxpayers under s. 70.511.

(b) Have been rescinded or refunded to taxpayers under s. 74.33.

(bm) Have been refunded or collected under s. 70.43.

(bn) Have been rescinded or refunded to taxpayers under s. 70.74 or 75.25 (2).

(c) Have been refunded to taxpayers under s. 74.35 or 74.37.

(1m) AMOUNT COLLECTED FROM PROPERTY IN A TAX INCREMENTAL DISTRICT. A tax may not be included on a form submitted under sub. (1) if the tax was levied on property within a tax incremental district, as defined in s. 60.85 (1) (n) or 66.1105 (2) (k), unless the current value of the tax incremental district is lower than the tax incremental base, as defined in s. 60.85 (1) (m) or 66.1105 (2) (j), in the assessment year for which the tax was refunded, rescinded, collected, or corrected under sub. (1) (a) to (c).

(2) AMOUNT REQUIRED FOR SUBMISSION. A tax may be included on a form submitted under sub. (1) only if all of the following apply:

(b) The tax under sub. (1) for any single description of property in the tax roll for any one year is $250 or more.

(bm) The tax under sub. (1) was refunded or rescinded for any of the 5 assessment years immediately preceding the year in which the form under sub. (1) is submitted or refunded or rescinded because of a court determination and submitted under sub. (1) no later than one year after the date of the court's determination.

(4) CHARGE−BACK AMOUNT DETERMINED. The department of revenue shall, by the November 15 following submission of the form under sub. (1), determine the amount of rescinded or refunded taxes to be charged back to, and collected from, each taxing jurisdiction for which taxes were collected by the taxation district and determine the amount of taxes collected under s. 74.33 to be shared with each taxing jurisdiction for which taxes were collected by the taxation district. Except for interest on refunds under s. 70.511 (2) (b) that is paid with respect to property that was assessed under s. 70.995 and that is not paid by the department of administration under s. 70.511 (2) (bm), the amount determined may not include any interest. The determination of the department of revenue under this subsection is reviewable only under s. 227.53.

(5) NOTICE AND PAYMENT. (a) The department of revenue shall certify to the clerk of the taxation district the amount determined to be charged back or shared under sub. (4) and shall furnish a copy of the certification to each affected taxing jurisdiction.

(b) Each taxing jurisdiction to which an amount is charged back under sub. (4) shall pay the amount certified under par. (a) to the taxation district treasurer by February 15 of the year following the determination under sub. (4). By February 15 of the year following the determination under sub. (4), the taxation district treasurer shall pay the amounts to be shared with other taxing jurisdictions.

(6) NO EFFECT ON MILL RATE LIMITS. A tax levied by a taxation jurisdiction to fund an amount which the taxing jurisdiction is required to pay under sub. (5) shall not be considered in determining whether the taxing jurisdiction is in compliance with any statutorily imposed mill rate limit.

History: 1987 a. 378; 1991 a. 39; 1995 a. 408; 2001 a. 16; 2005 a. 405; 2015 a. 317; 2017 a. 17.

74.42 Charge back of personal property taxes; subsequent distributions. (1) CHARGE BACK. No earlier than February 2 and no later than April 1, the taxation district treasurer may charge back to each taxing jurisdiction within the taxation district, except this state, its proportionate share of those personal property taxes for which the taxation district settled in full the previous year, which were delinquent at the time of settlement, which have not been collected in the intervening year, and which remain delinquent, if the taxes are owed by an entity that has ceased operations, or filed a petition for bankruptcy, or are due on personal property that has been removed from the next assessment roll. At the same time, if there are charge−backs, the taxation district treasurer shall charge back to the county the state's proportionate share of those taxes. No later than the first May 1 after receipt of a notice of a charge−back, the taxing jurisdiction shall pay to the

taxation district treasurer the amount due, and the state shall pay to the proper county treasurer the amount due.

(2) SUBSEQUENT DISTRIBUTIONS. An amount equal to any delinquent personal property taxes charged back under sub. (1) which are subsequently collected by the taxation district, minus the cost of collecting those taxes, shall be proportionately distributed to each taxing jurisdiction to which the delinquent taxes were charged back under sub. (1). Distributions under this subsection shall be made on May 15, August 15, November 15 and February 15.

History: 1987 a. 378; 1989 a. 104; 1991 a. 39; 1995 a. 278; 2009 a. 171.

SUBCHAPTER VI

RETURN AND COLLECTION OF DELINQUENT TAXES

74.43 Return of unpaid taxes, special assessments and special charges. (1) DELIVERY OF TAX ROLL. Except as provided in s. 74.12, on or before February 20, the taxation district treasurer, except the treasurer of a city authorized to act under s. 74.87, shall transfer the tax roll to the county treasurer. The tax roll transferred to the county treasurer shall meet all of the following conditions:

(a) Contain all information required under s. 70.65 (2) (a) to (d) and (f).

(b) Conform with the format required by the department of revenue under s. 70.09 (3).

(c) Reflect all payments received by the taxation district treasurer.

(2) CORRECTION OF PROPERTY DESCRIPTION. If the county treasurer discovers any error or inadequacy in the description of any property in the tax roll, he or she may correct the description in the tax roll at any time prior to issuance of the tax certificate under s. 74.57. If the county treasurer corrects a description of property, he or she shall keep a record identifying the place where each correction is made, briefly describing the correction and specifying the date when the correction was made.

(3) COUNTY TREASURER TO ACCEPT UNPAID TAXES. If the roll is delivered under sub. (1), the county treasurer shall accept all unpaid real property taxes, special assessments, special charges and special taxes contained in the tax roll.

History: 1987 a. 378; 1991 a. 39.

74.45 Certificate of delinquent taxes; endorsement of treasurer's bond. (1) CERTIFICATE OF DELINQUENT TAXES BY COUNTY TREASURER. After the taxation district treasurer transfers the tax roll under s. 74.12 or 74.43, the county treasurer shall prepare a certificate of the amount that is delinquent on real property and the amount that is not delinquent but payable in subsequent installments on real property and the amount of delinquent special assessments, special charges and special taxes.

(2) ENDORSEMENT OF TAXATION DISTRICT TREASURER'S BOND. After the taxation district treasurer has fulfilled the requirements for settlement with the county under s. 74.25 or 74.30, the county treasurer if requested to do so, shall endorse the bond of the taxation district treasurer executed under s. 70.67 (1) as satisfied and paid. The endorsement fully discharges the taxation district treasurer and his or her sureties from the obligations of the bond, unless the return of the taxation district treasurer under s. 74.43 is false. If the return is false, the bond continues in force and the taxation district treasurer and his or her sureties are subject to action upon the bond for all deficiencies and damages resulting from the false return.

History: 1987 a. 378; 1991 a. 39.

74.47 Interest and penalty on delinquent amounts. (1) INTEREST. The interest rate on delinquent general property taxes, special charges, special assessments and special taxes included in the tax roll for collection is one percent per month or fraction of a month.

(2) PENALTY ALLOWED. (a) Any county board and the common council of any city authorized to act under s. 74.87 may by ordinance impose a penalty of up to 0.5 percent per month or fraction of a month, in addition to the interest under sub. (1), on any delinquent general property taxes, special assessments, special charges and special taxes included in the tax roll.

(b) Any ordinance enacted under par. (a) may specify that the penalty under this subsection shall apply to any general property taxes, special assessments, special charges and special taxes that are delinquent on the effective date of the ordinance.

(3) DISTRIBUTION. (a) All interest and penalties collected by the county treasurer on payments of real property taxes and special taxes shall be retained by the county treasurer for the county.

(b) All interest and penalties on payments of delinquent special assessments and special charges collected by the county treasurer of a county which settles for unpaid special assessments and special charges under s. 74.29 shall be retained by the county treasurer for the county.

(c) All interest on payments of delinquent special assessments and special charges collected by the county treasurer of a county which does not settle for unpaid special assessments and special charges under s. 74.29 shall, along with the delinquent amounts that have been paid, be paid to the taxing jurisdiction which assessed the special assessment or special charge as follows:

1. If collected on or before July 31, as part of the settlement under s. 74.29.

2. If collected after July 31 and before issuance of the tax certificate under s. 74.57, on or before September 15.

(d) All interest and penalties on delinquent general property taxes, special assessments, special charges and special taxes collected on or before July 31 by the treasurer of a taxation district which has enacted an ordinance under s. 74.12 shall be retained by the taxation district treasurer for the taxation district.

(e) All interest and penalties on payments of delinquent personal property taxes collected by the taxation district treasurer shall be retained by the taxation district treasurer for the taxation district.

(f) All penalties on payments of delinquent special assessments and special charges collected by the county treasurer of a county which does not settle for unpaid special assessments and special charges shall be retained by the county treasurer for the county.

History: 1987 a. 378; 1989 a. 104; 1991 a. 39.

74.485 Charge for converting agricultural land. (1) DEFINITION. In this section, "agricultural land" has the meaning given in s. 70.32 (2) (c) 1g.

(2) CONVERSION CHARGE. Except as provided in sub. (4), a person who owns land that has been assessed as agricultural land under s. 70.32 (2r) and who converts the land's use so that the land is not eligible to be assessed as agricultural land under s. 70.32 (2r), as determined by the assessor of the taxation district in which the land is located, shall pay a conversion charge to the county in which the land is located in an amount, calculated by the county treasurer, that is equal to the number of acres converted multiplied by the amount of the difference between the average fair market value of an acre of agricultural land sold in the county in the year before the year that the person converts the land, as determined under sub. (3), and the average equalized value of an acre of agricultural land in the county in the year before the year that the person converts the land, as determined under sub. (3), multiplied by the following:

(a) Five percent, if the converted land is more than 30 acres.

(b) Seven and one−half percent, if the converted land is 30 acres or less but at least 10 acres.

(c) Ten percent, if the converted land is less than 10 acres.

(3) VALUE DETERMINATION. Annually, the department of revenue shall determine the average equalized value of an acre of agricultural land in each county in the previous year, as provided

under s. 70.57, and the average fair market value of an acre of agricultural land sold in each county in the previous year based on the sales in each county in the previous year of parcels of agricultural land that are 38 acres or more to buyers who intend to use the land as agricultural land.

(4) EXCEPTIONS AND DEFERRAL. (a) A person who owns land that has been assessed as agricultural land under s. 70.32 (2r) and who converts the land's use so that the land is not eligible to be assessed as agricultural land under s. 70.32 (2r) is not subject to a conversion charge under sub. (2) if the converted land may be assessed as undeveloped under s. 70.32 (2) (a) 5., as agricultural forest under s. 70.32 (2) (a) 5m., as productive forest land under s. 70.32 (2) (a) 6., or as other under s. 70.32 (2) (a) 7. or if the amount of the conversion charge determined under sub. (2) represents less than $25 for each acre of converted land.

(b) If a person owes a conversion charge under sub. (2), the treasurer of the county in which the person's land is located may defer payment of the conversion charge to the succeeding taxable year if the person demonstrates to the assessor of the taxation district in which the land is located that the person's land will be used as agricultural land in the succeeding taxable year. A person who receives a deferral under this paragraph is not subject to the conversion charge under sub. (2) related to the deferral, if the person's land is used as agricultural land in the succeeding taxable year. If the land of a person who receives a deferral under this paragraph is not used as agricultural land in the succeeding taxable year, the person shall pay the conversion charge with interest at the rate of 1 percent a month, or fraction of a month, from the date that the treasurer granted a deferral to the date that the conversion charge is paid.

(5) PAYMENT. Except as provided in sub. (4), a person who owes a conversion charge under sub. (2) shall pay the conversion charge to the county in which the person's land related to the conversion charge is located no later than 30 days after the date that the conversion charge is assessed. A conversion charge that is not paid on the date it is due is considered delinquent and shall be paid with interest at the rate of 1 percent a month, or fraction of a month, from the date that the conversion charge is assessed to the date that the conversion charge is paid. The county shall collect an unpaid conversion charge as a special charge against the land related to the conversion charge.

(6) DISTRIBUTION. A county that collects a conversion charge under this section shall distribute 50 percent of the amount of the conversion charge to the taxation district in which the land related to the conversion charge is located. If the land related to the conversion charge is located in 2 or more taxation districts, the county shall distribute 50 percent of the amount of the conversion charge to the taxation districts in proportion to the equalized value of the land related to the conversion charge that is located in each taxation district. A taxation district shall distribute 50 percent of any amount it receives under this subsection to an adjoining taxation district, if the taxation district in which the land related to the conversion charge is located annexed the land related to the conversion charge from the adjoining taxation district in either of the 2 years preceding a distribution under this subsection.

(7) NOTICE. A person who owns land that has been assessed as agricultural land under s. 70.32 (2r) and who sells the land shall notify the buyer of the land of all of the following:

(a) That the land has been assessed as agricultural land under s. 70.32 (2r).

(b) Whether the person who owns the land and who is selling the land has been assessed a conversion charge under sub. (2) related to the land.

(c) Whether the person who owns the land and who is selling the land has been granted a deferral under sub. (4) related to the land.

(8) TAXATION DISTRICT ASSESSOR. The assessors of the taxation districts located in the county shall inform the county treasurer and the real property lister of all sales of agricultural land located in the county. No later than 15 days after the board of review has adjourned, the assessors shall also deliver to the county treasurer all information necessary to compute the conversion charges assessed under this section.

(9) ADMINISTRATION. The county in which the land as described in sub. (1) is located shall administer the conversion charge under this section.

History: 2001 a. 109; 2003 a. 33; 2007 a. 210.

74.49 Payment of delinquent taxes in installments.

(1) INSTALLMENTS ALLOWED. Delinquent property taxes, special assessments, special charges and special taxes may be paid to the appropriate treasurer in partial payments of not less than $20, unless the treasurer agrees to accept a lower amount.

(2) PRINCIPAL AND INTEREST. (a) The treasurer shall determine that portion of a partial payment to be applied as principal by dividing the amount of the partial payment by a figure which is the sum of one plus a figure which is the product of the number of months of delinquency, as determined under s. 74.11, 74.12 or 74.87:

1. Times 0.01, if no penalty under s. 74.47 (2) applies; or

2. Times a decimal which reflects the applicable percentage, if a penalty under s. 74.47 (2) applies.

(b) The amount of the payment that is in excess of the amount of principal determined under par. (a) is the interest and penalty accrued from the date of the delinquency on the amount of the partial payment which is principal. After any partial payment is made, subsequent determinations of interest and penalty shall be computed only on the unpaid balance of the principal, from the date of the delinquency as determined under s. 74.11, 74.12 or 74.87.

History: 1987 a. 378; 1991 a. 39.

74.51 Discharge of delinquent taxes.

(1) PAYMENT TO DISCHARGE DELINQUENCY. Any person may, at any time before issuance of a tax certificate under s. 74.57, discharge delinquent real property taxes, special assessments, special charges or special taxes on real property by paying the delinquent amounts, together with interest and any penalty provided under s. 74.47 (2).

(2) RECEIPTS FOR TAXES PAID. After a payment is made under sub. (1), the treasurer shall execute duplicate receipts showing the name of the person making the payment, the date of the payment, the description of the property upon which the payment was made and the amount paid. One copy of the receipt shall be delivered to the person making the payment and the other copy filed in the treasurer's office.

History: 1987 a. 378.

74.53 Personal liability for delinquent taxes and other costs.

(1) RECOVERY OF TAXES AND COSTS AGAINST PERSONS. Except as provided in subs. (3) and (5), a county or a municipality may bring a civil action against a person to recover any of the following amounts that are included in the tax roll for collection and any of the amounts under pars. (b) and (c) that are not included in the tax roll for collection:

(a) Delinquent real property taxes, special charges, special assessments and special taxes, not including amounts under pars. (b) and (c), that were delinquent during the period that the person owned the property.

(b) The cost of razing and removing property and restoring the site to a dust−free and erosion−free condition incurred under s. 66.0413 (1) (br) 2., (f), (g) or (i), (2) (d) or (4) or of filling an excavation incurred under s. 66.0427 if the person owned the property when the property was razed and removed and the site restored or the excavation was filled, or if the person owned the property while the order to raze the property was recorded in the register of deeds office.

(c) The cost of abating a public nuisance under s. 254.595 or 823.04 if the person owned the property when the public nuisance was abated.

(2) CO−OWNER LIABILITY. Co−owners of property are jointly and severally liable for the payment of real property taxes, assessments or costs collectible under sub. (1).

(3) LIMITATION. A county or a city authorized to act under s. 74.87 may not proceed against any person under sub. (1) for amounts under sub. (1) (a) unless the property against which the amounts are levied in the tax roll is included in a tax certificate issued under s. 74.57.

(4) RECOVERY LIMITED. A county or a municipality that proceeds against a property owner under this section may not recover more than the amount owed plus interest and penalties.

(5) PRIOR APPROVAL; NOTICE. No action may be commenced under sub. (1) for the amounts under sub. (1) (a) unless it is approved by the county board or the governing body of the municipality. The clerk shall mail, to the last−known address of the person against whom an action is proposed to be commenced, advance written notice of the time and place the county board will meet to consider approval of legal action. A county board or the governing body of the municipality may abrogate its duty to approve and notice each action to be commenced under sub. (1) by adopting an ordinance waiving the duty and specifying procedures by which an action under sub. (1) may be commenced.

(6) ACTION BY TAXING JURISDICTION. A taxing jurisdiction may bring a civil action under this section against a person to recover special assessments as defined in s. 75.36 (1) and special charges levied by it for which the county or municipality did not settle in full or which were not fully paid by proceeds distributed under s. 75.05 or 75.36. Any amount recovered in an action under this subsection shall be reported to the county or city treasurer, who shall subtract it from the amount owed for purposes of sub. (4).

(7) APPOINTMENT OF RECEIVER. A court may appoint a receiver to take charge of property included in a tax certificate under s. 74.57 if a county or a city authorized to act under s. 74.87 proceeds against the owner of the property under this section. The receiver shall manage the property, collect rents and apply income to the payment of delinquent real property taxes.

History: 1987 a. 378; 1989 a. 104, 347, 359; 1993 a. 27, 382, 453, 491; 1997 a. 27; 1999 a. 68, 150; 2001 a. 38.

A land contract vendor is not an owner of real estate under this section. City of Milwaukee v. Greenberg, 163 Wis. 2d 28, 471 N.W.2d 33 (1991).

74.55 Action to collect delinquent personal property taxes. (1) CIVIL ACTION. Delinquent personal property taxes, together with any interest and penalty under s. 74.47, may be recovered by the taxation district in a civil action, including an action under ch. 799, if the action is brought within 6 years after the January 1 of the year in which the taxes are required to be paid.

(2) CERTAIN PROPERTY NOT EXEMPT FROM EXECUTION. In a proceeding to enforce a judgment rendered in an action under this section to recover delinquent personal property taxes, the personal property on which the taxes were delinquent is not exempt from execution under s. 815.18.

History: 1987 a. 378.

SUBCHAPTER VII

ISSUANCE OF TAX CERTIFICATE

74.57 Issuance of tax certificate. (1) ISSUANCE. Annually, on September 1, the county treasurer shall issue to the county a tax certificate which includes all parcels of real property included in the tax roll for which real property taxes, special charges, special taxes or special assessments remain unpaid at the close of business on August 31.

(2) EFFECT. (a) Issuance of a tax certificate commences the redemption period on all real property included in the tax certificate unless s. 74.59 (2) applies.

(b) Two years after the issuance of the tax certificate, unless s. 74.59 (2) or 75.03 applies, the county is entitled, as to any property included in the tax certificate which has not been redeemed, to do any of the following:

1. Take a tax deed under s. 75.14.

2. Commence an action to foreclose the certificate under s. 75.19.

3. Commence an action to foreclose the tax lien represented by the certificate under s. 75.521.

(3) CERTIFICATE NOT TRANSFERABLE. Except as provided under s. 74.635, the county may not sell, assign, or otherwise transfer a tax certificate. However, if a city authorized to act under s. 74.87 pays delinquent taxes under an agreement entered into under s. 74.83, the county treasurer shall issue or reissue tax certificates to the city on all property for which the delinquent taxes have been paid.

(4) FORM. (a) The tax certificate shall group by taxation district all parcels for which real property taxes, special assessments, special charges or special taxes remain unpaid.

(b) Unless it is issued by a city authorized to act under s. 74.87, the tax certificate shall:

1. Contain a legal description of each parcel of property.

2. For each parcel, state the amount of the unpaid real estate taxes, special assessments, special charges or special taxes and the date from which the interest and any penalty accrue.

3. State the earliest date upon which the county may be entitled to a tax deed or equivalent evidence of title.

(c) The format of the tax certificate shall be prescribed by the department of revenue under s. 70.09 (3).

(d) If a parcel of property is redeemed after the tax certificate is issued, the date on which the property was redeemed shall be noted on the certificate, together with the amount for which the property was redeemed.

(5) CERTAIN LANDS EXEMPT. This section does not apply to public lands held on contract, lands mortgaged to the state or lands subject to s. 74.65.

History: 1987 a. 378; 1989 a. 104; 1991 a. 39; 2003 a. 33.

74.59 Notice of issuance of tax certificate. (1) NOTICE OF ISSUANCE OF TAX CERTIFICATE. (a) Within 90 days after issuance of the tax certificate under s. 74.57, the county treasurer shall mail a notice to each owner of record, as shown in the tax roll, of property included in the certificate for which real property taxes, special assessments, special charges or special taxes remain unpaid as of the date the notice is mailed. Unless it is issued by a city authorized to act under s. 74.87, the notice shall state all of the following:

1. That real property taxes, special assessments, special charges or special taxes remain unpaid as of the date of mailing on property which the tax roll shows is owned by the addressee.

2. That the records showing the delinquency under subd. 1. are available for inspection in the treasurer's office.

3. That, on the previous September 1, a tax certificate was issued to the county for all property for which real property taxes, special assessments, special charges or special taxes remained unpaid at the close of business on August 31.

4. That failure to pay the delinquent real property taxes, special charges, special taxes or special assessments will result in eventual transfer, no earlier than 2 years after issuance of the tax certificate, of the ownership of the property to the county.

(b) The format of the notice under this subsection shall be prescribed by the department of revenue under s. 70.09 (3).

(2) NOTICE NOT TIMELY MAILED. If a treasurer fails to mail the notice required under sub. (1), the notice may be mailed later and the 2−year period of redemption commences on the date of the mailing.

(3) AFFIDAVIT OF MAILING. After completing the mailing under sub. (1) or (2), the treasurer, except the treasurer of a city authorized to proceed under s. 74.87, shall sign an affidavit attest-

ing that the treasurer has complied with the mailing requirements under this section. The affidavit shall do all of the following:

(a) Identify the property owners and the addresses to which the notice was mailed.

(b) Contain a description of each parcel of property, as shown on the tax certificate, for which a notice was mailed.

(c) State the amount of unpaid real property taxes, special assessments, special charges or special taxes for each description of property included under par. (b).

(4) EFFECT OF NOT RECEIVING NOTICE. Failure of a person to receive a notice under this section does not affect the ability of a county or city to acquire ownership of property for which a tax certificate has been issued.

History: 1987 a. 378; 1991 a. 39.

74.61 Correction of description on tax certificate. (1) ERROR DISCOVERED. If the treasurer determines that the description of any property in a tax certificate is erroneous, the treasurer shall direct the assessor of the taxation district in which the property is located to prepare and deliver to the county treasurer an affidavit that provides a correct description of the property.

(2) NOTICE TO INTERESTED PERSONS. After the treasurer receives the affidavit, he or she shall notify any person with a recorded interest in the property that the description of the property is to be corrected as shown in the assessor's affidavit. The format of the notice shall be prescribed by the department under s. 70.09 (3). Notice shall be given as provided in s. 801.11 (4).

(3) OBJECTION; COURT RESOLUTION. Not more than 20 days after notice is given under sub. (2), any person with a recorded interest in the property may file with the treasurer a written objection to the proposed correction of the description of the property. If an objection is filed and cannot be resolved, the treasurer shall bring an action in circuit court to correct the property description.

(4) NO OBJECTION; DESCRIPTION CORRECTED. If no objection is made under sub. (3), the treasurer shall correct the description as prescribed in the affidavit of the assessor. The treasurer shall verify in writing on the tax certificate that the correction was made and shall sign the verification. Any tax certificate corrected under this section is valid as of the date the tax certificate was originally issued, and any tax deed or equivalent evidence of title issued on the corrected tax certificate is valid.

History: 1987 a. 378.

74.63 Retention of tax certificate and other information. Following issuance of a tax certificate under s. 74.57 and notice of issuance under s. 74.59, the treasurer shall retain all of the following:

(1) The tax certificate.

(2) The affidavit of mailing, executed under s. 74.59 (3).

(3) The tax roll upon which were included the real property taxes, special charges, special taxes or special assessments for which the tax certificate was issued.

History: 1987 a. 378.

74.635 Sale of tax certificate revenues. (1) DEFINITIONS. In this section:

(a) "County" includes a city that is authorized to act under s. 74.87.

(b) "Tax certificate" means a tax certificate issued under s. 74.57.

(c) "Tax certificate revenues" means, with respect to each parcel of real property included in a tax certificate, payments of real property taxes, special charges, special taxes, and special assessments indicated on a tax certificate, including interest and penalties on such amounts.

(2) SALE. A county may sell to any person all or a portion of the county's right to receive tax certificate revenues. The county shall distribute the proceeds from a sale under this subsection as provided under s. 75.05.

(3) ADMINISTRATION. A county may enter into an agreement for the sale of the county's right to receive tax certificate revenues. The agreement may include any provisions that the county considers necessary and may permit any person who purchases all or any portion of a county's right to receive tax certificate revenue to sell, assign, or otherwise transfer such right, in whole or in part, to another person.

History: 2003 a. 33.

74.65 Lands acquired by state. (1) EXCLUDED FROM TAX CERTIFICATE. A tax certificate may not, at the time of issuance, include real property which was acquired by the state after taxes have become a lien on the property. Within a reasonable time after the tax roll in which the delinquent real property taxes, special charges, special taxes or special assessments charged to such property are included is delivered to the county treasurer under s. 74.43, or within a reasonable time after a delinquency occurs, if it occurs after delivery of the tax roll to the county treasurer, or, if the roll is retained by a city authorized to act under s. 74.87, on or before July 1, the treasurer shall certify to the state agency acquiring the property the amount of the delinquency, including interest and penalty, and include the description of the property contained in the tax roll. Within a reasonable time after receipt of the certification from the treasurer, the state agency shall transmit the certification and a voucher to the department of administration, directing that the amount of delinquency, including interest and penalty, be paid.

(2) NO TAX DEEDS ISSUED. No tax deed or equivalent evidence of title may be issued for real property which is acquired by the state after a tax certificate which included the property was issued. A state agency which purchases property which is included on an outstanding tax certificate shall pay to the treasurer an amount sufficient to redeem the property. If by mistake a tax deed or equivalent evidence of title is issued contrary to this subsection and the state brings an action to set aside the deed or equivalent evidence of title, the court shall require, as a condition of relief, that the state indemnify the county, city authorized to act under s. 74.87 or persons having an interest in the property which is founded upon the tax deed or equivalent evidence of title.

(3) HOW LIENS PAID. The amount of unpaid liens against property purchased by the state shall, when paid, be charged to the appropriation to which the purchase price is charged. Liens on property forfeited under s. 24.28 shall be paid out of the appropriation to which payments by the person forfeiting the property were credited.

History: 1987 a. 378.

SUBCHAPTER VIII

MISCELLANEOUS

74.67 Effect on taxes of revision of taxing jurisdiction boundary. A revision of the boundaries of a taxing jurisdiction after the January assessment date does not affect the levy or collection of property taxes based upon that assessment. Section 66.0235 governs any adjustment of assets and liabilities following revision of the boundaries.

History: 1987 a. 378; 1999 a. 150 s. 672.

74.69 Timely payment. (1) GENERAL RULE. If payment is required by this chapter to be made by a taxpayer on or before a certain date, the payment is timely if it is mailed in a properly addressed envelope, postmarked before midnight of the last day prescribed for making the payment, with postage prepaid, and is received by the proper official not more than 5 days after the prescribed date for making the payment.

(2) POSTAL SERVICE DELAY. A payment which fails to satisfy the requirements of sub. (1) solely because of a delay or administrative error of the U.S. postal service shall be considered to be timely.

(3) COUNTY DETERMINATION OF POSTAL SERVICE DELAY OR ERROR. (a) In this subsection, "late payment" means a payment required under s. 74.11 or 74.12 which is not timely made under sub. (1).

(b) Any person required to pay interest or a penalty because of a late payment may, within 10 days of payment of interest or a penalty, but not later than December 1 of the year that the general property tax, special tax, special charge or special assessment was due, file a written request with the county treasurer requesting that the county board find that the late payment was timely under sub. (1) because the sole reason it was not timely was a delay or administrative error on the part of the U.S. postal service. The county board shall act on the request within 30 days after receipt of the request by the treasurer.

(c) The county board shall find that a late payment was timely under sub. (1) if it determines that the sole reason the payment was not timely was a delay or administrative error by the U.S. postal service. If it so finds, the county board shall direct that any interest or penalty paid because of the late payment be reimbursed to the taxpayer by the taxation district or county which collected the interest or penalty. A taxation district treasurer or county treasurer shall comply with a directive issued under this paragraph within 10 days.

(d) The county board may delegate the authority to make a determination under this subsection to any committee of the county board or committee or official of the county.

(e) This subsection does not affect the authority of a taxation district treasurer or county treasurer to consider payment timely under sub. (1) if the treasurer concludes that the payment fails to satisfy the requirements of sub. (1) solely due to a delay or administrative error by the U.S. postal service.

(f) This section does not apply to a city authorized to proceed under s. 74.87.

History: 1987 a. 378.

74.71 Treasurer's receipts. When a taxation district treasurer pays money to a county treasurer under this chapter, the county treasurer shall give the taxation district treasurer a receipt prescribed by the department of revenue for the amount paid.

History: 1987 a. 378; 1991 a. 39.

74.73 Rights of occupant or tenant who pays taxes. An occupant or tenant of property who pays real property taxes, special assessments, special charges or special taxes levied against the property, including any interest or penalties, may recover the amounts paid, plus interest at the rate of 1.0 percent per month or portion of a month, from the person under whom he or she is an occupant or tenant. Unless otherwise agreed between the parties, the occupant or tenant may deduct the amounts paid, plus interest, from rental payments otherwise due to the person under whom he or she is an occupant or tenant.

History: 1987 a. 378.

74.75 Vacancies in office; how taxes collected. If property within a taxation district is not assessed because of a vacancy in a county, city, village or town office, the department of revenue shall appoint a person certified under s. 73.09 to perform the functions of the office of assessor. If property taxes, special charges, special assessments or special taxes are not collected on property because of a vacancy in a city, other than a city authorized to proceed under s. 74.87, village or town office, the county treasurer shall perform the functions of taxation district treasurer.

History: 1987 a. 378.

74.77 Effect on lien of payment of taxes by lienholder. (1) PAYMENT INCREASES LIEN. A person who holds a lien on real property and pays real property taxes, special assessments, special charges or special taxes levied against the property or any interest or penalty increases the amount of his or her most senior lien against the property by the amount paid, plus interest at the rate of 1.0 percent per month or fraction of a month. An increase in the amount of a lien by this section does not affect the priority or enforcement of the lien.

(2) APPLICABILITY. This section applies to all payments made by lien holders, regardless of whether they are made against current amounts, delinquent amounts or in redemption under ch. 75.

History: 1987 a. 378.

74.79 Lienholder may contest tax. (1) Any person who holds a lien on real property has the remedies of a property owner to contest, as to that property, the legality or validity of any real property tax, special assessment, special charge or special tax or the validity of a tax certificate issued under s. 74.57.

(2) A county to which a tax certificate has been issued under s. 74.57 has the remedies of a property owner to contest, as to any property included in the tax certificate, the assessed value of the property and the legality or validity of any real property tax, special assessment, special charge or special tax.

History: 1987 a. 378; 1993 a. 453.

SUBCHAPTER IX

EXCEPTIONS FOR 1ST CLASS CITIES

74.81 Procedure in authorized city. In any city authorized by its charter to sell land for nonpayment of city taxes, the provisions of this subchapter relating to the time and place of payment and returns and settlements of the taxes and charges in the duplicate county tax roll shall apply in order to conform as nearly as may be to the procedure prescribed and followed under that charter, but otherwise the provisions of this subchapter shall govern.

History: 1987 a. 378.

74.83 Agreements. Any 1st class city may enter into agreements to pay delinquent state, county, metropolitan sewerage district and technical college district real or personal property taxes, including accrued interest and penalties thereon, applicable to property located in that city at any stage in the proceedings for collection and enforcement of those taxes and thereafter collect and enforce those taxes, including interest and penalties on them, in its own name in accordance with any of the procedures or remedies applicable to the collection and enforcement of delinquent city, state, county, metropolitan sewerage district and technical college district taxes under this chapter and ch. 75.

History: 1987 a. 378; 1993 a. 399, 491.

74.87 Payments in authorized cities. (1) DEFINITION. In this section, "city" means a city authorized by its charter to sell land for nonpayment of taxes.

(2) WHEN PAYABLE GENERALLY. Except as provided in subs. (3) and (4), in a city, general property taxes, special charges and special assessments shall be paid to the city treasurer on or before January 31.

(3) OPTIONAL PAYMENT SCHEDULE. The common council of a city may, by ordinance, permit payment in 10 equal installments, without interest, of general property taxes, special charges and special assessments of the city, other than for special assessments for which no payment extension is allowed. Each installment shall be paid on or before the last day of each month from January through October. Taxes on personal property may be paid in installments under this subsection if, on or before January 31 of the year in which the tax becomes due, the taxpayer has first paid to the city treasurer taxes on personal property levied by all taxing jurisdictions other than the city. The amounts and time of payment of city general property taxes, special assessments and charges in the city tax roll shall be as provided in the charter of the city.

NOTE: Sub. (3) is shown as renumbered from sub. (3) (a) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(4) OPTIONAL PAYMENT SCHEDULE FOR CERTAIN TAXES AND CHARGES. The common council of a city may, by ordinance, permit the payment in 7 equal installments, without interest, of a portion of all general property taxes and special charges in the duplicate county tax roll or of any tax or charge levied by a metropolitan

sewerage district under ss. 200.21 to 200.65. Each installment shall be paid on or before the last day of each month from January through July.

(5) EXERCISE OF INSTALLMENT OPTION. The taxpayer may exercise the option provided under sub. (3) or (4) by making the first installment payment on or before January 31 of the year in which the general property taxes, special assessments or special charges are due.

(6) LATE PAYMENT OF INSTALLMENTS. (a) If one installment only is not paid on the due date, that installment is not delinquent and does not render the unpaid balance delinquent, but the installment shall be collected, together with interest and penalty as provided under s. 74.47 from the day following the due date.

(b) If a 2nd installment under sub. (3) is not paid on the due date, the city treasurer shall declare the unpaid balance delinquent and the general property taxes, special assessments and special charges shall be collected by the city treasurer together with interest and penalty as provided under s. 74.47 from the preceding February 1.

(c) If a 2nd installment under sub. (4) is not paid on the due date, the entire unpaid balance is delinquent and shall be returned to the county treasurer for collection.

(d) If the final installment is not paid by the end of the month following the due date, the delinquent unpaid balance shall be collected, with interest and penalty as provided under s. 74.47, from the preceding February 1.

(7) PAYMENT CONSIDERED TIMELY. A payment is timely under subs. (2) to (4) under any of the following conditions:

(a) It is mailed in a properly addressed envelope and received by the city treasurer with postage prepaid and the envelope is postmarked before midnight of the last date prescribed for making the payment.

(b) It is received by the city treasurer by mail or otherwise within 5 days of the prescribed date.

(c) If the only reason that the requirements of par. (a) or (b) are not met is delay by, or an administrative error of, the U.S. postal service.

(8) RETURN OF TAX ROLL. On or before February 25, the treasurer of a city acting under this section shall return the duplicate county tax roll to the county treasurer. The city treasurer shall collect delinquent city general property taxes, special assessments and special charges as provided in the city charter, except that the city treasurer shall certify all delinquent taxes levied by a metropolitan sewerage district that is created under ss. 200.21 to 200.65 to the county treasurer for collection.

History: 1987 a. 378; 1991 a. 39; 1999 a. 150 s. 672; s. 13.92 (1) (bm) 2.

Town of Merrimac, Sauk County, Wisconsin

ORDINANCE # 2009-03

ADOPTION OF WISCONSIN UNIFORM DWELLING CODE

CONTENTS

1.1 AUTHORITY. These regulations are adopted under the authority granted by s. 101.65, Wisconsin Statutes

1.2 PURPOSE. The purpose of this ordinance is to promote the general health, safety and welfare and to maintain required local uniformity with the administrative and technical requirements of the Wisconsin Uniform Dwelling Code.

1.3 SCOPE. The scope of this ordinance includes the construction and inspection of one- and two-family dwellings built since June 1, 1980.

1.4 WISCONSIN UNIFORM DWELLING CODE ADOPTED. The Wisconsin Uniform Dwelling Code, Chs. Comm 20-25 of the Wisconsin Administrative Code, and all amendments thereto, is adopted and incorporated by reference and shall apply to all buildings within the scope of this ordinance.

1.5 BUILDING INSPECTOR. There is hereby created the position of Building Inspector, who shall administer and enforce this ordinance and shall be certified by the Division of Safety & Buildings, as specified by Wisconsin Statutes, Section 101.66(2), in the category of Uniform Dwelling Code Construction Inspector. Additionally, this or other assistant inspectors shall possess the certification categories of UDC HVAC, UDC Electrical, and UDC Plumbing.

1.6 UNIFORM DWELLING CODE PERMIT REQUIRED. A Uniform Dwelling Code Permit is required when a person constructs a new one- or two-family dwelling. If a person alters a building in excess of $1,000,000 value in any twelve month period, adds onto a building in excess of $1,000,000 in any twelve month period, or builds or installs a new building, within the scope of this ordinance, they shall first obtain a Uniform Dwelling Code permit for such work from the building inspector. Any structural changes or major changes to mechanical systems that involve extensions shall require permits if over the forgoing thresholds. Restoration or repair of an installation to its previous code- compliant condition as determined by the building inspector is exempted from permit requirements. Residing, re-roofing, finishing of interior surfaces and installation of cabinetry shall be exempted from Uniform Dwelling Code permit requirements, but not necessarily from the requirements of the Town of Merrimac's Zoning Ordinance.

1.7 BUILDING PERMIT FEE. The building permit fees shall be determined by resolution and shall include the state fees to be forwarded to the Wisconsin Department of Commerce for a UDC permit seal that shall be assigned to any new dwelling.

1.8 PENALTIES. The enforcement of this section and all other laws and ordinances relating to building shall be by means of the withholding of building permits, imposition of forfeitures and injunctive action. Forfeitures shall be not less than $25.00 nor more than $1,000.00 for each day of noncompliance.

1.9 The building inspector(s) shall keep a log of all inspections completed. The Building Inspector shall report all activity at least monthly to the Town's Zoning Administrator.

1.10 This ordinance does not repeal, replace, supercede, nor affect any requirements for building permits required by the Town of Merrimac Zoning Ordinance.

1.11 EFFECTIVE DATE. This ordinance is effective on publication or posting. The town clerk shall properly post or publish this ordinance as required under s. 60.80, Wis. stats.

Adopted this 2nd, day of December, 2009.

Steve Peetz, Town Chair

Attest: _____
Tim McCumber
Town Administrator & Clerk - Treasurer

Posted/Published 12-3-09

TOWN OF MERRIMAC
ORDINANCE 2014-15

AN ORDINANCE TO PROHIBIT ISSUANCE OF LICENSES OR PERMITS FOR NONPAYMENT OF TAXES, ASSESSMENTS AND CLAIMS.

Whereas, State of Wisconsin Statute §66.0115(1), specifically authorizes a municipality to refuse to issue any license or permit to a person who has not paid an overdue forfeiture resulting from a violation of an ordinance of the municipality, unless the nonpayment of a forfeiture if the license applicant is appealing the imposition of the forfeiture; and

Whereas, Wis. Stat. §125.10(1), provides sufficient authority for a municipality to enact an ordinance that prohibits the issuance of an alcohol beverage license, retail or operator, where the applicant owes municipal taxes, assessments or other fees, such as room tax, so long as the ordinance applies to all municipal licenses.

THE TOWN BOARD OF THE TOWN OF MERRIMAC, SAUK COUNTY, WISCONSIN, DO ORDAIN AS FOLLOWS:

No initial or renewal alcohol related license, building permit, zoning variance, conditional use approval, or other zoning matter, or any other discretionary action of the town or any of its boards, commissions, departments, or employees may not be:

1. Approved for any applicant who is:
    a. Delinquent in the payment of any real estate taxes, room taxes, assessments, special assessments, personal property taxes, engineering, legal, administrative or other claim owed to the town.
    b. Delinquent in the payment of a forfeiture resulting from the violation of any ordinance.
2. This Ordinance shall take effect on August 14, 2014.

Adopted August 12, 2014