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GENERAL PROVISIONS AS TO OFFICIALS

1.01 TOWN GOVERNMENT. The Board of Supervisors of the Town is operated pursuant to Ch. 60, Wis. Stats.

1.02 TOWN BOARD. The Town Board shall consist of 5 members at large. Three supervisors shall be elected in odd numbered years at the annual spring election and 2 supervisors shall be elected in the even numbered years.

1.03 ELECTED OFFICIALS. (Rep. 98-467)

1.04 APPOINTED OFFICIALS. (Rep. & rec. 98-467)

(1) Annually the following officials shall be appointed by the Town Chairman, subject to the approval of the Town Board: Attorney, Assessor, Highway Superintendent, Building Inspector, Animal Control Officer, Fire Chief, Plumbing Inspector, Electrical Inspector, Chief of Water Safety Patrol and Weed Commissioner; and

(2) In addition thereto, the Town Board shall appoint by a majority of the members-elect of the Town Board as defined by Wisconsin Statute §59.001 (2m) a Town Clerk and a Town Treasurer as authorized by the Town meeting under Wisconsin Statute §60.10 (1)(b) 2m. The initially appointed Town Clerk and the Town Treasurer shall be appointed pursuant to Wisconsin Statute §60.30 (1)(e), (f) and (g) and shall not take office until the term of the incumbent Town Clerk and Town Treasurer expires. The initial term of office for the appointed Town Clerk and Town Treasurer shall commence on April 13, 1999 and end on December 31, 1999. The term of office for the Town Clerk and the Town Treasurer thereafter shall be for one calendar year commencing on January 1, 2000 and on January 1st of each year thereafter. The person appointed to the position of Town Clerk or Town Treasurer may be reappointed and may be dismissed by the Board only for cause as defined in Wisconsin Statute §17.16 (2).

(3) Town Administrator (Rep. & rec. 20-02)

- (a) Position Creation. The position of Town Administrator is hereby created in order to provide the Town of Delafield with a more efficient, effective and responsible government.
- (b) Selection; Conditions of Employment. The Administrator shall be appointed by the Town Board to hold office at the pleasure of the Town Board, as an at-will employee.
- (c) Multiple Positions. The Town Board may appoint the same person to the Administrator position, as the person who serves as Town Clerk and Town Treasurer.
- (d) Powers and Duties. The Town Administrator shall have such powers and duties as may be delegated from time to time by the Town Board. The Town Board may create a job description for the Town Administrator, which may be modified by the Town Board from time to time.

1.05 OATHS AND BONDS. Elected and appointed officials shall take and file the official oath within 5 days after notice of their election or appointment as provided in §60.20, Wis. Stats., and shall execute and file the official bond as required by State Statutes and this General Code.

1.06 REMOVALS.

(1) **ELECTED OFFICIALS.** Elected officials may be removed by the judge of the Circuit Court for cause pursuant to §17.13(3), Wis. Stats.

(2) **APPOINTED OFFICIALS.** Appointed officials may be removed as provided in §§17.13(1) and 17.13(3), Wis. Stats.

1.07 VACANCIES.

(1) **HOW OCCURRING.** Vacancies in elective and appointive positions are caused as provided in §17.03, Wis. Stats.

(2) **HOW FILLED.** Vacancies in elective and appointive offices shall be filled as provided in §17.25, Wis. Stats.

1.08 COMPENSATION. The compensation of all elected and appointed officials, including members of boards and commissions, shall be as determined by the annual Town meeting, or the Town Board where applicable, provided salaries and compensation rates of elected officials shall not be increased or reduced during their terms of office. (See §60.60, Wis. Stats.)

1.09 RECEIPT OF GIFTS AND GRATUITIES.

(1) **RESTRICTED.** No Town employee or official shall receive or offer to receive, either directly or indirectly, any gift, gratuity or other thing of value which he is not authorized to receive from any person who:

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- (a) Has or is seeking to obtain contractual or other business or financial relationships with the Town or Town Board; or
- (b) Conducts operations or activities which are regulated by the Town or Town Board; or
- (c) Has interests which may be substantially affected by the Town or Town Board.

(2) **PENALTY.** The receipt of any gift, gratuity or other thing of value as denoted above is contrary to the public policy of the Town and is punishable as provided in §946.12, Wis. Stats. Such conduct shall also be punishable under §25.04 of this General Code.

1.10 DUTIES. The duties of all elected or appointed officials and employees of the Town shall be as prescribed by the applicable Wisconsin Statutes pertaining to town officials and such additional duties and responsibilities as set from time to time by the Town Board.

1.11 NONDISCRIMINATION. The Town and its representatives shall not discriminate against or interfere with any employee on account of membership or nonmembership in any labor organization. Nor shall the Town or its representatives discriminate with respect to any employee because of race, creed, color, national origin or sex.

1.12 TOWN CHAIRMAN AND SUPERVISORS.

(1) **ELECTION AND TERM.** See §1.01.

(2) **POWERS AND DUTIES.** The Town Board shall have all powers of the Town not specifically given to some other body or officer. Except as otherwise provided by law, the Town Board shall have the management and control of the Town property, finances, highways, streets, utilities and the public service, and may act for the government and good order of the Town, for its commercial benefit and for the health, safety, welfare and convenience of the public, and may carry its powers into effect by license, regulations, suppression, borrowing, taxation, special assessment, appropriation, imposition of forfeitures and other necessary or convenient means. The Town Board may appoint such officials from time to time as may be deemed necessary for the benefit of the community. In addition, the Town Board shall have the powers enumerated in §60.24, Wis. Stats. The powers hereby conferred shall be in addition to all other grants and shall be limited only by express language.

1.13 TOWN CONSTABLE, OFFICE OF ABOLISHED. (Rep. & recr. 4/24/90) Pursuant to the direction issued by the Town electors at the annual meeting of April 17, 1990, the office of Town Constable is hereby abolished with the provision that this action shall take effect at the conclusion of the term of the person presently serving in that office.

BOARDS AND COMMISSIONS

1.15 BOARD OF REVIEW. (Rep. & recr. 2013-05). (a) Members. The supervisors and one elector of the Town shall constitute the Board of Review for the Town. Pursuant to Wisconsin Statutes Sections 70.46(1) and 70.46(1m)(b), the Board of Review member who is not a Town Supervisor shall be appointed by the Town Chair with the approval of the Town Board for a five (5) year term. The Town Clerk shall be the clerk of the Board of Review and shall keep an accurate record of all its proceedings. The members of the Board,

except those who are full time officials of the Town, shall receive such compensation as shall be fixed by resolution of the Town Board.

- (b) Filing and Electronic transmission. Filing documents with the Clerk of the Board of Review may be accomplished in-person, by mail, by facsimile transmission or by e-mail transmission. In each case the document is not deemed to be filed until, and it is only deemed to be filed if, it is complete and (i) in the case of in-person delivery, mail or facsimile, it is actually received by the Clerk, or the party in charge of the Clerk's office, in-hand; or (ii) in the case of email, it is opened by the Clerk or the Clerk's designee. Any message left orally by telephone voice recording or other electronic means, similarly, is not deemed to be received until such message is actually heard by the Clerk or the Clerk's designee. Notwithstanding the foregoing, if the Board of Review finds that an email message or voice recording was actually received and reasonably should have been opened by the Clerk or the Clerk's designee, during normal business hours, at or prior to the applicable deadline, the Board of Review may find that the filing or voice recording was timely received. No document transmitted by facsimile transmission or email transmission while the Board of Review is in session shall be deemed to be filed with, or received by, the Clerk during the session. The party transmitting the document or message is solely responsible for ensuring its timely and complete receipt and filing.
- (c) Alternate Board of Review Members. Alternate members of the Board of Review may be appointed and may serve as follows. Alternate members shall be Town residents, and may include public officers and public employees. One alternate member shall be appointed annually by the Town Chair, subject to the confirmation of the Town Board, for a term of two (2) years, provided that initially two (2) alternate members shall be appointed for terms of 1 and 2 years respectively. At the time of their appointment, each alternate member shall be designated as either 1st or 2nd alternate, to establish the priority of all alternate members, and this priority may be revised annually by the Town Chair subject to the confirmation of the Town Board. The first alternate member shall act with full power when three (3) members are absent, refuse, or are otherwise unavailable to hear an objection. The second alternate member shall act with full power when four (4) members (or three (3) members and the first alternate member) are absent, refuse, or are otherwise unavailable to hear an objection.
- (d) Whenever the Assessor, in the performance of the Assessor's duties, requests or obtains income and expense information pursuant to Section 70.47(7)(af), Wis., Stats., or any successor statute thereto, then, such income and expense information that is provided to the Assessor shall be held by the Assessor on a confidential basis, except, however, that said information may be revealed to and used by persons: in the discharging of duties imposed by law; in the discharge of duties imposed by office (including, but not limited to, use by the Assessor in performance of official duties of the Assessor's office and use by the Board of Review in performance of its official duties); or pursuant to order of a court. Income and expense information provided to the Assessor under Section 70.47(7)(af), unless a court determines that it is inaccurate, is, per Section 70.47(7)(af), not subject to the right of inspection and copying under Section 19.35(1), Wis. Stats.

1.16 PLAN COMMISSION.

(1) APPOINTMENT AND TERM. (Rep. & recr. #92-326) The Plan Commission is hereby established and shall consist of the Town Chairman, one Town Supervisor and 5 citizens who reside in the Town and are persons of recognized experience and qualifications. The 5 citizen members shall be appointed by the Town Chairman, subject to confirmation by the Town Board. Following the initial appointment to the Plan Commission, the Town supervisor member shall be elected each April by 2/3 vote of the Town Board. The initial term of the 5 citizen members of the Plan Commission shall terminate in the April following initial appointment. Thereafter, the 5 citizen members of the Plan Commission shall be appointed for periods commencing as follows: one citizen member for a period ending one year thereafter, 2 citizen members for a period ending 2 years thereafter and 2 citizen members for a period ending 3 years thereafter. Succeeding appointments of the citizen members shall be for a full term of 3 years. All vacancies on the Plan Commission shall be filled for the unexpired term in the same manner as appointment for the full terms. Citizen members shall receive compensation for services on the Commission as the Town Board may determine. The chairman of the Plan Commission shall be determined by a 2/3 vote of the Town Board.

(2) **EXPENSES.** The Plan Commission shall have power and authority to employ experts and a staff and to pay their wages and such other expenses as may be necessary and proper, not exceeding the appropriation that may be made for such Commission by the Town Board or placed at its disposal through gift and subject to any ordinance or resolution enacted by the Town Board.

(3) **POWERS AND DUTIES.** The Plan Commission shall have the powers and duties as prescribed by §62.23, Wis. Stats., and such other duties as may be prescribed by the Town Board.

(4) **RULES OF PROCEDURE.** The Commission may adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings and determinations, which shall be a public record.

(5) **MASTER PLAN.** It shall be a function and duty of the Commission to make and adopt a master plan and from time to time amend, extend or add to the master plan as provided in §62.23(2), Wis. Stats.

BOARD OF ZONING APPEALS. The Board of Zoning Appeals shall consist of such members and have such powers and duties as are set forth in the Zoning Code.

1.17 HIGHWAY COMMISSION. See §8.01.

1.18 ARCHITECTURAL CONTROL COMMISSION. The Architectural Control Commission shall be appointed by the Town Board and shall advise the Board, Plan Commission and Building Inspector on matters pertaining to aesthetics and related matters as designated by the Board.

1.19 ECONOMIC DEVELOPMENT COMMITTEE. (Adopted 5/27/97 ord. 97-435)

The Economic Development Committee is hereby established and shall consist of four members appointed by the Town Chairman subject to confirmation by the Town Board, and the Town Chairman or his/her designee. The Economic Development Committee shall be responsible for researching, investigating and identifying economic activities and economic plans for the Town of Delafield and its environs and to provide information and input to the Plan Commission and Town Board upon their request.

1.20 PARK AND RECREATION COMMISSION. (Repealed 8/13/19 ord. 2019-04)

ELECTIONS

1.22 APPOINTMENT OF ELECTION OFFICIALS. (Cr. #92-313)

(1) The Town Board provides for the selection of 2 sets of officials to work at different times on election day.

(2) Any such additional officials shall be employed in such a manner that the total number of officials is an odd number and the predominant party under §7.30(2), Wis. Stats., is represented by one more official than the other party.

(3) The current and future provisions of §7.30, Wis. Stats., are adopted and made a part of this section by reference.

1.25 REGISTRATION OF VOTERS.

(1) **STATE STATUTES ADOPTED.** The statutory provisions describing and defining the registration of electors in the following enumerated sections of the Wisconsin Statutes are hereby adopted and by reference made a part of this section as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this section:

(a) 6.28 When to Register

(b) 6.30 How to Register

(c) 6.33 Registration Forms

- (d) 6.35 Filing Registration Cards
- (e) 6.36 Official Registration List
- (f) 6.40 Transferring Registration
- (g) 6.45 Registry Lists Public
- (h) 6.48 Challenging Registration
- (i) 6.50 Revision of Registration List
- (j) 6.55 Failure to Register; Rights
- (k) 6.57 Registry List for School & Special Elections
- (l) 6.77 Place for Voting
- (m) 6.78 Poll Hours
- (n) 6.79 Recording Electors

(2) **REGISTRY.** The Town Clerk shall have control of elector registration within the Township and shall prepare, continue and revise the registry, and is required to proceed with the registration of voters, all in the manner provided by law.

(3) **REGISTRATION REQUIRED.** No elector in the Town shall be permitted to vote unless registered in the manner provided by law, unless exempt from such requirement.

1.26 BOARD OF CANVASSERS.

Pursuant to §7.53(2)(b), Wis. Stats., the Town Board does hereby establish a Board of Canvassers as follows:

- (a) One member shall be the Town Clerk who shall be chairman of the Board. The Town Clerk shall receive no extra compensation for work on the Board of Canvassers.
- (b) Two members shall be electors of the Town with a demonstrated interest in municipal, county and State government. They shall not be current election workers. They shall be compensated at the same rate as election workers.
- (c) The Board members described in par. (b) shall be appointed by the Town Chairman, subject to confirmation of the Town Board. They shall serve for a term of 3 years and shall take and file an oath of office with the Town Clerk.

(2) The Board of Canvassers shall perform those duties and functions required by the Wisconsin Statutes.

MUNICIPAL COURT

1.30 MUNICIPAL COURT (repealed and recreated 2019-02)

(1) MUNICIPAL COURT CREATED

There is hereby created and established a Municipal Court under the provisions of Chapter 755 of the Wisconsin Statutes for the City of Oconomowoc, Village of Oconomowoc Lake, Village of Dousman, Town of Delafield, Village of Nashotah, Town of Lisbon, Town of Merton, Village of Sussex, Village of Hartland, Village of Lac LaBelle, Town of Oconomowoc, Village of Summit, Village of Chenequa, Town of Erin, Village of Merton, Village of Sullivan, Village of Johnson Creek, Town of Ixonia (Contract

Member), Town of Ottawa (Contract Member), and Town of Sullivan (Contract Member), or so many of those municipalities which enact an ordinance identical to this ordinance pursuant to §755.01(4).

(2) MUNICIPAL JUDGE

Such court shall be under the jurisdiction of and presided over by a Municipal Judge, who shall be an attorney licensed to practice law in Wisconsin, and who shall reside in one of the following Municipalities: City of Oconomowoc, Village of Oconomowoc Lake, Village of Dousman, Town of Delafield, Village of Nashotah, Town of Lisbon, Town of Merton, Village of Sussex, Village of Hartland, Village of Lac LaBelle, Town of Oconomowoc, Village of Summit, Village of Chenequa, Town of Erin, Village of Merton, Village of Sullivan, Village of Johnson Creek, Town of Ixonia, Town of Ottawa, or Town of Sullivan, or those municipalities which enact an ordinance identical to this ordinance and enter into an agreement pursuant to §66.0301 Wis. Stats. for the joint exercise of the power granted under §755.01 Wis. Stats. Such Municipal Judge shall be elected at large in the spring election for a term of four (4) years commencing May 1. All candidates for the position of Municipal Judge shall be nominated by nomination papers as provided in §8.10 Wis. Stats., and selection at a primary election if such is held as provided in §8.11 Wis. Stats. The Town Board of the Town of Delafield shall provide for a primary election whenever three (3) or more candidates file nomination papers for such position of Municipal Judge as provided in §8.11(1)(a) Wis. Stats., and such primary election shall be held on the third Tuesday of February as provided in §5.02(22) Wis. Stats.

(3) ELECTIONS

The Municipal Clerk of each municipality shall see to the compliance with §5.58(1c), 5.60(1)(b), 5.60(2), 7.10(1)(a), 7.60(4)(a) and 8.10(6)(bm) to provide for the election of a Municipal Judge under §755.01(4).

(4) OATH AND BOND

The Judge shall, after his election or appointment to fill a vacancy, take and file the official oath as prescribed in §757.02(1), Wis. Stats., and at the same time execute and file an official bond in the amount of \$5,000.00. The Judge shall not act until his oath and bond have been filed as required by §19.01(4)(c) Wis. Stats. and the requirements of §755.03(2) have been complied with.

(5) SALARY

The salary of the Municipal Judge shall be fixed by the governing bodies of the municipalities that created and established this Municipal Court, which shall be in lieu of fees and costs. No salary shall be paid for any time during his/her term during which such Judge has not executed his official bond or official oath, as required by §755.03, Wis. Stats., and filed pursuant to §19.01(4)(c) Wis. Stats. The municipalities may by separate ordinances, resolutions, or through the budget process, allocate funds for the administration of the Municipal Court pursuant to Wis. Stats. §66.0301.

(6) JURISDICTION

The municipal Judge of the Municipal Court shall have such jurisdiction as provided by §755.045 and 755.05 Wis. Stats., and as otherwise provided by State Law. The Municipal Judge is authorized to issue inspection warrants under §66.0119 Wis. Stats.

(7) LOCATION AND HOURS

The Municipal Court shall be held in the Council Chambers of the City of Oconomowoc City Hall at 174 E. Wisconsin Avenue, Oconomowoc, Wisconsin, until relocated to the City of Oconomowoc Police Department building at 630 East Wisconsin Avenue, Oconomowoc, Wisconsin. The Municipal Court shall be open at such times as determined by the Municipal Judge.

(8) FINES AND FORFEITURES

The Municipal Judge may impose punishment and sentences as provided by §800.09, Wis. Stats., and as provided in the ordinances of the following municipalities: City of Oconomowoc, Village of Oconomowoc Lake, Village of Dousman, Town of Delafield, Village of Nashotah, Town of Lisbon, Town of Merton, Village of Sussex, Village of Hartland, Village of Lac LaBelle, Town of Oconomowoc, Village of Summit, Village of Chenequa, Town of Erin, Village of Merton, Village of Sullivan, Village of

Johnson Creek, Town of Ixonia, Town of Ottawa, or Town of Sullivan. All forfeitures, fees, penalty assessments and costs shall be paid to the Treasurer of the Municipality within which the case arose within 7 days after receipt of the money by the Municipal Judge or other court personnel. At the time of the payment, the Municipal Judge shall report to the Treasurer the title of the action, the offense for which a forfeiture was imposed and the total amount of the forfeiture, fees, penalty assessment and costs, if any.

(9) STIPULATIONS AND DEPOSITS IN MUNICIPAL COURT

The Municipal Court herein established shall be operated pursuant to and in compliance with the provisions of Chapter 800 Wis. Stats., and, where applicable, other provisions of the Wis. Stats. as referred to in subsection (10) below. The Municipal Judge shall establish in accordance with §800.037 Wis. Stats., a schedule of deposits for violations of City, Village and Town ordinances, resolutions and by-laws, except traffic regulations which are and shall be governed by §345.26 Wis. Stats., and boating violations which are, and shall be governed by §23.66 and 23.67 Wis. Stats. Such deposit schedule shall be approved by the respective governing bodies of the municipalities creating and establishing this Court and shall be posted in the office of the Municipal Court Clerk and the police departments of the respective communities.

(10) PROCEDURE IN MUNICIPAL COURT

The procedure in Municipal Court shall be as provided by this Ordinance and State Law including, but not excluding because of enumeration Chapters 66, 345, 751, 755, 757 and 800 of Wis. Stats.

(11) CONTEMPT PROCEDURES

(a) The Municipal Judge may impose a sanction authorized under §800.12(2) for contempt of court, as defined in §785.01(1) Wis. Stats. in accordance with the procedures under §785.03 Wis. Stats.

(b) The Municipal Judge may impose a forfeiture for contempt under §800.12(1) Wis. Stats., in an amount not to exceed \$50.00 or, upon nonpayment of the forfeiture and the penalty assessment under §757.05 Wis. Stats., a jail sentence not to exceed 7 days.

(12) The Municipal Court hereby established shall not be abolished while the 755.01(4) agreement is in effect.

(1) **MUNICIPAL COURT CREATED.** There is hereby created and established a Municipal Court under the provisions of Chapter 755 of the Wisconsin Statutes to be designated as "Lake Country Municipal Court," or so many of those municipalities which enact an ordinance identical to the ordinance pursuant to Wis. Stat. § 755.01(4).

(2) **MUNICIPAL JUDGE.** Such court shall be under the jurisdiction of and presided over by a Municipal Judge, who shall be an attorney licensed to practice law in Wisconsin, and who shall reside in one of the following municipalities: City of Oconomowoc, Town of Oconomowoc, Town of Merton, Town of Summit, Village of Hartland, Village of Oconomowoc Lake, Village of Chenequa, Village of Lac La Belle, Village of Nashotah, Village of Dousman, Town of Lisbon, or Town of Delafield, or those municipalities which enact an ordinance identical to this ordinance and enter into an agreement pursuant to Wis. Stat. § 66.0301 for the joint exercise of the power granted under Wis. Stat. § 755.01. Such Municipal Judge shall be elected at large in the spring election for a term of two (2) years commencing on May 1. Candidates for the position of Municipal Judge shall be nominated by nomination papers as provided in Wis. Stat. § 8.10 and selection at a primary election if such is held as provided in Wis. Stat. § 8.11. The Town Board of the Town of Delafield shall provide for a primary election whenever three (3) or more candidates file nomination papers for such position of Municipal Judge as provided in Wis. Stat. § 8.11(l)(a), and such primary election shall be held on the third Tuesday of February as provided in Wis. Stat. § 5.02(22).

(3) **ELECTIONS.** The Municipal Clerk of each municipality shall see to the compliance with Wis. Stat. §§ 5.58(l)(c), 5.60(l)(b), 5.60(2), 7.10(l)(a), 7.60(4)(a), and 8.10(6)(a) to provide for the election of a Municipal Judge under Wis. Stat. § 755.01(4).

(4) **OATH AND BOND.** The judge shall, after his/her election or appointment to fill a vacancy, take and file the official oath as prescribed in Wis. Stat. § 757.02(l) and at the same time execute and file an official bond

in the amount of \$5,000. The judge shall not act until his/her oath and bond have been filed as required by Wis. Stat. § 19.01(4)(c) and the requirements of Wis. Stat. § 755.03(2) have been complied with.

(5) SALARY. The salary of the Municipal Judge shall be fixed by the governing bodies of the municipalities that created and established this Municipal Court, which shall be in lieu of fees and costs. No salary shall be paid for any time during his/her term during which such judge has not executed his/her official bond or official oath, as required by Wis. Stat. § 755.03 and filed pursuant to Wis. Stat. § 19.01(4)(c). The municipalities may be separate ordinances, resolutions, or through the budget process, allocate funds for the administration of the Municipal Court pursuant to Wis. Stat. § 66.0301.

(6) JURISDICTION. The Municipal Judge of the Municipal Court shall have jurisdiction as provided by Wis. Stat. §§ 755.045 and 755.05 and as otherwise provided by state law. The Municipal Judge is authorized to issue Special Inspection Warrants under Wis. Stat. § 66.0119.

(7) LOCATION AND HOURS. The Municipal Court shall be held in the Council Chambers of the City of Oconomowoc, all at 174 East Wisconsin Avenue, Oconomowoc, Wisconsin. The Municipal Court shall be open at such times as determined by the Municipal Judge.

(8) FINES AND FORFEITURES. The Municipal Judge may impose punishment and sentences as provided by Wis. Stat. § 800.09 and as provided in the ordinances of the following municipalities: City of Oconomowoc, Town of Oconomowoc, Town of Merton, Town of Summit, Village of Hartland, Village of Oconomowoc Lake, Village of Chenequa, Village of Lac LaBelle, Village of Nashotah, Village of Dousman, Town of Lisbon and Town of Delafield. All forfeitures, fees, penalty assessments, and costs shall be paid to the Treasurer of the municipality with which the case arose within 7 days after receipt of the money by the Municipal Judge or other court personnel. At the time of the payment, the Municipal Judge shall report to the Treasurer the title of the action, the offense for which a forfeiture was imposed, and the total amount of the forfeiture, fees, penalty assessments and cost, if any.

(9) DEPOSITS. The Municipal Court herein established shall be operated pursuant to and in compliance with the provisions of Chapter 800 of the Wisconsin Statutes and, where applicable, other provisions of the Wisconsin Statutes as referred to in subsection (10) below. The Municipal Judge shall establish in accordance with Wis. Stat. § 800.03(3) a schedule of deposits for violations of city, village, and town ordinances, resolutions, and by laws, except traffic regulations which are and shall be governed by Wis. Stat. § 345.27, and boating regulations which are and shall be governed by Wis. Stat. § 23.67. Such deposit schedule shall be approved by the respective governing bodies of the municipalities creating and establishing this court and shall be posted in the office of the Municipal Court Clerk and the police departments of the respective communities.

(10) PROCEDURES IN MUNICIPAL COURT. The procedure in Municipal Court shall be as provided by this ordinance and state law including, but not excluding because of enumeration, Chapters 66, 345, 711, 757 and 800 of the Wisconsin Statutes.

(11) CONTEMPT PROCEDURES.

(a) The Municipal judge may impose a sanction authorized under Wis. Stat. § 800.12(2) for contempt of court, as defined in Wis. Stat. § 785.01(l), in accordance with the procedures under Wis. Stat. § 785.03.

(b) The Municipal Judge may impose a forfeiture for contempt under Wis. Stat. § 800.12(l) in an amount not to exceed \$50 or, upon nonpayment of the forfeiture and the penalty assessment under Wis. Stat. § 165.87, a jail sentence not to exceed 7 days.

(12) ABOLISHMENT. The Municipal Court hereby established shall not be abolished while the Wis. Stat. § 755.01(4) agreement is in effect.

1.31 PUBLICATION AND POSTING OF OFFICIAL PUBLIC NOTICES (Cr. 2015-07)

All ordinances and notices which are to be published shall be published in the newspaper, except in those cases where the Wisconsin Statutes require publication in some other manner or the Wisconsin Statutes permit publication in some other manner. Whenever posting may be used in lieu of publication in a newspaper, posting shall be described as follows. Pursuant to Wisconsin Statutes Section 9.85(2)(a), the notice may be posted in the front window of the Town Hall located at W302 N1254 Maple Avenue, Delafield, Wisconsin, and placed electronically on the Town's official internet site, in lieu of posting in three locations.

CHAPTER 2
THE GOVERNING BODY

- 2.01 Village Board Powers Adopted
- 2.02 Meetings
- 2.03 Adjournment to Specific Date
- 2.04 Conduct of Meetings
- 2.05 Duties of Presiding Officer
- 2.06 Absences
- 2.07 Conduct of Deliberations
- 2.08 Appropriation Ordinances or Resolutions
- 2.09 Reconsideration
- 2.10 Suspension of Rules
- 2.11 Procedures at Public Hearings

THE GOVERNING BODY

2.01 VILLAGE BOARD POWERS ADOPTED. (Am. MSC '85) The Town Board has Village Board powers pursuant to 60.22(3), Wis. Stats., by resolution of the annual Town meeting dated April 2, 1935.

2.02 MEETINGS.

(1) OPEN MEETING LAW. All meetings of the Town Board, committees, boards and commissions shall be open to the public and preceded by public notice as provided in §19.84, Wis. Stats.

(2) REGULAR MEETINGS. (Rep. & rec. 98-456) Regular Meetings of the Town Board shall be held on the second and fourth Tuesday of the month at 6:30 p.m. Any regular meeting falling upon a legal holiday shall be held on the day designated by the Board. All meetings of the Board shall be held in the Town Hall, including special and adjourned meetings, unless otherwise designated. Notice of a substitute meeting place shall be given to the public by posting a written notice of the substitute meeting place and time thereof on the outer door of the Town Hall at least 24 hours prior to such meeting; provided that nothing herein prevents the Town Board from convening a meeting at the duly noticed location and deciding at the meeting to recess and reconvene at an alternative location, without prior notice. The Town Chair, or the Town Board by majority vote, may cancel any regular meeting. Notice of a cancelled meeting thereof on the outer door of the Town Hall and on the Town website as soon as the Town Administrator/Clerk/Treasurer deems to be practicable prior to such cancelled meeting.

(3) SPECIAL MEETINGS. (Rep. & rec. 2013-09) Special meetings of the Town Board may be called in one of the following ways: (a) by the Town Chair, with oral or written notice to the Town Clerk; or (b) by duly adopted motion of the Town Board, made and adopted at a properly noticed preceding Town Board meeting; or (c) by any 2 Supervisors in writing, filed with the Clerk at least 36 hours prior to the time specified for such meeting. When a special Town Board meeting is called, by any such method, the Town Clerk shall immediately notify each Supervisor of the time and purpose of such meeting. Only the business for which such special meeting was called shall be transacted at the special meeting.

2.03 ADJOURNMENT TO SPECIFIC DATE. The Board may by a majority vote adjourn any regular or special meeting from time to time to a specific date and hour.

2.04 CONDUCT OF MEETINGS.

(1) The business of the Board shall be conducted in the following order: (Am. #187)(Am. #95-374)

(a) Call to order by presiding officer.

(b) Pledge of allegiance.

(c) Roll Call. (If a quorum is not present, the meeting shall thereupon adjourn, which may be to a specific date pursuant to §2.03).

(d) Citizen Comments: Public comments from citizens regarding items on, or not on the Agenda. The Board may not engage in a discussion with the citizen making the comments. During this period of citizen comments, the following procedures shall apply;

1. Each citizen wishing to address the Board will have up to three (3) minutes to speak.

2. Presentations shall be directed to topics subject to Town Board action and related to the Town of Delafield. Presentations are not limited to items on the agenda.

3. Comments shall be limited to thirty (30) minutes in total, unless otherwise deemed appropriate by the Chair or Consensus of the Town Board; the time limit may be increased by increments of 15 minutes.

4. All comments shall be directed only to the members of the Town Board, and not to Town staff, the applicant, other residents, or members of the audience.

5. Speakers shall not make comments regarding personalities of the Town Board, Town staff, applicants or members of the audience.

6. Speaker's comments shall not attempt or be designed for the purpose of engaging the Town Board, Town staff, applicants, or members of the audience in a debate, conversation or a question and answer session.

7. Speakers are not allowed to yield time to another speaker.
8. Speakers are limited to speaking once during citizen comments
9. No Board member may address the board during citizen comments.
- (e) Approval of Minutes if correct, and rectifying mistakes if any exist.
- (f) Action on budget sub-accounts if necessary, and vouchers submitted for payment.
- (g) Communications (for discussion and possible action).
- (h) Unfinished Business
- (i) New Business
- (j) Announcements and Planning Items
- (k) Adjournment

(2) In the absence of the Clerk the Chair shall appoint a Clerk pro tem.

- 2.05 DUTIES OF PRESIDING OFFICER. The Chair at the stated hour shall call the meeting to order. He/she shall preserve order and decorum, decide all questions of order, and conduct the proceedings of the meeting in accordance with the parliamentary rules contained in Roberts' Rules of Order, current edition, unless otherwise provided by statute or by these rules. Any member shall have the right of appeal from a decision of the presiding officer. No appeal shall be debatable, and the appeal may be sustained by a majority of the members present, exclusive of the Chair.
- 2.06 ABSENCES. If the Chair is absent at the designated time for any meeting, the Clerk or, in his/her absence, the senior Supervisor present, based on date of original elections as Supervisor, shall call the meeting to order and preside until the Board shall by motion select an acting Chair for that meeting.
- 2.07 CONDUCT OF DELIBERATIONS. The deliberations of the Board shall be conducted in the following manner:
- (1) No Supervisor shall address the Board until he/she has been recognized by the presiding officer. He/she shall thereupon address himself/herself to the Chair and confine his/her remarks to the question under discussion and avoid all personalities.
 - (2) When 2 or more members simultaneously seek recognition the presiding officer shall name the member who is to speak first.
 - (3) Unless recognized by the Chair, no person other than a board member shall address the Board except under order of business as provided in §2.04.
 - (4) No motion shall be discussed or acted upon unless and until it has been seconded, unless the rules permit one Supervisor to initiate action. No motion shall be withdrawn without the consent of the person making the same and the person seconding it.
 - (5) When a question is under discussion, no action shall be in order, except to adjourn, to lay on the table, move the previous question, to postpone to a certain day, to refer to a committee, to amend, to postpone indefinitely. These motions shall have precedence in the order listed.
 - (6) Any member desirous of terminating the debate may move the previous question, in which event the Chair shall announce the question as "Shall the main question now be put?" If a majority of the members present vote in the affirmative, the main question shall be taken without further debate, its effect being to put an end to all debate and bring the Board to a direct vote, first upon any pending amendments, and then upon the main question.
 - (7) Any Supervisor may demand an aye and nay vote on any matter and such vote shall be entered in the proceedings. Every member shall vote when a question is put unless the Board by a majority vote of those present shall excuse him for special cause. A majority vote of all members of the Board in favor of any proposed ordinance, resolution or appointment shall be necessary for passage

or approval, unless a larger number is required by statute, except as otherwise provided a majority vote of those present shall prevail in other cases.

- (8) A motion to adjourn shall always be in order, and a motion to adjourn, to lay on the table, and a call for the previous question shall be decided without debate.
- (9) No member of the Board, whether they be a Supervisor or the Town Chair, shall vote on any question involving their own character or conduct, their right as a member or their pecuniary interest.

- 2.08 APPROPRIATION ORDINANCES OR RESOLUTIONS. All ordinances or resolutions appropriating money or creating any charge against the Town other than the payment of claims for purchases or work previously authorized by the Board shall only be acted upon by the Board at the next regular meeting, provided this provision may be suspended by affirmative action of all members of the Board. A roll call vote shall be taken and recorded on all appropriations, except as to alternative methods provided in Section 3.12 of this Code
- 2.09 RECONSIDERATION. Any member voting in the majority may move for a reconsideration of the vote of any question at that meeting or at the succeeding regular meeting. A motion to reconsider being put and lost shall not be renewed. A Supervisor may not change his/her vote on any question after the result has been announced.
- 2.10 SUSPENSION OF RULES. These rules or any part thereof may be temporarily suspended in connection with any matter under consideration by a recorded vote of 2/3 of the members present.
- 2.11 PROCEDURES AT PUBLIC HEARINGS. (Cr. #95-392) The Board shall be responsible for preparing written procedures for the conduct for all public hearings before the Board and the Plan Commission. A copy of the written procedures shall be maintained at all times in the Clerk's office and those procedures shall be made available to the general public for review.

CHAPTER 3

FINANCE AND TAXATION

- 3.01 Annual Report
- 3.02 Preparation of Tax Roll
- 3.03 Duplicate Treasurer's Bond Eliminated
- 3.04 Destruction of Obsolete Public Records
- 3.05 Public Contracts
- 3.06 Delinquent Taxes, Assessments and Fees
- 3.07 Tax Search
- 3.08 Charge Back of Engineering, Attorney and Other Fees to Landowners
Benefitting
- 3.09 Combination of Tax Key Numbers and Parcels and the Creation of Tax Numbers
- 3.12 Alternative Limited Expenditure and Contracting Authority Delegated.
- 3.10 Reinspection Fees
- 3.11 Tax Credits to be Paid Directly to the Town
- 3.15 Penalties

3.01 ANNUAL REPORT.

- (1) Each year, the Treasurer shall prepare for the annual Town meeting an annual report. The report shall contain a summary of financial transactions for the preceding fiscal year, a statement of receipts and disbursements for the preceding fiscal year, and such other information as from time to time the Town Board may deem necessary and proper.
- (2) At the annual Town meeting, the Town Board shall also make a report of the Town activities for the preceding fiscal year.

3.02 PREPARATION OF TAX ROLL.

- (1) AGGREGATE TAX STATED ON ROLL. Pursuant to §70.65(2), Wis. Stats., the Clerk shall in computing the tax roll, insert only the aggregate amount of State, County, school and local taxes in a single column in the roll, opposite the parcel or tract of land against which the tax is levied or, in the case of personal property, in a single column opposite the name of the person against whom the tax is levied.
- (2) RATES STAMPED ON RECEIPTS. Pursuant to §74.08(1), Wis. Stats., in lieu of entering on each tax receipt the several amounts paid respectively for State, County, school, local and other taxes, the aggregate amount of such taxes shall be combined in a single column on the tax receipt issued by the Treasurer. The Treasurer shall cause to be printed or stamped on the tax receipt the separate proportion or rate of taxes levied for State, County, school, local or other purposes.

3.03 DUPLICATE TREASURER'S BOND ELIMINATED.

- (1) The Town elects not to give the bond for the Treasurer provided for by §70.67(1), Wis. Stats.
- (2) Pursuant to §70.67(2), Wis. Stats., the Town shall be obligated to pay, in case the Treasurer shall fail to do so, all State and County taxes required by law to be paid by such Treasurer to the County Treasurer.

3.04 DESTRUCTION OF OBSOLETE PUBLIC RECORDS.

(1) FINANCIAL RECORDS. The Clerk may destroy the following non-utility records of which he or she is the legal custodian and which are considered obsolete, after completion of an audit by State auditors or an auditor licensed under Ch. 442, Wis. Stats., but not less than 7 yrs. after payment or receipt of any sum involved in the particular transaction unless a shorter period has been fixed or will in the future be fixed by the State Public Records Board pursuant to §16.61(3)(e), Wis. Stats., and then after such shorter period:

- (a) Bank statements, deposit books, slips and stubs.
- (b) Bonds and coupons after maturity.
- (c) Cancelled checks, duplicates and check stubs.
- (d) License and permit applications, stubs and duplicates.
- (e) Official bonds.
- (f) Payrolls and other time and employment records of personnel included under the Wisconsin Retirement Plan.
- (g) Receipt forms.
- (h) Special assessment records.
- (i) Vouchers, requisitions, purchase orders and all supporting documents pertaining thereto.
- (j) Vouchers and supporting documents pertaining to charges not included in plant accounts of municipal utilities and the Sewer Department.
- (k) Other municipal utility and Sewer Department records, with the written approval of the State Public Service Commission.

(2) UTILITY RECORDS. Town officers may destroy the following utility records, subject to the regulations by the State Public Service Commission, and of the Sewer Department of the Town, of which they are the legal custodians and which are considered obsolete, after completion of an audit by State auditors or by an auditor licensed under Ch. 442, Wis. Stats., but not less than 2 yrs. after payment or receipt of the sum involved in the applicable transaction:

- (a) Water and sewer stubs and receipts of current billings.
- (b) Customer's ledgers.
- (c) Vouchers and supporting documents pertaining charges not included in plant accounts.

(3) OTHER RECORDS. Town officers may destroy the following records which are considered obsolete, but not less than 7 yrs. after the record was effective:

- (a) Assessment rolls and related records, including Board of Review minutes.
- (b) Contracts and papers relating thereto.
- (c) Correspondence and communications.
- (d) Financial reports other than annual financial reports.
- (e) Insurance policies.
- (f) Oaths of office.
- (g) Reports of boards, commissions, committees and officials duplicated in the Town Board minutes.
- (h) Resolutions and petitions.
- (i) Voter cards.

(4) NOTICE REQUIRED. Prior to the destruction of any public record described above, at least 60 days notice shall be given the State Historical Society.

(5) INTERPRETATION. This section shall not be construed to authorize the destruction of any public record after a lesser period than that prescribed by statute or State administrative regulation.

3.05 PUBLIC CONTRACTS.

The Town Board shall let, pursuant to the provisions of §66.29, Wis. Stats., all public contracts as defined in §66.29(1)(c), Wis. Stats., the estimated cost or amount involved of which shall not exceed \$5,000.

- (1) Any class of public contract or part thereof may be done directly by the Town without submitting the same for bids.
- (2) The Town Board may also enter into arrangements with the County to do any type of work without the requirement of competitive bidding regardless of amount involved.

3.06 DELINQUENT TAXES, ASSESSMENTS AND FEES. (Rep. & recr. #92-336)

No initial or renewal license, permit, variance, conditional use approval, special exception, zoning matter or any other discretionary action of the Town Board or any of its boards, commissions, departments or employees shall be:

- (1) Approved for any applicant who is:
 - (a) Delinquent in the payment to the Town of any taxes, fees, assessments, special assessments, sanitary sewer assessments, personal property taxes, engineering, legal, administrative or other claims owed to the Town.
 - (b) Delinquent in the payment to the Town of any forfeiture or fees resulting from the violation of any ordinance of the Town.

(c) Delinquent in the payment of any taxes or other claims due to the Town.

(d) Has any known outstanding warrant or capias from any municipal, State or federal court.

(2) Issued for any premises or property for which taxes, assessments, special assessments, sanitary sewer assessments, personal property taxes, engineering, legal, administrative or other claims for the Town are delinquent and unpaid.

3.07 TAX SEARCH. (Cr. #88-207, repealed & recreated 2002-**-**))

Any request for a tax search submitted by anyone other than a governmental body or agency shall be accompanied by a fee as set from time to time by the Town Board.

3.08 CHARGE BACK OF ENGINEERING, ATTORNEY AND OTHER FEES TO LANDOWNERS BENEFITTING. (Rep. & Rec. #01-529)

(1) CERTAIN FEES AND SERVICES TO BE CHARGED BACK. If charges for fees that include without limitation attorney fees, engineering fees, other professional fees or if charges for services that include without limitation snow and ice removal, weed elimination, street sprinkling, oiling and tarring, repair of sidewalks or curb and gutter, garbage and refuse disposal, recycling, storm water management, including construction of storm water management facilities, tree care, removal and disposition of dead animals pursuant to Section 60.23(20), Wis. Stats., soil conservation pursuant to Section 92.115, Wis. Stats., and snow removal pursuant to Section 86.205, Wis. Stats., are incurred by the Town and such service is not a service supplied to the Town as a whole but a service to a property owner or owners. The property owner or owners who has benefitted from such fee or service shall be charged for the proportional amount of such fee or service pursuant to Section 66.0627, Wis. Stats.

(2) PROCEDURE FOR CHARGE-BACK AND APPEAL

(a) At least 30 days prior to charging any fees for Town professional services against the current or next tax roll as provided in (c) below, the Town Clerk shall give the property owner notice of the charges, via first class mail. Such notice shall include an itemized statement of the professional service fees to be charged, with a statement that said bill is due and payable within 30 days. Such notice shall further specify that within 15 days of the date of the notice, the property owner may request a hearing before the Town Board regarding the assessment against the property.

(b) Upon receipt of a request for hearing, the Town Board shall hold a hearing regarding the property assessment at its next scheduled meeting or as soon as feasible. Such hearing shall be preceded by public notice and reasonable notice, via first class mail, to the property owner. In the event a hearing is requested, no charges shall be placed on the tax roll until such hearing has been held.

(c) If no hearing has been requested within the applicable time limits and the bill remains unpaid after 30 days from the date the Town Clerk served notice of the charges, the Town Clerk shall automatically charge that delinquent bill against the current or next tax roll as a delinquent tax against the property as provided by law. In the event the statement rendered to the property owner or the time given for the property owner to pay is too late in the current year for the charge, when it becomes delinquent, to be extended on that year's tax roll, then the delinquent charge shall be extended to the following year's tax roll.

3.09 COMBINATION OF TAX KEY NUMBERS AND PARCELS AND THE CREATION OF TAX KEY NUMBERS. (Cr. #93-350)

(1) APPLICABILITY. This section shall apply to the following:

(a) The combination of 2 or more parcels, each of which exist under a separate tax key number, into one parcel existing under one tax key number

(b) The creation of one or more parcels requiring the creation of one or more tax key numbers.

(2) PERSON DEFINED. A person shall mean any individual, business, corporation, partnership or other entity capable of purchasing and holding land.

(3) GENERAL REGULATIONS. No person shall conduct or cause to be conducted any of the activities subject to this section, as provided in sub. (1) above, unless that person first satisfies the following requirements:

- (a) Any combination or creation of lots as provided in sub. (1) above shall only be done through a certified survey map, which map shall be recorded in the Register of Deeds' office for Waukesha County under the requirements of Ch. 236, Wis. Stats.
- (b) The certified survey map shall first be presented to the Town Plan Commission for review and approval. Approval shall not be provided until the Plan Commission determines that the provisions of this section and all other applicable ordinances of the Town and Waukesha County have been complied with.
- (c) The Town Assessor shall not approve the combination of or creation of any tax key numbers unless this section is first complied with.

3.10 REINSPECTION FEE. (Cr. 2012-08)

To compensate for inspection and administrative costs, a fee of \$50 may be charged for any reinspection to determine compliance with an order to correct conditions of provisions of the Town of Delafield Code under the jurisdiction of the Town of Delafield Building Inspector, Town Zoning Administrator or Town Code Enforcement Officer, or their designees, except no fee shall be charged for the reinspection when compliance is recorded. A fee of \$75 may be charged for a second reinspection, a fee of \$150 for a third reinspection and a fee of \$300 for each subsequent reinspection. Reinspection fees shall be charged against the real estate upon which the reinspections were made, shall be a lien upon the real estate and shall be assessed and collected as a special charge.

3.11 TAX CREDITS TO BE PAID DIRECTLY TO THE TOWN. (Cr. 2019-01)

- (a) The Town receives more than \$3,000,000 in payments from the State of Wisconsin for the state school levy, lottery and gaming, and first dollar property tax credits.
- (b) Pursuant to 2017 Wisconsin Act 59, and Wisconsin Statutes Section 79.10(7m)(cm) 1.a. municipalities receiving greater than \$3,000,000 in state property tax credits may notify the state departments of administration and revenue that the municipality approves the direct distribution of the property tax credits to the municipality until or unless the ordinance is repealed, or the property tax credits to be distributed no longer exceed \$3,000,000 annually.
- (c) By passage of this ordinance, the Town hereby notifies the State of Wisconsin Departments of Administration and Revenue to make such direct payments in 2019 and for all subsequent years. Further, the Clerks shall send a copy of this ordinance to the Wisconsin Departments of Administration and Revenue by February 22, 2019.

3.12 ALTERNATIVE LIMITED EXPENDITURE AND CONTRACTING AUTHORITY DELEGATED. (Cr. 2021-07)

(1) The Town Administrator/Clerk/Treasurer and Town Chair, jointly, shall have the power to approve contracts and expenditures, for the Town of Delafield for bills, vouchers, labor, materials, supplies or equipment, subject to the following conditions:

- (a) Any such contract or expenditure shall be for less than or equal to \$25,000 in total cost;
- (b) The contract or expenditure must be approved by both the Town Administrator/Clerk/Treasurer and Town Chair;
- (c) The contract or expenditure must be consistent with, and must not exceed, the budgetary approvals granted by the Town Board and the Town Chair, and the Town Administrator/Clerk/Treasurer must find all of the following:
 - i. Funds are available under the town budget to make payment.
 - ii. The item or service has been duly authorized.
 - iii. The item or service has been supplied or rendered in conformity with the authorization.
 - iv. For expenditures, the claim appears to be a valid claim against the Town.
- (d) The contract or expenditure must require prompt action prior to the next regular meeting of the Town Board, as determined by the Town Administrator/Clerk/Treasurer and Town Chair. Any contract or expenditure that does not require this prompt action cannot be approved by this alternative procedure of Section 3.12, and must await

Town Board action.

- (e) The Town Administrator/Clerk/Treasurer must notify the Town Board of the contract or expenditure within a reasonable time following approval, no less frequently than monthly, not to reconsider the approval, but for the purposes of monitoring the Town Administrator/Clerk/Treasurer's and Town Chair's activities pursuant to this ordinance.
- (2) The contracts and expenditures approved pursuant to this Section 3.12 require the execution in the name of the Town by the Town Administrator/Clerk/Treasurer and Town Chair.

3.15 PENALTIES. (Cr. #93-350; ren. MCC '94)

Any person violating any provision of this chapter or any order, rule or regulation made hereunder shall be subject to a penalty as provided in §25.04 of this Code.

- 4.01 POLICE DEPARTMENT. In addition to the power to establish its own police department, the Town Board shall have the power to provide police protection services to the Town by contract pursuant to §60.56(1), Wis. Stats., with another municipality or with Waukesha County, in which case said contract would provide rules and regulations for the operation of the police department in addition to this chapter.
- 4.02 POLICE OFFICERS.
- (1) General Powers and Duties. The officers designated with providing police protection services by the Town Board, shall possess the powers conferred by law, shall preserve the public peace and enforce the laws and ordinances of the State and Town subject to the orders, rules, and regulations of the Town Chairperson and Town Board.
- (2) Additional Powers and Duties of the Law Enforcement Officers:
- (a) Obey all lawful written orders of the Town Chairperson and Town Board.
- (b) Preserve public peace and see that all laws and ordinances of the State and Town are enforced, and whenever any violation becomes known to the officer, that officer shall cause the requisite complaint to be made and see that evidence is procured for the successful prosecution of the offender(s).
- (c) Keep accurate and complete records of all complaints, arrests, traffic violations, convictions and dispositions of the Department.
- 4.03 ASSISTANCE BY CIVILIANS. All persons in the Town, at the request of any law enforcement or peace officer shall aid and assist such officer in the execution of their duties.
- 4.04 ASSISTING ESCAPE OF PRISONER No person shall assist any person in the custody of any law enforcement or peace officer to escape or attempt to escape from such custody.
- 4.05 - 4.09 {reserved for future use}
- 4.10 PENALTY. Any person who shall violate any provision of this chapter shall be subject to a penalty as provided in §25.04 of the Town of Delafield Municipal Code.

FIRE PROTECTION

5.01 BURNING REGULATED. (Rep. & recr. 2007-004)

(1) GENERAL REGULATION FOR OPEN FIRES. All burning, bonfires or other open fires shall be subject to the following regulations:

A. Burning Procedures: No person may engage in any burning of any nature except in strict conformity with the following procedures:

1. Tools Required: Persons engaged in burning shall have sufficient tools present at the fire to control the fire at all times. A minimum of two of the following shall be present at the location of the burn:
 - (a) Rakes, shovels, garden hose, water pump can or other implements necessary to control the spread of fire while the burning is in process.
2. Supervision: A person of at least 18 years of age shall remain at and insure the fire remains under control at all times.
3. Size of Burn Pile: The size of any burn pile shall not exceed the dimensions of four (4) feet by four (4) feet by three (3) feet high.
4. Distances: The burning materials shall be located at a minimum 15 feet from any property line. The burning material shall also be at a minimum of at least 30 feet from any building, fences, utility poles, overhead wires or piles of combustible materials.
5. Wind: No burning shall be permitted if the National Weather Service reports a wind speed in excess of 9 MPH. No burning shall be permitted if the wind direction is such that smoke or soot will be visibly carried onto any adjoining building or when it would be a source of annoyance to persons near the location of the burn.
6. Material Banned From Burning: The burning of garbage, tires, asphalt products, plastic material, treated lumber, composite woods or other materials which create toxic or noxious smoke is prohibited at all times.
7. Type of Burning: Unless specifically provided herein, burning shall be permitted only between the hours of 8:00 A.M. and 10:00 P.M. seven days a week.
8. Fire Hot Line: The Fire Department shall maintain a recorded telephone service known as the Fire Hot Line. The Fire Hot Line shall identify whether ground conditions are favorable or unfavorable for burning. In addition to all other requirements herein, no person shall engage in any burning without first calling the Fire Hot Line at (262) 646-6667 within four (4) hours prior to burning, and no person shall engage in burning if the Fire Hot Line identifies ground conditions as unfavorable for burning.

(2) BONFIRES: All bonfires shall be subject to the following regulations:

1. Procedures to Burn: No bonfire shall be permitted except in strict conformity
2. Materials: Only dry wood materials may be used for bonfires. No leaves, pine branches, Christmas trees or other similar materials may be used.
3. Time Burning is Allowed: Bonfires shall be permitted between the hours of 4:00 P.M. and 1:00 A.M., every day of the week.

- (3) BURNING AT CONSTRUCTION SITES: Burning at any construction site, in any fashion, including a burn barrel, is PROHIBITED except as follows:
1. Masonry/Concrete Work: Sand used for the purpose of making cement may be warmed for use in the winter months by burning coal or charcoal in a metal tube or large diameter pipe.
 - a. Procedures to Burn: The fire shall comply with the requirements of Section 1.
 - b. Materials to Burn: Only coal or charcoal may be used. No on-site construction materials shall be burned at any time.
 - c. Method of Heating: An area of at least 15 feet shall be cleared of ALL combustible materials. The clear distance to the end of the heating pipe shall be 5' at a minimum. A large diameter pipe shall be run through a pile of sand open at both ends. The fuel shall be placed in the pipe to provide heating. At no time are burning materials allowed outside the heating pipe.
- (4) DEMOLITION OR RAZING OF BUILDINGS: No buildings or materials from demolished buildings shall be burned except as defined within this section.
1. Requirements: No materials from a razed, demolished building or structure shall be burned unless the debris pile and materials are first inspected by the Fire Chief and his/her written approval is granted for such burning.
 2. Debris Piles: Any debris pile for which approval is requested shall be at a minimum 30 feet from any other buildings, fences, utility poles, overhead wires or other combustible materials.
 3. Buildings and Structures: No building or structure shall be burned in place, without the approval and supervision of the Fire Department. The Fire Department may, as it determines necessary, charge a reasonable fee for this supervision for the equipment and manpower necessary to insure public safety.
 4. Public Safety: The burning in all cases shall be conducted in a manner that is safe and that does not adversely affect the environment or the public safety.
- (5) BURNING OF PRAIRIE, GRASS LANDS AND OPEN FIELDS: No burning of any prairie, grass lands, or open fields shall be permitted except as defined within this section:
1. Requirements: No prairie, grass lands or open fields shall be burned unless the area and materials are first inspected by the Fire Chief and his/her written approval is granted for such burning.
 2. Supervision: No prairie, grass lands or open fields shall be burned without the supervision of the Fire Department unless the Chief determines direct supervision by the Department is not required. The Fire Department may, as it determines necessary, charge a reasonable fee for this supervision for the equipment and manpower necessary to insure public safety.
 3. Procedures to Burn: The fire shall comply with the requirements of Section 1 (1) A. 1 through 7 inclusive. If the Fire Department has determined it will not be present at the site of the burn, the area of open flame shall not extend beyond 20' in total length at any time.
- (6) CAMPFIRES: All campfires are subject to the following:
1. Size: The size of the fire ring shall not exceed 36" in diameter with burning materials not to exceed 24" in height at any time.
 2. Requirements: No campfire shall be permitted except in strict conformity with the requirements of Section 1 (1) A. 1 through 6.

(7) BURNING IN A CONTAINER:

1. Container: The container must be constructed of metal, masonry or concrete with a cover of metal mesh with opening not to exceed 3/8 of an inch.
2. Procedure to Burn: Burning in this type of container shall comply with the requirements of Section 1 (1) A. 1 through 5 inclusive.
3. Time Burning is Allowed: Burning in a container will be allowed from 8:00 A.M. to 10:00 P.M. on all days of the week. All fires must be COMPLETELY EXTINGUISHED by 10:00 P.M.

(8) BURNING BAN:

1. Burning Ban: The Fire Chief may, at any time in the interest of public safety, declare a "Burning Ban". When a burning ban is in effect, NO BURNING OF ANY TYPE will be allowed at any time within the Town limits.

(9) PENALTIES:

Except as otherwise provided, any person found to be in violation of any provisions of this ordinance shall be subject to penalties and forfeitures as set forth in Chapter 25 of the Town Code, and in addition, all personnel and equipment costs associated with any fire call made to the site. In the event the fire call costs are not paid within 60 days of levy, the Town Board may direct that the costs be placed on the owner's tax bill as a special charge.

5.02 AMBULANCE FEES. (Rep. & rec. #2018-03)

- (1) The Town Board hereby establishes a fee for the provision of ambulance and rescue services by the Delafield Fire Department and/or by agents and contractors of the Delafield Fire Department. The term "ambulance and rescue services" shall include, but not be limited to, technical rescue services, such as for example, trench rescue, high angle rescue, collapse rescue, entrapment rescue, confined space rescue, emergency building shoring, and helicopter rescue, along with ordinary ambulance and rescue services.
- (2) Fees under this ordinance will be assessed to the responsible individual, corporation, utility, company and/or property owner for whom ambulance and/or rescue services were provided, as determined by the Chief of the Delafield Fire Department. The fees assessed shall be as established by the Town Board from time to time by the resolution to recover the actual cost of the service(s) performed and, where applicable, shall include the actual amounts billed to the Town of Delafield and/or the Delafield Fire Department by contractors and agents called to incident(s) having occurred in the Town of Delafield.

5.03 FIRE DEPARTMENT SERVICE CHARGES: (Rep. & rec. #89-214) (Rep. & rec. #94-381)(1) (Rep. & rec. #2018-03)

- (a) Charges for services shall be assessed only to the individuals or other entities that do not fund the Department through the payment of taxes or other means for these services, except that ambulance and rescue services per Section 5.02, and the negligent handling of burning materials as defined in §961.01(1), or the causing of a Department response as a result of violation of any provision of the Town's "Burning Regulations," 93-354 or other Town ordinances will result in charges being assessed to the responsible or violating individual or other entities in ALL cases.

- (2) APPLICATION OF CHARGES. The charges for department services shall be determined by the nature, type, equipment, supplies and personnel used or provided for the service as defined herein and as shown in the “Services Rate Schedule”.
- (a) FIRE RUNS: Charges will be assessed to the responsible individual, corporation, utility, company or property owner for the extinguishment of burning in violation of any Town or State regulations, codes, ordinances or statutes.
 - (b) MOTOR VEHICLE FIRES: Charges will be assessed to the responsible individual, corporation, utility, corporation, utility, company, governmental body or vehicle owner for the extinguishment of burning vehicles on any Town, State or County roadway.
 - (c) RAIL ROAD AND UTILITY RESPONSES: Charges will be assessed to the responsible corporation, utility, company or governmental body for all types of responses that occur on property owned by these entities unless it is determined by the Fire Chief that the necessary response was caused by someone or something unrelated to the property owner.
 - (d) HAZARDOUS MATERIALS INCIDENTS OR CLEAN-UP OF MATERIALS: Charges will be assessed to the responsible individual, corporation, utility, company, property owner or individual for ALL equipment and materials used in the response to a hazardous material incident. In addition the clean-up of ANY/ALL material considered to be hazardous will be billed per dry gallon as defined in the “Services Rate Schedule”. This billing will apply to ALL spills within the Town including those caused by residence or businesses within the Town.
 - (e) MOTOR VEHICLE ACCIDENTS: Charges will be assessed for the cost of equipment and personnel used in response to motor vehicle accidents. The total cost will be divided equally between the vehicle owners involved. If the vehicle owner has previously paid for the service to the Town they will not be billed a portion of the cost.
 - (f) SERVICE CALLS OR OTHER ACTIVITIES: Charges will be assessed for all special services provided by the Fire Department that are not of an emergency nature as determined by the Fire Chief. Charges will apply but be limited to the burning of buildings and the pumping of basements.

5.04 TOWN FIRE DEPARTMENT. (Cr. #92-324)

(1) CREATED.

- (a) There is hereby created a Fire Department to serve the fire fighting and emergency medical needs of the Town. The Town Board shall have the option to fill the membership of the Department by contracting with a volunteer fire fighters’ organization legally incorporated under Wisconsin law or through the hiring of individual personnel to fill the Department.
 - (b) Regardless of which option is selected by the Town Board, the personnel so selected shall be officially recognized as the Town Fire Department (TDFD) and the duties of fire fighting, fire prevention education, preservation of life and property and emergency medical care in the Town is delegated to the Department. The Town Fire Department’s organization and internal regulations shall be governed by the provisions of this section and by the policies and procedures adopted by the Department as approved by the Town Board.
- (2) FINANCES, PROPERTY AND EQUIPMENT: The Town shall provide and own all equipment, real estate and money necessary to properly operate and maintain the Fire Department. Any money, equipment or property donated, dedicated or given to the Fire Department shall become the property of the Town, who shall thereafter account therefore.

- (a) Appropriations: The Town Board shall appropriate funds to provide for the operation and for such equipment and apparatus for the use of the Fire Department as the Board may deem expedient and necessary to maintain efficiency and to properly protect life and property from fire.
- (b) Personnel Compensation. The officers and members of the Fire Department shall receive such compensation from the Town as may be from time to time fixed by the Town Board.
- (c) Gifts, Donations and Conveyances. Any moneys or other property of whatever nature that is gifted, donated or conveyed to the Fire Department shall become the property of the Town to be accounted for as all other public funds.

(3) MEMBERSHIP OF THE DEPARTMENT:

- (a) Members. Any person eligible to belong to the Town Fire Department shall become a qualified fire fighter or qualified emergency medical technician within one year of membership. In the alternative, personnel may function in administrative or support capacities if desired. The policies of the Department as approved by the Town Board shall establish qualifications for membership in the Department. At no time shall the Department consist of less than a total complement of 22 and not more than 55 active fire fighters and active emergency medical technicians.
- (b) Organization. (Rep. & Rec. 98-462)
 - 1. Officers. The Fire Chief shall establish officer positions as he/she deems proper and fill those positions to ensure the department functions in a safe and efficient manner. The Chief need not fill all officer positions.
 - 2. Selection of Members.
 - (a) Application and approval. Members of the Fire Department shall be as provided by the Department policies, but all members shall be approved by the Chief. Any person desiring to become a member of the Fire Department may file with the Department an application in such form as established by the policies. All applicants shall meet the physical and health qualifications as established by the Department policies.
 - (b) Demotion or expulsion. Any member of the Department who has been expelled or demoted for any offense or neglect of duty or insubordination shall have the right of review of such action pursuant to §60.57, Wis. Stats.
 - 3. Chief.
 - (a) Appointment. The Chief shall be appointed by a 3/4 vote of the Town Board. The Town Board may give first preference to existing officers of the Department, but the selection shall not be binding upon the Town Board.
 - (b) Removal. The Chief can only be removed from office by a 3/4 vote of the Town Board for cause after hearing.
 - (c) Residency and vacancy. The Chief shall reside within 15 miles of the jurisdictional boundaries of the Town. A vacancy in the office of Chief shall be filled by a majority vote of the Town Board. Until the vacancy is filled, the next ranking officer shall fill the vacancy.

(4) FIRE CHIEF.

- (a) Powers and Duties of.
 - 1. The Chief shall have general supervision of the Department, subject to this section and the policies of the Department, and shall be responsible for the personnel and general efficiency of the Department.
 - 2. The Chief shall preside at meetings of the Department, call special meetings,

preserve order, decide all points of order that may arise and enforce a rigid observance of this section and the Department policies.

3. The Chief shall have complete command of and entire responsibility for all fire fighting operation, plan the control of the same, direct the action of the Department when they arrive at a fire, observe that the Department does its duty, grant leaves of absence at a fire when he/she may deem it proper and see that the fire apparatus is kept in proper condition at all times.
4. The Chief will not later than October 1 of each year submit to the Town Clerk a detailed estimate of the appropriations needed by the Department to conduct business during the ensuing fiscal year.
5. (Rep. & rec. 98-457) The Chief shall submit a written report to the Town Board not later than April 1 of each year and at such other times he/she deems desirable, relating to the conditions of the various pieces of apparatus and appurtenances, the number of calls occurring since the previous report, the total number of active members of the Department and resignations and expulsions from the Department. He/she shall also report upon the drill training program of the Department, together with other pertinent information, including recommendations of such improvements as he/she deems proper and necessary for the operation of the Department.
6. The Chief shall enforce all fire prevention and safety ordinances of the Town and State laws and regulations pertaining to fire prevention and safety and shall keep citizens informed on fire prevention methods and on the activities of the Department. He shall be in charge of the emergency medical services of the Department.
7. He/she shall keep a run report of every emergency call to which the Department is called, which shall contain the location of the call, time alarm received, cause of fire, cause of any delay, if any, in responding, method of extinguishment or care provided, equipment used, estimated fire loss, time call was completed, names of persons responding and general remarks.
8. He/she shall keep an inventory of all apparatus and equipment and inventory of all hose showing dates and results of tests on each length, which shall be individually identified.
9. He/she shall perform such other duties as are incumbent upon the commanding officer of the Fire Department, but not limited to specific written job descriptions as approved by the Town Board.
10. Subject to the approval of the Town Board, he is authorized to sign into municipal agreement or their equivalent concerning matters related to the operation of fire service and emergency medical service.

(b) Responsibilities of.

1. The Chief shall have control of all apparatus used by the Department and shall be responsible for its proper maintenance and repairs.
2. No apparatus shall be used for any purpose, except for fire fighting within the Town limits or in training. With the approval of the Chief, such apparatus may be used for purposes other than fire fighting within and outside of the Town. The Chief may pursue mutual aid with neighboring communities.

(5) POLICE POWER OF DEPARTMENT.

- (a) Authority at Emergencies. The Chief or officers at any emergency are hereby vested with full and complete police authority at emergencies. Any officer of the Department may cause the arrest of any person failing to give the right-of-

- way to the Fire Department in responding to an emergency.
- (b) Prescribing Certain Limits. The Chief or incident commander may prescribe certain limits in the vicinity of any emergency scene within which no person shall be permitted to enter, excepting authorized persons including, but not limited to, EMTs, fire fighters and policemen and those admitted by order of any officer. The incident commander shall have the power to cause the removal of any property whenever it shall become necessary for the preservation of such property from fire, to prevent the spreading of fire or to protect the adjoining property and, during the progress of any emergency, he shall have the power to order the removal or destruction of any property necessary to prevent the further danger to life or property. He shall also have the power to cause the removal of all wires or other facilities and the turning off of all electricity or other services where the same impedes the work of the Department during the progress of the emergency.
 - (c) Fire Fighters May Enter Adjacent Property. Any fire fighter or EMT, while acting under the direction of the Fire Chief or other officer in command, may enter upon the premises adjacent to or in the vicinity of any building or other property then on fire or involved in the emergency for the purpose of extinguishing such fire or rendering aid and, in case any person shall hinder, resist or obstruct any fire fighter or EMT in the discharge of their duty as is herein provided, the person so offending shall be deemed guilty of resisting emergency personnel in the discharge of their duty.
 - (d) Duties of Bystanders to Assist. Every person who shall be present at an emergency shall be subject to the orders of the Fire Chief or officer in command and may be required to render assistance in mitigating the emergency or in removing or guarding property. Such officers shall have power to cause the arrest of any person or persons refusing to obey the orders.

(6) MEETINGS AND ELECTIONS.

- (a) Fire Station. All meetings and elections of the Fire Department shall be held at the Town Fire Station No. 1.
- (b) Eligibility to Vote. Only members in good standing will be eligible to vote and the Department policies shall further define eligibility.

(7) SEPARATION OF SOCIAL ACTIVITIES OF FIRE FIGHTERS. Unless authorized by the Town Board, there shall be no social functions of the Department. Social functions include, but are not limited to, any activity with no primary business purpose and any activity where alcohol beverages might be served.

(8) FIRE INSPECTIONS.

- (a) The Chief of the Fire Department shall hold the office of Fire Inspector with the power to appoint one or more deputy inspectors who shall perform the same duties and have the same powers as the Fire Inspector.
- (b) Fire inspectors shall inspect semi-annually all commercial buildings, premises and public thoroughfares within the Town limits for the purpose of noting and causing to be corrected any condition liable to cause fire or injury.
- (c) Whenever or wherever in the Town any inspection by the Fire Chief or his deputies reveals a hazard, the Chief or his/her deputies shall serve a notice in

writing upon the owner of the property giving the owner a reasonable time in which to correct the hazard. In the event the hazard is not corrected within the time allowed, it shall be deemed a nuisance. The Fire Chief or deputy is authorized to have the conditions corrected by the Town and the cost of such correction shall be recovered in an action by the Town against the owner of the property.

- (d) The Chief shall keep a record of each property inspection which shall conform to the requirements of the State and shall make inspections as required by the State Fire Prevention Bureau.
- (e) No person shall deny the Chief or his/her deputy's free access to any property within the Town at any reasonable time for the purpose of making an inspection. No person shall hinder or obstruct the Fire Inspector in the performance of their duty or refuse to observe any lawful orders given by the Inspector.

(9) PENALTIES. Any person violating the provisions of this section shall be subject to forfeitures of not less than \$100 and not more than \$500, together with the costs of prosecution and, in the event of nonpayment, shall be imprisoned in the county jail for a term of not more than 3 months. Each day a violation of this section occurs shall constitute a separate offense.

5.05 FIRE PREVENTION CODE ADOPTED. (Cr. #93-341) (1) WISCONSIN ADMINISTRATIVE CODE. Except as otherwise specifically provided in this Code, the current and future provisions describing and defining regulations of the Department of Safety and Professional Services are hereby adopted and made part of this chapter by reference as if fully set forth herein. Any act required to be performed or prohibited by any current or future provision incorporated herein by reference is required or prohibited by this Code. Any future additions, amendments, revisions or modifications to the regulations incorporated herein are intended to be made a part of this Code in order to secure uniform state-wide regulation. If there is a conflict between codes or interpretations, the most restrictive code or interpretation shall be enforced. The adopted code herein includes, but is not limited to the following:

- (a) SPS 310 "Flammable and Combustible Liquids."
- (b) SPS 340 "Liquefied Petroleum Gases."
- (c) SPS 314 "Fire Prevention Code."

(2) ENFORCEMENT.

- (a) Enforcement Officials. This section shall be enforced by the Fire Department, the Town Board or any other designee of the Town Board.
- (b) Nonexclusive. 1. Other Ordinances. This section does not preclude the Town Board from adopting any other ordinance or providing for the enforcement of any other law or ordinance relating to the same or other matter.
2. Other Remedies. The issuance of a citation hereunder shall not preclude the Town Board or any authorized officer from proceeding under any other ordinance or law or by any other enforcement method to enforce any ordinance, regulation or order.

5.06 REQUIREMENT FOR STRUCTURES TO INSTALL A KEY LOCK BOX. (CREATED 2017-06)

(1) DECLARATION OF PURPOSE

- (a) The Town of Delafield Board of Supervisors hereby determines that the health, safety, and welfare of the citizens is promoted and safeguarded by requiring certain structures to have a key lock box installed on the exterior of the structure to aid the Town of Delafield Fire Department to gain access to the structure when the same is not occupied or when the occupants are unable to grant ingress to the Fire Department.
- (b) The key lock box system will reduce the need for forced entry into structures and should avoid costly and time-consuming efforts in gaining access to locked structures during an emergency.
- (c) This ordinance shall provide for effective fire protection by providing a method for rapid response entry into and throughout locked buildings in emergency situations where time may be of the essence.

(2) KEY LOCK BOX SYSTEM

- (a) The following structures shall be equipped with a key lock box at or near the main entrance or such other location as required by the Fire Chief commencing no later than the time specified in Subsection (b) and (c) below, and continuing for all times thereafter.
 - 1. Commercial and Industrial Structures
 - 2. Multi-family-residential structures with three or more units that have restricted access through locked doors but have a common corridor for access to the living units
 - 3. Schools, whether public or private
 - 4. Government structures, churches and nursing care facilities
- (b) All new construction of structures listed above, and remodeling of structures listed above that are required to have a building permit issued, shall have a key lock box installed and operational, based on the discretion of the Fire Chief, prior to the issuance of an occupancy permit.
- (c) All existing structures listed above which undergo a change in use, occupancy or ownership shall have a key lock box installed and operational.
- (d) The type of key lock boxes to be implemented within the Town of Delafield shall be subject to the prior approval of the Fire Chief.
- (e) All installations are subject to the approval of the Fire Chief.

(3) INSTALLATION

- (a) All lock boxes shall be installed within five (5) feet from the lock side of the main entry door on the address side of the building.
- (b) All lock boxes shall be flush or surface mounted between five (5) and six (6) feet from the ground to the center of the entry if possible.
- (c) In the event that the key lock box cannot be installed at the aforesaid location and/or height, the Town of Delafield Fire Chief may designate in writing a different location and installation specifications.
- (d) All applicable realty and/or property with an electronic security gate shall have the lock box installed outside of the gate or provide an electronic opener for the gate which can be activated by the fire department master key.
- (e) Any changes in the installation after the initial approval are subject to the prior approval of the Fire Chief.

(4) MAINTENANCE

The operator of the building shall immediately notify the Fire Chief and provide new keys when a lock box key is changed or rekeyed. They shall also ensure the box is properly maintained and accessible to the fire department.

(5) CONTENTS OF LOCK BOX

The building owner or occupant shall be responsible for purchasing/installing an approved lock box and providing the following keys:

- (a) Keys to locked points of ingress or egress, whether on the interior or exterior of such buildings
- (b) Keys to all locked mechanical rooms
- (c) Keys to all locked electrical rooms
- (d) Keys to elevator and their control rooms
- (e) Keys to the Fire Alarm panels
- (f) Keys (special) to re-set pull stations or other Fire Protective devices
- (g) Keys to any other areas as requested by the Fire Chief

(6) EXCEPTIONS TO REQUIREMENT TO INSTALL A KEY LOCK BOX SYSTEM

The following structures are encouraged to, but are exempt from the mandate to install a key lock box system:

- (a) Single family structures and multi-family structures with no more than two units
- (b) Structures that have 24 hour, 365-day on-site security personnel, or have other personnel on site.
- (c) Businesses that are open and staffed 24 hours, 365 days per year (which may include but are not limited to, Nursing Homes, Hospitals, Police Stations. etc...)
- (d) Rental storage facilities where there are locks on the separate storage pods, however, locked entry security gates will require a lock box.

5.10 PENALTY. (Am. #173; ren. MCC '94) Except as otherwise provided, any person found to be in violation of any provision of this chapter shall be subject to a penalty as provided in §25.04 of this General Code, plus the cost of any fire run made necessary by such fire. In default of payment of such forfeiture, the violator shall be imprisoned in the County Jail for a period not to exceed 30 days.

7.01 STATE TRAFFIC LAWS ADOPTED.

(1) STATUTORY REGULATIONS. Except as otherwise specifically provided in this chapter, all provisions of Chs. 340 to 348, Wis. Stats., describing and defining regulations with respect to vehicles and traffic for which the penalty is a forfeiture only, including penalties to be imposed and procedures for prosecution, are hereby adopted and by reference made a part of this chapter as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this chapter. Any further amendments, revisions or modifications of statutes incorporated herein are intended to be made part of this chapter in order to secure uniform statewide regulation of traffic on the highways, streets and alleys.

(2) ADOPTION OF ADDITIONAL STANDARDS. (Rep. & rec. #96-429) In addition to the sections of the Wisconsin Statutes previously adopted, there is also adopted in its entirety Chapter Trans. 305, Wis. Adm. Code, entitled "Standards for Motor Vehicle Equipment," and as it may be amended from time to time.

7.02 PARKING FOR ADVERTISING OR SALE PROHIBITED.

No person shall park a motor vehicle in any street for the primary purpose of advertising or for the sale of such vehicle.

7.03 PARKING RESTRICTIONS. (Rep. & rec. #95-383)

(1) No person shall stop or leave any vehicle standing upon any portion of a highway where and at the time when parking is prohibited, limited or restricted by official traffic signs.

(2) No person shall park, stop or leave standing any vehicle or any device by which persons or property are or may be transported or carried upon any street, road and highway in the Town under the Town's snowplowing jurisdiction during the months of November, December, January, February, March and from April 1 to April 15 of each year. (Rep. & rec. #95-418)

(3) No person shall park, stop or leave standing any vehicle or any device by which persons or property are or may be transported or carried, upon any traveled portion of a street, road, or highway in the Town. (Cr. #95-385)

7.04 (repealed in its entirety (06-006))

7.05 WEIGHT LIMITATIONS.

(1) CLASS B HIGHWAYS. All streets and alleys within the Town are designated as Class B Highways and shall be subject to the weight limitations imposed by §348.16(2), Wis. Stats.

(2) TRAFFIC PROHIBITED. No person shall operate a motor vehicle, except a motor bus, which is not equipped with pneumatic tires or has a combined vehicle load weight exceeding 6,000 lbs. on any street or alley within the Town not designated as a heavy traffic route, except for the purpose of obtaining orders for moving or delivering of supplies or commodities to or from a place of business or residence, provided the weight of the vehicle and load shall not exceed the weight limitations of §§348.15 or 348.16(3), Wis. Stats.

7.06 ONE WAY STREETS.

No person shall drive a vehicle on any one way street, one way alley, or in a Municipal Parking Lot, except in the direction designated, unless directed to do so by a Traffic Officer.

7.07 RIGHT OR LEFT TURNS.

No person operating a vehicle shall make any right or left turn at any intersection where the same is prohibited, unless directed to do so by a Traffic Officer.

7.08 U-TURNS.

No person operating a vehicle shall make any U-turn on any street where the same is prohibited, unless directed to do so by a Traffic Officer.

7.09 ERECTION OF SIGNS AND SIGNALS.

(1) The Highway Superintendent shall procure, erect and maintain appropriate standard traffic signs, signals and markings conforming to the Uniform Traffic Control Devices Manual, notifying drivers of the various driving or parking rules or restrictions at the various streets, alleys, intersections or other public places within the Town. Signs shall be erected in such locations and manner as authorized by the Board so as to give adequate warning to users of the streets, alleys or highways in question.

(2) No person shall be guilty of a violation of any restriction requiring a sign unless notice of the restriction was given at the time of the violation by a sign erected and in place and sufficiently legible to be seen and understood by a reasonably observant person.

(3) The Town Clerk shall maintain in his office at all times, a complete list of all traffic regulations at particular places adopted by the Board, whether herein by reference, the same as if fully set forth.

7.10 EMERGENCY TRAFFIC REGULATIONS. (am. 2002-04-010)

In case of an emergency, the Superintendent of Highways, in consultation with the Town Chairperson, may make and enforce temporary emergency traffic regulations to cover special conditions which shall be enforced by the Town's Law Enforcement Officer.

7.11 ACCELERATING VEHICLES.

No operator of any vehicle shall cause, by excessive and unnecessary acceleration, the tires of such vehicle to spin and emit loud noises or to unnecessarily throw stones or gravel; nor shall such operator cause to be made by excessive and unnecessary acceleration any loud noise such as would disturb the public peace.

7.12 REGULATION OF OFF-THE-ROAD VEHICLES. (repealed and recreated 2010-007)

(a) **Definitions.** As used in this section, the following terms shall the meaning indicated:

ALL-TERRAIN VEHICLE – Has the meaning specified under § 340.01(2g), Wis. Stats., as amended from time to time.

CONTIGUOUS – To be contiguous for purposes of this section, the real property must satisfy all of the following requirements:

- (1) The entire property must:
 - (a) either be a single parcel with a single tax identification number but only if the single parcel is at least 210 feet wide at each and every point; or
 - (b) be two or more parcels with separate tax identification numbers, only if all of the following are true:

- (1) each parcel must have a common boundary line of at least 210 feet with another parcel that makes up the entire property; and
- (2) all of the parcels that make up the entire property must be in identical ownership; and
- (3) the entire property must be treated and occupied by the property owner as a single unit for a use permitted by the applicable zoning district; and
- (4) there must be no gaps or obstructions between the parcels, whether by public right of way, body of water, physical construction or otherwise.
- (5) the entire property must be at least 210 feet wide at each and every point.

(2) If a public right of way, body of water, physical construction or other obstruction crosses a parcel of land, the parcel as a whole does not qualify as contiguous property. In that event, each severed portion shall constitute a separate parcel for purposes of this section.

OFF-THE-ROAD VEHICLE – Any two-wheeled self-propelled vehicle designed or adapted and used for riding over unpaved ground or gravel surfaces. Such vehicles may be equipped with rugged tires and flexible suspension and are called by various names: dirt bike, pit bike, chopper bike, sport bike, street bike, exercise bike, mini bike, and scrambler that are combustion engine operated. “Off-the-road vehicle”, as used in this section, does not include all-terrain-vehicles and snowmobiles, as defined in § 340.01 (2g) and (58a), respectively, Wis. Stats., as amended from time to time.

OPERATOR – A person who operates a vehicle herein regulated, who is responsible for the operation of a vehicle herein regulated or who is supervising the operation of a vehicle herein regulated.

TRACKS – Any real property within the Town where repetitive operation of any vehicle(s) regulated by this section has worn down a specific area on private property and/or where changes have been made to the original contour of the landscape for riding of any vehicle(s) regulated by this section.

(b) **All-Terrain Vehicles.** The restrictions and prohibitions concerning the operation of all-terrain vehicles found in Section 23.33 Wisconsin Statutes, as now or hereinafter amended, are hereby adopted by reference and made a part of this section with the same force and effect as if fully set forth herein.

(c) **Off-the-Road Vehicles.**

(1) No person may operate an off-the-road vehicle within the Town of any property less than ten contiguous acres in size.

(2) An off-the-road vehicle may be operated on the property that is ten or more contiguous acres in size with the consent of the adult property owner. Any adult property owner within the Town having not less than ten contiguous acres of property may operate and/or permit operation of an off-the-road vehicle on their property subject to the following restrictions:

(a) No operator shall operate any off the road vehicle within 100 feet from any property line.

(b) Only the property owner(s) and/or occupant(s) of the real estate may operate an off-the-road vehicle under this section.

- (c) No operator shall operate between the hours of 7 p.m. and 9 a.m. within 100' of a dwelling.
 - (d) No operator shall operate on the shoulders, in the drainage ditches or on public streets and highways.
 - (e) No operator shall operate in the excess of 25 mph.
 - (f) No operator shall operate with more than one passenger.
 - (g) No operator shall operate without protective headgear.
 - (h) No operator shall operate on a public or private street or highway unless the driver has an operator's license and the vehicle is licensed by and meets the equipment requirements of the State.
 - (i) No operator shall operate who is under 12 years of age.
 - (j) No operator shall operate so as to race the engine or otherwise cause unnecessary or unusual noise which annoys, disturbs, injures or endangers the comfort, health, peace or safety of others.
- (d) **Tracks Regulated.** No operator shall cause or permit the creation or establishment of a track for the operation of any vehicle regulated under this section without site plan and plan of operation review and approval pursuant to Section 17.03(1)(C) of this code and compliance with such other statutes, codes, ordinances and other laws as may apply.
- (e) **Parental Responsibility.** The parent or guardian having legal custody of an unemancipated minor child shall be liable for penalties and costs imposed for violations of this section, where such minor is unable to pay the same, including the jail sentence for nonpayment thereof.

7.13 MOTORCYCLES AND MOPEDS.

State motorcycle and moped laws, §§347.485 through 347.488, are hereby adopted by reference and made part of this section as if fully set forth herein.

7.14 SNOWMOBILES.

- (1) STATE SNOWMOBILE LAWS ADOPTED. Except as otherwise specifically provided in this section the statutory provisions describing and defining regulations with respect to snowmobiles in Ch. 350, Wis. Stats., are hereby adopted by reference and made part of this section as if fully set forth herein. Acts required to be performed or prohibited by such statutes are required or prohibited by this section.
- (2) OPERATION ON ROADS IN RESIDENTIAL AREAS PROHIBITED. No person shall operate a snowmobile upon any Town road or right-of-way in any area zoned residential, other than to drive directly across such road or right-of-way, and then only after stopping and yielding the right-of-way to all vehicles and pedestrians approaching on the road.
- (3) OPERATION IN PARKS AND ON PUBLIC LANDS PROHIBITED . No person shall operate a snowmobile in any park or on any public lands within the Town unless such park or public lands have been designated as a snowmobile route or trail by the Town Board.
- (4) OPERATION ON PRIVATE ROADS. No person shall drive a snowmobile on private property without first having received written permission from the property owner. Consent shall be dated and

limited to the year in which the consent is given. If the property is owned by more than one owner, the consent of all the property owners shall be necessary. Any person apprehended operating a snowmobile on property not owned by the operator or owner of the snowmobile, shall be presumed to be in violation of this section. This presumption shall be rebutted only upon written proof from the owner of the real estate of consent.

(5) **RESPONSIBILITY OF OWNER.** The owner of a snowmobile shall be held primarily responsible for all acts, violations, or damages caused by the operation of any snowmobile registered in his name.

(6) **INTOXICATING BEVERAGES AND DRUGS.** No person shall operate a snowmobile while under the influence of intoxicating beverages, narcotics or other drugs.

(7) **LITTERING PROHIBITED.** No person shall deposit, throw, or place any cans, paper, debris, refuse, bottles, garbage, solid or liquid waste on the ice or in the water of Pewaukee Lake.

(8) **ACCIDENTS AND ACCIDENT REPORTS.**

(a) If he can do so without serious danger to his snowmobile or to persons on board, the operator of a snowmobile involved in a snowmobile accident within the Town shall stop his snowmobile and render to other persons affected thereby such assistance as may be practicable and necessary to save them from or minimize any danger caused by the accident and shall give his name, address and identification of his snowmobile to any persons injured and to the owner of any property damaged in the accident.

(b) If the snowmobile accident results in death or injury to any person or total property damage in excess of \$100, every operator of a snowmobile involved in such accident shall, as soon as possible, notify the Waukesha County Sheriff's Department or the Town Law Enforcement Officer of the accident and shall, within 10 days after the accident, file a written report thereof within the Department on forms prescribed by it. (am. 2002-04-010)

(c) If the operator of a snowmobile is physically incapable of making the report required by this section and there was another occupant in the snowmobile at the time of the accident capable of making the report, he shall make the report.

(d) "Snowmobile accident" means a collision, accident or other casualty involving a snowmobile.

7.15 ABANDONED AND JUNK VEHICLES. (Rep. & recr. #00-506)

(1) **ABANDONMENT OF MOTOR VEHICLES.** No person shall abandon any motor vehicle within the Town and no person shall leave any motor vehicle within the Town for such time and under such circumstances as to cause such motor vehicle to reasonably appear to have been abandoned.

(2) **WRECKED AND NONOPERABLE MOTOR VEHICLES ON STREETS.** No person shall have any wrecked or nonoperable motor vehicles on any street within the Town.

(3) **SALE OR JUNKING OF ABANDONED VEHICLES.** Any member of the Town Law Enforcement Department or any person so designated by the Town Board is hereby authorized to remove or have removed any vehicle in violation of subsection (1) or (2) until lawfully claimed or disposed of as provided in subsection (4).

(4) **STORAGE AND SALE**

(a) Notice to owner. Any vehicle which is deemed abandoned shall be retained in a

convenient place of storage for a minimum of thirty (30) days after the Town Law Enforcement Officer notifies the owner and lienholders of record, by certified mail, that the vehicle can be reclaimed within thirty (30) days upon payment of towing and storage charges or the vehicle will be sold or junked. If the vehicle is not claimed within such 30 days, it shall be sold or junked.

(b) Disposal of such vehicle shall be by means of junking if it reasonably appears that such vehicles are of no value, except as junk, or by public auction if more than junk value can be received therefor. After payment of the reasonable and necessary expenses incident to the care and junking or sale of any motor vehicle, the balance of the proceeds shall be paid over to the Town Treasurer and retained in the general fund.

(c) At any time prior to the junking or sale of any motor vehicle as herein provided, any person establishing his ownership or right of possession to such vehicle may at the option of the Town reclaim and obtain possession of the same by paying to the Town a reasonable sum for the storage and towing thereof and other expenses incident to the care of the same.

(5) **JUNK VEHICLES**

(a) No person owning or having custody of any disassembled, unlicensed, unregistered, nonoperable, disabled, junked or wrecked motor vehicles shall allow such vehicles to be stored on any premises, except as provided in subsection (b).

(b) This subsection shall not apply to a motor vehicle in an enclosed building; a motor vehicle on the premises of a business enterprise operated in a lawful place and manner when necessary to the operation of such business; a motor vehicle in an appropriate storage place maintained in a lawful place and manner by the Town; or a motor vehicle on the premises of an authorized junk dealer.

(6) **NOTICE TO OWNER OR CUSTODIAN.** Whenever the Town Law Enforcement Officer shall find any vehicle which reasonably appears to violate a provision of subsection (5), they shall notify the owner or custodian thereof or the owner of the property upon which the vehicle is parked, placed or stored of the violation. The notification shall specify that the owner or custodian of the vehicle or the owner of the property upon which the vehicle is located shall have ten (10) days within which to remove the vehicle and that failure to comply with said notice shall result in daily issuance of fines until the vehicle is removed. Notification shall be given in the manner most likely to inform the owner or custodian of the vehicle or the owner of the property upon which the vehicle is located of the provisions of this section.

(7) **PENALTIES.** Penalties for violation of any provision of this section shall be provided as in section 25.04 of the General Ordinances.

7.16 FOLLOWING MUNICIPAL VEHICLES. (Cr. #92-318)

No person shall operate a motor vehicle within 50' of the rear of any municipal vehicle.

7.20 PENALTY. (Am. MSC `91)

The penalty for violation of any provision of this chapter shall be a forfeiture and penalty assessment if required by §165.87, Wis. Stats., a jail assessment if required by §53.46(1), Wis. Stats., plus any applicable fees prescribed in Ch. 814, Wis. Stats.

(1) **UNIFORM OFFENSE.** Except as provided in sub. (3) for nonmoving traffic offenses, forfeitures for violation of any provisions of Chs. 341 to 348, adopted by reference in §7.01 of this chapter, shall conform to forfeitures for violations of the comparable State offenses, including any variations or increases for second offenses.

(2) **SPECIAL LOCAL REGULATIONS.** The forfeiture for violation of any local regulation, except parking, shall be as provided in §25.04 of this General Code.

(3) **PARKING.** (Rep. and Rec. 2003-003) The forfeiture for violation of parking regulations in this chapter and for offenses described in §§346.50 to 346.55, Wis. Stats., adopted by reference in this chapter shall set from time to time by resolution of the Town Board.

7.21 ENFORCEMENT. (Am. MSC `91)

(1)(a) **ENFORCEMENT PROCEDURE.** This chapter shall be enforced according to §§23.33, 66.12, 345.11 to 345.61, 350.17 and Ch. 799, Wis. Stats. (am. 2002-04-010)

(1)(b) **ENFORCEMENT AUTHORITY.** The designated Town Law Enforcement Officer shall be responsible for enforcement of this chapter. (Cr. 2002-04-010)

(2) **CITATIONS.** (am. 2002-04-010)

(a) Citations may be issued by the Town's Law Enforcement Officer or peace officer with jurisdiction in the Town of Delafield.

(b) Citations for all nonmoving traffic violations, as defined at §345.28(1)(c), Wis. Stats., under this chapter shall conform to §345.28, Wis. Stats., and shall permit direct mail payment of the application minimum forfeiture to the Town Law Enforcement Officer within 10 days of the issuance of the citation in lieu of court appearance. The issuing officer shall specify thereon the amount of the applicable forfeiture as provided by this chapter. The forfeiture for violation of all nonmoving traffic violations under this chapter shall double if the applicable minimum forfeiture is not paid to the Town Law Enforcement Officer within 10 days of the issuance of the citation as set forth above.

(3) **PETITION TO REOPEN JUDGMENT.** Whenever a person has been convicted in this State on the basis of a forfeiture of deposit or a plea of guilty or no contest and the person was not informed as required under §345.27(1) and (2), Wis. Stats., the person may, within 60 days after being notified of the revocation or suspension of the operating privilege, petition the court to reopen the judgment and grant him an opportunity to defend on merits. If the court finds that the petitioner was not informed as required under §345.27(1) and (2), the court shall order the judgment reopened. The court order reopening the judgment automatically reinstates the revoked or suspended operating privilege.

(4) **DEPOSIT.**

(a) (am. 2002-04-010) Any person arrested for a violation of this chapter may make a deposit of money as directed by the arresting officer at the Town Hall or by mailing the deposit to the Town Hall. The arresting officer or the person receiving the deposit shall notify the arrested person, orally or in writing, that:

1. If the person makes a deposit for a violation of a traffic regulation, the person need not appear in court at the time fixed in the citation and the person will be deemed to have tendered plea of no contest and submitted to a forfeiture and penalty assessment if required by §165.87, Wis. Stats., a jail assessment if required by §53.46(1), Wis. Stats., plus any applicable fees prescribed in Ch. 814, Wis. Stats., not to exceed the amount of the deposit that the court may accept as provided in §345.37, Wis. Stats.

2. If the person fails to make a deposit for a violation of a traffic regulation or appear in court at the time fixed in the citation, the court may enter a default judgment finding the person guilty of the offense or issue a warrant for his arrest.

(b) The amount of the deposit shall be determined in accordance with the State of Wisconsin Revised Uniform State Traffic Deposit Schedule established by the Wisconsin Judicial Conference and shall include the penalty assessment established under §165.87, Wis. Stats., a jail assessment if required by §53.46(1), Wis. Stats., and court costs. If a deposit schedule has not been established, the arresting officer shall require the alleged offender to deposit forfeiture established by the Town Board, which shall include the penalty assessment established under §165.87, Wis. Stats. Deposits for nonmoving violations shall not include the penalty assessment.

(5) NOTICE OF DEMERIT POINTS AND RECEIPT. Every person accepting a forfeited penalty or money deposit under this chapter shall receipt therefor as provided in §345.26(3)(b), Wis. Stats., Every officer accepting a stipulation under the provisions of this chapter shall comply with the provisions of §§343.28 and 345.26(1)(a), Wis. Stats., and shall require the alleged violator to sign a statement of notice in substantially the form contained on the uniform traffic citation and complaint promulgated under §345.11, Wis. Stats.

(6) FORFEITURES IN TREASURY. Any officer accepting deposits or forfeited penalties under this chapter shall deliver them to the Town Treasurer within 7 days after receipt.

8.01 HIGHWAY COMMISSION.

A Town Highway Commission is hereby established consisting of the Town Chair and Town Supervisors. The Town Highway Commission shall be charged with the care and supervision of all highways and roadways in the Town pursuant to Ch. 81, Wis. Stats.

(1) The Town Highway Commission shall supervise the hire or discharge of personnel such as technical assistants, road maintenance crews, emergency help and shall contract for, as deemed necessary, materials, work and equipment to construct, repair and maintain the Town Highways with competitive bids being taken, as deemed necessary, on gravel, salt and sand, paving materials, equipment rentals, repair work, new construction or reconstruction on Town roads and mill tax roads new construction or reconstruction.

(2) Cause to have done such other things as are normally necessary to construct, build, maintain, improve, delete, abandon, obtain, condemn, purchase roads and rights-of-way and portions thereof.

(3) Post parking restrictions, either temporary or permanent, at any place where vehicular parking hinders the maintenance of Town highways or vehicular traffic thereon, prevents the proper removal of snow from the Town highways, or endangers the public safety or welfare.

(4) Proclaim the state of snow or other emergency through the press, radio or other public means of communication, and designate and authorize law enforcement officers and other personnel to inform the citizenry of the existence of the emergency. Cause the removal of any vehicle which may interfere with the operation of any snow removal equipment or any emergency vehicle to the owner or operator thereof. Such removal may be made either by Town personnel or by any garage man, service man, person, firm, or corporation designated by the Town Board or authorized agent thereof. Prosecute according to the provisions of this section any person who shall permit any vehicle to park or stop upon any uncleared Town or Town maintained highway, either during a driving snowstorm, immediately thereafter, or during a state of declared emergency in such a manner as to interfere with snow removal or other emergency equipment, unless with reasonable diligence he could not avoid it.

(5) Provide for the public safety on Town highways by posting stop signs, school and road hazard warning signs, etc., where, in its opinion, they are necessary for public good, removing obstruction of view at dangerous intersections or points in road, enforcing corner setbacks, fence and obstruction heights, line of vision, etc. per the Zoning Code, and cause the legal speed limits established by Town and County ordinances and State Statutes to be enforced on all roads in the Town.

(6) Cause public utilities to submit maps showing the location of any underground facilities within the right-of-way of any Town highways and Town maintained highways.

(7) Appoint a Superintendent of Highways who shall supervise the construction and maintenance of all highways and roadways in the Town required to be maintained by the Town, and keep them passable at all times, and perform such other services in connection with the highways as the Town Board requires, and keep a full account of all his receipts and disbursements. He may make such arrangement for the prosecution of his work as he deems necessary and appoint such foreman as the highway work requires. When any highway under his charge becomes impassable, he shall put the same in passable condition as soon as practicable. He shall make a complete and full report of all funds received and disbursed by him whenever requested so to do by the Town Board, and shall also make a complete and full report at each annual Town meeting. The Superintendent, and in his absence, the Town Board, shall immediately upon notice of its existence fill or remove any depression, ditch, hump or embankment which impedes the use of any highway in the Town. The Superintendent shall specify the size and location of all drainage culverts along or under Town highways or on private lands, where necessary, and perform all services in connection with the Town highways as the Town Highway Commission may require.

8.02 DRIVEWAYS AND CULVERTS.

(1) CULVERTS TO BE INSTALLED. (Am. #88-200) No driveway shall be constructed or maintained connecting with any street unless a suitable culvert is first installed across the roadside ditch at the street, where necessary. The culvert shall be set to the finished grade as established or at the grade established by the Town Highway Superintendent. Such culvert shall be constructed of corrugated metal pipe and shall have a cross section of not less than that of a 15" pipe. The length of the culvert shall be as required by the Town Highway Superintendent and shall be installed by the Highway Superintendent. All culverts

shall be equipped with end guards made of concrete or steel and shall be so installed as to not be beyond street height. Any person who wishes to have a culvert installed on any Town road shall first make application therefor with the Town Highway Superintendent. The applicant shall deposit a fee equal to the estimated cost of installation. The culvert and end sections shall be provided by the applicant and installed by the Town Highway Superintendent. On any county or State highway, application shall be made to the Waukesha County Highway Department.

(2) **EXISTING DRIVEWAYS.** Where the public welfare requires a suitable culvert for an existing driveway, the Town Board shall notify, in writing, the property owner maintaining the driveway across any gutter in any street, that the Town will install a culvert at the expense of the abutting property. The property owner shall deposit a sum in an amount equal to the estimated cost of installing such culvert within 10 days from date of notice. If the deposit is not made, the cost of the installation will be charged to the abutting property and, if not paid to the Town Treasurer on or before November 1, shall be entered on the tax roll as a special tax against the property.

(3) **FINANCIAL GUARANTEES REQUIRED FOR LANDSCAPING OF ROADSIDE DITCHES.** (rep. & rec. 17-626)

(a) Guarantee Specifications. All applications for a private driveway culvert installation shall include a cash deposit, letter of credit or bond in the amount set forth from time to time by resolution of the Town Board to insure proper completion of the landscaping restoration of the roadside ditch, in addition to the cost for such installation. This cash deposit, letter of credit or bond shall be for the roadside ditch adjacent to the culvert installation, shall be in a form approved by the Town Attorney, and shall be specifically applicable to the property for which a private driveway or culvert installation application has been made and shall not cover any other property. The cash deposit, letter of credit or bond will be held by the Town until the roadside ditch landscape restoration has been completed and approved by the Town Highway Superintendent or authorized designee.

(b) Inspection for Return of Guarantee. The property owner may request return of the financial guarantee required in subsection (a) at any time upon completion of the culvert installation and landscaping restoration. Upon such request, the Town Highway Superintendent or authorized designee shall make an inspection of the installation and restoration and if properly restored and landscaped, shall authorize return of the financial guarantee. If no request is made for an inspection within a year of the installation of the culvert, the Town shall make an inspection of the culvert and roadside ditch adjacent thereto, and if such installation is in proper condition and the landscaping and restoration of the ditch and culvert are properly completed as determined by the Town Highway Superintendent or authorized designee, then the financial guarantee shall be returned to the owner.

(c) Unsatisfactory Landscape/Repair. If any work needs to be done on the landscaping or any restoration of the ditch or repair of any damage due to construction or erosion in the opinion of the Town Highway Superintendent, this work shall be done by the Town and the property owner shall be billed therefore by the Town. If such bill is not paid within 30 days, the amount thereof shall be charged to the financial guarantee provided by the owner and the balance thereof shall be released by the Town to the property owner as herein provided.

(4) **SURFACING OF PRIVATE DRIVEWAYS AND TOWN RIGHT-OF-WAYS.** (rep. & rec. 2002-02-004)

(a) Concrete Surfacing of Private Driveways. No concrete surfacing shall be installed on a private driveway closer than 3' from the hard surface on the road right-of-way. If for any reason any portion of the driveway in the town right-of-way would need replacing, the town shall not be responsible for the cost of the repair or the replacement. No concrete surface driveway shall be installed on any private driveway until a permit has been obtained from the Building Inspector and shall indicate the width and length of such driveway to be installed. The Building Inspector shall advise all owners of property of the requirement for such permit at the time when the application for a building permit for the construction of any residence or other building on the premises is applied for. The amount of said permit fee shall be set by the Town Board from time to time by resolution.

(b) Asphalt or Concrete Surfacing of Private Driveways within Town Right-of-Ways. If for any reason any portion of a driveway that extends into the Town right-of-way needs to be constructed,

repaired, replaced or resurfaced with asphalt or concrete, the Town shall not be responsible for the cost of the construction, repair, replacement or resurfacing. **Concrete driveways shall not extend any closer than three (3) feet to the edge of the paved road.** No concrete construction, repair, replacement or resurfacing shall be installed until an application has been submitted and approved by the Town Highway Superintendent. After an application has been approved by the Town Highway Superintendent, the property owner shall contract with a private contractor for the concrete construction, repair, replacement or resurfacing.

(5) STREET GRADE. (Cr. #88-200) Every building hereafter erected, structurally altered or relocated shall be located on an improved street at a grade approved by the Building Inspector as being in satisfactory relationship with the established grades, if any, and, if not, with existing street grade, with particular consideration for proper drainage and safe vehicular access. Safe vehicular access is defined as a paved driveway of sufficient width and adequate horizontal alignment to accommodate emergency vehicles and a slope not to exceed 12% at any such point. Driveways shall be graded and graveled before construction commences. Cases in question may be referred to the Plan Commission by the Building Inspector.

(6) FINANCIAL GUARANTEES REQUIRED FOR REPAIR OF CURB AND GUTTERS (rep & rec. 17-626)

- (a) Whenever a building permit is issued in an area where curb and gutter sections exist, the financial guarantee herein provided in subsection (3) above shall be required. This guarantee shall insure any necessary repairs to the curb and gutter section which may be damaged as a result of the construction activities authorized by the building permit.
- (b) The Highway Superintendent shall make an inspection of the curb and gutter adjacent to the premises after an occupancy permit has been granted by the Building Inspector. Return of the financial guarantee shall be as subsection (c) below.
- (c) If there is any damage to the curb and gutter sections as a result of the authorized construction activities, the damage shall be repaired by the Town and the cost thereof billed to the owner. If such bill is not paid within 30 days, the amount thereof shall be charged to the financial guarantee provided by the owner and the balance thereof shall be released by the Town to the property owner.

8.03 EXCAVATION IN PUBLIC RIGHT-OF-WAY.

(1) PERMITS REQUIRED. No person, company or utility (hereinafter "applicant") shall make or cause to be made any excavation in or under any street, alley, public grounds or sidewalk in the Town without first obtaining a written obstruction or excavation permit from the Town Highway Superintendent. Such permit shall be issued only upon a written application signed by the applicant. The application shall describe the place where the excavation is proposed to be made with such certainty that it may be readily located, and shall specify the purpose for which the excavation is to be made and when it is proposed to begin. Applicants shall pay a non-refundable application fee in an amount which shall be set forth from time to time by resolution of the Town Board.

(2) FINANCIAL REQUIREMENTS.

- (a) Cash Bond. Applicant shall provide a cash bond binding the applicant to the Town in an amount as determined by the Town Highway Superintendent and Town Administrator, that does not exceed \$10,000, that runs to the Town and any third party who may be injured, and that secures the performance of the conditions specified, as enumerated in Wisconsin Statutes Section 66.0425(2). The condition voiding the bond being that the applicant will perform and fully complete in a manner approved by the Town Highway Superintendent, all work for which any highway and street opening permit is issued, and within the time prescribed by the Town Highway Superintendent. In addition, such bond shall provide that the applicant will backfill, maintain, and restore the surface of any Town highway, street, alley, sidewalk or right-of-way.
- (b) Indemnity Bond or Certificate of Insurance.

1. **Bond.** An indemnity bond binding the applicant, as principal, and a corporate surety licensed to do business in this State, as surety, to the Town in the penal sum of \$10,000, the condition voiding the bond being that the applicant shall indemnify and save harmless the Town, its officers, agent and employees and shall defend the same from and against any and all liability claims, loss, damages, interest, actions, suits, judgments, costs, expenses, attorney's fees and the like, to whomsoever owned and by whomsoever brought or obtained, which may in any manner result from or arise in the course of or out of the performance of any work for which any highway and street opening permit is issued to the applicant during the term of the bond or of any work incidental thereto; the bond shall provide that the penal sum of \$10,000 does not and shall in no manner be construed to limit the legal liability of the applicant (who is principal thereon) to indemnify or otherwise reimburse the Town for any loss, damage or expense it may incur through the defaults, acts or omissions of the applicant in the performance of any work for which a highway and street opening permit is issued to the applicant.
2. Insurance.
 - a. In lieu of the indemnity bond, the applicant may deposit with the Town Board proof of insurance showing to the Town Administrator's satisfaction that the applicant is maintaining in force policy of insurance containing the coverages indicated herein. Such coverage shall be provided for all work in the street right of way and shall be provided by the applicant and any subcontractors involved in the project.

(1). **Commercial General Liability (Occurrence Form)**

Applicant's policy shall include the following:

- a. General Aggregate (other than Prod/Comp Ops Liability) \$2,000,000
- b. Products/Completed Operations Aggregate: \$1,000,000
- c. Personal & Advertising Injury Liability \$1,000,000
- d. Each Occurrence \$1,000,000
- e. Town of Delafield as an Additional Insured on a primary non-contributory basis, using for CG2010 07/04 or equivalent.
- f. Waiver of subrogation in favor of Town of Delafield

(2). **Workers' Compensation and Employer's Liability**

Applicants Policy shall include the following:

- a. Workers' Compensation State Statutory Limits
- b. Employer's Liability
 1. Bodily Injury by Accident \$100,000 each accident
 2. Bodily Injury by Disease \$500,000 policy limit
 3. Bodily Injury by Disease \$100,000 each employee
 4. Waiver of Subrogation in favor of Town of Delafield

(3). **Auto Liability**

Applicants Policy shall include the following:

- a. Combined Single limit \$1,000,000

(4). **Umbrella Liability**

Applicants Policy shall include the following:

- a. Each Occurrence and Aggregate \$5,000,000

- b. The above coverages must be placed with an insurance company with an A.M. Best rating of A-: VII or better.

The expiration date of the insurance policy and must provide that the insurance policy cannot be changed or canceled except upon 10 days' notice to the Town. If such insurance policy expires or is canceled within one year of the date of issuance of any obstruction or excavation permit, similar insurance must be provided without any gap in coverage.

3. Form. The bonds shall be in the form designated or approved by the Town Board, and the Town Board shall also approve the sureties and any certificate of insurance. Bonds may be furnished to cover each individual permit applicant, or an applicant may furnish bonds covering work under all permits granted within a stated period, and may periodically renew the same. The obligation of such bonds shall remain in full force and effect after date of expiration as to any work for which a permit was granted prior to expiration.

(3) SPECIFICATIONS FOR HIGHWAY AND STREET OPENINGS.

- (a) No openings in Town highways, Town maintained highways, streets, alleys, other public ways or public lands will be permitted when the ground is frozen, except, when necessary, in the opinion of the Town Highway Superintendent. In making such an opening all materials excavated from existing or proposed pavements or driveways or within 5' of the edges thereof, shall be removed from the site and disposed of by the applicant in a manner approved by the Town Highway Superintendent. Maintenance of any excavation shall be performed on a regular and as-needed basis until such time a permanent repair can be performed. If maintenance work is not performed timely, no additional permits will be issued to the applicant and the Town may use the cash bond to perform repairs.
- (b) All excavations made in accordance with permission given pursuant hereto shall be enclosed with sufficient barriers, and lamps shall be maintained upon the same at night. All other necessary precautions shall be taken to guard the public against accidents from the beginning to the completion of the work. Underground facilities may be laid only on condition that the applicant is bonded as hereinbefore mentioned from all damages that may result from his neglect of necessary precaution against all accidents to persons or property of others.
- (c) All disturbed areas associated with an excavation of any Town highway, street, alley, other public way or public lands, must be restored to precisely the same condition and relation to the remainder as they were before. All rubbish, boulders and other undesirable materials not used in backfilling must be removed immediately and the excavated areas shall be left in perfect repair. The applicant shall be responsible for to repair any settling or damage of the excavation for one year after approval of the repair.
- (d) When any excavation is made in an existing or proposed pavement or driveway, or within 5' of the edge thereof, all excavated material must be removed and the excavation backfilled with slurry to 4-inches below the surface of the pavement in a manner approved by the Town Highway Superintendent. The Town Highway Superintendent may waive the requirement, in writing, for slurry backfill for repairs only done to the surface of the driveway. The top 4-inches shall be asphalt pavement conforming to specifications in this Chapter. Concrete pavement shall be replaced in kind. Concrete shall meet the following specifications:

Minimum cement content - sacks per cubic yard 6.0
Compressive strength after 28 days cured 3,500 psi
Maximum amount of water per sack of cement 6.0 gallons
Size of coarse aggregate required No. 1 plus No. 2
Slump 1 Inch - 3 Inches
Air Content 4.5% - 7.5%
Admixtures (including flyash) shall NOT be allowed.

Any tunnels shall be backfilled in a manner approved by the Town Highway Superintendent and Town Engineer.

- (e) No work shall be performed and no excavation shall be made within the limits of any Town maintained highway, street, alley, other public way or public lands without prior notification in writing to the Town Highway Superintendent at least 48 hours before commencement of the work.
- (f) Traffic shall not be shut off from travel over the highways without express authority from the Town Highway Superintendent.
- (g) All pipelines shall be installed and laid so as not to interfere with the use of the highways by the public nor the use of the adjoining land by the owner thereof, and no trees or bushes shall be cut,

trimmed or the branches thereof cut or broken in the construction or maintenance of any line without the consent of the owner of the trees or bushes.

- (h) If any utility services installed by the applicant shall interfere with the maintenance or construction, within the right of ways of any streets or public way, the utility services shall be realigned at no expense to the Town.

(4) ABOVE-GROUND INSTALLATIONS

- (a) *Above-ground installations prohibited.* No person shall encroach upon or obstruct or encumber any street, alley, sidewalk, public grounds or land dedicated to public use, or any part thereof, or permit such encroachment or encumbrance to be placed or remain on any public way, except as provided in subsection (b) and (c).

- (b) *Exceptions.* The prohibition of subsection (a) shall not apply to the following.

1. Official signage, official traffic control devices, and utilities owned or leased by the Town.
2. A use permitted by conditional use permit or right of way agreement granted under the applicable laws.
3. Building materials for the period specifically authorized by the Town Board which shall not obstruct more than 1/3 of the traveled portion of the street, and which do not interfere with flow in the gutters.
4. Mailboxes for the collection of mail from the United States Postal Service are exempted from sub (a) if they comply with the Town's standard for mailbox dimensions and installation guidelines.
5. A legally placed above grade use in existence prior to April 11, 2023.
6. Special privileges permitted pursuant to State law.

- (c) *Permit required.* If an encroachment, obstruction, or excavation results in the above grade use of the right-of-way then an above grade right-of-way permit from the Town is required prior to the encroachment, obstruction, or excavation being established.

1. Application requirements.

- a. An above grade right-of-way permit application shall be filed with the Town Highway Superintendent.
- b. The applicant shall pay the above grade right-of-way permit fee. The above grade right-of-way permit fee shall be in the amount as established by resolution of the Town Board, and may be amended from time to time. In addition, a professional fee charge back agreement shall be signed to ensure compliance with Town ordinance that professional fees incurred by the Town to review said applications are not paid by the taxpayers, but by the applicant seeking special review and benefit.
- c. The applicant shall provide a detailed plan with structural engineering, scale drawings, visual rendering, and survey showing the exact location, size, appurtenances and or attachments of the equipment or structure to be placed in the right-of-way, along with the exact location of all streets, sidewalks, utilities, trees, and any other obstructions in the vicinity of the proposed installation, and the location of structures on abutting properties.
- d. The applicant shall provide a detailed report describing potential hazards to the public from said equipment, structure, and impacts due to location on safety for the driving public, pedestrians, and owners and users of adjacent property for such things as, but not limited to; fall zone, fire, explosion, chemical, environmental impacts, and vehicle crash impacts. Said report shall indicate the risk of the safety hazard and the proposed design element to address said safety hazard. The Town Highway Superintendent may require the applicant's report to be provided by a structural engineer or other expert approved by the Town Highway Superintendent, if the Town Highway Superintendent deems it to be

necessary to have such an expert opinion in light of the circumstances of the application, for the protection of public health and safety, in which case the applicant shall provide such an opinion at the applicant's cost.

- e. The plan must show how the installation and maintenance of said above grade right-of-way use will not impact snow removal or lawn care from the terrace, sidewalk or street, or conflict with the operation or maintenance of vehicular travel and existing utilities above or below ground.
 - f. An alternative analysis shall be provided to show what options other than locating above grade in the right-of-way exists and the approximate costs of such alternatives.
2. Application process.
- a. The application shall be submitted for review by the Town Highway Superintendent, and shall include all information required by applicable laws. The application shall be subject to a completeness determination within the time required by applicable laws.
 - b. Existing uses. Town staff shall determine whether to approve, deny, or conditionally grant above grade right-of-way permits for any new encroachment, obstruction, or excavation added to either a previously approved above grade use or one that was legally placed prior to April 11, 2023, unless the Town Highway Superintendent concludes the new encroachment, obstruction, or excavation may obstruct or incommode the public use in which case the application shall be subject to the procedures of subsection c.
 - c. New uses. All above grade right-of-way permit applications other than those described pursuant to subsection b., shall be considered as follows.
 - i. The Town Board shall hold a public hearing as reasonably soon as possible after application materials have been deemed complete by the Town and proper notification period for a class 1 notice and notice to all properties within 200 feet of the proposed installation.
 - ii. The Town Board shall give consideration to the application, the testimony received at the public hearing, staff and expert reports, or other information as the Town Board determines appropriate, as follows.
 - A. The Town Board shall consider public safety, alternative options, and the public good when considering an above grade right-of-way permit.
 - B. All users of the Town right-of-way shall comply with the following aesthetic standards:
 1. In areas where facilities are currently nonexistent or underground, undergrounding is required.
 2. No new above ground structures, including co-locations on existing structures, shall be placed within 500 feet of historic structures or historic districts designated by the National Register of Historic Places in Wisconsin or listed on the State Register of Historic Places. The 500-foot separation is waived for installations that are completely concealed from view, or are not visible from locations where the historic structure can be observed.
 3. Attachments to existing structures shall be designed to be flush with the existing structure as much as can reasonably be done, shall be a color that matches the existing structure and shall be the smallest size possible to reasonably accommodate the intended purpose. If the structure to which the attachment is made changes color due to repainting, resurfacing or other means, the attachment shall be modified to match the new color.

- C. The Town Board may grant the permit, grant the permit with conditions, or deny the permit. If the application is denied, the applicant must be provided a written documentation explaining the basis for the denial.
3. Non-Preemption. Any party objecting to the requirements of this Subsection (c) (Permit Required) or conditions imposed shall have an opportunity to demonstrate that the requirement constitutes an effective prohibition in violation of State or Federal law, in an appeal made pursuant to Section (d), below.

(d) *Appeals*. Any person who wishes to dispute actions taken by the Town pursuant to this Ordinance may contact the Town Clerk and request to appear before the Town Board at an upcoming regular Town Board meeting and may, at that time, present the matter to the Town Board for resolution. Appeal from the decision of the Town Board shall be by writ of certiorari to the Waukesha County Circuit Court.

8.04 HEAVY OR INJURIOUS VEHICLES RESTRICTED.

No machine having lugged wheels or metal tracks shall be driven or operated upon or along any street, alley or public place in the Town unless permission is secured, in writing, from the Town Highway Superintendent, which shall specify the route to be taken by such machine and it shall be unlawful to deviate from such route. The Town Highway Superintendent may require the removal from any machine of any flanges, cleats, or other removable parts which could damage the streets, and also require, whenever in his judgment it is necessary that planks, plywood plates or other sufficient protection for the streets be provided by the person driving or operating any such machine and be placed by such person on the street, and the machine shall be run upon such planks, plywood, plates or other protection when such requirement is made. Farm vehicles, such as tractors, combine harvesters, hay wagons, etc. shall be exempt from these requirements.

8.05 TEMPORARY WEIGHT RESTRICTIONS.

(1) GENERAL. The Town may limit the use of any Town road, bridge or culvert at any time, to the use of motor vehicles having a gross vehicular weight, regardless of the number of axles, of not more than 6 tons. Such restrictions may be imposed by the Town Highway Superintendent when in his judgment the use of any Town road, bridge or culvert would be damaged or destroyed by use for motor vehicles having a gross weight in excess of the limitation herein provided because of weakness of the roadbed, bridge or culvert due to deterioration or climate conditions or other special or temporary conditions.

(2) TEMPORARY LIMITS. Such temporary weight limitation shall be imposed by erecting signs on or along the Town road on which it is desired to impose the limitation sufficient to give reasonable notice that a temporary weight limitation is in effect and the nature of that limitation. Any temporary weight limitation as provided herein with reference to any bridge or culvert shall be imposed by erecting similar signs within 100' of each end of the bridge or culvert to which the weight limitation applies. All such temporary weight limitation signs shall comply with the rules of the State Department of Transportation.

(3) SPECIAL PERMIT. The Town may grant a special permit to the owner or operator of any motor vehicle having a gross weight in excess of the weight limitation herein imposed to operate the motor vehicle on any Town road while the weight limitation is in effect, if in his judgment an emergency condition exists which requires the use of such motor vehicle, and if the use of such motor vehicle would not damage the Town road on account of weather and street conditions at the time the permit is applied for. If such permit is issued, it shall be limited to the vehicle or vehicles described thereon and such permit shall name the street or streets upon which the vehicle or vehicles may travel, the gross vehicular weight allowed and the time that such permit shall be in effect. Applications for such permits shall be made to the Town Highway Superintendent.

8.06 DAMAGING STREETS PROHIBITED.

No person shall injure, tear up or remove any pavement, sidewalk or crosswalk or any part thereof, or dig any holes, ditches or drains in or remove any sod, stone, earth, sand or gravel from any street, lane, alley or public ground within the Town without obtaining a permit from the Town.

8.07 BARRICADES, INTERFERENCE WITH PROHIBITED.

No person shall remove an authorized barricade from any street or injure the same or drive upon any street which has been properly barricaded.

8.08 PLACING INJURIOUS SUBSTANCE ON STREET PROHIBITED.

No person shall place or cause to be placed upon a street, alley or sidewalk any foreign substance which may be injurious to any vehicle or part thereof.

8.09 LITTERING PROHIBITED.

No person shall throw or deposit any debris or waste material on any street, alley, sidewalk or other public or private property.

8.10 DEBRIS FROM VEHICLES PROHIBITED.

No operator of any vehicle shall permit to be thrown or deposited therefrom any type of debris or waste material. This section shall prohibit the deposit, upon the streets, alleys or sidewalks, of mud, gravel or dirt from the wheels or tires of a vehicle.

8.11 SPILLING DEBRIS FROM VEHICLES PROHIBITED.

No operator of any vehicle transporting waste or foreign matter shall permit such to be spilled on or along any street, alley or sidewalk.

8.12 VEHICULAR TRAFFIC OVER DRAINAGE DITCHES AND STREET CURBS.

(1) DEFINITION. "Motor vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public street including, but not limited to, passenger motor vehicles, motor trucks, tractors, earth moving equipment and any other type of motor drive vehicles.

(2) PROHIBITED. No person shall operate any motor vehicle over, along or into any drainage ditch adjacent to any public street nor over a street curb except over an established driveway, except that a contractor may drive through a drainage ditch if this is necessary for the repair of an existing well or private sewage disposal system, or for the installation of sanitary sewer or water laterals. In such event the contractor having the plumbing permit for such work shall be responsible for the repair of the ditch and road surface. This repair must be made to the satisfaction of the Superintendent within 30 days after the work is completed. Until such satisfactory repairs are made, the Plumbing Inspector shall not issue any further plumbing permit to the contractor involved.

8.125 UNPAVED HIGHWAY RIGHT-OF-WAY AREAS; ENCROACHMENTS PROHIBITED. (Cr. #89-224)

(1) Pursuant to §§86.03 and 86.04, Wis. Stats., from and after the enactment hereof, no person shall plant trees, shrubs or stone formations or unsafe mail boxes within the dedicated highway right-of-way areas adjacent to the paved portion of such highway. This section shall not apply to typical flared end of culverts.

(2) The Town Board may grant special exceptions to this section for good cause shown.

8.13 STANDARDS FOR THE CONSTRUCTION OF TOWN HIGHWAYS.

(1) ARRANGEMENTS. The provisions of Ch. 18 of this Code shall apply.

(2) DESIGN STANDARDS. The provisions of Ch. 18 of this Code shall apply.

(3) REQUIRED IMPROVEMENTS. The provisions of Ch. 18 of this Code shall apply, and other facilities deemed necessary to the Town Board, including storm sewers, sanitary sewers, curb and gutters, bridges, water systems, etc.

(4) CONSTRUCTION STANDARDS. These construction standards and the previously listed design standards and required improvements shall apply to any party desiring acceptance by the Town of any

road to be subsequently designated a Town highway and maintained by the Town. No road to be ultimately accepted as a Town highway and not shown on the Official Town Highway and Street Map shall be constructed without previous approval of the Town Board.

- (a) The typical section for local residential Town roads is shown on Exhibits "A" "B" and "C" at the end of this chapter. The typical section for all other roads shall be designated by the Town Engineer. (Am. #90-264)
- (b) The Town Board shall require that profiles of roads to be constructed and accepted, be prepared by a Registered Professional Engineer in the State and be submitted to the Town Board for approval of the established grades on all of the proposed highways and drainage easements prior to preceding with any grading operations.
- (c) Before commencing with any earth moving operations, the contractor shall obtain an erosion control and storm water management permit from Waukesha County Parks and Land Use Department, Land Resources Division. A drainage plan shall be submitted and shall consider the following: Temporary cover during grading operations; permanent grass and vegetative cover by use of stabilization materials, such as mulch, jute mat, excelsior, low growing plants, vines, and sod; construction of diversionary channel and terracing access slopes; and leaving critical areas in undisturbed condition. The drainage plan shall be approved by the Town before the developer may proceed with any grading operations.
- (d) Topsoil, peat, unstable material, all vegetative cover, stones, stumps, roots, and other deleterious materials shall be removed below the subgrade of the roads and replaced with sound fill materials placed and compacted to the satisfaction of the Town Highway Superintendent and Town Engineer. Any rock encountered shall be excavated to a point at least 20" below the finished grade of the roads. The contractor shall not proceed with the graveling operations until the subgrade has been checked for proper grade, proof-rolled and approved by the Town Engineer.
- (e) After the subgrade has been approved, the contractor shall place a minimum of 10" of 1 ¼-inch dense graded base course in accordance with Section 305 of the Standard Specifications for Road and Bridge Construction, Division of Highways, State Department of Transportation (State Specifications), most recent edition. Acceptable base materials shall be crushed stone or crushed gravel. In areas that are wet or seasonably wet, a minimum 6" layer of no. 2 stone shall be placed below the 10" base course. For areas that fail the proof roll, the contractor shall excavate to an elevation at which the contractor has determined that he/she can pass the proof roll, install a filter fabric (Type SR, Chapter 645 State Specifications), and fill the excavation with 3-inch dense graded base course and compact. The Town may require that the aggregate be tested at the owner's expense by an approved testing laboratory before being placed on the road. If additional material is required, in the opinion of the Town Highway Superintendent or Town Engineer to stabilize the road, the same shall be furnished and applied to the satisfaction of the Town Highway Superintendent or Town Engineer before acceptance, at no cost to the Town. Shoulders, if required, shall be ¾-inch crushed stone or crushed gravel.
- (f) After the aggregate has been placed and approved by the Town, 4-inches of asphalt shall be placed in two lifts. The lower (binder) lift shall be 2 1/4-inches of bituminous concrete 3 LT 58-28 S installed in accordance with §460 of the State Specifications. The Town may require that the asphalt course be cored to determine adequate thickness. The cost of these tests shall be paid by the developer. If the lower lift should be found to be less than 2 1/4-inches in thickness, the average deficiency shall be determined by the Town Engineer and a proportionate increase be made in the final lift. The upper (surface) lift shall be 1 ¾-inches of asphalt 5 LT 58-28 S, unless otherwise approved by the Town Highway Superintendent and Town Engineer. Other mix specifications may be used or required based on traffic analysis and site conditions, and shall be approved by the Town Highway Superintendent and Town Engineer. If the final thickness is found to be deficient, the deficiency shall be remedied by placing a lift over the entire roadway equal in thickness to such deficiency, but in no case less than 1-inch.
- (g) Curb and gutter that meets the requirements shown on Exhibit "D" shall be installed on the inside of all curvilinear roads and at all radii of intersections.
- (h) Developer may install curb and gutter with storm sewer throughout the entirety of a subdivision, if approved by the Town Board, after recommendation from the Town Highway Superintendent and

Town Engineer. Curb and gutter shall meet the requirements of Exhibit "D." Storm sewer shall meet the following standards:

Pipe: Reinforced Concrete Pipe

Catch Basins: File No. 29 (Green Book) with Neenah 3508 B Frame and Grate

Manholes: File Nos. 11 or 12 (Green Book)

Construction specifications shall be in accordance with the Standard Specifications for Sewer and Water Construction in Wisconsin, with Addendums (Green Book)

- (i) When roadways intersect a collector street, County trunk highway, or State trunk highway, deceleration and acceleration lanes, flairs, tapers and/or increased radii may be required on one or both of the intersecting streets. The Town Engineer shall determine the location of these lanes, etc. These areas shall be graded, stoned, paved and landscaped as specified herein.
- (j) All culverts shall be corrugated metal pipes or reinforced concrete pipe with standard end sections.
- (k) Ditches and side slopes along roads and in easements shall be covered with a minimum of 4" of topsoil free of all stones, roots and other debris, graded, seeded and/or sodded, mulched, fertilized and maintained for a sufficient period to provide adequate grass cover prior to acceptance by the Town. Unless specifically altered by the Town Board, the following standards shall be followed:

SLOPE OF DITCH	MINIMUM RESTORATION STANDARD
Less than 1.25%	No ditch is allowed to be less than 1.25% slope
1.25% to 2.00%	Ditch bottom shall be seeded and staked with jute matting or similar material.
2.00% to 4.00%	Ditch bottom shall be sodded and staked with jute matting or similar material
4.00% to 8.00%	Ditch bottom shall be sodded
Over 8.00%	Ditch bottom shall be paved.

Town Engineer and Town Highway Superintendent may allow alternative restoration standards based on individual site conditions.

8.14 OFFICIAL TOWN HIGHWAY AND STREET MAP.

To facilitate the carrying out of the provisions of this chapter, the Town Board may, in cooperation with the Town Plan Commission, have prepared and subsequently adopt an official Town Highway and Street Map. This map shall become a part of this chapter after adoption and publication by the Town Board and may include: location, width, weight restriction, if any, and the name of all Town, County, State, federal, mill tax roads, and Town owned rights-of-way.

8.15 ADOPTION, AMENDMENTS, AND EFFECTIVE DATE.

Amendments to this chapter shall take effect and be in full force after adoption by the Town Board

following a public hearing. Notice of this public hearing shall be given by publication in the official newspaper at least 3 times preceding the hearing and giving not less than 10 nor more than 30 days notice prior to the hearing.

8.16 UNIFORM ADDRESS SYSTEM.

(1) **ADOPTED.** The uniform address system of the Town shall be based on and become a part of a uniform address system for Waukesha County, as recommended by the County Board on March 12, 1957. All provisions herein relating to the establishment of a uniform address system for the County are hereby approved, and such provisions are applicable to the Town as more specifically set forth in the following sections, are hereby adopted by the Town Board.

(2) **ESTABLISHED.** There is hereby established a uniform system of numbering properties fronting on all streets, highways and rights-of-way in the Town and all existing residences and places of business and all residences and places of business which are hereafter constructed shall be numbered in accordance with the provisions of this section.

(3) **BASE LINES.**

- (a) Base lines, as recommended for a uniform County address system, shall be used for determining the numbering in the Town. The east west line, as recommended, shall be used for numbering along all streets running north and south. This base line shall be a continuation of the east west base line used in Milwaukee County and shall be the north or top line of Sections 31 to 36 inclusive in the Towns of Brookfield, Pewaukee, Delafield and Summit. Its numerical designation shall be "1". A north south base line, as recommended, shall be used for numbering along all streets running in a westerly direction. This base line shall be the eastern boundary of Waukesha County and its numerical designation shall be "124".
- (b) Each property north of the east west base line and facing a street running in a northerly direction shall carry an address indicating its position west of the north south base line and its position north of the east west base line.
- (c) Each property south of the east west base line and facing a street running in a southerly direction shall carry an address indicating its position west of the north south base line and its position south of the east west base line.
- (d) Each property west of the north south base line and facing a street running in a westerly direction shall carry an address indicating its position either north or south of the east west base line and its position west of the north south base line.
- (e) Properties on diagonal or curvilinear streets shall be numbered the same as or similarly to, properties on northerly or southerly streets if the diagonal or curvilinear streets run more from the north to the south. The same shall hold for diagonal or curvilinear streets which run more from the east to the west in that properties on such streets shall be numbered the same as, or similarly to, properties on westerly streets.
- (f) Where the general direction of a diagonal or curvilinear street has a deviation of exactly 45 degrees, the direction of the street shall be considered as being northerly or southerly.

(4) **SYSTEM.** A system of invisible rectangular blocks shall be established as a central grid in the following manner conforming to the recommended uniform address system.

- (a) The established section lines shall form a basis for the block system, and in a westerly direction from the eastern boundary of the County, the first 6 sections, extending through the Towns of Menomonee, Brookfield, New Berlin and Muskego, shall be divided into 16 blocks each. These invisible block lines shall have numerical designations of from "124" at the County line, to "200" at the western Town lines of Muskego, New Berlin, Brookfield and Menomonee. Westward through the remaining towns, the sections shall be divided into 10 blocks each and the block lines shall have numerical designations of from "200" to "400", the latter being at the west edge of the County.
- (b) In a northerly direction from the east west base line, the first and second rows of sections shall be

divided into 11 blocks each, the third row into 8 blocks and the fourth row into 9 blocks. >From and including the fifth row northward to the north County line, the sections shall be divided into 8 blocks each. These invisible block lines shall have numerical designations of from "1", the base line, to "96" at the north County line.

- (c) In a southerly direction from the east west base line the first row of sections shall be divided into 13 blocks and the second row into 9 blocks. From and including the third row southward to the south County line the sections shall be divided into 8 blocks each. These invisible block lines shall have the numerical designations of from "1", the base line, to "111" at the south County line.

(5) NUMBERS.

- (a) One hundred numbers shall be assigned to each invisible block, regardless of discrepancies in block sizes. Properties on the north and east sides of streets shall bear even numbers and properties on the south and west sides of streets shall bear odd numbers.
- (b) The number assigned to each property shall be composed of 2 parts. The first part, or street designation, shall be composed of a directional letter, "N", "S" or "W" followed by the appropriate block line.
- (c) The second part of the property number, the block and house designation, shall be composed of directional letter followed by the number of the appropriate block line plus 2 additional digits indicating the relative position of the property in the block.
- (d) For a block which lies south of the east west base line, the designation of the block shall be by the block line numbers of its north and its east boundaries. For a block which lies north of the east west base line, the designation of the block shall be by the block line numbers of its south and its east boundaries.
- (e) Properties and street intersections contained within any block shall bear numbers and directional letters related to the point of intersection of the block boundary lines stipulated in the paragraph next above.

(6) POINT OF DETERMINATION. The point from which any property shall be assigned its proper number shall be determined as follows:

- (a) Where land has been subdivided or platted into lots, the center point of the frontage line of each parcel shall be the point of determination.
- (b) In cases of farm residences or other residences or business places situated on large acreage or away from other development, the point of determination shall be the intersection of the center line of the principal driveway with the street or highway right-of-way line.
- (c) The proper number shall be determined and assigned by the Building Inspector.

(7) STREET NAMES.

- (a) A list shall be compiled by the Building Inspector of all existing street names in the Town and no future street shall be given a name which duplicates or approximates an existing name. Cooperation shall be sought with all towns and municipalities in the County to the end that duplication of street names shall be minimized.
- (b) The Town shall cooperate with neighboring towns, villages and cities to the end that streets which are continuous from one municipality or town to another municipality or town may have but one name when such single name would be desirable.
- (c) The Town Board may accept or reject proposed names of new streets and, where there is clearly a conflict or duplication in existing names, may direct the changing of one or more such names so that conflict or duplication may be minimized. The Board, if it sees fit, may hold public hearings at which interested property owners may express their views concerning the naming or renaming of

a street or streets.

(8) PLAT BOOK.

- (a) The Clerk shall inform any person inquiring of the numbers and approved street names belonging to any property to the degree records will allow, with the Building Inspector making the final determination.
- (b) Within 30 days after the final approval of any new subdivision or other division of land, the Building Inspector shall assign addresses to each new building site. Records shall be kept of the assignments and a copy shall be provided for the developer at his request.

(9) INSTALLATION OF NUMBERS.

- (a) (Repeal & Rec. 99-484) When each residence and place of business has been assigned its respective number, the owner, occupant or agent shall install or cause to be installed those numbers on the premises along the side of the street on which the home sits; in a place clearly visible from the road.
- (b) Numbers shall be installed within 30 days from date of assignment or from the date of initial occupancy.
- (c) (Repeal & Rec. #99-484) The minimum size of the numbers assigned under the uniform address system to be installed shall be 2¼" wide and 3½" high. The letters and numbers assigned shall be black on a white or a reflective background. The numbers shall be installed at a place clearly visible from the traveled portion of the road. Mailboxes may serve to display the house numbers if they are located within 10 ft of the driveway and provided there is no other mailbox adjacent. House numbers displayed on mailboxes must be placed at a height between 2' and 8' above the finished grade at the point of installation. In instances where more than one mail box exists house numbers must also be placed on each individual property as prescribed by the ordinance.

One set of numbers will be sufficient and should be placed parallel to the road. If the house numbers are perpendicular to the road, the numbers must be visible from the travel direction immediately adjacent to the numbers. The owner, occupant, or agent shall install or cause to be installed those numbers on the premises on the side of the street on which the home sits; in a place clearly visible from the road; no more than 25 feet from the edge of the road pavement, within 10 feet of either side edge of the driveway; and between 2' and 8' above the finished grade at the point of installation. Homes and businesses sharing a common driveway or located on a private road shall have numbers at the intersection with the public road, at each split, fork or intersection thereafter, and on the property itself as specified in this ordinance.

(10) NUMBERS REQUIRED. Whenever any residence or place of business shall be erected in the Town after the work of establishing a uniform address system has been completed, the owner shall at the time of obtaining a building permit procure the correct number and street name from the Building Inspector and within 30 days thereafter install the number on the building or premises as provided in sub. (9).

(11) VIOLATION. (Repeal & Rec. 99-484) If the owner, occupant, or agent of any residence or place of business shall neglect to comply with the requirements of this ordinance, the Law Enforcement Officer, Building Inspector/Code Enforcement Officer or designated representative of the fire department may issue a notice of non-compliance to the owner, occupant or agent. If the owner, occupant or agent fails to correct the non-compliance within (30) days, the Law Enforcement Officer may issue a citation and the owner, occupant or agent shall be subject to the penalties of Chapter 25 of the Town Code.

8.17 SOLID AND HAZARDOUS WASTE SITING.

(1) The "Siting resolution" authorized by AB-936 is hereby approved.

(2) A Siting Board is hereby established, consisting of 4 members appointed by the Town Board, with no more than 2 elected officials. The Board shall exercise all the authority and obligations granted by AB-936.

8.18 SANITARY SEWER REGULATIONS, FOXWOOD ESTATES SUBDIVISION (Rep. and Recr. Ord. 2007-005)

(1) INTRODUCTION AND GENERAL PROVISIONS

- (a) INTRODUCTION. This Ordinance regulates the use of public and private sewers and drains, connections to the public sewer system, discharge of septage into the public sewerage system, and the discharge of waters and wastes into the public sewerage systems within the Foxwood Estates Subdivision within the Town of Delafield. It also provides for and explains the method used for levying and collecting wastewater treatment services charges, sets uniform requirements for discharges into the wastewater collection and treatment systems and enables the said Municipality to comply with administrative provisions, and other discharge criteria which are required or authorized by the State of Wisconsin or Federal law. Its intent is to derive the maximum public benefit by regulating the characteristics of wastewater discharged into the sewerage system.
- (b) GENERAL PROVISIONS.
- i. This Ordinance provides a means for regulating the use of the public sewers, effectuating connections thereto, determining wastewater volumes, constituents and characteristics, the setting of charges and fees, and the issuing of permits to certain users. Revenues derived from the application of this Ordinance shall be used to defray the costs of operating and maintaining the wastewater collection and treatment systems and to provide sufficient funds for capital outlay, debt service costs and capital improvements. The charges and fees herein have been established pursuant to requirements of the Wisconsin Statutes.
 - ii. This Ordinance shall supersede any previous Ordinances, Rules or Regulations of the Municipality relating to the subject matter hereof; and shall repeal all parts thereof that may be inconsistent with this Ordinance. If there is any conflict between this Ordinance and the inter-municipal agreement between the Town and the Village of Hartland concerning the provision of sanitary sewer service for the Foxwood Estates Subdivision, the terms of said agreement shall control.
- (c) LEGAL AUTHORITY. This Ordinance is enacted pursuant to the power and authority conferred by Section 66.0821, Stats., as amended from time to time.

(2) DEFINITIONS

Unless the context specifically indicates otherwise, the meaning of terms used in this Ordinance shall be as follows:

- (a) APPROVING AUTHORITY of the Municipality shall mean its Town Board or its duly authorized committee, agent, or representative.
- (b) BUILDING DRAIN shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building or structure and conveys it to the Building Sewer.
- (c) BUILDING SEWER shall mean the pipe extension beginning at the outside of the inner face of the building wall, to a point of connection with the public sewer.
- (d) CARBONACEOUS BIOCHEMICAL OXYGEN DEMAND (CBOD) shall mean the quantity of oxygen used in the biochemical degradation of organic material in five (5) days at 20EC when the oxidation of reduced forms of nitrogen is prevented by the addition of an inhibitor. This analytical procedure shall be performed in accordance with Standard Methods.
- (e) COMPATIBLE POLLUTANTS shall mean carbonaceous biochemical oxygen demand, suspended solids, total kjeldahl nitrogen, plus additional pollutants identified in the WPDES permit for the publicly owned treatment works receiving the pollutant if such works were designed to treat such additional pollutants to a substantial degree.

- (f) FLOATABLE OIL shall mean oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater or septage shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection of treatment system.
- (g) GARBAGE shall mean the residue from the preparation, cooking, and dispensing of food, and from the handling, storage, and sale of food products and produce.
- (h) GROUND GARBAGE shall mean the residue from the preparation, cooking, and dispensing of food that has been shredded to such degree that all particulates will be no greater than one-half (1/2) inch in any dimension and will be carried freely in suspension under normal flow conditions in sewers.
- (i) INCOMPATIBLE POLLUTANTS OR WASTEWATER shall mean wastewater or septage with pollutants of such a strength that will adversely affect or disrupt the wastewater treatment processes or effluent quality or sludge quality if discharged to the sewerage system facility.
- (j) INDUSTRIAL WASTE shall mean the wastewater from an industrial process, trade, or business, as distinct from sanitary sewage, including cooling water and the discharge from sewage pretreatment facilities.
- (k) MAY is permissible.
- (l) DEL-HART ORDINANCE shall mean the Sewer Use & User Charge Ordinance of the Delafield-Hartland Water Pollution Control Commission (herein the "Del-Hart Commission") effective February 27, 2007, and any amendments thereto or restatements thereof.
- (m) MUNICIPAL WASTEWATER shall mean the wastewater of a municipality, including that of the Municipality. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residential, commercial buildings, industrial plants and institutions, together with any groundwater, surface water, and storm water that may have inadvertently entered the sewerage system of the municipality.
- (n) MUNICIPALITY shall mean the Town of Delafield, a Wisconsin municipality.
- (o) NATURAL OUTLET shall mean any outlet, including storm sewers, into a water course, pond, ditch, lake or other body of surface water or groundwater.
- (p) PARTS PER MILLION shall mean a weight-to-weight ratio; the parts per million value multiplied by the factor 8.34 shall be equivalent to pounds per million gallons of water.
- (q) PERSON shall mean any and all persons, including any individual, firm, company, municipal or private corporation, association, society, institution, enterprise, government agency, or other entity.
- (r) pH shall mean the logarithm of the reciprocal of hydrogen ion concentration. The concentration is the weight of hydrogen ions, in grams per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen ion concentration of 10^{-7} .
- (s) PUBLIC SEWER shall mean any sewer owned or provided by or subject to the jurisdiction of the Municipality, the Del-Hart Commission or any other municipality.
- (t) SANITARY SEWAGE shall mean a combination of liquid and water-carried wastes discharged from toilets and/or sanitary plumbing facilities, together with such ground, surface, and storm waters as may have inadvertently entered the sewerage system.
- (u) SANITARY SEWER shall mean a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with small quantities of ground, storm, and surface waters that are not admitted intentionally.

- (v) SEPTAGE shall mean the wastewater or contents of septic or holding tanks, dosing chambers, grease interceptors, seepage beds, seepage pits, seepage trenches, privies or portable restrooms.
- (w) SEWER SERVICE CHARGE is a service charge levied on users of the wastewater collection and treatment facilities for payment of use-related capital expenses as well as the operation and maintenance costs, including replacement costs, of said facilities.
- (x) SEWER SYSTEM means the public sanitary sewers within a sewerage system. The facilities which convey wastewater from individual structures, from private property to the public sanitary sewer, or its equivalent, are specifically excluded from the definition of "sewer system"; except that pumping units and pressurized lines for individual structures or groups of structures may be included as part of a "sewer system" when such units are owned and maintained by the Municipality or the Village of Hartland. For example, a Building Sewer is not part of the sewer system.
- (y) SEWERAGE SYSTEM means all structures, conduits and pipes, by which sewage is collected, treated, and disposed of, except plumbing inside and in connection with buildings served, and service pipes, from building to street main, i.e., a Building Sewer.
- (z) "SHALL" is mandatory.
- (aa) SLUG LOAD shall mean any substance released at a discharge rate and/or concentration which causes interference to wastewater treatment processes or plugging or surcharging of the sewer system.
- (bb) STATS. shall mean the Wisconsin Statutes in effect from time to time.
- (cc) STANDARD METHODS shall mean the examination and analytical procedures set forth in the most recent edition of "Standard Methods for the Examination of Water, Sewage, and Industrial Wastes" published jointly by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation and is in compliance with Federal Regulations 40 CFR 136, "Guidelines Establishing Test Procedures for Analysis of Pollutants," all as amended from time to time.
- (dd) STORM DRAIN (sometimes termed "STORM SEWER") shall mean drain or sewer for conveying surface water, groundwater, and subsurface water other than polluted water from any source.
- (ee) STORM WATER RUNOFF shall mean that portion of the rainfall that is collected and drained into the storm sewers.
- (ff) SUSPENDED SOLIDS shall mean solids that either float on the surface of, or are in suspension in, water, wastewater, septage, or other liquids, and that are removable by laboratory filtering as prescribed in "Standard Methods" and is referred to as non-filterable residue.
- (gg) TOTAL KJELDAHL NITROGEN (TKN) shall mean the quantity of organic nitrogen and ammonia as determined in accordance with Standard Methods.
- (hh) TOTAL PHOSPHOROUS (TP) shall mean the quantity of total phosphorous as determined in accordance with the Standard Methods.
- (ii) WASTEWATER FACILITIES shall mean the structures, equipment, and processes required to collect, carry away, store, and treat domestic and industrial waste and septage and dispose of the effluent and sludge.
- (jj) WASTEWATER TREATMENT WORKS shall mean an arrangement of devices and structures for treating wastewater, septage, industrial waste, and sludge. Sometimes use is synonymous with waste treatment facilities.

- (kk) WATERCOURSE shall mean a natural or artificial channel for the passage of water, either continuously or intermittently.

(3) MANAGEMENT, OPERATION, AND CONTROL

- (a) MANAGEMENT. The management, operation, and control of the sewer system for the Municipality is vested in the Town Board and the Village Board of the Village of Hartland pursuant to the inter-municipal agreement between the Village of Hartland and the Town of Delafield concerning sanitary sewer service for the Foxwood Estates Subdivision on file in the office of the Town Clerk.
- (b) OWNER'S MAINTENANCE OF BUILDING SEWER. The owner of property abutting a public sewer shall maintain sewer service from the public sewer main to the structure or building on the owner's property, including all controls between the same, without expense to the Municipality, except when they are damaged as a result of negligence or carelessness on the part of the Municipality. Without intending to limit the generality of the foregoing, the owner has the sole responsibility for the repair and maintenance of all Building Sewers; and the ownership thereof shall at all times be vested in such property owner. All sewer services must be maintained free of defective conditions, by and at the expense of the owner or occupant of the property. When any sewer service is to be re-laid and there are two or more buildings on such service, each building shall be disconnected from such service and a new sewer service shall be installed for each building. In the event of any obstruction of, damage to or repair of a Building Sewer, the same shall be the responsibility of the property owner, except as provided for in Section 4(f) hereof or as otherwise provided for herein.
- (c) TITLE TO REAL ESTATE AND PERSONAL PROPERTY. All property, real, personal, and mixed, including but not limited to easements, acquired for the construction of the Municipality's sewer system, and all plans, specifications, diagrams, papers, books and records connected therewith, and all buildings, machinery, and fixtures pertaining thereto, shall be the property of and titled in the name of the Village of Hartland in accordance with the inter-municipal agreement between the Town and the Village of Hartland concerning sanitary sewer service for the Foxwood Estates Subdivision .
- (d) NO LIMITATION. Nothing contained in this Ordinance shall be construed as limiting the power and authority of the Municipality as provided for by applicable Wisconsin Statutes; and the Municipality shall have all rights and authority as provided for by law.

(4) ADMINISTRATIVE RULES AND REGULATIONS

The following rules, regulations and ordinances for the regulation of licensed plumbers, sewer users, property owners and others, are hereby adopted and established:

- (a) GENERAL PROVISIONS
- i. Agreement to Rules and Regulation. All persons now receiving sewerage service from the Municipality or who may hereafter make application for such service or who otherwise receive such service, shall be considered as having agreed to be bound by all of the terms and provisions of this Ordinance, as amended from time to time; and such agreement is a condition precedent to the provision of such sewerage service.
 - ii. Application for Service. Every person desiring to connect property, buildings or structures to public sewers shall make application in writing to the Municipality on such forms as are prescribed for that purpose, prior to commencing use of such service. The application must describe fully and truthfully all the wastes which are anticipated to be discharged. If the applicant is not the fee simple owner of the property, the written consent of the owner must accompany the application. Persons connected to the public sewers of the Municipality are referred to herein as "Users." By submitting such an application, all users are deemed to have agreed to be bound by this Ordinance, as amended from time to time. If it appears that the service applied for will not provide adequate service for the contemplated use, the Municipality may reject the application. If the Municipality approves the application, it

shall issue a connection permit as shown on the application. No service shall be provided or application approved without prior payment of all applicable fees.

- iii. Application Fee. Where the application for service is for a connection to the Municipality's public sewers, the application shall be accompanied by an Application Fee(s) in an amount to be determined from time to time by the Municipality. Such fee shall cover the cost of processing the application and inspection of the connection. Application Fees may vary in amount between residential users and commercial/industrial users. The payment of this fee shall be in addition to any Connection Fees that may be charged to or on account of new users by the Municipality, the Village of Hartland, or by the Del-Hart Commission.
- iv. Inspections. Any connection to the public sewers within the Municipality shall be subject to the prior inspection and approval of the work by an authorized representative of the Municipality and/or the Village of Hartland. No trench or other excavation shall be filled, or any connection completed, without such prior inspection. The applicant requesting the connection shall reimburse the Municipality for all inspection costs incurred, if not previously paid as part of the Application Fee.
- v. Disconnection and Refusal of Service. Sewer service may be disconnected or refused for any of the following reasons:
 - (1) Violation of this Ordinance, as amended from time to time;
 - (2) Violation of the Del-Hart Ordinance, as amended from time to time;
 - (3) Failure to pay the Application Fee, any Connection Fee or delinquent sewer service charges of the user.
 - (4) Violation of the inter-municipal agreement between the Town and the Village of Hartland concerning sanitary sewer service for the Foxwood Estates Subdivision.
- vi. Disconnection for Delinquent Accounts or Where a Dangerous Condition Exists. A bill for service is delinquent if unpaid after the due date shown on the bill. The Municipality may disconnect service for a delinquent bill by giving the user, at least eight calendar days prior to disconnection, a written disconnect notice which may be included in the bill for service. For purposes of this rule, the due date shall not be less than twenty days after issuance of the bill. The Municipality or the Village of Hartland may disconnect without notice where the Village Engineer, Town Engineer, or Del-Hart's Engineer reasonably determines in his or her opinion that that disconnection is necessary to avoid danger to persons or property due to a condition that exists on the property. The Municipality may thereafter deny reconnection of service for as long as the condition exists.
- vii. Denial of Service Due to Non-Compliance or Dangerous or Unsafe Conditions. Service may be denied to any user for failure to comply with the applicable requirements of this Ordinance or if the Village Engineer, or the Village Engineer's designee, has reasonably determined that a dangerous or unsafe condition exists on the user's property.
 - (b) PLUMBERS. No plumber, pipe fitter, or other person will be permitted to do any plumbing or pipe fitting work in connection with the sewer system without first receiving a license from the State of Wisconsin and obtaining permission from the Municipality in which the work is to be performed. All service connections to the sewer main shall comply with the State plumbing code, as amended.
 - (c) MANDATORY CONNECTIONS
 - i. Within that portion of the Foxwood Estates Subdivision receiving sanitary sewer service from the Village of Hartland, the owner of each parcel of land adjacent to a public sewer main on which there exists a building used or usable for human habitation or in a block through which such system is extended, shall connect to the

sewer system within 365 days (one year) of notice in writing from the Municipality. Upon failure to do so, the Municipality may cause such connection to be made and bill the property owner for all such costs. If such costs are not paid within thirty (30) days, such cost shall constitute a special tax lien against the property, in the manner provided for by law. However, the owner may within thirty (30) days after the completion of the work file a written election with the Municipality stating that the owner cannot pay such amount in one sum and ask that the sum be levied in five (5) or less equal annual installments. The amount shall be so collected with interest at a rate not to exceed fifteen percent (15%) per annum from the date of completion of the work, all as determined by the Municipality. The unpaid balance shall constitute a special tax lien, all pursuant to sec. 281.45, Stats., as amended.

- ii. This Ordinance ordains that, where sanitary sewer service is available within the Foxwood Estates Subdivision pursuant to inter-municipal agreement between the Town and the Village of Hartland concerning sanitary sewer service for the Foxwood Estates Subdivision, any such failure to connect to such sewer system is contrary to the minimum health standards of the Municipality and fails to assure preservation of public health, welfare, comfort, and safety; and that such failure constitutes a public nuisance under sec. 823.02, Stats., as amended, subject to abatement as provided for therein.
- (d) BUILDING SEWER CONNECTION EXPENSE. Persons attaching to a public sewer shall have the Building Sewer, or lateral, installed at their own cost and expense.
- (e) TAP PERMITS. After sewer connections have been introduced into any building or upon any premises, no plumber shall make any alterations, extensions, or attachments, unless the party ordering such tapping or other work exhibits the proper permit for the same from the Municipality.
- (f) OBSTRUCTION OF BUILDING SEWERS IN PUBLIC RIGHT OF WAYS. In the event of any blockage, damage or break in any Building Sewer, which occurs within a public street, alley, highway, or other public right of way, the Village of Hartland shall have the exclusive right and option to repair the Building Sewer within said street, alley, highway, or right of way. In such event, the owner of the Building Sewer shall promptly reimburse the Municipality and/or the Village of Hartland for all costs so incurred. If not so reimbursed, the same shall be added to the owner's sewer service charges and collected in the same manner as such charges are so collected.
- (g) BACKFLOW PREVENTER. All floor drains shall have a backflow prevention valve installed at the owner's expense.
- (h) USER USE ONLY. No user shall allow other persons or other services to connect to the sewer system through their lateral or Building Sewer.
- (i) USER TO PERMIT INSPECTION. Every user shall permit the Municipality, the Village of Hartland, or its duly authorized agent, at all reasonable times, to enter their premises or building to examine the pipes and fixtures, and the manner in which the drains, and sewer connections operate; and the user must at all times, frankly and without concealment, answer all questions put to them relative to its use, all in accordance with this Ordinance and sec. 196.171, Stats., to the extent applicable.
- (j) MUNICIPAL RESPONSIBILITY. It is expressly stipulated that no claim shall be made against the Municipality or its Board members, agents, employees and representatives by reason of the breaking, clogging, stoppage, or freezing of any pipes; nor from any damage arising from repairing mains, making connections or extensions or any other work that may be deemed necessary. The right is hereby reserved to cut off sewer service at any time for the purpose of repairs or any other necessary purpose, any permit granted or regulations to the contrary notwithstanding.
- (k) EXCAVATIONS WITHIN PUBLIC RIGHT OF WAY. Any person excavating in the public right of way shall fully comply with all provisions of Section 8.02 of the Municipal Code.

- (l) TAPPING THE MAINS. Connections to the sewer system, other than Building Sewer connections, shall be done only in accordance with the Del-Hart Ordinance, as amended.
- (m) INSTALLATION OF BUILDING SEWERS. All Building Sewers on private property shall be installed in accordance with State of Wisconsin Administrative Code "Design, Construction, Installation, Supervision, and Inspections of Plumbing," especially, Section ILHR 82.10, "Basic Plumbing Principles," as amended. As required therein, all laterals shall be inspected. The Building Sewer and/or private interceptor main sewer shall be inspected upon completion of placement of the pipe and before backfilling and tested before or after backfilling.
- (n) APPLICATION OF DEL-HART ORDINANCE. Notwithstanding anything to the contrary contained herein, any connection to the public sewers shall be subject to the provisions of the Del-Hart Ordinance, as amended from time to time, to the extent applicable and to the inter-municipal agreement between the Town and the Village of Hartland concerning sanitary sewer service for the Foxwood Estates Subdivision. In the event of any conflict between the provisions of the Del-Hart Ordinance, the more restrictive provision shall control.
- (o) NEW CONNECTIONS. New connections to the Municipality's sewer system will be allowed only if there is available capacity in all of the downstream wastewater collection and treatment facilities of the Municipality and the Del-Hart Commission and such connection is permitted under the Town's inter-municipal agreement with the Village of Hartland concerning sanitary sewer service for the Foxwood Estates Subdivision.

(5) USE OF THE PUBLIC SEWER

- (a) NO CLEAR WATER DISCHARGES. No person shall discharge or cause to be discharged any unpolluted waters such as storm water, ground water, roof rain, subsurface, drainage or collecting water to any sanitary sewer.
- (b) COMPLIANCE WITH THE DEL-HART ORDINANCE. No person shall discharge wastes into a public sewer within the Municipality, except residential wastes in accordance with the provisions of the Del-Hart Ordinance, as amended from time to time.
- (c) NO DISCHARGE TO VIOLATE GENERAL PERMIT FOR BYPASSING. No person shall discharge or cause to be discharged any waters, wastewaters or other substances of any kind or nature that will result in or otherwise cause a violation of any General Permit For Bypassing issued by the Wisconsin Department of Natural Resources and held by the Municipality.

(6) PUBLIC SEWER MAIN EXTENSIONS

- (a) APPLICATION AND APPROVAL. The extension of public sewer mains to serve new customers/users is subject to the prior review and approval of the Municipality, the Village of Hartland, and any other governmental agency having appropriate jurisdiction thereof. Any person seeking to develop real property and requiring sewer service in connection with such development, shall make application to the Municipality for a public sewer main extension, if so required in order to serve such development. Such application shall be in writing and shall set forth the following information:
 - i. Name of development and the legal description of the property involved.
 - ii. Plat map or certified survey map or other map showing street layout and lot sizes.

- iii. Zoning of the property.
- iv. Proposed plans and specifications for the sewers.
- v. Name and address of consulting engineer.
- vi. Number of housing units and/or other units to be constructed.
- vii. Such additional information as the Municipality may require.

(b) CONDITIONS OF APPROVAL. The Municipality, subject to its inter-municipal agreement with the Village of Hartland concerning sanitary sewer service for the Foxwood Estates Subdivision, shall have the discretion to approve or disapprove the requested public sewer main extensions. In granting such approval, the Municipality may condition its approval upon compliance with:

- i. Any applicable ordinances of the Municipality, the Del-Hart Commission or Waukesha County.
- ii. Any applicable statute, rules, orders, or codes of the State of Wisconsin.
- iii. The preparation of plans and specifications for the sewer main extension, subject to the approval of the Municipality and its consulting engineer.
- iv. The applicant making and installing the public sewer main extension at his/her/its sole cost and expense or otherwise providing a surety bond or other security to ensure that the main will be so constructed within a reasonable period of time.
- v. The dedication of such rights of way, easements and sewerage facilities as the Municipality may reasonably require.
- vi. The payment of all costs and expenses incurred or to be incurred by the Municipality in connection with the review and approval of such sewer extension, including but not limited to engineers fees, attorneys fees, inspection fees and other similar costs and expenses.
- vii. The payment of any applicable Connection Fees due or to become due pursuant to the inter-municipal agreement between the Town and the Village of Hartland concerning sanitary sewer service for the Foxwood Estates Subdivision.
- viii. Any restriction or condition set forth in the inter-municipal agreement between the Town and the village of Hartland concerning sanitary sewer service for the Foxwood Estates Subdivision.
- ix. Any other condition determined by the Municipality to be fair and reasonable in order to protect the interest of the Municipality in connection with the proposed development.

(c) CONTRACT FOR SEWER IMPROVEMENTS. The Municipality may require the person filing an application pursuant to Section 6(a) hereof, to enter into a written development agreement with the Municipality, as a condition of the approval of the sewer main extension. Such agreement shall define the scope of the work, the obligations of the applicant to construct the sewer facilities, the requirement of security for performance of the applicant's obligations set forth therein, and such other matters as the Municipality may reasonably determine. The applicant shall reimburse the Municipality for all fees and costs as provided for in Section 3.08 of the Town ordinances.

(7) SEWER USER CHARGE SYSTEM

Sewer service charges, costs, and fees to each user shall be based on the inter-municipal agreement between the Municipality and the Village of Hartland concerning sanitary sewer service for the Foxwood Estates Subdivision.

(8) CONTROL OF INDUSTRIAL WASTES

(a) GENERAL

- i. An "Industrial Discharge" or "Industrial Waste" shall have the same meaning as provided for in the Del-Hart Ordinance, as amended from time to time.
- ii. No person shall discharge or cause discharge of Industrial Waste into the public sewers of the Municipality.

(b) DISCHARGE OF HOLDING TANK WASTE

- i. GENERAL. For purposes of this Section, the terms "Holding Tank Waste" and "Licensed Disposer" shall have the same meaning as provided for in the Del-Hart Ordinance, as amended from time to time.
- ii. PROHIBITION OF DISCHARGE INTO THE MUNICIPALITY'S PUBLIC SEWERS. No person, including a Licensed Disposer, shall discharge any Holding Tank Waste, or any other similar waste, into any manhole or other opening in a public sewer owned or maintained by the Municipality. Instead, all such discharges of Holding Tank Wastes shall be made pursuant to the Del-Hart Ordinance, as amended from time to time.

(10) BILLING AND PAYMENT OF SEWER SERVICE CHARGES

- (a) CALCULATION. Sewer Service Charges that are to be assessed to users shall be computed by the Municipality according to the rates and methodology presented in Chapter VII of this Ordinance.
- (b) BILLING. Sewer Service Charges shall be billed to each user as provided for in the inter-municipal agreement between the Town and the Village of Hartland concerning sanitary sewer service for the Foxwood Estates Subdivision.
- (c) PENALTY FOR DELINQUENT PAYMENTS. A penalty equal to one and one-half (1.5%) percent per month of the delinquent amount shown on any bill for services, shall be added to all bills not paid by the date fixed therein for final payment. An additional penalty of ten (10%) shall be assessed and delinquent bills placed on the tax roll pursuant to the provisions set forth in Section 66.0809(3), Wis. Stats.
- (d) REMEDIES FOR FAILURE TO MAKE PAYMENTS. The Municipality may direct that unpaid Sewer Service Charges, Connection Fees, or other charges due from any person or user, shall be collected and taxed and shall be a lien upon the property served in the manner provided for in Sections 66.0809 and 66.0821(4) (d), Stats., as amended from time to time, or the Municipality may utilize any other remedy available to it under Wisconsin law..
- (e) OBLIGATION FOR PAYMENT. The obligation for payment of Sewer Service Charges, Connection Fees or other charges due the Municipality shall be a joint and several obligation of the user and property owner, where the user and property owner are not the same person. To the end that there may be attempts at avoidance of payment of such charges and fees by non-property owner users, and to overcome the same, the Municipality or Village of Hartland may send the bill for such a user, in care of the property owner.
- (f) REMEDIES CUMULATIVE. All remedies provided for in this Ordinance are distinct and cumulative to any other right or remedy under this Ordinance or any other Ordinance of the Municipality or afforded by law or equity; and may be exercised by the Municipality concurrently, independently, or successively.

(11) CONNECTION FEES

For each connection of a Building Sewer to a public sewer within the Foxwood Estates Subdivision, there shall be paid a Connection Fee as determined pursuant to inter-municipal agreement between the Town and the Village of Hartland concerning sanitary sewer service for the Foxwood Estates Subdivision. The failure to pay any Connection Fee is a violation of this Ordinance; and this Municipality may pursue all rights and remedies provided for herein.

(12) VIOLATIONS, ABATEMENT PROCEDURES AND PENALTIES

- (a) VIOLATIONS CONSTITUTING PUBLIC NUISANCE. A violation (other than the failure to pay Sewer Service Charges or other fees or costs due under this Ordinance) of any provision of this Ordinance or any other rule or order of the Municipality is hereby declared to be a public nuisance.
- (b) DAMAGE TO MUNICIPALITY'S PROPERTY. No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure of equipment which is a part of the Municipality's or Village of Hartland's sewerage system. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct or criminal damage to property as the case may be.
- (c) ENFORCEMENT. The Municipality shall have the right to enforce the provisions of this Section and shall make periodic inspections and inspections upon complaint to insure that such provisions are not violated. No action shall be taken under this Section to abate a public nuisance unless the Municipality and/or the Village of Hartland shall have inspected or caused to be inspected the premises where the nuisance is alleged to exist and shall have satisfied itself that a nuisance does in fact exist.
- (d) OTHER METHODS NOT EXCLUDED. Nothing in this Ordinance shall be construed as prohibiting the abatement of public nuisances by the Municipality or its officials in accordance with the laws of the State of Wisconsin.
- (e) COURT ORDER. Except where otherwise permitted under applicable Wisconsin law, the Municipality shall not use force to obtain access to private property to abate a public nuisance, but shall request permission to enter upon private property if such premises are occupied, and, if such permission is denied, shall apply to any court having jurisdiction for an order assisting the abatement of public nuisance.
- (f) COST OF ABATEMENT. In addition to any other penalty imposed by this Chapter for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the Municipality shall be collected as a debt from the owner, occupant, or person causing, permitting, or maintaining the nuisance, and such cost shall be assessed against the real estate as a special charge. For purposes hereof, costs shall include but not be limited to actual attorneys' fees and court costs.
- (g) Section 13.9 CONTINUED VIOLATIONS. Any person who shall continue any violation beyond the aforesaid notice time limit provided, shall be subject to penalties as provided in § 25.04 of this Code and shall be liable for any expense, loss or damage occasioned the Town, commission, or others by reason of such violation, including any costs in connection with repairing damages to the wastewater facilities or any downstream user or facilities damaged as a result of a prohibited discharge or any violation of this section.
- (h) ACCIDENTAL DISCHARGE. Any person found to be responsible for accidentally allowing a deleterious discharge into the sewerage system which causes damage to the sewerage system and/or a receiving body of water (e.g., lake, river, stream, etc.) shall, in addition to a fine, pay the amount to cover all damages, both of which will be determined by the Municipality or other governmental authority having appropriate jurisdictions.

- (i) ACCIDENTAL DISCHARGE REPORTING. Any person responsible for an accidental discharge that may have a detrimental impact on the sewerage system, shall immediately report the nature and amount of the discharge to the Del-Hart Commission.

- (j) LIABILITY FOR LOSSES. Any person violating any provision of this Ordinance shall become liable to the Municipality for any expense, attorney's fees, costs, engineering fees, loss, or damage occasioned by reason of such violation which the Municipality may suffer as a result thereof. Without intent to limit the generality of the foregoing, the Municipality shall have the right of recovery from all such persons, any expense incurred by the Municipality for the repair or replacement of any part of the public sewerage system damaged in any manner by any person by the performance of any work under its control, or by any negligent acts.

(13) SEPTIC SYSTEMS

The maintenance and use of a septic tank or other private sewerage disposal system by any owner of land located within the Foxwood Estates Subdivision serviced by the Village of Hartland pursuant to the inter-municipal agreement between the Town and the Village of Hartland concerning sanitary sewer service for the Foxwood Estates Subdivision, is hereby declared to be a public nuisance and a health hazard. Such nuisance and hazard shall be abated; and damages and costs recovered therefor in accordance with Section 823.02 of the Wisconsin Statutes.

8.20 PENALTY. Any person who shall violate any provision of this chapter or any order, rule or regulation made hereunder shall be subject to a penalty as provided in §25.04 of this General Code.

9.01 OFFENSES AGAINST STATE LAWS SUBJECT TO FORFEITURE. (Am. 06-006) The following statutes with the prefix "9" defining offenses against the peace and good order of the State are adopted by reference to define offenses against the peace and good order of the Town, provided the penalty for commission of such offenses hereunder shall be limited to a forfeiture imposed under §25.04 of this Code.

9.50.58	Careless Smoking
9.134.71	Pawnbrokers and Secondhand Dealers
9.144.42(6)	Tampering With Pollution System
9.161.41(2m)	Unlawful Manufacture/Delivery of Controlled Substance
9.161.14(3);	Possession of Controlled Substance
9.167.31	Use and Transportation of Firearms
9.167.32	Safety at Sporting Events
9.175.25	Illegal Storage of Junked Automobiles
9.218.0145 & 9.218.0146	Used Cars/Prohibited Acts
9.218.0147	Motor Vehicles/Sale to Minors
9.254.76	Careless Smoking
9.285.30	Tampering with Pollution System
9.939.05	Parties to Crime
9.939.22	Words and Phrases Defined
9.939.32	Attempt
9.940.19(1)	Battery
9.940.32	Stalking
9.941.01	Negligent Operation of Vehicle
9.941.10	Negligent Handling of Burning Material
9.941.12(2);(3)	Interfering With Fire Fighting
9.941.13	False Alarms
9.941.20(1)	Reckless Use of Weapon
9.941.23	Carrying Concealed Weapon
9.941.235	Carrying Firearm in Public Building
9.941.237	Possession of Handguns in Taverns
9.941.24	Possession of Switchblade Knife
9.941.26(4)	Use of Pepper Spay
9.941.36	Fraudulent Tapping of Electric Wires, Gas or Water Meters or Pipes

9.941.37	Obstructing Emergency or Rescue Personnel
9.943.01(1)	Criminal Damage to Property (\$1,000 or Less)
9.943.07(1),(2),(3) 9.943.07(4)	Criminal Damage to Railroad Depositing Debris on Railroad
9.943.11	Entry Into Locked Vehicle
9.943.125	Entry Into Locked Coin Box
9.943.13	Trespass to Land
9.943.14	Criminal Trespass to Dwellings
9.943.15	Entry Into Construction Site, Locked Building, Dwelling or Room
9.943.20	Theft (\$1,000 or Less)
9.943.21	Fraud on Hotel or Restaurant Keeper (\$1,000 or Less)
9.943.23	Operating Vehicle Without Consent
9.943.24	Issue of Worthless Checks (\$1,000 or Less)
9.943.34(1)	Receiving Stolen Property With Value (\$1,000 or Less)
9.943.37	Alteration of Property Identification Marks
9.943.41(2), (3)(a)-(d),(4)(b)	Credit Card Crimes
9.943.46	Theft of Cable Television Service
9.943.50	Retail Theft (Shoplifting)
9.944.15	Fornication
9.944.17	Sexual Gratification
9.944.20	Lewd and Lascivious Behavior
9.944.205	Photos/Videos Showing Nudity
9.944.30	Prostitution
9.944.31	Patronizing Prostitutes
9.944.32	Soliciting Prostitutes
9.944.33(1)	Pandering
9.944.36	Solicitation of Drinks Prohibited
9.945.01 9.945.02	Definitions Relating to Gambling Gambling
9.945.04	Permitting Premises to be Used for Commercial Gambling
9.946.06	Improper Use of Flag
9.946.32	False Swearing

9.946.40	Refusing to Aid Officer
9.946.41	Resisting or Obstructing Officer
9.946.42(1)	Escape
9.946.69	Falsely Assuming to Act as Public Officer or Employee
9.946.70	Impersonating Peace Officer
9.946.72(2)	Tampering With Public Records
9.947.01	Disorderly Conduct
9.947.012	Unlawful Use of Telephone
9.947.013	Harassment
9.947.06	Unlawful Assemblies
9.948.10	Exposing Sex Organ
9.948.11(1), (2)(b),(c),(3)	Exposing a Child to Harmful Material
9.948.40	Contributing to Delinquency of Child
9.948.51(1), (2),(3)(c)	Hazing
9.948.60	Possession of a Dangerous Weapon by a Child
9.948.605	Gun-free School Zone
9.948.61	Dangerous Weapons Other Than Firearms on School Premises
Ch. 951	Crimes Against Animals
9.961.14(3)	Possession of Controlled Substance
9.961.41(2m)	Manufacture/Delivery of Controlled Substance

9.02 USE OF FIREARMS. (Rep. & Rec. 2018-04)

- (1) Except as provided below, no person shall fire, discharge or use any firearm, such as a rifle, pistol, or revolver of any caliber, or CO2 pistols/rifles, other compressed air pistols/rifles, spring or air guns of any description within the Town.
- (2)
 - (a) A shotgun or muzzle loader may be used in the Town only for hunting purposes providing written permission is obtained from the property owner of the land to which the hunting is to be confined. Written permission shall be carried on the person while hunting. While hunting, a person shall not discharge a shot, slug or ball which passes beyond the property line of the area to which the hunting is confined.
 - (b) No person shall discharge a shotgun or muzzle loader within 300 feet of any building or roadway within the Town.
 - (c) No person shall discharge a firearm within 660 feet of any Town park, or within 1,700 feet of any hospital or school within the Town.
 - (d) Intentionally Omitted.
 - (e) No person may discharge any firearm as described in Section 1, nor shall any person discharge a shotgun or muzzle loader within lands that are part of a platted subdivision in the Town of Delafield.

9.03 BURNING. (Rep. & rec. #94-383, #95-389) No burning of any material shall be permitted within the Town except in strict compliance with the provisions of Section 5.01 of the Town Code. In addition, no person shall burn any material in a negligent manner such that a fire causing a fire run results.

9.04 LOUD AND UNNECESSARY NOISE.

(1) **PROHIBITED** . No person shall make or cause to be made any loud, disturbing or unnecessary sounds or noises such as may tend to annoy or disturb another in or about any public street, alley or park or any private residence.

(2) **OPERATION OF MOTOR VEHICLES** . It shall be a violation of this section for a person to operate a motor vehicle so as to cause the tires thereof to squeal, the horn to blow excessively or the motor to race excessively.

9.05 LOITERING PROHIBITED.

(1) **LOITERING OR PROWLING** . No person shall loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the person takes flight upon appearance of a police or peace officer, refuses to identify himself or manifestly endeavors to conceal himself or any object. Unless flight by the person or other circumstances makes it impracticable, a police or peace officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm which would otherwise be warranted by requesting to identify himself and explain their presence and conduct. No person shall be convicted of an offense under this subsection if the police or peace officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the person was true and, if believed by the police or peace officer at the time, would have dispelled the alarm.

(2) **OBSTRUCTION OF HIGHWAY BY LOITERING** . No person shall obstruct any street, bridge, sidewalk or crossing by lounging or loitering in or upon the same after being requested to move on by any police officer.

(3) **OBSTRUCTION OF TRAFFIC BY LOITERING** . No person shall loaf or loiter in groups or crowds upon the public streets, alleys, sidewalks, street crossings or bridges or in any other public place within the City in such manner as to prevent, interfere with or obstruct the ordinary free use of such public streets, sidewalks, streets, street crossings and bridges or other public places by persons passing along and over the same.

9.06 OPEN CISTERNS, WELLS, BASEMENTS OR OTHER DANGEROUS EXCAVATIONS PROHIBITED.

No person shall have or permit on any premises owned or occupied by them any open cisterns, cesspools, wells, unused basements, excavations or other dangerous openings. All such places shall be filled, securely covered or fenced, in such manner as to prevent injury to any person and any cover shall be of a design, size and weight that the same cannot be removed by small children.

9.07 ABANDONED OR UNATTENDED REFRIGERATORS, ETC. PROHIBITED. No person shall leave or permit to remain outside of any dwelling, building or other structure, or within any unoccupied or abandoned building, dwelling or other structure under his/her control in a place accessible to children, any abandoned, unattended or discarded ice box, refrigerator or other container which has an airtight door or lid, snap lock or other locking device which may not be released from the inside without first removing the door or lid, snap lock or other locking device from the ice box, refrigerator or container unless such container is displayed for sale on the premises of the owner or his/her agent and is securely locked or fastened.

9.08 LITTERING PROHIBITED. No person shall throw any glass, refuse or waste, filth or other litter upon the streets, alleys, highways, public parks or other of the Town or upon any private property or upon the surface of any body of water within the Town.

9.09 CONSUMPTION OF ALCOHOL BEVERAGES IN PUBLIC PLACES PROHIBITED.

(1) No person shall possess any open container of or use, consume, sell or convey any alcohol beverage in or upon the following:

(a) Any property, building or other structure owned or operated by the Town, or its public school districts.

(b) Any public street, alley, sidewalk, street crossing, bridge, public playground, public park or public

parking lot.

- (c) Any premises held out to the public for the use or parking of their motor vehicles, whether such premises are publicly or privately owned. This definition shall include the parking lots of all fermented malt beverages or liquor licensees, shopping centers, restaurants, bowling alleys, provided this enumeration is not exclusive.

(2) The prohibition in sub. (1) shall not apply to community functions or events when authorized by specific written action of the Administrator. In exercising this authority, the Town Administrator shall consider the size of the event, the location of the event, the precautions to be taken by event organizers, and such other relevant facts and circumstances in the situation, to protect health and safety and ensure compliance with applicable laws. (Ord 2021-04)

(3) All purchases of intoxicating liquor or fermented malt beverages by the glass or in open containers shall be consumed in the licensed premises where served, and shall not be removed therefrom or consumed in or upon any of the places described in sub. (1).

9.10 DRUG PARAPHERNALIA.

(1) **DEFINITION .** In this section "drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance, as defined in Ch. 161, Wis. Stats., in violation of this section. It includes, but is not limited to:

- (a) Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
- (b) Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.
- (c) Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance.
- (d) Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.
- (e) Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances.
- (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances.
- (g) Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana.
- (h) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances.
- (i) Capsules, balloons, envelopes or other containers used, intended for use or designed for use in packaging small quantities of controlled substances.
- (j) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances.
- (k) Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body.
- (l) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body including, but not limited to:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.
2. Water pipes.
3. Carburetion tubes and devices.
4. Smoking and Carburetion masks.
5. Objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.
6. Miniature cocaine spoons and cocaine vials.
7. Chamber pipes.
8. Carburetor pipes.
9. Electric pipes.
10. Air-driven pipes.
11. Chillums.
12. Bongs.
13. Ice pipes or chillers.

(2) DETERMINATION OF DRUG PARAPHERNALIA . In determining whether an object is drug paraphernalia, the following shall be considered:

- (a) Statements by an owner or by anyone in control of the object concerning its use.
- (b) Prior convictions, if any, of an owner or of anyone in control of the object under any city, State or federal law relating to any controlled substance.
- (c) The proximity of the object in time and space to a direct violation of this section.
- (d) The proximity of the object to controlled substances.
- (e) The existence of any residue of controlled substances on the object.
- (f) Direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom the person knows or should reasonably know intent to use the object to facilitate a violation of this section. The innocence of an owner or of anyone in control of the object as to a direct violation of this section shall not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.
- (g) Oral or written instructions provided with the object concerning its use.
- (h) Descriptive materials accompanying the object which explain or depict its use.
- (i) National and local advertising concerning its use.
- (j) The manner in which the object is displayed for sale.
- (k) Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise.
- (l) The existence and scope of legitimate uses for the object in the community.
- (m) Expert testimony concerning its use.

(3) PROHIBITED ACTIVITIES.

- (a) Possession of Drug Paraphernalia . No person may use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this section.
- (b) Manufacture, Sale or Delivery of Drug Paraphernalia . No person may sell, deliver, possess with intent to deliver or manufacture with intent to deliver drug paraphernalia knowing that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this section.
- (c) Delivery of Drug Paraphernalia to a Minor . Any person 18 years of age or over who violates par. (b) by delivering drug paraphernalia to a person under 18 years of age is guilty of a special offense.
- (d) Advertisement of Drug Paraphernalia . No person may place in any newspaper, magazine, handbill or other publication or upon any outdoor billboard or sign any advertisement knowing that the purpose of the advertisement in whole or in part is to promote the sale of objects designed or intended for use as drug paraphernalia.
- (e) Exemption . This subsection does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with Ch. 161, Wis. Stats. This section does not prohibit the possession, manufacture or use of hypodermics in accordance with Ch. 161, Wis. Stats.

(4) PENALTIES .

- (a) Any drug paraphernalia used in violation of this section shall be seized and forfeited to the Town.
- (b) Any person who violates pars. (3)(a) (b) or (d) shall, upon conviction, be subject to a forfeiture of not more than \$500, together with the costs of prosecution and, upon default of payment, be imprisoned in the county jail or house of correction until the costs are paid, but not to exceed 20 days.
- (c) Any person who violates par. (3)(c) shall, upon conviction, be subject to a forfeiture of \$1,000, together with the costs of prosecution and, upon default of payment, be imprisoned in the county jail or house of correction until the costs are paid, but not to exceed 40 days.

9.11 (repealed in its entirety 06-006)

9.12 LAWN FERTILIZER APPLICATION CONTROL (Cr. #2004-01)

(1) **"Applicator"** defined . For purposes of this ordinance, applicator shall be defined as any firm, corporation, franchise, a commercial or noncommercial applicator for hire engaged in the business of landscaping or lawn care, and the application of fertilizer in conjunction therewith, or any individual property owner or renter.

(2) **RESTRICTIONS ON FERTILIZER CONTENT . Fertilizer Content.** No applicator shall topically apply any lawn fertilizer, liquid or granular, within the Town of Delafield which contains more than 3% phosphorous or other compound containing phosphorous. This restriction does not pertain to the use of phosphorous fertilizer on lands zoned agricultural and when used for crop production.

(3) **REGULATION OF APPLICATION .**

- (a) Time of application . No applicator may apply lawn fertilizer when the ground is frozen or when conditions exist which will promote or create runoffs.
- (b) Impervious surfaces and drainage ways . No applicator shall apply fertilizer to impervious surfaces; such as driveways, sidewalks and streets or areas within drainage ditches or waterways. In cases where fertilizer unintentionally lands on a sidewalk, street or driveway, the applicator or person shall be required to sweep it off that surface.
- (c) Buffer Zone . No fertilizers containing phosphorus may be applied below the ordinary high water lines

of any stream or water body as established by the Wisconsin Department of Natural Resources.

(4) PENALTIES . Violations of this section shall carry penalties as provided in 25.04 of this Municipal Code.

9.13 EMERGENCY VEHICLE LANE ON PRIVATE ROADS.

- (a) Definition. "Private road" is every way or place in private ownership and used for vehicular traffic only by the owners and those having express or implied permission from the owners. A private road as used in this section does not include a driveway which provides access to a single residence or parcel, or parking lots.
- (b) Establishment. An emergency vehicle lane is established on all private roads within the Town.
1. If the private road is less than 20 feet wide, the emergency vehicle lane shall be the entire width of the roadway.
 2. If the private road is more than 20 feet wide, the emergency vehicle lane shall be that half of the road which is the most northern or eastern lane depending on the orientation of the road.
- (c) Parking Prohibited.
1. Parking is prohibited on all private roads anywhere within the emergency vehicle lane.
 2. Exception. Permission for parking in the emergency vehicle lane may be given by the Town Fire Department upon written request, which includes the address of the property, filed at least 72 hours before the date requested, for special situations in which additional parking is required, such as for loading and unloading moving vans, large gatherings or similar events. This permission is restricted to 3 requests per calendar year.
- (d) Posting.
1. The Town shall post a sign regarding these regulations in the public road right-of-way nearest or immediately adjacent to the intersection of the private road and the public highway for all private roads existing on the date the ordinance enacting this section is effective.
 2. For private roads proposed and constructed after the effective date of this section, the property owner or developer shall post these regulations in accord with subdivision 1.
- (e) Violations of this section shall be subject to the penalties and procedures found in §25.04, of the Town Code.

SECTION 2: SEVERABILITY.

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

9.14 MINIMUM PROPERTY STANDARDS.

The following minimum property standards shall apply throughout the Town of Delafield. Nothing herein shall be interpreted to abrogate any more restrictive requirements that may apply per this Code or other applicable laws. In the event the standards hereby established conflict or coincide with requirements established in other sections of this Code or other applicable laws, the more restrictive shall apply.

(4) REGULATION OF POLYSTRUCTURES.

- (a) Definition: Polystructure. A building having a frame of steel or other materials which is covered with plastic, polyurethane, vinyl, canvas, or other flexible sheeting material.
- (b) Purpose. The following polystructure regulation is created, to protect against risks of blight or adverse aesthetic impacts on abutting properties and related diminution of property values that can arise from polystructures, as they are not as substantial as traditional construction methods used in the Town, and they do not have the image of stability and security of traditional construction methods.
- (c) Minimum Standards. Polystructure(s) are prohibited, except as follows. Polystructure(s) may be allowed in conjunction with approved commercial nursery or greenhouse operations for the sole

purposes of housing live plants, or farm operations for agricultural purposes, subject to all conditions that may apply to such operations per applicable laws.

(5) REGULATION OF VACATION RENTAL. (Revised 2/14/22 – ORD 2023-05)

(a) Definition: Vacation Rental Establishment. Any property that is regulated by Wisconsin Statutes Sections 66.1014(2)(d)2. And 97.01(15k), as a tourist rooming house.

(b) Purpose. The following vacation rental establishment licensing regulations are created, to ensure that applicable State laws are followed, to protect persons engaged in this practice either as landlord or tenant; to protect against adverse impacts of noise, odor, disturbance, adverse visual impacts, or other nuisances, that this practice could have upon neighboring properties; to preserve property values for the commercial benefit of the Town; and also to control the impacts of such operations on municipal services, including snow plowing, garbage collection, sanitation, law enforcement and fire protection.

(c) Minimum Standards.

1. License Required. No vacation rental establishment may operate in the Town unless a Vacation Rental Establishment License for such operation is granted by the Town, and only in full compliance with such License.
2. Procedure. The General Provisions as to Licenses, described in Section 12.02 of this Code, apply to Vacation Rental Establishment licenses.
3. Conditions Under Which Permitted. A license shall not be granted for a vacation rental establishment 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 Town's license being effective; and evidence of each renewal of such State permit shall be filed by the Petitioner with the Town Clerk, such that evidence of a current State permit is always on file for the duration of the Town's vacation rental establishment license.
 - b. Transfer of a license because of transfer or sale of property is not permissible. Should such property be sold, then the license shall become void.
 - c. All vacation rental establishments shall be subject to and comply with Wisconsin Statutes Chapter 97 including maintaining a tourist rooming house annual license as required by Wisconsin Statutes Section 97.605(1)(a), which sections are incorporated herein by reference.
 - d. All vacation rental establishments shall be subject to and comply with Wisconsin Administrative Code Section ATCP 72 which is hereby incorporated by reference.
 - e. Each vacation rental establishment shall be required to keep a register and require all guests to sign such register using their actual names and address before being assigned quarters. The register shall be available for inspection by the Waukesha County Sheriff's Department, and Town Code Enforcement Officer for a period of not less than one year.
 - f. A minimum of one off-street parking stall shall be provided for every guest bedroom with a minimum of three. All parking areas shall meet the size and location requirements of the Town Code and shall be hard-surfaced and maintained in a reasonably dustless condition.
 - g. Every vacation rental establishment shall be properly addressed with numbers on the street side of the structure, a minimum of 5" high and of contrasting color so as to be visible from the street.
 - h. The Town Board shall consider the potential impact to the surrounding neighborhood and proximity to any existing bed and breakfast establishment or vacation rental establishment when reviewing a request for a vacation rental establishment license.

- i. Whenever the property changes ownership, an occupancy permit and a new license is required to ensure compliance with all State and local regulations and ordinances.
 - j. Every license for a vacation rental establishment shall be placed on a February Town Board meeting agenda for consideration and possible action upon annual review, to ensure compliance with all licensing requirements. Such property may be inspected by the Waukesha County Sheriff's Department, Town Fire Department, Town Code Enforcement Officer, or other authorized personnel of the Town to investigate and determine if any violations exist.
 - k. All refuse containers shall be screened from view.
 - l. If the Town finds that any statement made on the license application is incorrect, at any time, the Town may immediately and summarily revoke the license.
 - m. Sleeping quarters related to a vacation rental establishment use shall only be located within the principal structure on the lot. Accessory buildings cannot be used for sleeping quarters.
 - n. 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 Board. Such clear delineation must be maintained for the duration of the license, 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.
 - o. Unless the property is connected to a municipal sewer system, the Petitioner/Owner must provide to the Town Code Enforcement Officer, proof that is satisfactory to the Town Code Enforcement Officer that the septic system is properly sized for purposes of the proposed use. Such septic system must be properly maintained at all times for the duration of the conditional use permit.
 - p. The vacation rental establishment occupancy limits shall not exceed the number of occupants allowed by Wisconsin Administrative Code Section ATCP 72.14(2)(b) per bedroom, and also shall not exceed 8 per 1,000 square feet of living area within the principal structure.
 - q. The parcel cannot have more people on site than the higher of 20 people or the maximum number of people allowed under Wisconsin Administrative Code Section ATCP 72.14(2)(b).
 - r. The Petitioner/Owner must provide a copy of this section and a copy of the license, to all parties using the property for vacation rental purposes, prior to commencement of each such use.
- (d.) Annual Limit. If a vacation rental establishment is rented for periods of more than 6, but fewer than 30 consecutive days the vacation rental establishment shall not operate outside of the 180 consecutive day period that begins on the date of the first such rental, for a 365 day period. The owner of the vacation rental establishment shall notify the Town Clerk in writing when the first 365 day period begins, and all subsequent 365 day periods shall be measured from that date. This limitation shall be interpreted in compliance with Wisconsin Statutes Section 66.1014(2)(d) 1.
- (e.) Prohibition. Rental of a residential dwelling for 6 days or fewer is prohibited. For purposes of this subsection "rental" includes any real property that is subject to any verbal or written contract, lease, sublease, rental agreement, easement, instrument or other device (the "Agreement"), if all of the following circumstances apply: (i) the Agreement or Agreements create a right to occupy said property; (ii) such rights of occupancy have an actual duration of less than 7 days; and (iii) the Agreement requires payment or other remuneration or barter, for the benefit of the property owner.

(6) NO UNDESIRABLE STRUCTURES.

- (a) Purpose. The following minimum standards are created, to protect against risks of blight or adverse aesthetic impacts on abutting properties and related diminution of property values that can arise from undesirable structures as described below; to protect against adverse impacts of noise, odor, disturbance, adverse visual impacts, or other nuisances, that can be caused by such issues; and to preserve property values for the commercial benefit of the Town.

(b) Minimum Standards. (repealed and recreated 2015-01) No building or structure shall be erected, converted, relocated, enlarged, structurally altered, occupied, or reoccupied and no lumber, materials, furniture, equipment or excess excavation shall be stacked, piled or stored in a manner which adversely affects the property values or general desirability of the neighborhood.

1. The Code Enforcement Officer shall submit any such case in question respecting undesirable structures to the Architectural Control Commission for its determination.
2. The Architectural Control Commission shall base its determination on the following considerations:
 - a. Design or appearance of such unorthodox or abnormal character as to be considered unsightly or offensive to the degree that would have an adverse effect on the property values or general desirability of the neighborhood; or
 - b. Identical design and appearance with adjoining buildings or structures to the degree that monotony and commonness would have an adverse effect on the property values and general desirability of the neighborhood.
3. The decision of the Architectural Control Commission shall be stated in writing, including the reason for the decision.

(7) SITE MAINTENANCE.

(a) Purpose. The following minimum standards are created, to protect the health, safety and welfare of the residents of the Town and to maintain the desirability, amenities and property values of the residential, commercial and industrial neighborhoods of the Town.

(b) Minimum Standards.

1. General Maintenance. The exterior of every structure or accessory structure shall be maintained free of broken glass, loose shingles, excessive paint peeling, crumbling stone or brick, loose boards or other conditions reflective of deterioration or inadequate or deferred maintenance.
2. Litter Control. Construction sites shall be maintained in a manner so as to prevent litter from being blown off the site. Accordingly, all litter from construction activities shall be picked up at the end of each workday and placed in appropriate containers. Litter collection and storage areas shall be maintained in a clean condition to ensure that all litter on the premises is controlled and disposed of properly. Additionally, prime contractors shall also be responsible to abide by this provision.
3. Outside Storage. No unenclosed storage of materials, equipment or supplies including, but not necessarily limited to, unused or junked appliances, furniture, lumber, bricks and cement blocks shall be permitted where such storage is readily visible from any public place or from any surrounding private property. Dumpster and recycling areas for development occurring subsequent to this chapter shall be adequately screened from view.

(8) PARKING OF VEHICLES.

(a) Purpose. The following minimum standards are created, to protect against risks of blight or adverse impacts on abutting properties and related diminution of property values that can arise from parking of vehicles as described below; and to preserve property values for the commercial benefit of the Town

(b) Minimum Standards.

1. Parking of cars, vans, sport utility vehicles and light duty pick-up trucks accessory to a residential use shall be limited to those actually used by the residents or for temporary parking of guests.
2. No more than one commercial panel truck or pick-up truck is allowed per lot with a residential use. Such truck and any attached extraneous material shall not exceed 20 feet 6 inches in length, 8 feet in height nor 7 feet in width.

3. No bus, truck or other equipment shall be regularly parked on road right-of-ways.
4. Recreational vehicles shall be kept in a garage or shall have a planting screen, landscaped fence, or wall at least four feet in initial height along a side abutting or fronting a residential property, with the exception of boats.
5. Recreational equipment parked or stored shall not have fixed connections to electricity, water, gas or sanitary sewer facilities and at no time shall this equipment be used for living or housekeeping purposes.
6. If camping or recreational equipment is parked or stored outside of a garage, it shall be parked or stored subject to the following: There shall be a minimum setback of 50 feet when parked or stored adjacent to a public street or highway. It shall be parked or stored between the rear lot line and the principle structure, and it shall be parked or stored not closer than 10 feet from a side or rear lot line. Notwithstanding the above, camping or recreational equipment may be parked anywhere on the premises for loading or unloading purposes for a period of not more than 48 hours.
7. There shall be no parking or storage anywhere on property that is used for residential purposes of any equipment which is no longer capable of the use intended or requiring repair over and above ordinary maintenance. All recreational equipment shall be kept in good condition. The ground area under and immediately surrounding where such recreational equipment is stored shall be maintained free of noxious weeds, debris or overgrowth.

(9) EXCEPTIONS OR MODIFICATIONS.

Where, in the judgment of the Town Board, it would be inappropriate to apply literally the provisions of this Section 9.14 due to exceptional circumstances, the Town Board may waive or modify any requirement to the extent deemed just and proper on a case-by-case basis. An exception or modification granted by this subsection 9.14(6) shall only affect the otherwise applicable requirements of this Section 9.14, and shall have no effect on any other provisions of this Code or other applicable laws.

No exception or modification to the provisions of this Section 9.14 shall be granted unless the Town Board finds that all the following facts and conditions exist and so indicates in the minutes of its proceedings:

- (a) Exceptional Circumstances. There are exceptional, extraordinary, or unusual circumstances or conditions where a literal enforcement of the requirements of this Section 9.14 would result in a severe burden. Such circumstances should not apply generally to other properties or be of such a recurrent nature as to suggest that Section 9.14 should be changed.
- (b) Preservation of Property Rights. That such exception or modification is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same vicinity.
- (c) Absence of Detriment. That the exception or modification will not create substantial detriment to adjacent property, the desirable general development of the Town and its environs, and will not materially impair or be contrary to the purpose and spirit of this Section 9.14.

9.15 PENALTY.

(1) Except as otherwise provided in this chapter, any person who shall violate any provision of this chapter shall be subject to a penalty as provided in §25.04 of this General Code.

(2) In addition to any penalty imposed for violation of this chapter, any person who shall cause physical damage to or destroy any public property shall be liable for costs of replacing or repairing such damaged or destroyed property. The parent or parents of any unemancipated minor child who damages or destroys any public property may also be held liable for the cost of replacing or repairing such damaged or destroyed property in accordance with §895.035, Wis. Stats.

CHAPTER 10

PUBLIC NUISANCES

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10.01 PUBLIC NUISANCES PROHIBITED.

No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the Town.

10.02 PUBLIC NUISANCE DEFINED.

A public nuisance is a thing, act, occupation, condition or use of property which continues for such length of time as to:

- (1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public.
- (2) In any way render the public insecure in life or in the use of property.
- (3) Greatly offend the public morals or decency.
- (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.

10.03 PUBLIC NUISANCES AFFECTING HEALTH.

The following acts, omissions, places, conditions and things are specifically declared to be public health nuisances; but such enumeration shall not be construed to exclude other health nuisances coming within the definition of §10.02:

- (1) ADULTERATED FOOD. All decayed, adulterated or unwholesome food or drink sold or offered for sale to the public.
- (2) UNBURIED CARCASSES. Carcasses of animals, birds or fowl not intended for human consumption or food which are not buried or otherwise disposed of in a sanitary manner within 24 hrs. after death.
- (3) BREEDING PLACES FOR INSECTS OR VERMIN. Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material in which flies, mosquitoes, disease carrying insects, rats or other vermin can breed.
- (4) STAGNANT WATER. All stagnant water in which mosquitoes, flies or other insects can multiply.
- (5) PRIVY VAULTS AND GARBAGE CANS. Privy vaults and garbage cans which are not flytight.
- (6) NOXIOUS WEEDS.
 - (a) Noxious Weeds defined: The term "noxious weeds" as used in this section includes the following: Canada thistle, leafy spurge, field bindweed (creeping jenny), nodding thistle, burdock, purple loostrike, bull thistle and garlic mustard. These listed weeds are hereby declared to be noxious within the boundaries of the Town of Delafield.
 - (b) All noxious weeds and other rank growth of vegetation. All weeds and grass shall be kept cut to a height not to exceed 1'. The Town may cause all weeds and grass to be cut and removed and brush to be removed and the cost thereof charged to the property under §66.60(16), Wis. Stats.
- (7) WATER POLLUTION. The pollution of any public well or cistern, stream, lake, canal or other body of water by sewage, creamery or industrial wastes or other substances.

- (8) NOXIOUS ODORS, ETC. Any use of property, substances or things within the Town emitting or causing any foul, offensive, noisome, noxious or disagreeable odors, gases, effluvia or stench

extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the Town.

- (9) STREET POLLUTION. Any use of property which causes any noxious or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk or public place within the Town.
- (10) AIR POLLUTION. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, industrial dust or other atmospheric pollutants within the Town or within one mile therefrom in such quantities as to endanger the health of persons of ordinary sensibilities or threaten or cause substantial damage to property in the Town.

10.04 PUBLIC NUISANCES OFFENDING MORALS AND DECENCY.

The following acts, omissions, places, conditions and things are specifically declared to be public nuisances offending public morals and decency; but such enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of §10.02:

- (1) DISORDERLY HOUSES. All disorderly houses, bawdy houses, houses of ill fame, gambling houses and buildings or structures kept or restored to for the purpose of prostitution, promiscuous sexual intercourse or gambling.
- (2) GAMBLING DEVICES. All gambling devices and slot machines.
- (3) UNLICENSED SALE OF LIQUOR AND BEER. All places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, manufactured or rectified without a permit or license as provided by the ordinances of the Town.
- (4) CONTINUOUS VIOLATION OF CITY ORDINANCES. Any place or premises within the Town where Town ordinances or State laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated.
- (5) ILLEGAL DRINKING. Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of State laws.

10.05 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.

The following acts, omissions, places, conditions and things are 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 §10.02:

- (1) DANGEROUS SIGNS, BILLBOARDS, ETC. All signs, billboards, awnings and other similar structures over or near streets, sidewalks, public grounds or places frequented by the public, so situated or constructed as to endanger the public safety.
- (2) ILLEGAL BUILDINGS. All buildings erected, repaired or altered in violation of Town ordinances relating to materials and manner of construction of buildings and structures within the Town.
- (3) UNAUTHORIZED TRAFFIC SIGNS. All unauthorized signs, signals, markings or devices placed or maintained upon or in view of any public highway or railway crossing which purport to be or may be mistaken as official traffic control devices or railroad signs or signals or which, because of their color, location, brilliance or manner of operation, interfere with the effectiveness of any such device, sign or signal.
- (4) OBSTRUCTION OF INTERSECTIONS. All trees, hedges, billboards or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of

traffic when approaching an intersection or pedestrian crosswalk.

- (5) LOW-HANGING TREE LIMBS. All limbs of trees which project over and less than 8' above any public sidewalk, street or other public place.
- (6) DANGEROUS TREES. All trees which are a menace to public safety or are the cause of substantial annoyance to the general public.
- (7) FIREWORKS. All use or display of fireworks except as provided by State laws and Town ordinances.
- (8) DILAPIDATED BUILDINGS. All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human use.
- (9) LOW HANGING WIRES AND CABLES. All wires and cables over streets, alleys or public grounds which are strung less than 15' above the surface thereof.
- (10) NOISY ANIMALS OR FOWL. The keeping or harboring of any animal or fowl which, by frequent or habitual howling, yelping, barking, crowing or making of other noises, greatly annoys or disturbs a neighborhood or any considerable number of persons within the Town.
- (11) OBSTRUCTIONS OF STREETS; EXCAVATIONS. All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by the ordinances of the Town but including those which, although made in accordance with such ordinances, are kept or maintained for an unreasonable or illegal length of time after the purpose thereof has been accomplished or which do not conform to the permit.
- (12) UNLAWFUL ASSEMBLIES. Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks.
- (13) BLIGHTED BUILDINGS AND PREMISES. Premises existing within the Town which are blighted because of faulty design or construction, failure to maintain them in a proper state of repair, improper management or due to the accumulation thereon of junk or other unsightly debris, structurally unsound fences and other items which depreciate property values and jeopardize or are detrimental to the health, safety, morals or welfare of the people of the Town.
- (14) OFF-THE-ROAD VEHICLE VIOLATIONS. (repealed and recreated 2010-006) Use of an off-the-road vehicle, as defined in Section 7.12 of this code, in a manner which violates Section 7.12 of this code is hereby declared to be a public nuisance.

10.06 DUTCH ELM DISEASE

- (1) PUBLIC NUISANCE DECLARED. The Town Board, having determined that the health of the elm trees within the Town is threatened by a fatal disease known as Dutch elm disease, hereby declares the following to be public nuisances:
 - (a) Any living or standing elm tree or part thereof infected with Dutch elm disease fungus or which harbors any of the elm bark beetles *Scolytus multistriatus* (Eichh) or *Hylurgopinus rufipes* (Marsh).
 - (b) Any dead elm tree or part thereof, including logs, branches, firewood, stumps or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle destroying insecticide.
- (2) TOWN FORESTER. The Highway Superintendent shall serve as Town Forester and shall have the powers and perform the duties imposed by this section and by Ch. 27, Wis. Stats.
- (3) DEFINITIONS. For the purposes of this section, the following phrases are defined as follows:

(a) Public Nuisance.

1. Dutch elm disease.
2. Elm bark beetles Scolytus multistriatus (Eichh) or Hylurgopinus rufipes (Marsh).
3. Any living or standing elm tree infected with Dutch elm disease fungus or in a weakened condition which harbors any of the elm bark beetles.
4. Any dead elm tree or part thereof, including logs, branches, firewood, stumps or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle destroying concentrate.

(b) Public Property. Any premises owned or controlled by the Town, including but not restricted to public sites, parks, playgrounds, streets, alleys, sidewalks, boulevards and terrace strips between the lot line and the curb or improved portion of any public way.

(4) INSPECTIONS.

- (a) The Town Forester shall inspect at least twice a year all premises and places within the Town to determine whether any public nuisance exists there on. He shall also inspect any elm tree reported or suspected to be infected with Dutch elm disease or any elm bark bearing material reported or suspected to be infested with elm bark beetles.
- (b) Whenever necessary to determine the existence of Dutch elm disease or elm bark beetles in any tree, the Town Forest shall remove or cut specimens from the tree in such manner as to avoid permanent injury thereto and forward them to the State Department of Agriculture for analysis to determine the presence of such nuisances.
- (c) The Forester and his agents or employees may enter upon private premises at reasonable times for the purpose of carrying out any of the provisions of this section.

(5) ABATEMENT OF NUISANCES.

- (a) The Forester shall order, direct, supervise and control the abatement of public nuisances by spraying, removal, burning or other means which he determines to be necessary to prevent as fully as possible the spread of Dutch elm disease fungus or the insect pests or vectors known to carry such disease fungus.
- (b) Whenever the Forester determines that a public nuisance exists on public property in the Town, he shall immediately abate or cause the abatement of such nuisance in such manner as to destroy or prevent as fully as possible the spread of Dutch elm disease or the insect pests or vectors known to carry such disease fungus.
- (c) When the Forester determines with reasonable certainty that a public nuisance exists upon private premises, he shall immediately serve personally or by registered mail upon the owner of such property, if he can be found, or upon the occupant thereof, a written notice of the existence of such nuisance, directing that nuisance be abated within 10 days after service of such notice. Such notice shall describe the nuisance and recommend the procedure for its abatement and shall state that, unless the owner abates the nuisance as specified in the notice, the Forester will cause the abatement thereof at the expense of the property served. If the owner or occupant cannot be found, such notice shall be given by publication in a newspaper of general circulation in the Town.

(6) SPRAYING.

- (a) Whenever the Forester determines that any elm tree or part thereof is infected with Dutch elm

disease fungus or is in a weakened condition and harbors elm bark beetles, he may cause all elm trees within a 1,000' radius thereof to be sprayed with an effective elm bark beetle destroying concentrate.

- (b) To facilitate the work and minimize the inconvenience to the public of any spraying operation

conducted under this section, the Forester shall cause to be given advance public notice of such operation by newspaper, radio, television public service announcements or other effective means and shall cause the posting of appropriate warning notices in the areas and along the streets where trees are to be sprayed at least 24 hrs. in advance of spraying. When any residue or concentrate from municipal spraying operations can be expected to be deposited on any public street, the Forester shall also notify the Constable, who shall make and enforce such temporary parking and traffic regulations on such streets as conditions require. Temporary "no parking" notices shall be posted in each affected block of any street at least 24 hrs. in advance of spraying operations.

- (c) If warning notices and temporary "no parking" notices have been given and posted in accordance with par. (b) above, the Town shall not allow any claim for damages to any vehicle caused by such spraying operations.
- (d) When trees on private property are to be sprayed, the Forester shall notify the owner of such property and proceed in accordance with sub. (5)(c).

(7) SPECIAL ASSESSMENTS FOR TREE CARE AND ABATEMENT.

- (a) The cost of abatement of a public nuisance or spraying elm trees or elm wood at the direction of the Forester, if the nuisance tree or wood is located in a public park or on other public grounds, shall be borne by the Town.
- (b) The cost of abating a public nuisance or spraying elm trees or elm wood located on private premises or in the public right-of-way, when done at the direction and under the supervision of the Forester, shall be assessed to the property on which such nuisance tree or wood is located or which abuts on the public right-of-way in which such nuisance tree or wood is located, as follows:
1. The Forester shall keep account of the cost of such work or spraying and the amount chargeable to each lot or parcel and shall report such work charges, the description of lands to which they are chargeable and the names and addresses of the owners of such lands to the Town Clerk on or before October 15 of each year.
 2. The Town Clerk shall mail notice of the amount of such final assessment to each owner of property assessed at his last known address, stating that, unless paid within 30 days of the date of the notice, such assessment shall bear interest at the rate of current lawful rate per annum and will be entered on the tax roll as a delinquent tax against the property; and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such assessment.
 3. The Town hereby declares that, in making assessments under this section, it is acting under its police power. No damages shall be awarded to any owner for the destruction of any diseased or infested elm tree or elm wood or part thereof.

(8) PROHIBITED ACTS. No person shall:

- (a) Transport any bark bearing elm wood, elm bark or elm material on public streets or highways or other public premises without first securing the written permission of the Forester.
- (b) Interfere with or prevent any act of the Forester or his agents or employees while they are

engaged in the performance of duties imposed by this section.

- (c) Refuse to permit the Forester or his duly authorized representative to enter upon his premises at reasonable times to exercise the duties imposed by this section.
- (d) Permit any public nuisance to remain on any premises owned or controlled by him when ordered by the Forester to abate such nuisance.

10.07 (Repealed in its entirety - 10/12/10)

10.08 SEWERAGE SLUDGE AND SEPTIC WASTES DISPOSAL.

- (1) SCOPE AND INTENT. The intent of this section is to safeguard the public against the creation or perpetration of a public nuisance. It is the intent of the Town Board that the application of sludge

and septic waste on property sites located in the Town be undertaken in accordance with the regulations and laws of Wisconsin, but not in such manner as might be offensive to the ordinary sensibilities of the Town residents.

- (2) SEPTIC WASTE DISPOSAL.

- (a) Definition. As used in this section "septic waste" shall mean the accumulated residual solids generated by private septic systems, portable toilets, outdoor toilets or holding tanks of any type, including sanitary systems incorporated in recreation boats or vehicles.
- (b) Restrictions. No person shall apply septic waste or allow septic waste to be applied to any lands in the Town.
- (c) Disposal Facility. Septic waste may be disposed of at a wastewater treatment plant subject to requirements established by that facility. All costs incurred from such disposal shall be borne by the person disposing of such waste.

- (3) SEWERAGE SLUDGE DISPOSAL.

- (a) Definitions. As used in this section:

- 1. Sludge. The accumulated residual solids (usually in aqueous solution) resulting from the treatment of municipal waste waters.
- 2. Site or Property Site. The property on which the applicant intends to apply sludge. Each real estate tax parcel as found on the tax rolls of the Town shall constitute a separate "site" or "property site."
- 3. Applicant. The owner of the treatment facility generating the sludge.

- (b) Permit Required. No person shall apply sludge or allow sludge to be applied to lands under their ownership, lease, or control, within the corporate limits of the Town without first having obtained a permit from the Town Board. This shall apply to both existing and proposed sludge disposal operations.

- (c) Application. Written application for a permit to apply sludge on any land located within the Town shall be made to the Town Clerk. The application shall state:

- 1. The applicant shall be the owner of the waste water treatment facility generating the sludge.
- 2. The name and address of the applicant, and if the applicant is a corporation, the name, address, and registered agent of the corporation.

3. The legal description of the site to be used.
 4. The name of the landowners and haulers involved with the disposal of the sludge. A copy of any contract between the landowners and applicant related to the sludge disposal shall be appended to the application.
 5. The name or names and address of the owners of any other site or sites on which the applicant is presently applying sludge, whether or not such site or sites are within or without the corporate limits of the Town.
 6. The name and post office address of all property owners whose property, or any portion thereof, are located within 1,000' of any boundary of the property site on which the applicant intends to dispose of the sludge.
 7. The volume, application rate and content of sludge that is proposed to be applied. In addition to the nutritional content of sludge, applicant will supply exact and detailed analysis of the sludge metal content.
 8. The length of time the applicant intends to apply sludge on the site or sites described in the application.
 9. Copies of all reports required by the Department of Natural Resources shall be submitted to the Town along with the application.
- (d) Term of Permit. A permit issued hereunder shall be for a period commencing on April 1 in the year of application and ending on November 30 in the year of application. Winter (December through March 31) sludge disposal will not be permitted.
- (e) Permit Fee. The applicant shall accompany his application with a nonrefundable annual permit fee in an amount as established by the Town Board from time to time.
- (f) Granting of Permit. The Town Clerk shall refer all applications for issuance of a permit hereunder to the Plan Commission for its recommendation. The Plan Commission will act within 10 days of its next regularly scheduled meeting. Upon receipt of the recommendation of the Plan Commission, the Town Board shall within 30 days schedule a public hearing on the application. Notice of the public hearing shall be sent by registered mail to all property owners whose property, or any portion thereof is located within 1000' of any boundary of the property site. At the conclusion of the public hearing, the Town Board may, if it finds that reasonable concern exists as to whether the application of sludge on the property site might tend to create a public nuisance, engage the services of an engineer, hydrologist, or other individual having recognized expertise in the areas of concern. The Town Board shall, however, in all instances, act on the application within 30 days of the conclusion of the public hearing. The Town Board shall issue a permit hereunder if, at the conclusion of the public hearing, and upon consideration of all other evidence presented to the Board, it finds that:
1. The injection of the sludge will be held at a 10" depth for the full recommended rate. A minimum depth of 6" will be allowed in severe hardpan or rocky soils, but the recommended rate of sludge will be reduced by 50%. Any sludge that surfaces in the injected furrows will be incorporated by disking within 24 hrs. of the application of that sludge.
 2. The sludge will be applied in accordance with the appropriate regulations of the Wisconsin Department of Natural Resources.
 3. The applicant has received approval from the Department of Natural Resources to apply such sludge to the property site described in the application.

4. No sludge will be applied at a distance less than 500' from the nearest residence, unless the owners agree to a smaller distance. However, such distance shall in no case be reduced to less than 200'.
 5. No sludge will be applied at a distance less than 25' from any property line, road right-of-way, ditch or dry run.
 6. The sludge will not be applied at a distance less than 1,000' from the nearest public or private water supply well unless the owner agrees to a lesser distance. However, such distance shall in no case be reduced to less than 200' and/or 1,000' from the nearest public supply well, and that the application of sludge is not likely to result in the contamination of a source for any water supply, irrespective of the location of the water supply.
 7. The sludge will not be applied a distance less than 500' from any lake, stream, pond, channelized waterway, or Wetland zoning.
 8. The sludge will not be applied to any soil which, because of its composition would tend to create a health hazard.
 9. The sludge will not be applied to any area with less than 3' of soil above bed rock or ground water levels.
 10. The application of sludge will only take place between 7 a.m. and 7 p.m. and will not be applied to any site Saturday, Sunday or holidays.
 11. Absolutely no Town roads will be used for transporting sludge without prior approval of the Town Board. Applicant must agree that all road damage or cleanups caused by applicant will be paid for by applicant and that monies can be taken from the bond if not paid within 30 days of billing.
 12. Before any action is taken, the applicant will provide soil tests as required by the Department of Natural Resources.
 13. The applicant has applied for and received all appropriate licenses from county and State licensing authorities.
- (g) Notification. At least 3 working days prior to sewerage sludge disposal, written notification must be made to the Town Board, N14 W30782 Golf Road, Delafield, Wisconsin, 53018. The notice will also include which roads will be used.
- (h) Recording. Within 30 days after sludge has been applied to a site, the owner shall record a statement with the Waukesha County Register of Deeds indicating that the volume, application rate and content of the sludge has been applied to the site, and the dates of the application, volume, rate of application and content are on file with the Town Clerk at the Town Hall.
- (i) Subsequent Development. Future development on lands upon which sludge has been applied will be subject to the parameters of the Residential Development Control system of the Town Regulating the Division and Platting of Land, Ch. 18 of this General Code.
- (j) Bond and Insurance. Upon approval of the application for the issuance of a permit hereunder, but prior to the issuance of the permit, the applicant shall provide the following bond, and a certificate of insurance:

1. Bond. The applicant shall file with the Town Clerk a surety bond in the amount to be
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determined from time to time by the Town Board, as a guarantee that the applicant will fully abide by the terms and conditions of this chapter, the ordinances of the Town, and any conditions, rules, or regulations imposed by the Town Board as a condition for the granting of the permit. The term of the bond shall be in effect for the term of the permit and one year thereafter. The bond should also guarantee the payment of any forfeitures imposed under this section.

2. Insurance. The applicant shall file with the Town Clerk a certificate of insurance that the following minimum coverages are in effect:

- a. Standard worker's compensation policy, conforming to the requirements of the State.
 - b. Comprehensive general liability in a minimum amount to be set from time to time by the Town Board. Such policy shall contain an endorsement that it covers sludge disposal operations, and that the Town will be held harmless from any and all claims arising from acts or omissions of the applicant, his haulers, agents or employees, in the conduct of the sludge disposal operation.
- (k) Separate Violations. Each violation and each day a violation continues or occurs shall constitute a separate offense.

10.09 REGULATION OF HOLDING TANKS. (Repealed and Recreated #2010-003)

No person shall install, operate, repair, maintain or reconstruct any device designed for the holding of sewage wastes in the Town, unless a permit therefore has been obtained under the following conditions:

- (1) HOLDING TANKS PERMITTED. Holding tanks will be permitted to be installed, operated, repaired, maintained or reconstructed in the Town only in those instances described as follows:
 - (a) Residential. Residential holding tanks will be permitted only to replace an existing failing system. No new residential construction may be serviced by a holding tank.
 - (b) Commercial, Industrial and Institutional. Holding tanks will be permitted for the replacement of existing septic or sewage systems and for new construction of commercial and industrial projects.
- (2) AGREEMENT. An agreement is provided by the Town and on file with the Town Clerk shall be executed by the owner of the lands upon which the holding tank is located. Such agreement shall provide as follows:
 - (a) Owner shall agree with the Town to install a holding tank of adequate size for the use proposed as approved by the Town Engineer or Plumbing Inspector.
 - (b) Owner shall agree to conform to all rules and regulations, ordinances and codes of the Town as well as all regulations and statutes of the State or Waukesha County, both in the installation and the maintenance of such holding tank.
 - (c) Owner shall agree to submit to the Town a copy of a contract or agreement signed by a State licensed holding tank pumping firm, which contract will provide for the periodic pumping of such holding tank whenever necessary at owner's expense. Owner agrees that he will, whenever necessary, have such holding tank pumped out by a State licensed wastewater holding tank pumping firm and further agrees to maintain such holding tank in proper repair and order at his expense. Owner agrees that he will keep such hauling contract in full force and effect at all times and so long as such holding tank use is continued. Any change of haulers by owner shall require owner to immediately substitute new hauler's agreement for the old.
 - (d) Owner shall agree that at any time such holding tank is not pumped as necessary, the Town

shall have the right on 24 hours written notice to hire or otherwise accomplish the emptying of such tank at the expense of the owner. The Town shall add to such cost 15% additional charge for the administration of this section. The total amount owed to the Town if such amount remains unpaid for 30 days shall be charged to the Owner as a special charge against the real estate of the owner pursuant to §66.0627, Wis. Stats., and may be collected as such according to the statute.

- (e) Owner will agree in such agreement to grant to the Town full right, license and authority to enter upon his property for inspection, pumping and transportation from such holding tank.
 - (f) As a further condition for the granting of such holding tank permit, owner agrees that he will pay all special assessments due if and when sanitary sewer becomes available and that he will grant all necessary easements for the installation of the same. The agreement signed by such owners shall constitute a waiver of all special assessment procedures and amounts. Owners further shall agree that they will connect up to such sanitary sewer within 60 days of the date the same becomes available. In addition, when public sewer is available, owners agree to properly abandon the holding tank and appurtenances as required by law and the Town Plumbing Inspector.
 - (g) Owner shall simultaneously with the agreement referred to herein deposit with the Town a cash bond in an amount as determined by the Board from time to time to guarantee to the Town reimbursement for any and all expenses occurring as a result of this holding tank. The cash bond shall at all times be maintained constantly at the amount originally deposited. Such bond shall be returned to owner upon proper connection to the public sewer or other approved disposal system and abandonment of such holding tank. Interest earned, if any, by such cash deposit shall be the property of the Town as an administrative charge by the Town for administering such cash bond.
 - (h) The agreement referred to herein shall be made a part of this section and shall be executed in recordable form, shall contain the legal description of the owner's property benefited and shall be recorded with the Register of Deeds for Waukesha County. All parties in interest to owner's property shall execute and be parties to the agreement. The owner shall bear expense of recording.
 - (i) The agreement shall continue so long as the holding tank is maintained and shall terminate upon connection to public sewer or other approved disposal system and abandonment of the holding tank.
 - (j) The agreement, upon execution by owner, shall thereupon become a part of this section and enforceable as a part of this section as if it were contained herein.
- (3) INSPECTION. In the event a violation ever occurs causing a nuisance, the Town may inspect such holding tank on a monthly basis to insure that future violations do not occur. The fee for these inspections shall be the responsibility of the owner and, in the event owner does not pay such inspection fees, the cost may then be added to the tax roll as a special real estate charge. The amount of the inspection fee shall be as determined from time to time by the Board.
- (4) PENALTIES. In addition to the financial obligations provided for in this section, if the owner violates or permits violation of any provision of this section or the holding tank agreement, such owner shall be liable to the Town for a penalty as provided for in §25.04 of this Municipal Code for each violation of which convicted. Each day that a violation occurs or continues shall be considered a separate violation of this section.
- (5) APPEALS.
- (a) Any person prohibited from installing a holding tank may petition the Town Board for reconsideration of the Town's denial and request a variance to the prohibition.

- (b) The Town Board shall upon receipt of any such petition as soon as practical call a public hearing thereon. Notice of the time and place of the hearing shall be given pursuant to the open meeting law.
- (c) As soon as possible after such public hearing, the Town Board shall act on such petition either granting, denying or conditionally granting the variance. In determining whether to grant, deny or conditionally grant the variance, the Town Board shall look to the standards as set forth in §ILHR 83.18(1) and (2), Wis. Adm. Code, and to the guidelines and past practice of Waukesha County.
- (d) The Town shall inform the Department of Industry, Labor and Human Relations in writing of each variance.

10.10 LITTERING. (Cr. #91-390)

- (1) **PROHIBITED.** No person shall drop, deposit or throw glass, refuse or waste, filth or other litter upon the streets, alleys, highways, public parks or other property of the Town; upon any private property; or upon the surface of any body of water within the Town.
- (2) **RECYCLING.**
 - (a) The Town will provide receptacles for the following recyclable materials: clear glass, brown glass, green glass, tin/steel cans, aluminum cans, newspapers, used oil and any other materials designated, included or excluded from time to time by the Town Board.
 - (b) No person shall drop, deposit or throw glass, refuse or waste, filth or other litter around or near any recycling receptacles.
 - (c) No person shall deposit into a recycling receptacle any material other than that which the receptacle is designated to receive.

10.11 DESIGNATED SEX OFFENDERS REGULATED. (repealed and re-created ORD 2023-02)

1. Findings and Intent.

- (a) This Chapter is a regulatory measure aimed at protecting the health and safety of children from the risk that convicted sex offenders may re-offend in locations close to their residences. The Governing Body has closely considered this question and had made numerous findings and expressions of intent within the preamble to the Ordinance which adopts this Code Section which are incorporated herein by reference. The Governing Body finds and declares that sex offenders are a serious threat to public safety. When convicted sex offenders re-enter society, they are much more likely than any other type of offender to be re-arrested for a new sexual assault. The Governing Body further finds that, given the high rate of recidivism for sex offenders and that reducing opportunity and temptation is important to minimizing the risk of re-offense, there is a need to protect children where they congregate or play in public places in addition to the protections afforded by state law near schools, and other places children frequent. The Governing Body finds and recognizes that, in addition to schools, there are other areas where children congregate or play.
- (b) This Chapter is not intended to impose a criminal penalty or punishment of sexual offenders, but rather to serve the Town's compelling interest to promote, protect, and improve the health, safety, and welfare of children in the Town by creating areas around locations where children regularly congregate in concentrated numbers where sexual offenders and sexual predators are prohibited from loitering and/or establishing temporary or permanent residence and by regulating certain activities that may be used by sexual offenders to prey upon children.
- (c) Due to the high rate of recidivism for sexual offenders, and because reducing both opportunity and temptation would help minimize the risk of re-offense, the Governing Body finds that there is a compelling need to protect children where they congregate or play in public places.

2. Definitions.

For purposes of this Chapter, the following terms shall have the following meaning unless the context otherwise requires:

- (a) Child means a person under the age of 18.
- (b) Children means two or more persons under the age of 18.
- (c) Child Safety Location means the site upon which any of the following are located without regard to whether such site is located within the geographic limits of the Town of Delafield:
 - 1. Facility for children;
 - 2. Group home, as defined in Wis. Stat. sec. 48.02(7);
 - 3. Library, that is held open for use by the public;
 - 4. Licensed day care center as defined in Wis. Stat. sec. 48.65;
 - 5. Public or private primary, elementary, secondary, middle, junior high, or high school;
 - 6. Recreational trail, playground or park;
 - 7. Specialized school for children, including, without limitation, a gymnastics academy, dance academy, or music school; the Schoenstatt Retreat Center is a specialized school;
 - 8. Swimming pool, wading pool, or aquatic facility held open for use by the public;
 - 9. A public or private golf course or range;
 - 10. Church or places of worship;
 - 11. Movie theater; and
 - 12. Delafield Town Hall.
- (d) Child Safety Zone means any place within the Town that is physically located within two thousand feet (2,000') of any Child Safety Location.
- (e) Domicile means an individual's fixed and permanent home where the individual intends to remain permanently and indefinitely and to which whenever absent the individual intends to return provided, however, that no individual may have more than one domicile at any time. Domicile does not include a residence for any special or temporary purpose.
- (f) Facility for children means a public or private school, a group home, as defined in Section 48.02(7), Wisconsin Statutes, a residential care center for children and youth, as defined in Section 48.02(15d), Wisconsin Statutes, a shelter care facility, as defined in Section 48.02(17), Wisconsin Statutes, a daycare center licensed under Section 48.65, Wisconsin Statutes, a daycare program established under Section 120.13(14), Wisconsin Statutes, a daycare provider certified under Section 48.651, Wisconsin Statutes, or a youth center, as defined in Section 961.01(22), Wisconsin Statutes.
- (g) Minor means a person under the age of 17.
- (h) Park means any area held open for use by the public for active or passive leisure purposes including, but not limited to, any park, parkway, recreation or open space area, beach, playground, conservation area, lake access point or recreational trail. "Park" also means any private lake access point or private beach that owners of two or more lots or condominium units are entitled use, pursuant to a deed restriction, subdivision plat, condominium declaration, condominium plat, homeowner's association regulation or similar rights of common use.
- (i) Permanent Residence means a place where the person abides, lodges, or resides for 14 or more consecutive days.
- (j) Sex Offender shall mean:
 - 1. Any person who is required to register under §301.45, Wis. Stats., for any offense against a child or any person who is required to register under §301.45, Wis. Stats., and

who is subject to the Special Bulletin Notification process set forth in §301.46(2_ and (2m), Wis. Stats.;

2. Any person subject to the sex crimes commitment provisions of §975.06, Wis. Stats.;
 3. Any person found not guilty by reason of disease or mental defect placed on lifetime supervision under §971.17(1j), Wis. Stats.
- (k) Sexually Violent Offense has the meaning set forth in Wis. Stat. sec. 980.01(6), as amended from time to time.
- (l) Temporary Residence means a place where the person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address or a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or non-consecutive days in any month and which is not the person's domicile.

3. **Residency Restrictions for Sex Offenders, Exceptions.**

- (a) Child Safety Zone Restriction. Subject to the exceptions in Section 3(c), no Sex Offender shall establish a permanent residence or temporary residence within the Town of Delafield that is within a Child Safety Zone, as determined by following a straight line from the outer property line of the permanent residence or temporary residence to the nearest outer property line of any Child Safety Location.
- (b) Original Domicile Restriction. In addition to Section 3(a), but subject to the exceptions in Section 3(c), no Sex Offender, shall establish a permanent or temporary residence within the Town of Delafield and no supervised release of a Sex Offender shall be established in Town of Delafield unless such person was domiciled in the Town of Delafield at the time of the offense resulting in the Sex Offender's most recent conviction. The original domicile restriction shall only apply to Sex Offenders whose applicable crimes or offenses were committed after January 11, 2011 when an original domicile restriction was first enacted.
- (c) Exceptions. A Sex Offender may not be found to be in violation of the residency restrictions in Section 3(a) if the Sex Offender establishes that any of the following apply:
1. The person was domiciled in the Town of Delafield prior to January 11, 2011, provided, however, that if the person was then subject to Wis. Stat. Sec. 301.45, the person must have also reported and registered the residence pursuant to Wis. Stat. Sec. 301.45 prior to such date to take advantage of the exception.
 2. The person is a minor and is not required to register under Wis. Stats. Sec. 301.45 and Sec. 301.46.
 3. The Child Safety Location began after the Sex Offender had established the permanent residence or temporary residence and reported and registered the residence if required pursuant to Wis. Stat. Sec. 301.45.
 4. The Sex Offender is subject to an active court order to serve a sentence or is otherwise involuntarily required to reside in a jail, prison, juvenile facility, or other correctional institution or mental facility within the Child Safety Zone.
- (d) Petition for Exemption.
1. A Sex Offender may seek an exemption from this Section 10.11 by petitioning to the Town Board.
 2. The Town Board shall approve an official petition form. The Sex Offender seeking an exemption must complete the petition and submit it to the Town Clerk who shall forward it to the Town Board. The Town Board shall hold a hearing on each petition, during which the Town Board may review any pertinent information and accept oral or written statements from any person. The Town Board shall base its decision on factors related to the Town's interest in promoting, protecting and improving the health, safety and welfare of the community. Applicable factors for the Town Board's consideration shall include, but are not limited to:

- a. Nature of the offense that resulted in sex offender status
- b. Date of offense
- c. Age at time of offense
- d. Recommendation of probation or parole officer
- e. Recommendation of Police Department
- f. Recommendation of any treating practitioner
- g. Counseling, treatment and rehabilitation status of sex offender
- h. Remorse of sex offender
- i. Duration of time since sex offender's incarceration
- j. Support network of sex offender
- k. Relationship of sex offender and victim(s)
- l. Presence or use of force in offense(s)
- m. Adherence to terms of probation or parole
- n. Proposals for safety assurances of sex offender
- o. Conditions to be placed on any exception from the requirements of this Ordinance.

3. The Town Board shall decide by majority vote whether to grant or deny an exemption. An exemption may be unconditional or limited to a certain address or time, or subject to other reasonable conditions. The Town Board's decision shall be final for purposes of any appeal. A written copy of the decision shall be provided to the Sex Offender and the Town of Delafield Police Department.

4. Renting Real Property to Sex Offenders, Restricted.

No person shall let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by a sex offender contrary to the provisions of Section (3) of this Ordinance.

5. Prohibited Activities by Sex Offenders, Exception.

- (a) Prohibited Activities by Sex Offenders. Except as provided in subsection 5(b), no sex offender shall participate in a holiday event in the Town of Delafield involving one or more child by means of distributing candy or other items to such child or children in relationship to Halloween, wearing a Santa Claus costume in a public place in relationship to Christmas, or wearing an Easter Bunny costume in a public place in relationship to Easter, or other similar activities that may, under the circumstances then present, tend to entice a child to have contact with a sex offender.
- (b) Exception. Events in which the sex offender is a parent or legal guardian of the child or children involved are exempt from the provisions of Section (5)(a) of this Ordinance provided that no child or children other than a child or children of the sex offender are present at the event.

6. Loitering by Sex Offender Prohibited, Exception.

- (a) Loitering by Sex Offender. No sex offender shall loiter or prowl on or within 200 feet of any Child Safety Location, at a time, or a manner not usual for law abiding individuals, under circumstances that warrant alarm for the safety of the persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself or manifestly endeavors to conceal himself or herself or any object. Unless flight by the actor or other circumstances makes it impractical, a law enforcement officer shall prior to any arrest for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him or her to identify himself or herself or explain his or her presence and conduct at the aforementioned locations. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true, and, if believed by the law enforcement officer at the time, would have dispelled the alarm.
- (b) Exception. The prohibitions set forth in section 6(a) of this Ordinance shall not apply where the sex offender is a minor who is with one or both of his or her parents or guardian at the time of the offense or the actor was exercising First Amendment rights protected by the United States

Constitution, including freedom of speech, free exercise of religion and the right of assembly.

7. Child Safety Zone Map.

The Town Clerk's Office shall maintain an official map showing Child Safety Zones within the Town. The Town Clerk's Office shall update the map at least annually to reflect any changes in the location of Child Safety Zones. The map is to be displayed in the office of the Delafield Town Clerk. In the event of a conflict, the terms of this Ordinance shall control. In no event shall a failure to update the map in compliance with this Ordinance preclude the prosecution or conviction of any sex offender under this Ordinance.

8. Penalties.

- (a) Any violation of this ordinance shall be subject to the penalties and remedies as set forth in Section 25.04 of this Code. Each day of violation shall constitute a separate offense.
- (b) In addition and not to the exclusion or prejudice of such other penalties and remedies as may apply, violation of Section 3 or Section 4 of this Ordinance shall also constitute a public nuisance, which the Town may enforce by action or proceeding to enjoin or abate such public nuisance.

10.12 REGULATION OF PORTABLE OUTHOUSES

- (1) **PROHIBITED.** No person shall build, place or maintain any portable outhouse or other moveable method of sewage disposal or cause the same to be built, located, placed, or constructed on any lot or premises within the Town limits except as follows:
 - a. The Town Building Inspector may grant permission in conjunction with the issuance of a building permit. Such permission shall be expressly set forth on the face of the building permit and shall terminate upon the Building Inspector's determination that the project for which the building permit was issued has been substantially completed, or the expiration, suspension, or revocation of the building permit by the Town, whichever occurs first.
 - b. The Building Inspector or Town Administrator may grant a permit to allow such temporary structure for a special event or other limited use, based upon a determination by the Building Inspector or Town Administrator that restroom facilities are not otherwise available or that restroom facilities are available but are not reasonably adequate for the size of the expected assemblage. The permit shall terminate 24 hours after conclusion of the special event or other use, or a specific time noted in the permit. The portable outhouse shall be removed from any premises no later than the termination time. Application for a permit under this subsection shall be made on the application form provided by the Town and may be accompanied by the fee as established by the Town Board from time to time. For purposes of this subsection, the Building Inspector and Town Administrator shall consider the proximity of existing restroom facilities without regard to whether such facilities are subject to payment of a fee for their use.
- (2) **PENALTIES.** If the owner or applicant violates or permits violation of any provision of this section, such owner or applicant shall be liable to the Town for a penalty as provided for in §25.04 of this Municipal Code for each violation of which convicted. Each day that a violation occurs or continues shall be considered a separate violation of this section.

10.15 ABATEMENT OF PUBLIC NUISANCES. (Ren. MSC `92)

(1) **ENFORCEMENT.** The Constable, Fire Chief, Building Inspector and the Highway Superintendent shall enforce those provisions of this chapter that come within the jurisdiction of their offices; and they shall make periodic inspections and inspections upon complaint to insure that such provisions are not violated. No action shall be taken under this section to abate a public nuisance unless the officer has inspected or caused to be inspected the premises where the nuisance is alleged to exist and has satisfied himself that a nuisance does in fact exist.

(2) SUMMARY ABATEMENT. If the inspecting officer determines 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 Chairman may direct the proper officer to cause the same to be abated and charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be.

(3) ABATEMENT AFTER NOTICE. If the inspecting officer determines that a public nuisance exists on private premises but that such nuisance does not threaten great and immediate danger to the public health, safety, peace, morals or decency, he shall serve notice on the person causing or maintaining the nuisance to remove the same within 10 days. If such nuisance is not removed within 10 days, the proper officer shall cause the nuisance to be removed as provided in sub. (2).

(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.

(5) COURT ORDER. Except when necessary under sub. (2), an officer hereunder shall not use force to obtain access to private property to abate a public nuisance but shall request permission to enter upon private property if such premises are occupied and, if such permission is denied, shall apply to any court having jurisdiction for an order assisting the abatement of the public nuisance.

10.16 COST OF ABATEMENT. (Ren. MSC `92)

In addition to any other penalty imposed by this chapter 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; and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge.

10.17 PENALTY. (Ren. MSC `92)

In addition to other penalties provided in this chapter, any person who shall violate any provision of this chapter, or any regulation, rule or order made hereunder, or permit or cause a public nuisance, may be subject to a penalty as provided in §25.04 of this General Code.

Chapter 11

Outdoor Lighting

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Revised February 16, 2023

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11.01 **PURPOSE AND INTENT**

The purpose of this ordinance is to improve night-time public safety, utility and security by restricting the night-time emission of light rays which are the source of light trespass and/or unnecessary glare, and/or are detrimental to the safety and/or security of persons, property or vehicular traffic, and/or are detrimental to the traditional aesthetic values of the Town and/or unnecessarily restrict persons from the peaceful enjoyment of their property. Furthermore, the ordinance is intended to regulate and reduce the nuisance caused by unnecessary intensity of artificial illumination of property and buildings, mitigate the impact on ecosystems, promote the safety and welfare of its citizens by restricting glare producing sources of light and generally establish proper levels of lighting. The intent is not to regulate residential or agricultural lighting since lighting concerns can be addressed by Chapter 823 of the Wisconsin State Statutes.

11.02 **DEFINITIONS.**

The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Acreage, net. The area of a parcel being developed for a development project including the open space required by the zoning district.

Classifications of lighting. Lighting shall be classified in one of the following categories:

- (a) *"Functional" lighting.* All outdoor lighting used for, but not limited to, outdoor sales or eating areas, assembly, advertising and other signs, recreational facilities and other

similar applications where color rendition is important to preserve the effectiveness of the activity.

- (b) *"Safety" lighting.* All outdoor lighting used for, but not limited to, illumination for walkways, roadways, equipment yards, parking lots and outdoor security where general illumination for safety or security of the grounds is the primary concern.
- (c) *"Decorative" lighting.* Any outdoor lighting used for decorative effects including, but not limited to, architectural illumination, flag and monument lighting, and illumination of trees, bushes, and similar features.
- (d) *Multi-class lighting.* Any outdoor lighting used for more than one purpose, such as security and decoration, such that its use falls under the definition of two or more classes as defined above. All multi-class lighting shall comply with the most restrictive class of which it falls under.

Color Rendition. How a light source makes the colors of objects appear to the human eye and how subtle variations in color shades are revealed.

Development project. Any residential, commercial, business, industrial, institutional or mixed use development plan which is required to be submitted to the Town for approval.

Direct illumination. Illumination resulting from light emitted directly from a lamp or luminaire, not light diffused through translucent signs or reflected from other surfaces such as the ground or building faces.

Foot-candle. A unit of light expressed in lumens per square foot.

Fully shielded fixture or full cutoff fixture. An outdoor light fixture shielded in such a manner that 100 percent of all light emitted by the fixture, either directly from the lamp or indirectly from the fixture, is projected below the horizontal plane as determined by photometric test or certified by the manufacturer.

Glare. Intense light from an illumination source which may result in visual impairment or discomfort. Also, a light ray emanating directly from a source such that it falls directly upon the eye of the observer.

Hardscape. Permanent hardscape improvements to the site including parking lots, drives, entrances, curbs, ramps, stairs, steps, medians, walkways and non-vegetated landscaping that is 10 feet or less in width. Materials may include concrete, asphalt, stone, gravel, and similar materials.

Height. The vertical distance of a light structure measured from the uppermost extremity of any light fixture, , pole or supporting member and the ground level at the light structure.

Light Fixture. See Luminaire.

Light source. A single artificial device or source whose primary function is to produce visible or near-visible radiant energy for general illumination.

Light Structure. An outdoor illuminating device consisting of a base, pole (or support structure) and light fixture.

Light trespass. Light emitted by a luminaire that shines beyond the boundaries of the property on which the luminaire is located.

Lumen. The unit used to measure the actual amount of light which is produced by a lamp. For all lamp types and sources, the initial output, as defined by the lamp or source

manufacturer, is the value to be considered. For avoidance of doubt, a lumens to watts comparison table is below:

Lumens	Incandescent Watts	Fluorescent/LED Watts
375lm	25W	6.23W
600lm	40W	10W
900lm	60W	15W
1125lm	75W	18.75W
1500lm	100W	25W
2250lm	150W	37.5W
3000lm	200W	50W

Luminaire. The complete lighting unit consisting of a lamp or lamps together with the parts designed to distribute the light, to position and protect the lamps and to connect the lamps to the power supply.

Measurement. For the purposes of this section, unless otherwise stated, illumination levels shall be measured at a point three feet above grade with the measuring device aimed directly at the light source(s) being measured. Measurements shall be taken using baffles or shields to separate the sources(s) under review from other existing or ambient sources such as streetlights, in a manner that eliminates to the greatest extent possible other light sources.

Opaque. A material that does not transmit light from an internal illumination source through that material.

Outdoor light fixtures. Outdoor electrically powered illuminating devices, outdoor lighting or reflective surfaces, lamps and similar devices, either permanently installed or portable, which are used for illumination or advertisement. Such devices shall include, but are not limited to, linear strip lights, search lights, spot lights and flood lights for:

- (a) Buildings and structures;
- (b) Recreational areas;
- (c) Parking lot areas;
- (d) Landscape and architectural lighting;
- (e) Signs (advertising or other);
- (f) Product display areas.
- (g) Private roadway and driveway lighting
- (h) Building overhangs and open canopies
- (i) Any similar use.

Outdoor light output, total. The maximum total amount of light, measured in lumens, from all outdoor light fixtures. For all lamp types and sources, the initial output, as defined by the lamp or source manufacturer, is the value to be considered.

Partially shielded fixture. An outdoor light fixture shielded in such a manner that more than zero but less than ten percent of the light emitted directly from the lamp or indirectly from the fixture is projected at angles above the horizontal, as determined by photometric test or certified by the manufacturer.

Shielding. A lighting fixture constructed in such a manner that all light emitted by the fixture, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the luminaire, is shielded from view from adjacent properties. Any structural part of the light fixture providing this shielding must be permanently affixed.

Temporary lighting. Lighting which does not conform to the provisions of this ordinance and which will not be used for more than one 30-day period within a calendar year, with one 30-day extension, unless a longer extension is granted by specific approval by the Plan Commission. Temporary lighting is intended for uses which by their nature are of limited duration; e.g., civic events, or construction projects, not including exempt lighting listed in section 11.04 (4). Temporary lighting shall be approved by the Plan Commission.

Uniformity ratio. The ratio of the average lighting level in lumens for the area to be lit to the minimum lighting level in lumens of the area to be lit.

Use, abandonment of. The relinquishment of a property, or the cessation of a use or activity by the owner or tenant for a period of six months, excluding temporary or short term interruptions for the purpose of remodeling, maintaining, or otherwise improving or rearranging a facility. A use shall be deemed abandoned when such use is suspended as evidenced by the cessation of activities or conditions which constitute the principle use of the property.

Watt. The unit used to measure the electrical power consumption of a lamp, or when describing a fixture, the fixture input wattage before ballast losses.

11.03 APPLICABILITY

- (1) This Chapter shall apply to Commercial, Business, Industrial, Institutional and all Conditional Use Permits except Keeping of Poultry or Livestock, Legal Nonconforming Use and Solar Energy Systems. Specifically, lighting of sites in the B-1, B-2, B-3, M-1, and P-1 zoning districts, and all Conditional Use Permit uses except Keeping of Poultry or Livestock, Legal Nonconforming Use and Solar Energy Systems, including but not limited to the following:
 - a. Existing commercial, business, industrial and institutional developments shall comply with these regulations no later than June 30, 2024.
 - b. All new developments, buildings, structures and modifications for:
 1. Commercial Uses
 2. Business Uses
 3. Industrial Uses
 4. Institutional uses
 - c. Any change of use to an existing building or structure, except in the case of a single tenant in a multi-tenant building, shall meet the requirements of this section for the entire property to the greatest extent possible as determined by the Plan Commission.
- (2) Subsection 11.05 shall apply to special uses not addressed in other subsections.

11.04 REGULATIONS FOR COMMERCIAL, BUSINESS, INDUSTRIAL, INSTITUTIONAL AND RELATED CONDITIONAL USE PERMIT USES.

- (1) Total outdoor lighting lumen output shall not exceed 2.5 lumens per square foot of hardscape. The following shall be included in this limit:
 - a. Outdoor lighting fixtures that are pole mounted, ground mounted, mounted on buildings or affixed in any way to provide light on the premises on which the proposed use is taking place, unless otherwise exempt as stated in this code.
 - b. Outdoor lighting fixtures that are fully shielded and installed under canopies, roof eaves and building overhangs.

- (2) All outdoor lighting fixtures shall be designed, located and specified with shielding or be a cut-off type fixture so that no glare or illumination is cast outside the boundaries of the property where the luminaire is located so as to constitute light trespass. No light levels shall be greater than 0.2 foot-candles measured at a height of 3 feet above the grade at a property line or high water mark of a lake on which the luminaire is located, except as set forth herein. Outdoor lighting shall not be aimed toward or directed at a neighboring property
 - a. All lighting.
 1. Luminaries attached to a building shall not exceed 16 feet in height from grade.
 2. All outdoor luminaries shall be reduced to 25% of total illumination by 10:00 p.m. with the following exceptions:
 - a. Commercial, business, industrial and institutional uses which remain open after 10:00 p.m. as permitted by zoning regulations or conditional use requirements shall be allowed to keep their approved outdoor lighting on for the period of time they remain open and up to one-half hour after closing.
 - b. Approved commercial, business, industrial, and institutional security lighting shall be allowed in accordance with the provisions of this Code.
 - c. Motion sensor lighting shall be allowed for security purposes.

 - b. Functional lighting.
 1. The maximum illumination of any interior or exterior illuminated sign, including subdivision signs, shall not exceed 15 foot-candles when measured with a light meter held perpendicular to the sign at a distance of 12 inches.
 2. The maximum illumination of any vertical building surface shall not exceed 10 foot-candles.

- c. Safety lighting.
 1. Parking lot lighting shall maintain a two-foot-candle average and a uniformity ratio of 12:1.
 2. The height of parking lot light structures shall not exceed 20 feet. Existing light structures that exceed the height limitation shall be allowed to remain as installed.
 3. Light structures intended for pedestrian traffic shall not exceed 10 feet in height and have average illumination levels between 0.5 and one foot-candle.
 4. Bollards shall not exceed 42 inches in height and 8,500 lumens per fixture with 0 percent of lumen output at or above the horizontal plane.
 5. Security lighting shall not exceed 25 percent of the total allowed lumen output.
 6. Lighting at entrance and exit doors shall not exceed 1.5 foot-candles at the floor or grade level.
 - d. Decorative lighting.
 1. Only the United States flag and the state flag shall be permitted to be illuminated from dusk to dawn. Other flags may be illuminated if they are located on the same pole or part of a group or array that includes the United States or state flag. Flag lighting sources shall not exceed 10,000 lamp lumens per flag pole and shall be shielded to prevent viewing the fixture opening, and designed to apply 80 percent of the fixture output onto the area of the flag.
 2. Lighting of aesthetic features for commercial, business, industrial and institutional uses, including but not limited to hardscape and landscape features, fountains, displays, and statuary shall not exceed 500 lumens per fixture.
 3. The maximum illumination of any vertical building surface or facade shall not exceed 10 foot-candles.
- (3) Prior to the erection, installation or placement of any exterior artificial light source, an application for permit shall be filed with the Town Administrator. All applications shall include
- a. a scaled plan depicting the existing and proposed number of fixtures, specific locations, intensity (stated in wattage and lumens) and total lumens.
 - b. manufacturers iso-footcandle curve reference plot
 - c. light distribution contour plan
 - d. manufacturers fixture and pole cut sheets with proposed luminaire elements clearly defined on them
 - e. type of illumination of all light sources.
 - f. chart indicating the total hardscape area of the site
 - g. chart indicating luminaries and lumen output for the entire lighting system.

The Town Administrator shall forward the information to the Plan Commission for approval. The plans submitted in compliance hereto shall not necessarily be deemed sufficient to fulfill the technical requirements of the building and electrical ordinance of the Town but are in addition thereto.

Any permit issued by the building inspector under the provisions of this section shall expire and be null and void if not implemented within one year of the date of approval. Whenever a permit is granted in conjunction with a site plan approval, such permit shall be valid for the same time period as the related site plan.

- (4) The following types of lighting shall be prohibited except as otherwise approved by Plan Commission as allowed in the exceptions below:
- a. Swivel mounted luminaries.
 - b. Outdoor neon lighting.
 - c. Any artificial light source that creates glare within the normal range of vision from any public walk or thoroughfare under normal weather conditions.
 - d. Display of intermittent lights or flashing, blinking, moving lights except as follows:
 1. Where such lights are required by state or federal law.
 2. Where such lighting is of a temporary nature including but not limited to holiday displays and grand opening events.
 - e. Laser source light. The use of laser source light or any similar high intensity light is prohibited.
 - f. Searchlights.
 - g. Light intended to illuminate naturally occurring environmental features including but not limited to wetlands, rivers, lakes and dedicated open spaces shall be prohibited except as approved as by the Plan Commission.
 - h. *Exceptions.* The Plan Commission, may approve exceptions to the provisions of this subsection where, in their opinion, strict compliance to the regulations is impractical and the alternative would further the public interest.
 - i. *Exemptions.* The following types of lighting shall be exempt from the outdoor lighting regulations:
 1. Seasonal decorations are exempt from the requirements of this chapter unless it constitutes a public nuisance (traffic, safety, etc.).
 2. Tower lighting or any other lighting which is required by federal or state regulations.
 3. Special events when use and lighting are approved by the Plan Commission and Town Board.
- (5) Property owners seeking a variance to allow existing light fixtures to remain on existing buildings shall be reviewed and approved by the Plan Commission.

11.05. REGULATIONS FOR SPECIAL USES

- (1) Illuminated outdoor recreation facilities.

- a. Lighting for outdoor recreational facilities including athletic fields, courts, or tracks shall be exempt from the lumens per acre limits of this section.
 - b. All lighting installations shall be designed to achieve no greater than the minimal illuminance levels for the activity as recommended by the Illuminating Engineering Society of North America. (IESNA RP-6)
 - c. Lighting trespass requirements are maintained.
 - d. Lighting shall only be used for the period of time that the recreational use continues.
- (2) Public and Private street lighting. Where private street lighting is installed, on private or public roads, the luminaries shall be fully shielded and not exceed 2,700 lumens per fixture.

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12.01 LICENSE FEES.

(1) GENERAL . (Rep. & rec. 99-473) The fees for the following licenses shall be established, from time to time, by separate Resolution of the Town Board:

- (a) Alcohol Beverages.
- (b) Soda Water Beverage Licenses.
- (c) Cigarette Licenses.
- (d) Direct Sellers Licenses (including non-refundable application fee) (amd. 01-527).
- (e) Dog Licenses.
- (f) Marina Licenses.
- (g) Garbage Hauler Licenses.
- (h) Concrete Surfacing of Private Drive Licenses.
- (i) Lake Pewaukee Sanitary District Licenses.
- (j) Park Permit Licenses.
- (k) Core Sampling Licenses.
- (l) Hall Rental Licenses.
- (m) Adult Oriented Establishment Licenses.

(2) ZONING . General. The fees for the following licenses shall be established, from time to time, by separate Resolution of the Town Board:

- (a) Petition Conditional Use Permits.
- (b) Petition to the Zoning Board of Appeals.
- (c) Petition to the Plan Commission or the Town Board of Supervisors.
- (d) Petition for Rezoning.

12.02 GENERAL PROVISIONS AS TO LICENSES.

(1) LICENSES OR PERMITS REQUIRED. No person shall engage in any trade, profession, business or privilege in the Town for which a license or permit is required by any provision of this General Code without first obtaining such license or permit from the Town in the manner provided in this section, unless otherwise specifically provided.

(2) APPLICATION. Unless otherwise provided, application for a license or permit shall be made in writing to the Town Clerk upon forms provided by the Town, and applicant shall state the location of the proposed activity and such other facts as may be required for or be applicable to the granting of such a license or permit.

(3) PAYMENT OF FEE. The fees required for any license or permit shall be paid at the office of the Town Clerk before the granting of the license or permit. No fee paid shall be refunded unless the license or permit is denied.

(4) BOND AND INSURANCE. All required bonds shall be executed by 2 sureties or a surety company and be subject to the approval of the Town Board. Where policies of insurance are required, such policies shall be approved as to substance and form by the Town Attorney. Satisfactory evidence of coverage by bond or insurance shall be filed with the Town before the license or permit is issued.

(5) APPROVAL OR DENIAL OF LICENSES. Where the approval of any Town or State officer is required prior to the issuance of any license or permit, such approval shall be presented to the Town before any license or permit is issued.

(6) CERTIFICATE. Licenses or permit certificates shall show the name of the licensee or permittee, the date of issue, the activity licensed and the term of the license or permit and shall be signed in the name of the Town by the Chairman and Town Clerk and be impressed with the Town seal. The Clerk shall keep a record of all licenses and permits issued.

(7) TERMS.

- (a) Unless otherwise provided, the license year shall end on June 30 of each year.
- (b) Where the issuance of licenses for a period of less than one year is permitted, the effective date of such license shall commence with the date of issuance.
- (c) Permits shall be issued for the term set forth in the permit.

(8) EXHIBITION OF CERTIFICATE. Every licensee or permittee shall carry his license or permit certificate upon his person at all times when engaged in the activity for which the license or permit was granted, except that where such activity is conducted at a fixed place or establishment, the license or permit certificate shall be exhibited at all times in some conspicuous place in his place of business. The licensee or permittee shall exhibit the license certificate when applying for a renewal and upon demand of any police officer or person representing the issuing authority.

(9) TRANSFER. Unless otherwise provided, no license or permit shall be transferable or assignable.

(10) DETERMINATIONS OF THE TOWN BOARD. All determinations made by the Town Board shall be subject to the provisions of Ch. 68, Wis. Stats.

(11) INSPECTION. Town officials may enter upon the premises where any licensed or permitted activity is being conducted for the purpose of inspection at any reasonable time.

(12) REVOCATION AND SUSPENSION OF LICENSES.

- (a) Except as otherwise provided, any license issued under this chapter may be revoked for cause by the Town Board. No license shall be revoked except upon written verified complaint filed with the Town Board by the Chairman, a member of the Town Board, the Constable or a resident of the Town. The licensee shall be served with a written copy of the charges and shall be given an opportunity to be heard before the Town Board. The licensee shall be given notice of such hearing, which shall be not more than 20 nor less than 5 days after notice, except as otherwise agreed between the parties.
- (b) At such hearing, the licensee shall be entitled to be represented by counsel, shall have the right to present and cross-examine witnesses and, upon request, may have subpoenas issued by the Chairman or presiding officer of the Board to compel the attendance of witnesses.
- (c) After hearing the evidence, the Board may revoke such license or impose a limited period of suspension. The determination of the Board shall be final, subject to review under Ch. 68, Wis. Stats., provided the licensee shall not be entitled to a further hearing unless granted by the Town Board.
- (d) The Constable shall repossess any license revoked hereunder.
- (e) If the licensee does not apply for a hearing within the time provided, the license may be revoked by the Town Board.

12.03 ALCOHOL BEVERAGES.

(1) STATE STATUTES ADOPTED. The provisions of Ch. 125, Wis. Stats., defining and regulating the sale, procurement, dispensing, consumption and transfer of alcohol beverages, including provisions relating to persons under the legal drinking age, are adopted and made a part of this section by reference. A violation of any of such provisions shall constitute a violation of this section.

(2) LICENSES, PERMITS, AUTHORIZATION REQUIRED.

- (a) When Required . Except as provided by §125.06, Wis. Stats., no person shall within the Town, serve, sell, manufacture, rectify, brew or engage in any other activity for which this chapter or Ch. 125, Wis. Stats., requires a license, permit or other authorization without holding the appropriate license, permit or other authorization as provided in this chapter. See §125.04(1), Wis. Stats.
- (b) Separate License Required for Each Place of Sale. Except for licensed public warehouses, a license shall be required for each location or premises where alcohol beverages are stored, sold or offered for sale. See §125.04(9), Wis. Stats.

(3) **CLASSES OF LICENSES AND FEES.** The following classes and denominations of licenses shall be issued by the Town Clerk under the authority of the Town Board upon compliance with law and payment of the license fees as set forth from time to time by resolution of the Town Board which, when so issued, shall permit the holder to sell, deal or traffic in alcohol beverages as provided in the referenced State statute.

- (a) Class "A" Fermented Malt Beverage Retailer's License. (Rep. & rec. 2003-004) These licenses are issued on or after July 1st for a one year term, expiring on June 30th. A license for a period of less than 12 months shall be prorated according to the number of months or fraction thereof for which the license is issued. See §125.25(4), Wis. Stats.
- (b) Class "B" Fermented Malt Beverage Retailer's License. (Rep. & rec. 2003-004)
 - 1. These licenses are issued on or after July 1st for a one year term, expiring on June 30th. A license for a period of less than 12 months shall be prorated according to the number of months or fraction thereof for which the license is issued. See §125.26(1) & (4), Wis. Stats.
 - 2. Six Month License. A Class "B" license may be issued at any time for a 6 month period for 50% of the annual license fee. Such license shall not be renewable during the calendar year in which issued. See §125.26(5), Wis. Stats.
 - 3. Temporary - Special Event (Picnic). (Rep. & rec. 2016-02) Available to certain bona fide clubs, chambers of commerce, fair associations, agricultural societies, churches, lodges or societies that have been in existence for 6 months or more. See §125.26(6), Wis. Stats.
- (c) Wholesaler's Fermented Malt Beverage License. (Rep. & rec. 2003-004) This is an annual license. The license fee is per year or fraction thereof (not prorated). See §125.28, Wis. Stats.
- (d) Retail "Class A" Liquor License. (Rep. & rec. 2003-004) See §125.51(2), Wis. Stats.
 - 1. These licenses are issued on or after July 1st for a one year term, expiring on June 30th. A license for a period of less than 12 months shall be prorated according to the number of months or fraction thereof for which the license is issued.
 - 2. Six Month License. A "Class A" license may be issued at any time for a 6 month period for 50% of the annual license fee. Such license shall not be renewable during the calendar year in which issued. See §125.51(9), Wis. Stats.
- (e) Retail "Class B" Liquor License. (Rep. & rec. 2003-004) A retail "Class B" liquor license permits its holder to sell liquor for consumption upon the premises where sold by the glass only. It also authorizes the sale of intoxicating liquor in the original package or container in multiples not to exceed 4 liters at any one time, and wine in original container or package with no quantity limit, to be consumed off the licensed premises. See §125.51(3)(b), Wis. Stats.
 - 1. These licenses are issued on or after July 1st for a one year term, expiring on June 30th. A license for a period of less than 12 months shall be prorated according to the number of months or fraction thereof for which the license is issued.

2. Six Month License. A "Class B" license may be issued at any time for a 6 month period for 50% of the annual license fee. Such license shall not be renewable during the calendar year in which issued. See §125.51(9), Wis. Stats.
 3. Temporary - Special Event License. (Rep. and recr. 2016-02) Available to certain bona fide clubs, chambers of commerce, fair associations, agricultural societies, churches, lodges or societies that have been in existence for 6 months or more. See §125.51(10), Wis. Stats. The amount of the license fee shall be as set forth from time to time by resolution of the Town Board, except that no fee shall be charged if the person applies at the same time for a Class "B" license under §12.03(3)(b)3. for the same event. Not more than 2 licenses may be issued under this subsection to qualified groups under §125.51(10), Wis. Stats. in any 12 month period, except for multiple-license events that may be allowed per Section 125.51(b), Wis. Stats.
- (f) Operator's License. See §125.17, Wis. Stats. (Rep. & recr. #94-372)
1. Regular Operator's License.
 - a. Regular Operator's Licenses shall be granted by the Town Administrator as an authorized designated officer according to §125.17, or by the Town Board to any individual who is qualified under §125.04(5), Wis. Stats., for the purpose of complying with §§ 125.32(2) and 125.68(2), or 125.06(3g) Wis. Stats., and upon payment of the annual license fee. (Rep. & rec. 2022-01)
 - b. Regular Operator's Licenses may be issued only on written application on forms provided by the Town.
 - c. Regular Operator's Licenses shall be valid for 2 years and shall expire on June 30 of the even numbered years.
 - d. If the remaining license period is less than 12 months, an applicant for a Regular Operator's License shall pay half the fee amount set forth from time to time by resolution of the Town Board. (Rep. & rec. 2003-004)
 - e. Repealed 2018-02
 2. Provisional Operator's License.
 - a. The Town Administrator shall issue a Provisional Operator's License to an applicant in case of a bona fide emergency. An emergency shall be caused by such things as death, disability, absence of the regular operator on the premises and the like. The Town Administrator before authorizing such issuance, shall determine if the applicant has a satisfactory record, and probably would be issued a Regular Operator's License. The license shall be valid for a period not to exceed 60 days unless sooner revoked by the Town Board. A Provisional Operator's license may be issued in accordance with §125.17(6), Wis. Stats. A Provisional Operator's License may not be issued to any person who has been denied a Regular Operator's License by the Town. (Rep. & rec. 2022-01).
 - b. The Town Board or its authorized designee shall issue a Provisional Operator's License to a person who is enrolled in a training course and has applied for a Regular Operator's License pursuant to §125.17(6), Wis. Stats. A Provisional Operator's License may not be issued to any person who has been denied a Regular Operator's License by the Town Board. The Town Board shall revoke the Provisional Operator's License if the applicant fails to successfully complete the course in which he or she is enrolled. (Rep. & rec. 2003-004)
 - c. The fee for the Provisional Operator's Licenses shall be as set forth from time to time by resolution of the Town Board but no greater than the maximum amount allowed by

statute. (Rep. & rec. 2003-004)

- d. The official who issued the Provisional Operator's License may revoke the license if he or she discovers that the holder of the license made a false statement on the application.
- (g) Class C Wine License. (Cr. MSC `92) A Class C license authorizes the retail sale of wine by the glass or in opened original container for consumption on the premises where sold.
- (h) Provisional Retail License. (Cr. #95-410) See § 125.185, Wis. Stats.
 1. The Town Clerk shall issue a Provisional Retail License to any person who has applied for a Class A Fermented Malt Beverage Retailer's License, a Class B Fermented Malt Beverage Retailer's License, a retail Class A Liquor License, a retail Class B Liquor License, or a Class C Wine License and whose license application has been approved by the Town Board except for the failure of the applicant to have completed a Responsible Beverage Server Course as required under § 125.04(5)(a)5, Wis. Stats. The Provisional Retail License shall authorize only those activities authorized by the type of retail license applied for and shall only be issued to an applicant who is in the course of completing a Responsible Beverage Server Course as required under § 125.04(5)(a)5, Wis. Stats. (Rep. & rec. 2003-004)
 2. A Provisional Retail License shall expire sixty (60) days after the issuance of the Provisional Retail License or upon the issuance of the Class A Fermented Malt Beverage Retailer's License, a Class B Fermented Malt Beverage Retailer's License, a retail Class A Liquor License, a retail Class B Liquor License, or a Class C Wine License to the holder, whichever is sooner.
 3. The Town Clerk may revoke the Provisional Retail License if he or she discovers that the holder of the license made a false statement on the application.
 4. The fee for a Provisional Retail License shall be as set forth from time to time by resolution of the Town Board but no greater than the maximum amount allowed by statute. (Rep. & rec. 2003-004)
 5. No person may hold more than one Provisional Retail License for each type of license applied for by the holder per year.
 6. No person shall apply for or obtain a Provisional Retail License for purposes of circumventing the license requirements of this Code. A Provisional Retail License shall only be issued to a person who has satisfied all provisions of this Code and whose application for a regular Retail Malt Beverage, Liquor or Wine License has been approved by the Town Board, but who cannot obtain such license because of failure to complete the Responsible Beverage Server Course as required under § 125.04(5)(a)5, Wis. Stats.

(4) LICENSE APPLICATION.

- (a) Form. Application for a license to sell or deal in intoxicating liquor or fermented malt beverages shall be made in writing on forms prescribed by the Wisconsin Department of Revenue and filed with the Town Clerk at least 15 days prior to issuance. The premises shall be physically described, including every room and storage space to be covered by the license and including all rooms joined by connecting entrances or not separated by a solid wall.
- (b) Application to be Notarized. The application shall be signed and sworn to by the applicant as provided by §887.01, Wis. Stats.

- (c) Publication. Prior to issuance of a license under this section, the Town Clerk shall publish notice of the application in the official Town newspaper.
- (d) List of Licensees. (Am. MSC `90) By July 15 of each year, the Clerk shall forward to the State Department of Revenue a list containing the name, address and trade name of each person holding a license issued under this section, except a picnic, manager's or operator's license.

(5) LICENSE RESTRICTIONS.

- (a) Statutory Requirements. (Am. MSC `88) Licenses shall be issued only to persons eligible therefore under §125.04, Wis. Stats.
- (b) Location.
 1. No retail "Class A" or "Class B" license shall be issued for premises the main entrance of which is less than 300' from the main entrance of any established public school, parochial school, hospital or church. Such distance shall be measured by the shortest route along the highway from the closest point of the main entrance of such school, church or hospital to the main entrance to the premises covered by the license.
 2. This paragraph shall not apply to premises licensed as such on June 30, 1947, nor shall it apply to any premises licensed as such prior to the occupation of real property within 300' thereof by any school, hospital or church building.
- (c) Violations of Liquor or Beer Laws or Ordinances. No retail Class A or B license shall be issued to any person who has been convicted of a violation of any federal or State liquor or fermented malt beverage law or the provisions of this section or whose license has been revoked under §125.12, Wis. Stats., during one year prior to such application. A conviction of a member of a partnership or the partnership itself shall make the partnership or any member thereof ineligible for such license for one year.
- (d) Health and Sanitation Requirements. No retail Class B license shall be issued for any premises which does not conform to the sanitary, safety and health requirements of the State Department of Industry, Labor and Human Relations pertaining to buildings and plumbing, to the rules and regulations of the State Department of Health and Social Services applicable to restaurants and to all such ordinances and regulations adopted by the Town Board.
- (e) License Quota. The number of persons and places that may be granted a retail Class B liquor license under this section is limited as provided in §125.51(4), Wis. Stats.
- (f) Corporations. (Am. MSC `87) No corporation organized under the laws of the State or of any other state or foreign country may be issued any alcohol beverage license or permit unless such corporation meets the requirements of §125.04(6), Wis. Stats.
- (g) Age Requirement. (Am. MSC `90) No license hereunder, except an operator's license, shall be granted to any person who has not attained the legal drinking age. Operator's licenses may be issued only to applicants who have attained the age of 18.
- (h) (rep. & renumbered #2003-004)
- (i) Delinquent Taxes, Assessments and Claims. No license shall be granted for any premises for which taxes, assessments or other claims of the Town are delinquent and unpaid, or to any person delinquent in payment of such claims, including unpaid forfeiture judgments, to the Town.

- (j) Issuance for Sales in Dwellings Prohibited. No license shall be issued to any person for the purpose of possessing, selling or offering for sale any alcohol beverages in any dwelling house, flat or residential apartment.
- (k) Payment of Fee. (Cr. # 2004-04). If the governing body of the municipality or other authorized person or entity approves the issuance of a license or permit under the ordinance and the required fee is not paid within sixty (60) days after the date of approval, such failure to pay shall be grounds for denial, suspension or revocation or non-renewal of the approval of the license or permit in accordance with the provisions of this ordinance and the laws of Wisconsin.

(6) FORM AND EXPIRATION OF LICENSES.

- (a) All licenses shall be numbered in the order in which they are issued and shall state clearly the specific premises for which granted, the date of issuance, the fee paid and the name of the licensee and, unless sooner revoked, shall expire on June 30 thereafter except as otherwise provided by law. The Town Clerk shall affix his or her affidavit as required by §125.04(4), Wis. Stats.
- (b) Surrender of License. No new alcohol beverage license will be released to the possession of the new license holder until such time as the old alcohol beverage license is physically surrendered to the Town Clerk.

(7) TRANSFER OF LICENSES.

- (a) As to Person. No license shall be transferable as to licensee except as provided by §125.04(12), Wis. Stats.
- (b) As to Place. Licenses issued pursuant to this section may be transferred to another premises once during any license year as provided in §125.04(12), Wis. Stats. Application for such transfer shall be made on blanks furnished by the State Department of Revenue. Proceedings for transfer shall be had in the same manner and form as the original application. The fee for such transfer shall be as set forth from time to time by resolution of the Town Board. (Rep. & rec. 2003-004)

(8) POSTING AND CARE OF LICENSES. Every license or permit required under this section shall be framed and posted and at all times displayed as provided in §125.04(10) Wis. Stats., No person shall post such license or permit any other person to post it upon premises other than those mentioned in the application, or knowingly deface or destroy such license.

(9) REGULATION OF LICENSED PREMISES AND LICENSEES.

- (a) Gambling and Disorderly Conduct Prohibited. Each licensed and permitted premises shall at all times be conducted in an orderly manner; and no disorderly, riotous or indecent conduct or gambling shall be allowed at any time on any such premises.
- (b) Employment of Underage Person. (Am. MSC `87) No licensee shall employ any underage person who does not have a valid operator's license to serve, sell, dispense or give away any alcohol beverage.
- (c) Sales by Clubs. No club shall sell intoxicating liquors or fermented malt beverages except to members and guests invited by members.
- (d) Safety and Sanitation Requirements. Each licensed premises shall be maintained and conducted in a sanitary manner and shall be a safe and proper place for the purpose for which used.

(10) CLOSING HOURS. No premises for which an alcohol beverage license has been issued shall remain open for the sale of alcohol beverages:

- (a) If a retail Class A fermented malt beverage license, between midnight and 8 a.m.
- (b) If a retail Class A intoxicating liquor license, between 9 p.m. and 8 a.m.
- (c) (Rep. and recr. 2016-02) If a retail Class B license, between 2 a.m. and 6 a.m. on weekdays and between 2:30 a.m. and 6 a.m. on Saturdays and Sundays. On January 1 premises operating under a Class B license are not required to close. No package, container or bottle sales may be made after midnight. No person may serve wine after 9:00 p.m. on premises covered by a temporary "Class B" license issued as provided in Section 125.51(10)(b), Wis. Stats.
- (d) Hotels and restaurants, the principal business of which is the furnishing of food or lodging to patrons, bowling alleys, indoor horseshoe pitching facilities, curling clubs, golf courses and golf clubhouses may remain open for the conduct of their regular business, but no intoxicating liquors or fermented malt beverages shall be sold during prohibited hours. (Am. MSC '91)

(11) REVOCATION AND SUSPENSION OF LICENSES.

- (a) Procedure. Whenever the holder of any license under this section violates any portion of this section, proceedings for the revocation or suspension of such license may be instituted in the manner and under the procedure established by §125.12, Wis. Stats., and the provisions therein relating to granting a new license shall likewise be applicable.
- (b) Effect of Revocation of License. Twelve months shall elapse before another license shall be granted to the person whose license was revoked.
- (c) Grounds for Revocation of Alcohol Beverage Licenses. (Renumb. 2003-004) Any alcohol beverage license issued pursuant to the general ordinances of the Town shall be subject to such further regulation and restriction as may be imposed by the Town Board by amendment to this section or by the enactment of a new ordinance. Further, the Town Board is specifically authorized to impose reasonable conditions upon any alcohol beverage license. Further, the Town Board is specifically authorized to impose reasonable conditions upon any alcohol beverage license. If any licensee shall fail or neglect to meet the requirements imposed by such new restrictions and regulations or the conditions imposed by the Town, his license may be revoked, not renewed, suspended or cancelled in accordance with this section. In the case of revocation, nonrenewal, suspension or cancellation of any license for any violation of any provision of this subsection in accordance with this section or by the court or for any reasonable cause, no refund shall be made of any part of the license fee. If a license issued hereunder is not used within 60 days after its issuance or its usage is discontinued for a period of 60 days after its issuance or its usage is discontinued for a period of 60 days or more, such situation may be grounds for cancellation, suspension, revocation or nonrenewal of the license in accordance with the provisions of this section and the laws of Wisconsin.

(12) NONRENEWAL OF LICENSES. Before renewal of any license issued under this section is refused, the licensee shall be given written notice of any charges or violations or the reasons proposed for nonrenewal and a copy of any proposed motion for nonrenewal and shall have an opportunity to be heard before the Town Board.

(13) NONUSE OF LICENSE. (Rep. & recr. #95-405, Renumb. 2003-004) If a license or permit issued under this section is not used within 60 days after its issuance or its usage is discontinued for a period of

60 days or more, such nonuse shall be grounds for cancellation, suspension, revocation or nonrenewal of the license or permit in accordance with the provisions of this section and State law.

(14) VIOLATIONS BY AGENTS AND EMPLOYEES. (Ren. 2003-004) A violation of this section by an authorized agent or employee of a licensee shall constitute a violation by the licensee.

(15) PREMISES REQUIRED FOR LICENSE. (Cr. #90-246, Ren. 2003-004)

- (a) Alcohol Beverage Licenses Required a Premises. In the Town no alcohol beverage license will be issued, unless there is a building in existence that is the licensed premises.
- (b) Transfer of Alcohol Beverage License. An alcohol beverage license shall be granted only for a building described as the premises and shall remain at that premises, unless movement thereof is approved by the Town Board.
- (c) Exception. In the event of fire or loss of the premises by act of God or calamity at the request of the owner of such premises, the alcohol beverage license may be maintained and renewed while the premises is being restored, subject to the provisions of par. (e).

12.04 SODA WATER BEVERAGES. Section 66.053, Wis. Stats., is adopted by reference and made a part of this chapter. See §12.01 for required license fee.

12.05 DIRECT SELLERS.

(1) REGISTRATION REQUIRED. No direct seller shall engage in direct sales within the Town without being registered for that purpose as provided herein.

(2) DEFINITIONS. For the purposes of this section, the following words and phrases shall be defined as:

- (a) Direct Seller. Any individual who, for himself or for a partnership, association or corporation, sells goods or takes sales orders for the later delivery of goods at any location other than the permanent business place or residence of such individual, partnership, association or corporation, and shall include, but not be limited to, peddlers, solicitors and transient merchants. The sale of goods includes donations required by the direct seller for the retention of goods by a donor or prospective customer.
- (b) Permanent Merchant. A direct seller who, for at least one year prior to the consideration of the application of this section to such merchant, has continuously operated an established place of business in the Town, or has continuously resided in the Town and now does business from his residence.
- (c) Goods. Includes personal property of any kind and shall include goods provided incidental to services offered or sold.
- (d) Charitable Organization. Includes any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to be such.
- (e) Clerk. The Town Clerk.

(3) EXEMPTIONS. The following shall be exempt from all provisions of this section:

- (a) Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes.
- (b) Any person selling goods at wholesale to dealers in such goods.

- (c) Any person selling agricultural products which such person has grown.
- (d) Any permanent merchant or employee thereof who takes orders away from the established place of business for goods regularly offered for sale by such merchant within this County and who delivers such goods in their regular course of business.
- (e) Any person who has an established place of business where the goods being sold are offered for sale on a regular basis, and in which the buyer has initiated contact with and specifically requested a home visit by such person.
- (f) Any person who has had, or one who represents a company which has had, a prior business transaction, such as a prior sale or credit arrangement, with the prospective customer.
- (g) Any person selling or offering for sale a service unconnected with the sale or offering for sale of goods.
- (h) Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law.
- (i) Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of such organization, provided that there is submitted to the Clerk proof that such charitable organization is registered under §440.41, Wis. Stats. Any charitable organization not registered under §440.41, Wis. Stats., or which is exempt from that statute's registration requirements, shall be required to register under this section;
- (j) Any person who claims to be a permanent merchant, but against whom complaint has been made to the Clerk that such person is a transient merchant; provided that there is submitted to the Clerk proof that such person has leased for at least one year, or purchased, the premises from which he is conducting business, or proof that such person has conducted such business in the Town for at least one year prior to the date complaint was made.

(4) REGISTRATION.

- (a) Applicants for registration shall complete and return to the Clerk a registration form furnished by the Clerk which shall require the following information:
 1. Name, permanent address and telephone number and temporary address, if any.
 2. Age, height, weight, color of hair and eyes.
 3. Name, address and telephone number of the person, firm, association or corporation that the direct seller represents or is employed by, or whose merchandise is being sold.
 4. Temporary address and telephone number from which business shall be conducted, if any.
 5. Nature of business to be conducted and a brief description of the goods offered and any services offered.
 6. Proposed method of delivery of goods, if applicable.
 7. Make, model and license number of any vehicle to be used by applicant in the conduct of his business.
 8. Last cities, villages, towns, not to exceed 3, where applicant conducted similar business.

9. Place where applicant can be contacted for at least 7 days after leaving the Town.
 10. Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's direct seller's business within the last 5 yrs.; the nature of the offense and the place of conviction.
- (b) Applicant's shall present to the Clerk for examination:
1. A driver's license or some other proof of identity as may be reasonably required.
 2. A State certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing and measuring devices approved by State authorities.
 3. A State health officer's certificate where applicant's business involves the handling of food or clothing and is required to be certified under State law. Such certificate shall state that applicant is apparently free from any contagious or infectious disease, dated not more than 90 days prior to the date the application for license is made.
- (c) At the time the registration is returned, the fee required by §12.01 shall be paid to the Clerk to cover the cost of processing such registration, and the applicant shall sign a statement appointing the Clerk his agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant, if the applicant cannot, after reasonable effort, be served personally. Upon payment of the fee and the signing of the statement, the Clerk shall register the applicant as a direct seller and date the entry. Such registration shall be valid for a period of 90 days from the date of entry, subject to subsequent refusal as provided in sub. (5)(b) below. The Clerk shall issue the direct seller a laminated picture identification card which the direct seller shall wear in plain view at all times when the direct seller is engaged in selling goods or taking sales orders. Failure to comply with wearing the identification card may result in the revocation of the direct seller permit. (amd. 01-527)
- (d) DIRECT SELLERS APPLICATION FEE. In addition to the license fee, direct sellers applying for registration also shall pay a non-refundable application fee. The application fee shall be established from time to time by separate Resolution of the Town Board.

(5) INVESTIGATION.

- (a) Upon receipt of each application, the Clerk may refer it immediately to the Constable who may make and complete an investigation of the statements made in such registration.
- (b) The Clerk shall refuse to register the applicant if it is determined, pursuant to the investigation above, that the application contains any material omission or materially inaccurate statement; complaints of a material nature have been received against the applicant by authorities in the last cities, villages and towns, not exceeding 3, in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation or ordinance violation within the last 5 yrs., the nature of which is directly related to the applicant's fitness to engage in direct selling; or the applicant failed to comply with any applicant provisions of sub. (4)(b) above.

(6) APPEAL. Any person denied registration may appeal the denial through the appeal procedure provided by Ch. 68, Wis. Stats.

(7) REGULATION OF DIRECT SELLERS.

(a) Prohibited Practices.

1. A direct seller shall be prohibited from calling at any dwelling or other place between the hours of 9 p.m. and 9 a.m., except by appointment; calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors" or words of similar meaning; calling at the rear door of any dwelling place or remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.
2. A direct seller shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods offered for sale, the purpose of his visit, his identity or the identity of the organization he represents. A charitable organization direct seller shall specifically disclose what portion of the sale price of goods being offered shall actually be used for the charitable purpose for which the organization is soliciting. Such portion shall be expressed as a percentage of the sale price of the goods.
3. No direct seller shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.
4. No direct seller shall make any loud noises or use any sound amplifying device to attract customers if the noise produced is capable of being plainly heard outside a 100' radius of the source.
5. No direct seller shall allow rubbish or litter to accumulate in or around the area in which he is conducting business.

(b) Disclosure Requirements.

1. After the initial greeting, and before any other statement is made to a prospective customer, a direct seller shall expressly disclose his name, the name of the company or organization he is affiliated with, if any, and the identity of goods or services he offers to sell.
2. If the sale of goods is made by a direct seller, or any sales order for the later delivery of goods is taken by the seller, the buyer shall have the right to cancel the transaction if it involves the extension of credit or is a cash transaction of more than \$25, in accordance with the procedure as set forth in §423.203, Wis. Stats., the seller shall give the buyer 2 copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of §423.203(1)(a), (b) and (c), (2) and (3), Wis. Stats.
3. If the direct seller takes a sales order for the later delivery of goods, he shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement, the amount paid in advance, whether full, partial or no advance payment is made, the name, address and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof.

(8) RECORDS. The Constable shall report to the Clerk all convictions for violation of this section and the Clerk shall note any such violation on the record of the registrant convicted.

(9) REVOCATION OF REGISTRATION.

- (a) Registration may be revoked by the Town Board after notice and hearing, if the registrant made any material omission or materially inaccurate statement in the application of registration; made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in direct sales; violated any provision of this

section; or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in direct selling.

- (c) Written notice of the hearing shall be served personally on the registrant at least 72 hours prior to the time set for the hearing. Such notice shall contain the time and place of hearing and a statement of the facts upon which the hearing will be based.

12.06 DOGS, HOUSEHOLD PETS, ANIMALS.

(1) STATE LAWS ADOPTED. Ch. 174, Wis. Stats., exclusive of any penalties, is adopted by reference and made a part of this chapter so far as applicable.

(2) LICENSE REQUIRED. Every owner of a dog more than 5 months of age on January 1 of any year or 5 months of age within the license year, January 1 through December 31 of each year, shall annually or within 30 days from the date such dog becomes 5 months of age, at the time and in the manner provided by law for the payment of personal property taxes, pay to the Treasurer his dog license tax and obtain a license therefor.

(3) DOGS, HOUSEHOLD PETS, ANIMALS RUNNING AT LARGE. (Rep. & rec. #95-400)

- (a) Prohibited. No owner, keeper or person having physical possession of any dog, other household pet or any other animal, shall permit the same to run at large at any place within the Town, unless accompanied and under the control of the owner, keeper or person having physical custody of the dog, other household pet or animal. A dog, other household pet or animal will be considered running at large under this section if it is upon the property of another without consent of the owner or occupant of that property. The restrictions set forth herein shall not be construed as to prevent any dog, household pet or animal running at large upon the premises of the owner, keeper or person having physical custody of the dog as long as the same remains on the premises.
- (b) Penalty. Any person who shall allow a dog, other household pet or animal to run at large in violation of (a) above shall be subject to forfeitures in an amount as may be established by the Town Board from time to time by separate resolution.

(4) VICIOUS DOGS. (Rep. and rec. #93-353) No person shall keep a vicious dog within the Town. A showing that a dog has bitten, attacked or injured any person or animal shall constitute a prima facie showing that such dog is vicious.

(5) NOISY DOGS PROHIBITED. No person shall keep a dog which by barking, fighting or howling disturbs the peace and quiet of the neighborhood.

(6) IMPOUNDMENT. (Rep. & rec. #95-400)

- (a) The Town Law Enforcement Officer or any officer appointed by the Town Board shall apprehend any dog, other household pet or animal running at large within the Town, not on the premises of its owner or keeper, as required by this section, or any dog suspected of having rabies, and confine the same to such facility or in such manner as may be provided by the Town Board.
- (b) Examination for Rabies. The keeper of the pound shall keep any dog suspected of rabies for such period as the Health Officer shall deem necessary to determine whether such dog has rabies. If the dog is found to have rabies, it shall be disposed of in a humane manner.
- (c) Disposition of Unclaimed Dogs. (Rep. & rec. #95-400) All dogs, other household pets or animals apprehended and confined as provided by the Town Board shall be kept for a period of seven (7) days. If any dog, other household pet or animal is not claimed by the rightful owner within such time, it may be sold for the amount incurred in keeping the dog or it may be humanely destroyed.

- (d) Owner to Pay Costs. The owner or keeper of any dog, other household pet or animal confined as provided by the Town Board may reclaim such dog, other household pet or animal at any time before the same is disposed of upon payment of all costs and charges incurred by the Town in impounding and keeping such dog, other household pet or animal.

(7) **NUMBER OF DOGS LIMITED.** (Rep. & rec. #92-325) No person shall keep more than the following number of dogs over the age of 5 months in the following units in the Town, except in a kennel authorized pursuant to Ch. 17 of this Code:

Condominium Unit	One/residential unit
Apartment Unit	One/residential unit
Townhouses/Duplexes	One/residential unit
Single Family Home	3/residential unit
Nonconforming Residential Units (where more than one residential unit legally exists on a single lot)	One/residential unit

(8) **EXEMPTION OF DOGS FOR THE BLIND.** Every dog specially trained to lead blind persons shall be exempt from dog license tax and every taxpayer owning such dog shall annually receive a free dog license from the local collecting officer upon application therefore.

(9) **CONTROL OF DEFECATION.** (Cr. #95-394)

- (a) It shall be unlawful for any person to cause or permit a dog to be on any property, public or private, not owned or possessed by such person and without the consent of the owner of the property, unless such person has in his immediate possession a device for the removal of excrement and a depository for the transmission of excrement to a receptacle located upon property owned or possessed by such person. This provision shall not apply to handicapped persons owning or possessing dogs trained to assist such person to accommodate such person's handicap.
- (b) It shall be unlawful for any person in control of, causing or permitting any dog to be on any property, public or private, not owned or possessed by such person and without the consent of the owner of the property to fail to remove excrement left by such dog to a proper receptacle located on property owned or possessed by such person. This provision shall not apply to handicapped persons owning or possessing dogs trained to assist such person to accommodate such person's handicap.
- (c) Notwithstanding any provisions of this code to the contrary, any person violating any of the foregoing provisions of this Section 12.06(9) shall be give a written warning for the first offense, shall be fined not less than Forty (\$40.00) dollars for the second offense, Sixty (\$60.00) dollars for the third offense, One Hundred (\$100.00) dollars for the fourth offense and each offense thereafter, together with the costs of prosecution.

12.07 REGULATING RECYCLING THROUGH PRIVATE GARBAGE CONTRACTORS. (Rep. & rec. #92-310)

(1) **DEFINITIONS.** The following terms have the meanings indicated:

Garbage Contractor. A person who collects garbage, rubbish or waste materials for hire in the Town.

Households. Refers to dwellings of one or more families having pickup and collection service.

Pickup. Refers to recyclable and nonrecyclable items collected from a household.

Recyclable Materials. Materials which are deemed by the Waukesha County multi-material recycling facility to be recyclable including, but not limited to, the following:

1. Glass containers - various colors.
2. Aluminum cans.
3. Steel/tin cans.
4. Plastic bottles PETE and HDPE Nos. 1 and 2.
5. Newspapers.

(2) VIOLATIONS AND APPLICATION.

- (a) No homeowner or apartment dweller shall fail to separate recyclables from nonrecyclable materials.
- (b) (Am. #94-367) No burning or burying of recyclable materials which are deemed recyclable under (1).
- (c) Nothing in this section shall be construed as requiring any person to utilize or accept the recycling service provided by a specific garbage contractor.

(3) LICENSING AND REGULATION.

- (a) No person may collect garbage, rubbish or waste material or recyclable materials, unless licensed by the Town. Such person serving as a garbage contractor shall provide recycling service to its customers for all collection which will include recyclable materials to be picked up on the same day as such garbage contractor's regular pickup or such garbage contractor shall subcontract with a registered garbage contractor to provide such recycling pickup service to its customers pursuant to this section. Nothing in this section shall be construed to limit collection service to single family households. This section shall not apply to municipal workers or construction contractors removing scrap and debris from building sites or owners and/or occupants of homes, apartment buildings, condominiums or other dwellings removing material from their particular property.
- (b) Licensing applications and licenses shall be on forms prepared and furnished by the Town Clerk and shall set forth the name and address of the applicant, description of vehicles used and such other information as may be required by the Clerk or the Town Board. The license period shall be from January 1 to December 31 each year. Fees shall be paid annually. The fee is to be determined by the Town Board.
- (c) It shall be the right of any garbage contractor to refuse to pick up trash and recyclables not properly separated. This garbage shall be removed from the set out location by the person who put the unseparated materials out for pickup.
- (d) The garbage contractors shall collect and keep newspapers and other recyclable materials separate from nonrecyclable materials. Recyclables picked up in a commingled fashion shall, along with newspapers, be delivered to the Waukesha County multi-material recycling facility.
- (e) Garbage contractors shall keep records of the amount and types of recyclables and the amount of garbage collected by tons or cubic yards, the disposition of recyclables and the name of the landfill where garbage is dumped and report the same to the Town Clerk every 3 months.
- (f) Haulers may charge an additional fee for removal of leaves, grass, plant debris, brush or other yard wastes. However, no such materials may be dumped at the recycling site.

- (g) Each vehicle shall have a hauling body with closed joints to prevent the dripping or leakage of liquid or debris and with adequate means to cover and keep the material securely within the hauling body. Each vehicle shall be kept well painted, clean and in good repair and reasonably free from odors. The vehicle shall bear the name and address of the owner.
- (h) Collectors shall so far as possible transfer the contents of all containers into their vehicles without spilling the contents on driveways, walks, yards or streets; shall clean up all of such contents as may be spilled during collection; and shall completely empty containers and replace lids.

(4) SCAVENGING PROHIBITED. Recyclables placed for collection shall remain the property of the householder until such time as the garbage contractor or its authorized agent shall take possession of such recyclables. No person unauthorized by the householder or recycling collection shall collect or cause to be collected any such items.

(5) INSURANCE AND INDEMNIFICATION. The issuance of a license to a contractor by the Town under this section does not constitute a representation or warranty by the Town as to the contractor and the contractor shall hold the Town harmless from any and all claims and liability whatsoever due to the collection and disposal of any materials pursuant to the license. The contractor shall be covered by insurance against public liability and property damage to the limit as set forth from time to time by resolution of the Town Board which may be evidenced by delivering a copy of a certificate of insurance to the Town Clerk. Failure to obtain or maintain such insurance shall result in immediate revocation of the contractor's license.

(6) CARE OF CONTAINERS. The employees of the contractor shall handle the permitted containers in which garbage, refuse, rubbish and recyclables are placed in a careful manner and return the containers to locations provided after the containers have been emptied. Upon any container being damaged through mishandling or negligence of employees of the contractor, the same shall be restored to its former condition or replaced at the contractor's expense.

(7) EFFECTIVE DATE. Pickup for recyclables is effective April 1, 1992.

12.08 ADULT ORIENTED ESTABLISHMENTS. (Rep. & Rec. 2011-007)

(1) FINDINGS OF FACT. The Town Board finds that Adult-Oriented Establishments operating in the Town require special licensing by the Town in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the Town.

Based on a review of studies conducted in Phoenix AZ, Garden Grove CA, Los Angeles CA, Whittier CA, Indianapolis IN, Minneapolis MN, St. Paul MN, Cleveland OH, Oklahoma City OK, Amarillo TX, Austin TX, Beaumont TX, Houston TX, Seattle WA, and the findings incorporated in *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Coleman A. Young v. American Mini-Theaters, Inc.*, 427 U.S. 50 (1976), the Town finds that Adult-Oriented Establishments are frequently used for sexual liaisons of a casual nature and unlawful sexual activities including prostitution.

It has been documented that entertainers in Adult-Oriented Establishments offer to perform sexual acts for patrons, and that sexual contact occurs between patrons and other employees of Adult-Oriented Establishments.

There is convincing documented evidence that booths, rooms or cubicles in Adult-Oriented Establishments have been used by patrons for the purpose of engaging in Specified Sexual Activities or in high-risk sexual behavior and configuration of the interior of the premises is an important factor in combating such activities.

The State of Wisconsin Division of Health has published reports that have been considered by the

Town relating to the subject of sexually-transmitted diseases and the concern over sexually-transmitted diseases is a legitimate concern of the Town in order to protect the health and well-being

of its citizens.

The State of Wisconsin has seen a steady increase in several types of sexually transmitted diseases since 1986.

Researchers have found that contracting sexually transmitted diseases may increase a person's vulnerability to Human Immuno-Deficiency Virus (HIV), the virus that causes AIDS (Acquired Immune Deficiency Syndrome) and some types of cancer. AIDS is a sexually-transmitted disease which destroys the body's immune system.

The State of Wisconsin Division of Health reports that as of June 30, 1999, 4,217 cases of AIDS were reported in the State, including 2,507 that resulted in death and new cases of HIV infection have been reported in Wisconsin each year.

The Town is concerned with the protection of its minors from exposure to age-inappropriate, sexually explicit materials and offenses.

Licensing is a legitimate and reasonable means of accountability to ensure that the operators and employees of Adult-Oriented Establishments comply with reasonable regulations and to ensure that operators and employees do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

Information relating to pending charges and convictions of the applicants is desired to further the Town's interest in controlling the negative secondary effects of Adult-Oriented Establishments.

There is convincing documented evidence that Adult-Oriented Establishments, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values.

The Town Board has reviewed studies of the negative secondary effects of Adult-Oriented Establishments and has concluded that if unregulated, they present an increased risk of prostitution, high-risk sexual behavior and crime, deleterious effects upon existing businesses and surrounding residential areas, and decreased property values.

The Town Board finds that negative secondary effects associated with adult, sexually oriented establishments have been confirmed by the United States Supreme Court in its decisions in, for example, *City Of Renton v. Playtime Theatres, Inc.* (475 U.S. 41 (1986)) and by the United States Court of Appeals in its decisions in, for example, *Hang On, Inc. v. City of Arlington* (65 F.3d 1248 (5th Cir., 1995), *Fantasy Ranch v. City of Arlington Texas* (459 F.3d 546 (5th Circuit, 2006), and *Andy's Restaurant & Lounge, Inc. v. City of Gary* (466 F.3d 550 (7th Cir., 2006) and that such negative secondary effects include personal property crimes, prostitution, lewd behavior, assault, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. The Town Board finds that the decisions issued by the appellate courts constitute reliable sources of information that may be reasonably relied upon by the Town Board. The Town Board finds that each of the foregoing negative secondary effects constitutes a harm that the Town has a substantial governmental interest in preventing and/or abating. The Town Board finds that continued regulation of adult-oriented establishments is necessary to limit the aforementioned negative secondary effects associated with adult sexually oriented establishments and thereby promote the health, safety, and welfare of the Town of Delafield; and

The Town Board desires to minimize and control these negative secondary effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods.

It is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content-neutral ordinance that addresses the negative secondary effects associated with Adult-Oriented Establishments.

It is not the intent of the Town Board to condone or legitimize the promotion of obscene material, and the Town Board recognizes that the law prohibits the promotion of obscene materials. The Town

Board expects and encourages law enforcement officials to enforce any applicable anti-obscenity laws against any such illegal activities in the Town.

Restricted hours of operation of Adult-Oriented Establishments will allow law enforcement personnel to concentrate on crime prevention during high crime hours and/or low staffing hours by relieving them of enforcement duties relative to prostitution, loitering, and criminal activity associated with Adult-Oriented Establishments.

Prohibition of alcohol beverages on the premises of Adult-Oriented Establishments will reduce the need for law enforcement resources to respond to alcohol related problems upon the premises will reduce high-risk sexual activity and will contribute to the reduction of secondary effects of Adult-Oriented Establishments.

(2) **PURPOSE AND INTENT.** Based upon the findings stated above, it is the intended purpose of the Town to regulate Adult-Oriented Establishments to promote the health, safety, morals, and general welfare of the citizens of the Town and to establish reasonable and uniform regulations for the operation thereof so as to minimize the negative secondary effects of these establishments on the community. The provisions of this section have neither the purpose nor intent of imposing a limitation or restriction on the content of any communicative materials, including Adult-Oriented materials protected by the First Amendment to the Constitution of the United States. Similarly, it is not the intent or effect of this section to restrict or deny access by adults to Adult-Oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of Adult-Oriented entertainment to their intended market. The promotion of obscene materials, which is not protected by the First Amendment, is subject to criminal sanctions under the State's penal code. The Town Board intends that this section shall be construed and enforced in a manner consistent with the First Amendment to the United States Constitution, Article I, Section 3 of the Wisconsin Constitution, and the compelling State interest in protection of the free flow of ideas.

(3) **DEFINITIONS.** The following terms have the meanings indicated:

Adult Arcade means any place to which the public is permitted or invited, wherein coin, slug, electrically, electronically, or mechanically controlled and/or operated still or motion picture machines, projectors, computers, or other image producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis on depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas".

Adult Bathhouse means a commercial establishment which provides a bath as a service and which provides to its patrons an opportunity for engaging in "Specified Sexual Activities."

Adult Body Painting Studio means a commercial establishment wherein patrons are afforded an opportunity to be painted or to paint images on Specified Anatomical Areas. An Adult Body Painting Studio does not include a tattoo parlor.

Adult Bookstore, adult novelty store, or adult video store means any commercial establishment which has a significant or substantial portion of its stock in trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space to the sale, rental or lease, for any form of consideration, any one or more of the following:

- (a) Books, magazines, periodicals or other printed matter; photographs, images, slides, or video captures; films, motion pictures, video cassettes, compact or digital video discs, video broadcasts, recordings or reproductions; cable/satellite transmission, subscriber programming, or other medium that allows an image to be displayed or transmitted; or any other visual representations, which are distinguished or characterized by their emphasis upon the exhibition or description of "Specified Sexual Activities" or "Specified Anatomical Areas";
- (b) Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the user(s) or others.

Adult Cabaret means a nightclub, bar, juice bar, restaurant, restaurant bottle club, or similar commercial establishment which features:

- (a) Live performances which are characterized or distinguished by the exposure of "Specified Anatomical Areas" or the removal of articles of clothing;
- (b) Persons who appear in a state of total or partial nudity; or,
- (c) Films, motion pictures, video cassettes, compact or digital video discs, video recording or imaging reproductions, slides, cable/satellite transmission, subscriber programming, or other video broadcastings, displays, reproductions, any other physical medium or manner of imaging that allows an image to be displayed or transmitted, or any other visual representations which are distinguished or characterized by their emphasis on depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas."

Adult Entertainment means any sale, rental, or exhibition, for any form of consideration, of any motion picture, live performance, display, recording, photographic reproduction, closed-circuit transmission, cable/satellite transmission, subscriber programming, or other physical medium or manner of imaging that allows an image to be displayed or transmitted, and/or any live performance, display, or dance of any type, which has as its dominant theme, or is distinguished or characterized by any one or more of the following:

- (a) "Specified Sexual Activities";
- (b) "Specified Anatomical Areas"; or
- (c) person(s) who appear in a state of partial or total nudity.

Adult Massage Parlor means a commercial establishment, with or without sleeping accommodations, which provides the service of massage or body manipulation, including exercise, heat and light treatment of the body, and any form or method of physiotherapy, which also provides its patrons with the opportunity to engage in "Specified Sexual Activities".

Adult Motel means a hotel, motel or other similar commercial establishment which:

- (a) offers accommodations to the public, for any form of consideration, and provides patrons with closed circuit television transmissions, cable/satellite transmission, subscriber programming, film, motion pictures, video cassettes, video reproductions, slides, or other physical medium that allows an image to be displayed or transmitted, visual reproductions characterized by depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas"; and, has a sign visible from the public right of way which advertises the availability of this type of adult entertainment; or
- (b) offers a sleeping room for rent for a period of time that is less than 10 hours; or
- (c) allows a tenant or occupant of a sleeping room to sublet the room for a period of time that is less than 10 hours.

Adult Motion Picture Theater means a commercial establishment where films, motion pictures, video cassettes, compact or digital video discs, video recording or imaging reproductions, slides, cable/satellite transmission, subscriber programming, or other video broadcastings, displays, reproductions, any other physical medium or manner of imaging that allows an image to be displayed or transmitted, or any other visual representations which are distinguished or characterized by their emphasis on depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas" are regularly shown for any form of consideration.

Adult-Oriented Establishment includes, but is not limited to, Adult Arcade, Adult Bathhouse, Adult Body Painting Studio, Adult Bookstore, Adult Cabaret, Adult Massage Parlor, Adult Motel, Adult Motion Picture Theater, Adult Theater, and any commercial establishment presenting Adult Entertainment, whether or not such establishment is operated or maintained for a profit.

Adult Theater means an enclosed building such as, for example, a theater, concert hall, auditorium or other similar commercial establishment which is regularly used for presenting "Adult Entertainment."

Applicant means the individual or business entity that seeks to secure a license under this section of the Town municipal code.

Board means the Town Board for the Town of Delafield, Waukesha County, Wisconsin.

Distinguished or characterized by an emphasis upon means the dominant or principal theme of the object described by such phrase. For example, when used in conjunction with a reference to films, the films so described are those whose dominant or principal character and theme are the exhibition or description of Specified Anatomical Areas or Specified Sexual Activities.

Employee means any and all Persons, including but not limited to "Operators", "Entertainers", clerks, managers, janitors or other Persons who work in or at, or render any services directly related to the day-to-day operation of an Adult-Oriented Establishment. Employee, as used in this ordinance, specifically excludes any independent contractor(s) who are responsible for the improvement or repair of the physical premises or who provide supplies to the establishment, provided that such Person(s) are not also in the position of providing any other day-to-day services for the Adult-Oriented Establishment.

Entertainer means any Person who provides entertainment within an Adult-Oriented Establishment whether or not a fee is charged or accepted for the entertainment and whether or not the entertainment is provided by the Person as an Employee of the Adult-Oriented Establishment or as an independent contractor.

Operator means the Person who is designated on the license application to be the Person in charge of the daily operation of the premises and who is to be the Adult-Oriented Establishment's contact Person for the municipality.

Person means an individual, proprietorship, corporation, association, partnership, limited liability entity, or other legal entity.

Public Area includes all areas of an Adult-Oriented Establishment except: a public restroom to the extent it is used for its proper purpose, individual rooms rented in an Adult Motel, or areas to which patrons have no physical or visual access.

Specified Anatomical Areas means:

- (a) Less than completely and opaquely covered human genitals, pubic region or pubic hair,
- (b) Any human buttock, or any portion of the female breast(s) that is situated below a point immediately above the top of the areola.

Specified Sexual Activities means and includes any of the following, simulated or actual:

- (a) The fondling or other erotic touching of another or one's own human genitals, pubic region, perineum, buttocks, anus, or female breast(s);
- (b) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio, cunnilingus, anilingus.
- (c) Showing of human genitals in a state of sexual stimulation or arousal.
- (d) Excretory functions as part of, or in connection with, any of the activities set forth in sections (a) through (b).

Transfer of Ownership or Control of an Adult-Oriented Establishment means and includes any of the following:

- (a) the sale, lease, or sublease of the business;
- (b) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or other means; or
- (c) the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of the law upon the death of the Person possessing the ownership or control.

Youth-facility means any facility where minors gather for educational or recreational activities including but not limited to playgrounds, swimming pools, libraries, licensed child-care facilities, or

youth clubs.

(4) LICENSING.

(a) LICENSES REQUIRED.

1. License Required for All Adult-Oriented Establishments. From and after the effective date of this section except as provided in paragraph (3) below, no Adult-Oriented Establishment shall be operated or maintained in the Town without first obtaining a license to operate issued by the Town. A license may be issued only for one Adult-Oriented Establishment located at a fixed and certain place. Any Person desiring to operate more than one Adult-Oriented Establishment must have a license for each.
2. License Required for All Employees of Adult-Oriented Establishments. In addition to the license required by the establishment, all Employees of an Adult-Oriented Establishment must also be licensed.
3. Licenses for Existing Adult-Oriented Establishments. All Adult-Oriented Establishments existing in the Town at the time of the passage of this section must submit an application for a license within 90 days of the effective date of this section. Any establishment that submits an application within the 90 day period shall be allowed to continue to operate until the license application is acted upon by the Town Board. Any establishment which fails to submit an application within the 90 day period, must cease operation upon expiration of the 90 day period unless and until a valid license is timely issued by the Town Board. The Town shall act upon any such license application in accordance with the provisions of this Section.
4. Licenses for Employees of Existing Adult-Oriented Establishments. All Employees already working in an Adult-Oriented Establishment existing at the time of the passage of this section must submit an application for a license within 90 days of the effective date of this section. Any Employee that submits an application within the 90 day period shall be allowed to continue his or her employment until the license application is acted upon by the Town Board. Any Employee who fails to submit an application within the 90 day period must cease employment upon expiration of the 90 day period unless and until a valid license is issued by the Town Board. The Town shall act upon any such license application in accordance with the provisions of this Section.
5. Change of Name Form. Any licensed Adult-Oriented Establishment which desires to change its name from that as listed on the original license application must file a change of name form with the Town Clerk and pay a \$10.00 fee at least 30 days prior to effectuating the name change.
6. Effect of Other Licenses. The fact that a Person possesses any other valid license or permit required by law, does not exempt that Person from the requirement of obtaining an Adult-Oriented Establishment license under this Section.
7. Non-transferability of Licenses. No license or interest in a license may be transferred to any Person. Any change in location for an Adult-Oriented Establishment shall require a new license application for that location.

(b) LICENSE APPLICATION PROCEDURE FOR ADULT-ORIENTED ESTABLISHMENTS

1. Any Person desiring to secure an Adult-Oriented Establishment license shall file an application together with two additional copies of the application with the Town Clerk.
2. The application shall be on a form provided by the Town Clerk.
3. The following information shall be required of each Applicant, and must be provided under oath or affirmation:
 - A. Name, including any aliases, address, and phone number.
 - B. If the Applicant is a corporation, partnership, limited liability company or limited liability partnership, the application shall include the name of the business entity; the date of incorporation, registration or organization; the state in which the entity

was incorporated, registered or organized; the name and address of the registered agent where applicable; the names and addresses of all officers and directors; operating or managing partners or general partners; members or managers, whichever is applicable for the particular form of business entity.

- C. If the Applicant is an individual, written proof that the Applicant is at least 18 years of age and two copies of a recent photo.
- D. If the Applicant is a business entity, a statement that no officer, director, partner, general partner, owner or manager is less than 18 years of age.
- E. Name, address and phone number of the Adult-Oriented Establishment for which a license is being secured.
- F. Name and address of any other current or past Adult-Oriented Establishments operated by the Applicant whether in this State or any other State or District within the United States.
- G. For any current Adult-Oriented Establishments operated by the Applicant, the Applicant shall describe the status of any required license for the establishment.
- H. Nature and date of offense if the Applicant has charges pending or has been convicted of violating any of the terms of this ordinance or of any administrative regulation or ordinance in any other jurisdiction regulating Adult-Oriented Establishments.
- I. Nature and date of offense if the Applicant has charges pending or has been convicted of any of the following crimes in Wisconsin:
 - Prostitution (§ 944.30, Stats.)
 - Patronizing Prostitutes (§ 944.31, Stats.)
 - Soliciting Prostitutes (§ 944.32, Stats.)
 - Pandering (§ 944.33, Stats.)
 - Keeping a Place of Prostitution (§ 944.34, Stats.)
 - Sexual Assault (§940.225, Stats.)
 - Prostitution (§ 944.30, Stats.)
 - Sexual Gratification (§ 944.17, Stats.)
 - Lewd and Lascivious Behavior (§ 944.20, Stats.)
 - Obscene Material or Performance (§ 944.21, Stats.)
 - Sexual Assault of a Child (§ 948.02, Stats.)
 - Engaging in repeated acts of sexual assault of the same child. (§ 948.025, Stats.)
 - Sexual Exploitation of a Child (§ 948.05, Stats.)
 - Causing a Child to view or listen to Sexual Activity. (§ 948.055, Stats.)
 - Incest with a child. (§ 948.06, Stats.)
 - Child Enticement (§ 948.07, Stats.)
 - Soliciting a Child for Prostitution (§ 948.08, Stats.)
 - Exposing a child to harmful material (§ 948.11, Stats.)
 - Possession of Child Pornography (§ 948.12, Stats.)
 - Child Sex Offender Working with Children (§ 948.13, Stats.)

The Wisconsin Statute numbers listed above are for reference purposes only. In

the event one or more of the crimes listed above are renumbered or categorized differently by an act of the legislature, the Applicant shall list those crimes for which the Applicant has been convicted that are similar in nature to those listed above.

- J. Nature and date of offense if the Applicant has charges pending or has been convicted of an offense under a statute analogous to those listed in I., above, in a state other than Wisconsin, or under an analogous ordinance of another municipal entity.
 - K. Name, address and phone number of an individual who is responsible for the day-to-day operation of the establishment, who will be deemed the Operator for purposes of this section, and who will be the contact Person for the municipality.
 - L. A statement that the Applicant is familiar, and in compliance, with the provisions of this section of the Town's municipal code.
 - M. When the Applicant is a business entity described in subsection 4(b)(3)(B), the information requested of an "Applicant" shall be construed to require the inclusion of all of the information required in this section for each of the officers and directors, partners and general partners, members, managers, and other owners, and managers of the business entity applying for the license. This provision shall not apply to any owner of any kind who holds stock or a beneficial ownership interest of less than 10.0 percent.
4. Each application shall be accompanied by:
- A. A building plan which meets all the requirements of this Section and the Zoning Code, if the Zoning Code for the zoning district imposes any building plan requirements in addition to those in this Section. Each application shall be accompanied by a sketch or diagram showing the floor plan of the interior of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but must be drawn to a 1/4 inch scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.
 - B. A written plan of operation which meets all the requirements of this Section and the Zoning Code, if the Zoning Code for the zoning district imposes any plan of operation requirements in addition to those in this Section.
 - C. A written site plan which meets all the requirements of this Section and the Zoning Code, if the Zoning Code for the zoning district imposes any site plan requirements in addition to those in this Section.
 - D. For corporate or limited liability applicants, proof that the Applicant is in good standing and registered to do business in Wisconsin.
5. Each application shall be signed by the Applicant.
6. Each application shall be accompanied by payment of the license fee of \$500.00. Filing of the application does not occur until this fee has been paid.
7. The Town Clerk shall date the filing of the application on the face of the application.
8. Upon filing of the application, each Applicant shall place a sign at the proposed business location providing notification of the application. Each sign shall be at least 24 inches by 36 inches in size. The sign shall state "ADULT-ORIENTED ESTABLISHMENT LICENSE APPLICATION PENDING" AND "APPLICATION FILED ON (fill in the date)." The letters on the sign shall be no less than 1 and 2 inches high by 2 inches wide. The sign must be placed in a conspicuous location so that it is clearly visible to all passers by whether on the public road, highway, sidewalk or parking lot.
9. Upon receipt of the application, the Town Clerk shall immediately distribute a copy of the application to the Building Inspector, Town Police Department, and the Town

Board.

10. The Town Police Department shall notify the Town Board in writing of any information bearing on the Applicant's qualifications, within 20 business days of the filing of the application.
11. The Building Inspector shall notify the Town Board in writing as to whether or not the Applicant's building plan, site plan, and plan of operation comply with this Section and the Zoning Code, if the Zoning Code for the zoning district imposes any requirements in addition to those in this section, within 20 business days of the filing of the application.
12. The Town Board shall within 45 days of the filing of the application with the Town Clerk, either grant the license or deny the application after reviewing the application for compliance with the licensing standards found in this ordinance. If the Board fails to act upon the license application within 45 days of the filing of the application with the Clerk, then the license shall be deemed granted.
13. If the license is granted by the Town Board, then the Town Clerk shall issue the license on the next business day.
14. If the Town Board decides to deny the application for a license, the Board shall immediately notify the Applicant in writing of the reasons for denial. Such notice shall be sent to the Applicant within 5 days of the decision by certified mail, return receipt requested.
15. Any Applicant aggrieved by such a decision of the Town Board, shall be entitled to immediately appeal the Board's decision in circuit court. Such an appeal must be made within 30 days of the date of the written decision by the Board. The Town explicitly elects not to be governed by Chapter 68, Wisconsin Statutes, and to provide the review procedures described in this Section.
16. Each license issued for an Adult-Oriented Establishment shall state on its face the name of the licensee, the name of the establishment, the street address of the establishment, the date of issue of the license and its expiration date.

(c) LICENSE PROCEDURES FOR EMPLOYEES IN ADULT-ORIENTED ESTABLISHMENTS.

1. Any individual desiring to secure an Employee license shall file an application together with two additional copies of the application with the Town Clerk.
2. The application shall be on a form provided by the Town Clerk.
3. The following information shall be required of each Applicant, and must be provided under oath or affirmation:
 - A. Name, including any aliases, and address. Pursuant to Sec. 19.35(1)(a)2.a., Wisconsin Statutes, the name and address of any entertainer shall be considered as exempt from disclosure under the public records law of the State of Wisconsin because of potential danger to the life and safety of such individuals from such disclosure.
 - B. Written proof that the individual is at least 18 years of age and two copies of a recent photo.
 - C. Nature and date of offense and date if the Applicant has charges pending or has been convicted of any violations of any of the terms of this ordinance or of any administrative regulation or ordinance in any other jurisdiction regulating Adult-Oriented Establishments.
 - D. Nature and date of offense if the Applicant has charges pending or has been convicted of any of the following crimes in Wisconsin:
 - Prostitution (§ 944.30, Stats.)
 - Patronizing Prostitutes (§ 944.31, Stats.)
 - Soliciting Prostitutes (§ 944.32, Stats.)

Pandering (§ 944.33, Stats.)
 Keeping a Place of Prostitution (§ 944.34, Stats.)
 Sexual Assault (§940.225, Stats.)
 Sexual Gratification (§ 944.17, Stats.)
 Lewd and Lascivious Behavior (§ 944.20, Stats.)
 Obscene Material or Performance (§ 944.21, Stats.)
 Sexual Assault of a Child (§ 948.02, Stats.)
 Engaging in repeated acts of sexual assault of the same child. (§ 948.025, Stats.)
 Sexual Exploitation of a Child (§ 948.05, Stats.)
 Causing a Child to view or listen to Sexual Activity. (§ 948.055, Stats.)
 Incest with a child. (§ 948.06, Stats.)
 Child Enticement (§ 948.07, Stats.)
 Soliciting a Child for Prostitution (§ 948.08, Stats.)
 Exposing a child to harmful material (§ 948.11, Stats.)
 Possession of Child Pornography (§ 948.12, Stats.)
 Child Sex Offender Working with Children (§ 948.13, Stats.)

The statute numbers listed above are for reference purposes only. In the event one or more of the crimes listed above are renumbered or categorized differently by an act of the legislature, the Applicant shall list those crimes for which the Applicant has been convicted that are similar in nature to those listed above.

- E. Nature and date of offense if the Applicant has charges pending or has been convicted of an offense under a statute analogous to those listed in D., above, in a state other than Wisconsin, or under an analogous ordinance of another municipal entity.
 - F. A statement that the Applicant is familiar with the provisions of this Section and is in compliance with them.
 - G. A list of other similar or analogous Adult Entertainer or Employee licenses issued by any other municipalities, the name and state of the municipality and the status of the license.
4. Each application shall be signed by the Applicant.
 5. Each application shall be accompanied by payment of the license fee of \$50.00 Filing of the application does not occur until this fee has been paid.
 6. The Town Clerk shall date the filing of the application upon the face of the application.
 7. Upon receipt of the application, the Town Clerk shall immediately distribute a copy of the application to the Town Police Department and the Town Board.
 8. The Town Police Department shall notify the Town Board in writing of any information bearing on the Applicant's qualifications as required herein, within 20 business days of the filing of the application.
 9. The Town Board shall within 45 days of the filing of the application with the Town Clerk, either issue the license or deny the application after reviewing the application for compliance with the licensing standards found in this ordinance. If the Board fails to act

upon the license application within 45 days of the filing of the application with the Clerk,

then the license shall be deemed granted.

10. If the license is granted by the Town Board, then the Town Clerk shall issue the license on the next business day.
 11. If the Town Board decides to deny the application for a license, the Board shall notify the Applicant in writing of the reasons for denial. Such notice shall be sent to the Applicant within 5 days of the decision by certified mail, return receipt requested.
 12. Any Applicant aggrieved by such a decision of the Town Board shall be entitled to immediately appeal the Board's decision in circuit court. Such an appeal must be made within 30 days of the receipt by the Applicant of the written decision of the Board. The Town explicitly elects not to be governed by Chapter 68, Wisconsin Statutes, and to provide the review procedures described in this Section.
- (d) PROCEDURES FOR ALTERATIONS OF LICENSED PREMISES. Following the granting of a license any licensee who wishes to alter any aspect of the licensed premises which was required to be described in the building plan, site plan or plan of operations required under this Section, shall be required to apply for a new license.
- (e) LICENSING STANDARDS FOR INITIAL LICENSES. The Town Board shall grant an initial license to an Applicant unless it finds one or more of the following to be true:
1. The Applicant is less than 18 years of age.
 2. The Applicant has charges pending or has been convicted of violating a provision of this Section or an analogous ordinance of another municipality within the 5 years immediately preceding the date of application.
 3. The Applicant has charges pending or has been convicted of a crime in any state or federal court where such crime is the same as or has substantially the same elements as the crimes specified in Subsections (4)(b)(3)(I) or (4)(c)(3)(D) of this Section; and if convicted, for which:
 - A. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is a misdemeanor offense.
 - B. Less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is a felony offense;
 - C. Less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the convictions are for two or more misdemeanor offenses, or combination of misdemeanor offenses, occurring within any 24 month period.

The fact that an appeal has been taken from any of the above-mentioned convictions shall have no effect.

4. The Applicant provides false information on the application.
5. The Applicant fails to provide information, to post the required notice, or to pay any fee required by this Section.
6. The Adult-Oriented Establishment does not submit plans which meet the requirements of Subsection (4)(b)(4).

(f) LICENSE EXPIRATION AND RENEWAL

1. Transfer of Ownership or Control of an Adult-Oriented Establishment shall result in automatic expiration of the existing license. Upon transfer of Ownership or Control, the procedures for a new license application must be followed. In order to ensure continuous operation, such procedures may also be commenced by a new Applicant prior to the expiration of the prior license.
2. Every license issued pursuant to this Section will terminate upon the expiration of one year

from the date of issuance unless sooner revoked. Any licensee desiring to renew an initial license shall make application to the Town Clerk. The application procedures governing new licenses shall be followed by an Applicant for a renewal license except for those found in Subsection (4)(b)(8). The application fee for a renewal license shall be \$300.00 for an Adult-Oriented Establishment license and \$50.00 for an Employee license.

3. Any licensee desiring to renew an initial license shall file the application for renewal no later than 60 days before the license expires. Any licensee who fails to apply for a renewal license at least 60 days before the license expires shall pay the same fee as if the licensee were applying for an initial license.
 4. An existing license shall be allowed to continue until such time as the Town Board acts upon the renewal license application. If the Board fails to act upon the license application within 45 days of the filing of the application with the Clerk, then the license shall be deemed granted.
 5. The Town Board will not expedite the renewal procedure to ensure that a license will not expire when the expiration of the license is due to the licensee's untimely filing of a renewal application. Upon expiration of a license under these circumstances, the licensee is prohibited from operating or serving as an employee until the new license is granted.
 6. A license may not be renewed if the Board, following the procedures found in this Section, finds that a violation of this Section has occurred or that the applicant is not qualified to hold the license.
 7. If the license is granted by the Town Board, then the Town Clerk shall issue the license on the next business day.
- (5) LOCATION OF ADULT-ORIENTED ESTABLISHMENTS. If all the requirements for a license as stated in this regulation are met, an Adult-Oriented Establishment shall only be allowed to locate in the zoning district(s) provided for by the Town and shall not be allowed to locate in any other district.
- (6) OPERATION OF ADULT-ORIENTED ESTABLISHMENTS.
- (a) No Adult-Oriented Establishment is permitted to operate between the hours of 2 a.m. and 8 a.m. Further, no Adult-Oriented Establishment is permitted to operate between the hours of 8 a.m. and midnight on any Sunday or legal holiday as defined in § 895.20, Wis. Stats.
 - (b) No Operator or Employee of an Adult-Oriented Establishment shall permit to be performed, offer to perform, perform or allow patrons to perform any Specified Sexual Activity in the establishment or on the site. This provision does not apply to Adult Motels, to the extent that such Specified Sexual Activity is not prohibited by law.
 - (c) No Operator or Employee of an Adult-Oriented Establishment shall allow any minor to enter into, loiter around or to frequent an Adult-Oriented Establishment or to view Adult Entertainment.
 - (d) The Operator shall maintain the premises in a clean and sanitary manner at all times.
 - (e) The Operator shall maintain at least 10 foot candles of illumination in the Public Areas of the establishment with the following exceptions:
 1. In a booth, room, or cubicle, if a lesser level of illumination is necessary to enable a patron to view the Adult Entertainment but at no time shall there be less than .01 foot candle of illumination as measured 30" from the floor;
 2. In an aisle adjacent to a booth, room, or cubicle, if a lesser amount of illumination is necessary to allow the occupant to view the Adult Entertainment, but at no time shall there be less than one and 2 foot candle of illumination as measured 30" from the floor.
 3. Adult Theaters must maintain 5 foot candles of illumination in the auditorium during intermission and no less than .01 foot candles during a picture as provided for in Wis. Adm. Code Comm. § 73.07(6).
 - (f) All Employees while engaged in the display or exposure of any Specified Anatomical Area, shall maintain a six-foot distance from any patron or other Employee.
 - (g) No restroom shall be designed, operated or maintained so that a patron can view Adult

Entertainment therein.

- (h) No operator or Employee shall, or shall knowingly allow another, to appear in a state of partial or total nudity on the premises of an Adult-Oriented Establishment, unless the person is an employee of the operator's establishment who, while in a state of partial or total nudity, is on a stage (on which no customer or patron is present) at least eighteen (18) inches above the floor, and such employee is either:
 - 1. At least six (6) feet from any customer or patron; or
 - 2. Physically separated from patrons by a wall or partition composed of solid glass or light-transmitting plastic or substantially equivalent material extending from the floor of the performance stage to at least five (5) feet above the level of the performance stage, but such that there are no openings in the wall or partition that would permit physical contact between customers or patrons and such employee.
- (i) No Employee, while in a state of partial or total nudity on the premises of an adult oriented establishment shall receive directly any pay or gratuity from any patron or customer and no patron or customer shall pay or give any gratuity directly to any employee, while that employee is in a state of partial or complete nudity in an adult oriented establishment. Such gratuity or pay may be provided to such employee through a tip receptacle, located more than six (6) feet from the nearest point of the performance stage where such employee is in a state of partial or complete nudity, or may be paid to an employee that is not in a state of partial or complete nudity, as part of the customer's bill.
- (j) No employee of an adult oriented establishment while on the premises shall, while in a state of partial or complete nudity, touch a customer or patron or the clothing of a customer or patron.
- (k) No customer or patron of an adult oriented establishment shall touch an Employee appearing in a state of partial or complete nudity or touch the clothing of the Employee while such Employee is on the premises.
- (l) Employees shall maintain a minimum distance of five feet from areas on the adult oriented establishment's premises being occupied by customers for a minimum of one hour after such Employee appears in a state of partial or complete nudity on the establishment's premises. This regulation is not intended to prohibit ingress or egress from the premises or the employee's use of a common restroom. It is, however, intended to control illicit sexual contact and reduce the incidents of prostitution occurring in any adult oriented establishment. Regulating a reasonable delay between the times entertainers appear in a state of partial or complete nudity and their commingling with customers is a narrowly tailored furtherance of this interest.
- (m) No Employee or patron in an Adult Cabaret shall be permitted to have physical contact with any Employee or patron on the premises.
- (n) The selling, serving, possession, or consumption of alcohol beverages is strictly prohibited at all times in all Adult-Oriented Establishments.
- (o) No Employee or Operator shall knowingly work in or about, or knowingly perform any service directly related to the operation of any unlicensed Adult-Oriented Establishment.
- (p) All Employees shall carry their license upon their person at all times while working in the Adult-Oriented Establishment and shall produce said license upon demand for inspection by any law enforcement authority. Entertainers are exempt from carrying their license upon their person while providing entertainment, but shall be readily able to produce said license upon demand for inspection by any law enforcement authority.
- (q) The license for the Adult-Oriented Establishment shall be displayed in a conspicuous public place in the Adult-Oriented Establishment.
- (r) No Employee, Operator, or owner may refuse any law enforcement official or building inspector entry into an Adult-Oriented Establishment for purposes of inspecting the Adult-Oriented Establishment for compliance with these operational standards or any other

applicable statute(s), regulation(s), or ordinance(s) during business hours, or at other times at a reasonable hour, with reasonable notice.

- (s) The Operator shall be responsible for compliance with the provisions of this section by the Adult-Oriented Establishment, its Employees and patrons.
- (t) Every act or omission by any Employee constituting a violation of the provisions of this section shall be deemed the act or omission of the Operator if such act or omission occurs, either with the authorization, knowledge or approval of the Operator, or as a result of the Operator's negligent failure to supervise the Employee's conduct, and the Operator shall be accountable for such act or omission in the same manner as if Operator committed the act or caused the omission.

(7) DESIGN AND LAYOUT.

- (a) EXTERNAL VISIBILITY. At no time should any Adult Entertainment inside the premises be visible to any persons who are outside the premises.
- (b) BOOTHS. Any Adult-Oriented Establishment having available for patrons any booth, room or cubicle for the private viewing of Adult Entertainment must comply with the following requirements:
 - 1. Access. Each booth, room, or cubicle shall be totally accessible to and from aisles and Public Areas of the Adult-Oriented Establishment and shall be unobstructed by any door, lock or other control type devices.
 - 2. Construction. Every booth, room or cubicle shall meet the following construction requirements:
 - A. Each booth, room or cubicle shall be separated from adjacent booths, rooms or cubicles and any non-Public Areas by a wall.
 - B. All walls shall be solid and without any openings, extended from the floor to a height of not less than 6' and be light colored.
 - C. Have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying the booth.
 - D. Booths must be separated at least twelve (12) inches from the exterior walls of any other viewing booths by open space.
 - 3. Visibility. The interior of the booth, room or cubicle shall not be blocked or obscured by doors, curtains, partitions, drapes or any other obstruction whatsoever.
 - 4. Lighting. Lighting for booth, room or cubicle shall comply with the provisions of Section (6) (e) of this ordinance.
 - 5. Occupants. Only one individual shall be permitted to occupy a booth, room or cubicle at any time. No occupant of the booth, room or cubicle, shall be permitted to engage in any Specified Sexual Activity, cause any bodily discharge or litter while in the booth. No individual shall be permitted to damage or deface any portion of the booth.
 - 6. Exception. This subsection does not apply to the individual rooms located in Adult Motels.
- (c) UNENCLOSED STAGE MARKING. A two-inch wide line shall be prominently and continuously displayed on the floor such that said line is clearly visible at all times, including in the dark, marking a distance of six feet (6') from each unenclosed stage on which an employee in a state of partial or total nudity may appear. For purposes of this provision, an "unenclosed stage" is a stage that is not physically separated from customers or patrons by a solid clear transparent unbreakable glass or Plexiglas wall with no openings that would permit physical contact with customers or patrons.
- (d) REQUIRED SIGNAGE. A sign shall be continuously and conspicuously posted on the interior of the adult oriented establishments at each entrance where customers or patrons enter the premises and adjacent to each stage that states, in letters at least two inches high, "TOUCHING OR TIPPING AN EMPLOYEE WHO IS IN A STATE OF NUDITY IS A

VIOLATION OF SECTION 12.08 OF THE TOWN OF DELAFIELD ORDINANCES, PUNISHABLE BY A FORFEITURE OF UP TO \$1,000.00. PATRONS SHALL REMAIN AT LEAST SIX FEET FROM ALL UNENCLOSED PERFORMANCE STAGES.”

- (8) EXCLUSIONS. The provisions of this Section relating to the licensing of Adult-Oriented Establishments shall not apply to:
- (a) Any private or public school as defined in Ch. 115, Wis. Stats., located within the Town when instructing pupils in sex education as part of its curriculum.
 - (b) Any business operated by or employing a licensed psychologist, licensed physical therapist, licensed masseuse, licensed vocational nurse, registered nurse, licensed athletic trainer, licensed cosmetologist, or licensed barber provided such business and licensed individual are only engaged in performing the normal and customary functions authorized under the license held;
 - (c) Any business operated by, or employing a licensed physician or licensed chiropractor while engaged in licensed activities;
 - (d) Any retail establishment whose principal business is the offering of wearing apparel for sale to customers and that does not exhibit merchandise on live model(s); or
 - (e) A class that satisfies all of the following requirements:
 - 1. The class is conducted or sponsored by a school licensed by the State of Wisconsin, a college, junior college or university supported entirely or partly by taxation, or a private college or university that maintains or operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation;
 - 2. The class is, at all times, situated in a structure that has no sign or other advertising visible from the exterior of the structure indicating a nude or partially nude person is available for viewing;
 - 3. In order to participate in such class, a student must enroll at least three (3) days in advance of the class; and
 - 4. No more than one (1) nude or partially nude model is on, depicted, or displayed at any one time.

(9) ENFORCEMENT.

(a) LICENSE NON-RENEWAL, SUSPENSION OR REVOCATION

- 1. CAUSES FOR LICENSE NON-RENEWAL, SUSPENSION OR REVOCATION. The Town Board may refuse to renew, suspend or revoke a license for any violations of this Section or if the applicant is not qualified to hold the license.
- 2. LICENSE NON-RENEWAL, SUSPENSION AND REVOCATION PROCEDURES.
 - A. In order to commence the procedure for a license non-renewal, suspension or revocation, the Town shall notify the licensee in writing by certified mail, return receipt requested, of the alleged violation or cause and the intent of the Town to seek a non-renewal, suspension or revocation of the license.
 - B. The licensee shall be entitled to a public hearing before the Town Board regarding the license non-renewal, suspension or revocation, upon written request to the Town Clerk within 10 days of receipt of the notification required in sub. A.
 - C. Any public hearing requested pursuant to sub. B., shall take place within 10 days of the filing of such written request.
 - D. At the hearing both the Town and the aggrieved party may be represented by an attorney, present evidence, call and examine witnesses, cross-examine witnesses of the other party, and make opening and closing statements. Such

witnesses shall be sworn. The Town Chairperson shall be the presiding officer at the hearing.

- E. Attorneys may issue subpoenas to compel attendance of witnesses or the production of evidence. Subpoenas issued must be in substantially the same form as provide in '805.07(4), Wis. Stats., and must be served in the manner provided in § 805.07(5), Wis. Stats. Copies of the subpoenas must be served on the opposing party.
- F. The Board shall cause the proceedings to be recorded by a stenographer, the expense thereof to be paid by the Town. Costs for copies of any transcripts or transcription of a recording shall be paid by the party requesting the transcript or transcription. All exhibits shall be marked and preserved.
- G. Within 10 days of the completion of any hearing the Town Board shall determine if cause for non-renewal, suspension or revocation exists. If no public hearing is requested, the Town Board shall make a determination within 20 days of the notification date.
- H. The Town Board shall issue its determination in writing and provide it within 5 days to the licensee by certified mail, return receipt requested.
- I. If a license period expires while a non-renewal, suspension or revocation procedure is pending, then the non-renewal, suspension or revocation of any license shall be stayed pending the issuance of a determination by the Town Board. The non-renewal, suspension or revocation of a license shall become effective thirty days following the issuance of a decision by the Town Board, if judicial review is not commenced as provided in this Section.
- J. If judicial review of such determination by the Town Board is timely commenced, then license non-renewal, suspension or revocation shall not become effective until judgment is entered.
- K. Any Person aggrieved by such a decision of the Town Board shall be entitled to immediately appeal the Board's decision in circuit court. Such an appeal must be made within 30 days of the licensee's receipt of the written decision by the Board. The Town explicitly elects not to be governed by Chapter 68, Wisconsin Statutes, and to provide the review procedures described in this Section.
- L. Any Person whose license is non-renewed, suspended or revoked shall not be eligible to receive a license for a period of five years from the effective date of the suspension or revocation.

(b) VIOLATIONS.

- 1. PENALTIES. Any Person who violates this Section will be subject to a monetary forfeiture in the amount of \$500.00 plus the costs of prosecution for each violation. Each day that each violation exists shall constitute a separate violation and be punishable as such.
- 2. INJUNCTION. Compliance with the provisions of this Section may also be enforced by an injunction properly issued by a court of competent jurisdiction upon the request of the Town.
- 3. NON-EXCLUSIVITY. The imposition of any penalty under this Section or the seeking of an injunction shall not impair the right of the Town to seek a non-renewal, suspension or revocation of a license as provided in this Section.

12.09 LICENSE FOR KEEPING CHICKENS. (created 2012-04)

- (1) LICENSE REQUIRED. The keeping of chickens in residential districts is subject to Section 17.06 5. of this code, as and to the extent described therein and within the zoning regulations of the Zoning

Code. Such use is subject to payment of a fee as described in Section 12.01, the general

provisions as to licenses as described in Section 12.02 and the additional and different license regulations of this section.

- (2) **APPLICATION OF GENERAL PROVISIONS.** The general provisions as to licenses described in Section 12.02 of this Code shall apply, except as follows. No bond or insurance shall be required for a license to keep chickens. The term of this license shall be for one calendar year, to end on December 31 of each year, rather than June 30th.
- (3) **LICENSE APPROVAL OR DENIAL.** Upon receipt of a completed license application and upon payment of the required fee, the Town Administrator and Engineer shall review the application and may approve, deny or conditionally approve the issuance of license subject to reasonable conditions.
- (4) **RENEWAL.** The license may be renewed for a subsequent year upon petition to the Town Administrator. Such application and accompanying fee must be filed prior to the expiration of the license. To avoid a lapse in the license term, the licensee must apply for renewal at least sixty (60) days prior to the expiration of the license.
- (5) **OBLIGATIONS UPON EXPIRATION/TERMINATION.** No chicken shall be kept on the property following the expiration or termination of the license, unless and until a new license is obtained for the keeping of chickens. All chicken coops, fences, chicken runs, and other structures and facilities associated with the keeping of chickens shall be removed from the property no later than twelve (12) months after the expiration or termination of the license or cessation of the use, whichever shall occur first.
- (6) **DISCLAIMER.** The grant of a license for keeping of chickens by the Town of Delafield does not supersede or abrogate any private deed restrictions, homeowner's association regulations or bylaws, or other private restrictions that may apply and may be more restrictive. Persons requesting a license to keep chickens are solely responsible to know and to comply with any such private limitations.
- (7) **PUBLIC NUISANCE.** Keeping of chickens in violation of chapter 12 and/or chapter 17 of the Town of Delafield Municipal Code shall constitute a public nuisance.

12.095 TOWN HALL PRIVATE USE.

SECTION 1:

- (a) **Regulation of Use.** Use of the Town Hall may be made available to: (i) Owners' Associations for residential subdivisions and condominiums located in the Town of Delafield, and (ii) Non-profit organizations that operate in the Town of Delafield that provide programs that teach leadership, citizenship and life skills to youth in the Town of Delafield and its environs, such as 4-H. All such use is subject to rules and regulations established by the Town Board from time-to-time, which shall be on file with the Town Clerk. No other private use of the Town of Delafield Town Hall is permitted.
- (b) **Private Use Application and Agreement, Required.**
 1. A resident of the Town of Delafield, personally and on behalf of a qualifying organization, desiring to use the Town Hall shall, submit an application for such use in the form provided by the Town Clerk.
 2. No use of the Town Hall shall be authorized under this Section until the applicant has entered into a private use agreement in the form supplied by the Town Clerk. The Town Clerk or designee shall have the authority to enter into and execute such private use agreement on behalf of the Town.

12.10 PENALTY.

In addition to the suspension, revocation or renewal of any license issued under this chapter, any person found to be in violation of any provision of this chapter shall be subject to a penalty as provided in §

25.04 of this General Code.

CHAPTER 13

WIND ENERGY SYSTEMS LICENSE AND REGULATIONS

- 13.01 Definitions
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- 13.12 Existing property uses
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CHAPTER 13. WIND ENERGY SYSTEMS LICENSE AND REGULATIONS.
(repealed and recreated 2012-07)

PART 1: GENERAL PROVISIONS

I. PURPOSE AND INTENT.

It is the intended purpose of the Town to regulate Wind Energy Systems to promote the health, safety, and general welfare of the citizens of the Town and to establish reasonable and uniform regulations for the operation thereof so as to minimize potentially dangerous effects of these Systems on the community, pursuant to the authority granted applicable laws.

II. AMENDMENTS TO APPLICABLE LAWS AND ADMINISTRATIVE RULES INCORPORATED HEREIN.

This ordinance is adopted pursuant to Wisconsin Statutes Sections 66.0401 and 66.0403, the rules of the State of Wisconsin Public Service Commission Chapter PSC 128, and other applicable laws as they exist on the date of adoption of this ordinance. Nothing herein shall be interpreted to be more restrictive than the rules promulgated by the State of Wisconsin Public Service Commission pursuant to Section 196.378(4g)(b), Wisconsin Statutes. In the event said statutes or said PSC Rules are amended from time to time, to the extent that this ordinance adopts identical provisions, this ordinance shall be interpreted to incorporate such amendments as are made to the applicable statutes and PSC Rules from time to time in the future.

PART 2: WIND ENERGY SYSTEM REGULATION

I. SYSTEM REGULATION; EXCLUDING SMALL SYSTEMS.

13.01 Definitions. In this chapter:

(1) “Commercial communications” includes communications used by government and military entities for emergency purposes, licensed amateur radio service, and non-emergency communications used by agricultural, business, government, and military entities including aviation radar, commercial mobile radio service, fixed wireless service, global positioning, line-of-sight, microwave, personal communications service, weather radar, and wireless internet service.

(2) “Commission” means the public service commission.

(4) “Decommissioning” means removal of all of the following:

(a) The above ground portion of a wind energy system, including wind turbines and related facilities, except for access roads if removal has been waived by the property owner.

(b) All below ground facilities, except the following:

1. Underground collector circuit facilities.
2. Those portions of concrete structures 4 feet or more below grade.

(5) “DNR” means the Wisconsin department of natural resources.

(6) “Maximum blade tip height” means the nominal hub height plus the nominal blade length of a wind turbine, as listed in the wind turbine specifications provided by the wind turbine manufacturer. If not listed in the wind turbine specifications, “maximum blade tip height” means the actual hub height plus the blade length.

(7) “Nameplate capacity” means the nominal generating capacity of a wind energy system, as listed in the wind turbine specifications provided by the wind turbine manufacturer.

(8) “Nonparticipating property” means real property that is not a participating property.

(9) “Nonparticipating residence” means a residence located on nonparticipating property.

(10) “Occupied community building” means a school, church or similar place of worship, daycare facility or public library.

(12) “Owner” means:

(a) A person with a direct ownership interest in a wind energy system, regardless of whether the person was involved in acquiring the necessary rights, permits and approvals or otherwise planning for the construction and operation of a wind energy system.

(b) At the time a wind energy system is being developed, a person who is acting as a wind energy system developer by acquiring the necessary rights, permits and approvals for or by planning for the construction and operation of a wind energy system, regardless of whether the person will own or operate the wind energy system.

(13) “Participating property” means any of the following:

(a) A turbine host property.

(b) Real property that is the subject of an agreement that does all of the following:

1. Provides for the payment of monetary compensation to the landowner from an owner regardless of whether any part of a wind energy system is constructed on the property.

2. Specifies in writing any waiver of a requirement or right under this chapter and that the landowner’s acceptance of payment establishes the landowner’s property as a participating property.

(14) “Participating residence” means a residence located on participating property.

(15) “Personal communications” includes wireless telecommunications, personal communications service, radio, television, wireless internet service, and other systems used for personal use purposes.

(16) “Political subdivision” has the meaning given in s. 66.0401 (1e) (c), Stats.

(17) “Residence” means an occupied primary or secondary personal residence including a manufactured home as defined in s. 101.91 (2), Stats., a hospital, community-based residential facility, residential care apartment complex or similar facility, or a nursing home. “Residence”

includes a temporarily unoccupied primary or secondary personal residence. “Residence” does not include any of the following:

- (a) A recreational vehicle as defined in s. 340.01 (48r), Stats., notwithstanding the length of the vehicle.
- (b) A camping trailer as defined in s. 340.01 (6m), Stats.
- (c) A permanently abandoned personal residence.

(19) “Shadow flicker” means a pattern of moving shadows cast on a residence or an occupied community building caused by sunlight shining through moving wind turbine blades resulting in alternating changes in light intensity.

(20) “Small wind energy system” means a wind energy system that has a total installed nameplate capacity of 300 kilowatts or less and that consists of individual wind turbines that have an installed nameplate capacity of not more than 100 kilowatts.

(20.5) “Town” means the Town of Delafield, and when referring to the governing body means the Town Board of the Town of Delafield.

(21) “Turbine host property” means real property on which at least one wind turbine is located.

(22) “Wind access easement” means a written document that creates a legal interest in real property that restricts the use of the property to avoid interference with the wind resource on another property.

(23) “Wind energy system” has the meaning given in s. 66.0403 (1) (m), Stats., and is used to convert wind energy to electrical energy.

(24) “Wind energy system easement” means a written document that creates a legal interest in real property that permits an owner to place, construct or operate a wind turbine or other wind energy system facility on the property.

(25) “Wind energy system emergency” means a condition or situation at a wind energy system that presents a significant threat of physical danger to human life or a significant threat to property or a natural event that causes damage to wind energy system facilities.

(26) “Wind energy system facility” means any component of a wind energy system, such as a wind turbine, collector circuit, access road, electric system interconnection facility or operation and maintenance facility.

(27) “Wind energy system lease” means a written agreement between a landowner and an owner that establishes the terms and conditions associated with the placement, construction or operation of a wind turbine or other wind energy system facility on a landowner’s property.

13.105 Development of a wind energy system; notice requirements.

(1) PRE-APPLICATION NOTICE. At least 90 days before an owner files an application to construct a wind energy system, an owner shall use commercially reasonable methods to provide

written notice of the planned wind energy system to all of the following:

- (a) Landowners within one mile of a planned wind turbine host property.
- (b) Political subdivisions within which the wind energy system may be located.
- (c) Emergency first responders and air ambulance service providers serving a political subdivision within which the wind energy system may be located.
- (d) The Wisconsin department of transportation.
- (e) The commission.
- (f) The DNR.
- (g) The Wisconsin department of agriculture, trade and consumer protection.
- (h) The office of the deputy undersecretary of the U.S. department of defense.

(1m) **ADDITIONAL PRE-APPLICATION NOTICE TO COMMISSION.** At least 180 days before filing an application to construct a wind turbine with a maximum blade tip height exceeding 600 feet, or a wind energy system in those portions of Lake Michigan or Lake Superior that are within the jurisdiction of the state, the owner shall provide written notice of the planned wind energy system to the commission.

(2) **PRE-APPLICATION NOTICE REQUIREMENTS.** The owner shall include all of the following in a notice under sub. (1) or (1m):

- (a) A complete description of the wind energy system, including the number and size of the planned wind turbines.
- (b) A map showing the planned location of all wind energy system facilities.
- (c) Contact information for the owner.
- (d) A list of all potential permits or approvals the owner anticipates may be necessary for construction of the wind energy system.
- (e) Whether the owner is requesting a joint application review process under s. 13.30 (7) and the name of each political subdivision that may participate in the joint review process.

13.11 Real property provisions. (1) **EASEMENT RECORDING REQUIRED.** A wind energy system easement or wind access easement shall be recorded under ch. 706, Stats. A wind energy system easement or wind access easement shall include the term of the easement and a full legal description of the property subject to the easement.

(2) **WIND LEASE AND WAIVER PROVISIONS.** A wind energy system lease and any waiver under s. 13.14 (5) or 13.15 (4) shall hold harmless and indemnify the real property owner for all of the following:

(a) Any violation of federal, state or local law by the owner of the wind energy system.

(b) Any damages or bodily injury caused by the construction, operation or decommissioning of the wind energy system.

13.12 Existing property uses. (1) LAND USE AND COMMERCIAL ENTERPRISES. An owner shall make reasonable efforts to ascertain and accommodate any land use or commercial enterprise located on a nonparticipating property within 0.5 mile of a proposed wind turbine site if the land use or commercial enterprise exists when the owner gives notice under s. 13.105 (1), or if complete publicly-available plans for construction are on file with the Town within 30 days of the date the owner gives notice under s. 13.105 (1).

(2) AGRICULTURAL USE. An owner shall design a wind energy system to reasonably minimize the conversion of land from agricultural use.

13.13 Siting criteria. (1) SETBACK DISTANCE AND HEIGHT REQUIREMENTS. (a) An owner shall design and construct a wind energy system using the wind turbine setback distances shown in Table 1.

Table 1

Setback Description	<i>Setback Distance</i>
Occupied Community Buildings	<i>The lesser of 1,250 feet or 3.1 times the maximum blade tip height</i>
Participating Residences	<i>1.1 times the maximum blade tip height</i>
Nonparticipating Residences	<i>The lesser of 1,250 feet or 3.1 times the maximum blade tip height</i>
Participating Property Lines	<i>None</i>
Nonparticipating Property Lines	<i>1.1 times the maximum blade tip height</i>
Public Road Right-of-Way	<i>1.1 times the maximum blade tip height</i>
Overhead Communication and Electric Transmission or Distribution Lines - Not including utility service lines to individual houses or outbuildings	<i>1.1 times the maximum blade tip height</i>
Overhead Utility Service Lines - Lines to individual houses or outbuildings	<i>None</i>

(b) An owner shall measure wind turbine setback distances as a straight line from the vertical centerline of the wind turbine tower to the nearest point on the permanent

foundation of a building or residence or to the nearest point on the property line or feature, as applicable.

(c) An owner shall work with the Town and owners of participating and nonparticipating properties to site wind turbines to minimize individual hardships.

(d) The owner of a nonparticipating residence or occupied community building may waive the applicable wind turbine setback distances in Table 1 for those structures to a minimum setback distance of 1.1 times the maximum blade tip height. The owner of a nonparticipating property may waive the applicable wind turbine setback distance in Table 1 from a nonparticipating property line.

13.14 Noise criteria. (1) **DEFINITIONS.** In this section, nighttime hours are the hours beginning at 10:00 p.m. and ending at 6:00 a.m. daily and daytime hours are the hours beginning at 6:00 a.m. and ending at 10:00 p.m. daily.

(2) **PLANNING,** (a) The noise limits in this section apply at the outside wall of a nonparticipating residence or occupied community building that exists when the owner gives notice under s. 13.105 (1) or for which complete publicly-available plans for construction are on file with the Town within 30 days of the date on which the owner gives notice under s. 13.105 (1).

(b) An owner shall design the proposed wind energy system to minimize noise at a residence or occupied community building to the extent reasonably practicable.

(c) An owner shall design a wind energy system to comply with the noise standards in this section under planned operating conditions.

(3) **NOISE LIMITS,** (a) Except as provided in par. (b), sub. (4) (c) and sub. (5), an owner shall operate the wind energy system so that the noise attributable to the wind energy system does not exceed 50 dBA during daytime hours and 45 dBA during nighttime hours.

(b) In the event audible noise due to wind energy system operations contains a steady pure tone, such as a whine, whistle, screech, or hum, the owner shall promptly take corrective action to permanently eliminate the noise. This paragraph does not apply to sound the wind energy system produces under normal operating conditions.

(4) **COMPLIANCE,** (a) If an owner uses sound level measurements to evaluate compliance with this section at a nonparticipating residence or occupied community building, those measurements shall be made as near as possible to the outside wall nearest to the closest wind turbine, or at an alternate wall as specified by the owner of the nonparticipating residence or occupied community building. The owner may take additional measurements to evaluate compliance in addition to those specified by this section.

(b) Upon receipt of a complaint regarding a violation of the noise standards in sub. (3) (a), an owner shall test for compliance with the noise limits in sub. (3) (a). A political subdivision or monitoring committee established under s. 13.41 may not require additional testing to show compliance with sub. (3) (a) if the owner has provided the results of an accurate test conducted within 2 years of the date of the complaint showing that the wind energy system is in compliance with sub. (3) (a) at the location relating to the complaint.

(c) Methods available for the owner to comply with sub. (3) shall include operational curtailment of one or more wind turbines. Upon receipt of a complaint about a noise under sub. (3) (b), the owner shall use operational curtailment to eliminate the noise until the owner permanently corrects the problem.

(d) An owner shall evaluate compliance with sub. (3) (a) as part of pre- and post-construction noise studies. An owner shall conduct pre- and post-construction noise studies under the most current version of the noise measurement protocol as described in s. 13.50 (2).

(5) WAIVER. Upon request by an owner of a wind energy system, an owner of an affected nonparticipating residence or occupied community building may relieve the owner of the wind energy system of the requirement to meet any of the noise limits in this section at the affected residence or occupied community building by written contract with the wind energy system owner. Unless otherwise provided in a contract signed by an owner of an affected nonparticipating residence or occupied community building, a waiver by an owner of an affected nonparticipating residence or occupied community building is an encumbrance on the real property, runs with the land until the wind energy system is decommissioned, and shall be recorded under ch. 706, Stats.

(6) NOTIFICATION, (a) Before entering into a contract under sub. (5), an owner of a wind energy system shall provide written notice of the requirements of this section to the owner of an affected nonparticipating residence or occupied community building.

(b) Before the initial operation of the wind energy system, an owner of a wind energy system shall provide notice of the requirements of this section to an owner of a nonparticipating residence or occupied community building within 0.5 mile of a constructed wind turbine that has not entered into a contract under sub. (5).

13.15 Shadow flicker. (1) PLANNING, (a) The shadow flicker requirements in this section apply to a nonparticipating residence or occupied community building that exists when the owner gives notice under s. 13.105 (1) or for which complete publicly-available plans for construction are on file with the Town within 30 days of the date on which the owner gives notice under s. 13.105 (1).

(b) An owner shall design the proposed wind energy system to minimize shadow flicker at a residence or occupied community building to the extent reasonably practicable.

(c) An owner shall use shadow flicker computer modeling to estimate the amount of shadow flicker anticipated to be caused by a wind energy system and shall design the wind energy system so that computer modeling indicates that no nonparticipating residence or occupied community building will experience more than 30 hours per year of shadow flicker under planned operating conditions.

(2) SHADOW FLICKER LIMITS. An owner shall operate the wind energy system in a manner that does not cause more than 30 hours per year of shadow flicker at a nonparticipating residence or occupied community building. If a nonparticipating residence or occupied community building experiences more than 30 hours per year of shadow flicker under the wind energy system's normal operating conditions, the owner shall use operational curtailment to comply with this subsection.

(3) SHADOW FLICKER MITIGATION, (a) An owner of a wind energy system shall work with an owner of a nonparticipating residence or occupied community building to mitigate the effects of

shadow flicker to the extent reasonably practicable.

(b) An owner shall provide reasonable shadow flicker mitigation at the owner's expense for a nonparticipating residence or occupied community building experiencing 20 hours or more per year of shadow flicker.

(c) An owner shall model shadow flicker and a nonparticipating residence or occupied community building is eligible for mitigation if computer modeling shows that shadow flicker at the nonparticipating residence or occupied community building will be 20 hours or more per year. An owner of a nonparticipating residence or occupied community building is not required to document the actual hours per year of shadow flicker if modeling indicates the nonparticipating residence or occupied community building is eligible for mitigation. A nonparticipating residence or occupied community building that experiences 20 hours or more per year of shadow flicker based on records kept by the resident of a nonparticipating residence or the occupant of an occupied community building shall also be eligible for mitigation.

(d) An owner may provide shadow flicker mitigation for any residence or occupied community building in addition to the mitigation required under par. (b).

(e) The requirement under par. (b) to mitigate shadow flicker applies when the owner receives a complaint or request for mitigation regarding shadow flicker for an eligible nonparticipating residence or occupied community building. If shadow flicker mitigation is required, the owner of the wind energy system shall allow the owner of the nonparticipating residence or occupied community building to choose a preferred reasonable mitigation technique, including installation of blinds or plantings at the wind energy system owner's expense.

(4) WAIVER. Upon request by an owner of a wind energy system, an owner of an affected nonparticipating residence or occupied community building may relieve the wind energy system owner of a requirement under sub. (2) or (3) (b) at the affected nonparticipating residence or occupied community building by written contract with the wind energy system owner. Unless otherwise provided in a contract signed by an owner of an affected nonparticipating residence or occupied community building, a waiver by an owner of an affected nonparticipating residence or occupied community building is an encumbrance on the real property and runs with the land until the wind energy system is decommissioned, and shall be recorded under ch. 706, Stats.

(5) NOTIFICATION, (a) Before entering into a contract under sub. (4), a wind energy system owner shall provide notice of the requirements of this section to individual owners of an affected nonparticipating residence or occupied community building.

(b) Before the initial operation of the wind energy system, a wind energy system owner shall provide notice of the requirements of this section to an owner of a nonparticipating residence or occupied community building within 0.5 mile of a constructed wind turbine that has not entered into a contract under sub. (4).

13.16 Signal interference. (1) PLANNING, (a) Except as provided in sub. (4) (b), the signal interference requirements in this section apply to commercial communications and personal communications in use when the wind energy system begins operation.

(b) A owner shall use reasonable efforts to avoid causing interference with commercial communications and personal communications to the extent practicable.

(c) An owner may not construct wind energy system facilities within existing line-of-sight communication paths that are used by government or military entities to provide services essential to protect public safety. The owner shall provide information showing that wind turbines and other wind energy system facilities will be in compliance with this paragraph.

(2) **COMMERCIAL COMMUNICATIONS INTERFERENCE MITIGATION.** An owner shall use reasonable and commercially available technology to mitigate interference caused by a wind energy system with commercial communications in use when a wind energy system begins operation. Before implementing mitigation measures, the owner shall consult with affected parties regarding the preferred mitigation solution for commercial communications interference problems. Except as provided in sub. (4), an owner shall mitigate commercial communications interference caused by the wind energy system by making the affected party's preferred reasonable mitigation solution effective until either the wind energy system is decommissioned or the communication is no longer in use, whichever is earlier.

(3) **PERSONAL COMMUNICATIONS INTERFERENCE MITIGATION,** (a) An owner shall use reasonable and commercially available technology to mitigate interference with personal communications in use when a wind energy system begins operation caused by a wind energy system. The owner shall use reasonable and commercially available technology to mitigate interference with personal communications that were not in use when the wind energy system began commercial operation, if a wind energy system is causing the interference and the interference occurs at a location at least 0.5 mile from a wind turbine.

(b) Before implementing mitigation measures, the owner shall consult with affected parties regarding the preferred mitigation solution for personal communications interference problems. Except as provided in sub. (4), an owner shall mitigate personal communications interference caused by the wind energy system by making the affected party's preferred reasonable mitigation solution effective until either the wind energy system is decommissioned or the communication is no longer in use, whichever is earlier.

(4) **MITIGATION PROTOCOL.** Under the protocol established under s. 13.50 (2), owners are required to implement a new mitigation solution that becomes commercially available before the wind energy system is decommissioned to address interference for which mitigation is required under sub. (2) or (3) and for which the original mitigation solution implemented is only partially effective.

13.17 Stray voltage. (1) **TESTING REQUIRED.** (a) An owner shall work with the local electric distribution company to test for stray voltage at all dairy and confined animal operations within 0.5 mile of a wind energy system facility pursuant to the stray voltage protocol established by the commission before any wind energy system construction activity that may interfere with testing commences and again after construction of the wind energy system is completed, except as otherwise specified by commission staff under par. (b).

(b) Before any testing under par. (a) begins, an owner shall work with commission staff to determine the manner in which stray voltage testing will be conducted and on which properties. The electric distribution company serving a dairy or confined animal operation where testing is required under par. (a) shall conduct or arrange to conduct all required testing at the expense of the owner.

(2) RESULTS OF TESTING. An owner and the electric distribution company shall provide to commission staff the results of all stray voltage testing in writing.

(3) REQUIREMENT TO RECTIFY PROBLEMS. An owner shall work with the electric distribution company and farm owner to rectify any stray voltage problems attributable to the construction and operation of the wind energy system, in compliance with the commission's stray voltage protocol.

13.18 Construction and operation. (1) PHYSICAL CHARACTERISTICS. (a) An owner may not display advertising material or signage other than warnings, equipment information, or indicia of ownership on a wind turbine. An owner may not attach any flag, decorative sign, streamers, pennants, ribbons, spinners, fluttering, or revolving devices to a wind turbine. An owner may attach a safety feature or wind monitoring device to a wind turbine.

(b) An owner shall ensure that a wind turbine has a conventional or unobtrusive finish.

(c) An owner shall install lighting at a wind energy system that complies with standards established by the federal aviation administration. The Town may not establish lighting requirements for a wind energy system that conflict with standards established by the federal aviation administration. The Town may require use of shielding or control systems approved by the federal aviation administration to reduce visibility of lighting to individuals on the ground.

(d) An owner shall take appropriate measures to ensure that a wind turbine is not readily climbable except by authorized personnel.

(e) An owner shall ensure that all wind turbine access doors and electrical equipment are locked when authorized personnel are not present.

(f) An owner shall place appropriate warning signage on or at the base of each wind turbine.

(g) An owner shall post and maintain up-to-date signs containing a 24-hour emergency contact telephone number, information identifying the owner, and sufficient information to identify the location of the sign within the wind energy system. An owner shall post these signs at every intersection of a wind energy system access road with a public road and at each wind turbine location.

(h) An owner shall clearly mark guy wires and supports for a wind energy system, meteorological tower or other device for measuring wind speeds so that the wires and supports are visible to low flying aircraft under fair weather conditions.

(2) ELECTRICAL STANDARDS, (a) An owner shall construct, maintain, and operate collector circuit facilities in a manner that complies with the national electrical safety code and ch. PSC 114 and shall construct, maintain, and operate all wind energy system facilities in a manner that complies with the national electrical code.

(b) An owner shall construct collector circuit facilities for a wind energy system underground to the extent practicable.

(c) An owner shall establish an inspection schedule for all overhead collector circuits to

ensure that third-party facilities, including cable television and telecommunications cables, are not attached or bonded to overhead collector circuit grounding. If third-party facilities are found attached to the overhead collector facilities, the owner shall ensure that the third-party facilities are promptly removed.

(3) CONSTRUCTION, OPERATION, AND MAINTENANCE STANDARDS, (a) An owner shall construct, operate, repair, maintain and replace wind energy system facilities as needed to keep the wind energy system in good repair and operating condition and in a manner that protects individuals from injury.

(am) An owner shall minimize soil compaction, topsoil mixing and damage to drainage systems on agricultural land during the construction or decommissioning of the wind energy system. The Town may establish reasonable requirements designed to minimize soil compaction, topsoil mixing and damage to drainage systems on agricultural land.

(b) Except for the area physically occupied by the wind energy system facilities, an owner shall restore the topography, soils and vegetation of the project area to original condition after construction is complete, unless otherwise provided in a contract signed by an affected landowner, considering any modifications needed to comply with DNR requirements.

(c) An owner shall carry general liability insurance relating to claims for property damage or bodily injury arising from the construction, operation or decommissioning of the wind energy system and shall include turbine host property owners as additional insured persons on the policy.

(4) EMERGENCY PROCEDURES, (a) An owner shall notify the Town of the occurrence and nature of a wind energy system emergency within 24 hours of the wind energy system emergency.

(b) An owner shall establish and maintain liaison with the Town and with fire, police, and other appropriate first responders serving the wind energy system to create effective emergency plans that include all of the following:

1. A list of the types of wind energy system emergencies that require notification under par. (a).
2. Current emergency contact information for first responders and for the wind energy system owner, including names and phone numbers.
3. Procedures for handling different types of wind energy system emergencies, including written procedures that provide for shutting down the wind energy system or a portion of the system as appropriate.
4. Duties and responsibilities of the owner and of first responders in the event of a wind energy system emergency.
5. An emergency evacuation plan for the area within 0.5 mile of any wind energy system facility, including the location of alternate landing zones for emergency services aircraft.

(c) The owner shall review the emergency plan at least annually in collaboration with fire,

police and other appropriate first responders to update and improve the emergency plan as needed.

(d) The owner shall distribute current copies of the emergency plan to the Town and fire, police and other appropriate first responders as identified by the Town.

(e) The Town may require the owner to provide annual training for fire, police and other appropriate first responders regarding responding to a wind energy system emergency until the wind energy system has been decommissioned.

(f) An owner of a wind energy system shall do all of the following:

1. Furnish its operator, supervisors and employees who are responsible for emergency action a copy of the current edition of the emergency procedures established under this subsection to ensure compliance with those procedures.
2. Train the appropriate operating personnel to ensure they have knowledge of the emergency procedures and verify that the training is effective.
3. As soon as possible after the end of a wind energy system emergency, review employee activities to determine whether the procedures were effectively followed.

13.19 Decommissioning. (1) REQUIREMENT TO DECOMMISSION. (a) An owner of a wind energy system shall decommission and remove the wind energy system when the system is at the end of its useful life.

(b) A wind energy system is presumed to be at the end of its useful life if the wind energy system generates no electricity for a continuous 360-day period. This presumption may be rebutted under par. (c).

(c) Upon application by the owner, and except as provided in par. (d), the Town shall grant an extension of the time period for returning the wind energy system to service by one or more additional 180 day periods if the owner demonstrates it is likely the wind energy system will operate again in the future and any of the following occur:

1. The owner submits a plan to the Town that demonstrates an ongoing good faith effort to return the wind energy system to service and outlines the steps and schedule for returning the wind energy system to service in a reasonable period of time, including by repairing, replacing or repowering the wind energy system facilities as necessary to generate electricity.
2. The owner demonstrates that the wind energy system is part of a prototype or other demonstration project being used for ongoing research or development purposes.
3. The owner demonstrates that the wind energy system is being used for educational purposes.

(d) The Town may deny a request for an extension under par. (c) if the wind energy system has not generated any electricity for a continuous period of 540 days or more and the Town finds that the owner is not capable of returning the wind energy system to service within a

reasonable period of time.

(e) A wind energy system is irrebuttably presumed to be at the end of its useful life if the wind energy system generates no electricity for a period of 540 days and any of the following occur:

1. The owner does not request an extension of the time period for returning the wind energy system to service under par. (c).
2. The Town denies a request for an extension under par. (d) and any appeal rights have expired.

(f) When decommissioning is required, the owner shall begin decommissioning within 360 days after the wind energy system has reached the end of its useful life. The owner shall complete decommissioning and removal of the wind energy system within 540 days after the wind energy system has reached the end of its useful life.

(2) DECOMMISSIONING REVIEW. The Town may establish a decommissioning review process to determine when a wind energy system has reached the end of its useful life.

(3) FINANCIAL RESPONSIBILITY. (a) The owner of a wind energy system with a nameplate capacity of one megawatt or larger shall maintain proof of the owner's ability to fund the actual and necessary cost to decommission the wind energy system and shall ensure the availability of funds necessary for decommissioning throughout the expected life of the wind energy system and through to completion of the decommissioning activities.

(b) An owner of a wind energy system with a nameplate capacity of one megawatt or larger shall provide financial assurance of the owner's ability to pay for the actual and necessary cost to decommission the wind energy system before commencing major civil construction activities such as blasting or foundation construction at the wind energy system site. An owner may comply with this paragraph by choosing to provide a bond, deposit, escrow account, irrevocable letter of credit, or some combination of these financial assurances, that will ensure the availability of funds necessary for decommissioning throughout the expected life of the wind energy system and through to completion of the decommissioning activities.

(c) An owner shall provide the financial assurance under par. (b) in an amount up to the estimated actual and necessary cost to decommission the wind energy system. The owner shall provide the Town with up to 3 cost estimates of the actual and necessary cost to decommission the wind energy system that are prepared by third parties agreeable to the owner and the Town. The owner shall establish financial assurance that places the Town in a secured position, and any secured funds may only be used for decommissioning the wind energy system until either the Town determines that the wind energy system has been decommissioned under sub. (5) (b), or until the Town has otherwise approved the release of the secured funds, whichever is earlier. The owner shall establish financial assurance that allows the Town to access funds for the purpose of decommissioning the wind energy system if the owner does not decommission the wind energy system when decommissioning is required.

(d) The amount of the financial assurance is not required to exceed the average of the cost estimates provided.

(e) Any approval by the Town of a wind energy system is subject to the owner's compliance with pars, (b) and (c).

(f) During the useful life of a wind energy system, the Town may periodically request information from the owner regarding the industry costs for decommissioning the wind energy system. If the Town finds that the future anticipated cost to decommission the wind energy system is at least 10 percent more or less than the amount of financial assurance previously provided under par, (b), the Town may correspondingly increase or decrease the amount of financial assurance required for the wind energy system. The Town may not adjust the financial assurance under this paragraph more often than once in a 5-year period.

(g) The Town may require an owner to submit to the Town a substitute financial assurance of the owner's choosing under par. (b) if an event occurs that raises material concerns regarding the viability of the existing financial assurance.

(4) SITE RESTORATION, (a) Except as provided in par. (b), if a wind energy system was constructed on land owned by a person other than the owner of the wind energy system, the owner of the wind energy system shall ensure that the property is restored to preconstruction condition, unless otherwise provided in a contract signed by an affected landowner, considering any modifications needed to comply with DNR requirements.

(b) If a wind energy system was constructed on a brownfield, as defined in s. 560.13 (1) (a), Stats., the owner shall restore the property to eliminate effects caused by the wind energy system, except for the effects of environmental remediation activities, as defined in s. 560.13(1) (d), Stats.

(5) DECOMMISSIONING COMPLETION. (a) An owner shall file a notice of decommissioning completion with the Town and the commission when a wind energy system approved by the Town has been decommissioned and removed.

(b) Within 360 days of receiving a notice of decommissioning, the Town shall determine whether the owner has satisfied the requirements of subs. (1) (a) and (4).

13.30 Application and notice requirements. (1) APPLICATION REQUIRED. An owner shall file an application to construct a wind energy system with all political subdivisions with jurisdiction over the wind energy system, including the Town Clerk.

(2) CONTENTS OF AN APPLICATION. An owner shall complete and file with the Town Clerk an application that includes all of the following:

(a) Wind energy system description and maps showing the locations of all proposed wind energy facilities.

(b) Technical description of wind turbines and wind turbine sites.

(c) Timeline and process for constructing the wind energy system.

(d) Information regarding anticipated impact of the wind energy system on local infrastructure.

(e) Information regarding noise anticipated to be attributable to the wind energy system.

- (f) Information regarding shadow flicker anticipated to be attributable to the wind energy system.
- (g) Information regarding the anticipated effects of the wind energy system on existing land uses within 0.5 mile of the wind energy system.
- (h) Information regarding the anticipated effects of the wind energy system on airports and airspace.
- (i) Information regarding the anticipated effects of the wind energy system on line-of-sight communications.
- (j) A list of all state and federal permits required to construct and operate the wind energy system.
- (k) Information regarding the planned use and modification of roads within the Town during the construction, operation, and decommissioning of the wind energy system, including a process for assessing road damage caused by wind energy system activities and for conducting road repairs at the owner's expense.
- (L) A copy of all emergency plans developed in collaboration with appropriate first responders under s. 13.18 (4) (b). An owner may file plans using confidential filing procedures as necessary.
- (m) A decommissioning and site restoration plan providing reasonable assurances that the owner will be able to comply with s. 13.19.
- (n) A representative copy of all notices issued under sub. (5) and ss. 13.105 (1) (a) and 13.42 (1).
- (p) Any other information necessary to understand the construction, operation or decommissioning of the proposed wind energy system.

(3) ACCURACY OF INFORMATION. The owner shall ensure that information contained in an application is accurate.

(4) DUPLICATE COPIES. The Town may specify a reasonable number of copies to be filed. Each copy shall include all worksheets, maps, and other attachments included in the application. Upon prior written approval of the Town, the Town may permit an owner to file an application electronically.

(5) NOTICE TO PROPERTY OWNERS AND RESIDENTS. (a) On the same day an owner files an application for a wind energy system, the owner shall, under s. 66.0401 (4) (a) 3., Stats., use commercially reasonable methods to provide written notice of the filing of the application to property owners and residents located within one mile of the proposed location of any wind energy system facility. The notification shall include all of the following:

1. A complete description of the wind energy system, including the number and size of the wind turbines.
2. A map showing the locations of all proposed wind energy system facilities.

3. The proposed timeline for construction and operation of the wind energy system.
4. Locations where the application is available for public review.
5. Owner contact information.

(b) After the Town receives an application for a wind energy system, the notice required to be published by the Town under s. 66.0401 (4) (a) 1., Stats., shall include a brief description of the proposed wind energy system and its proposed location, the locations where the application is available for public review, the method and time period for the submission of public comments to the Town, and the approximate schedule for review of the application by the Town.

(6) PUBLIC PARTICIPATION. (a) The Town shall make an application for a wind energy system available for public review at a local library and at the Town Hall. The Town may also provide public access to the application electronically.

(b) The Town shall establish a process for accepting and considering written public comments on an application for a wind energy system.

(c) The Town shall hold at least one public meeting to obtain comments on and to inform the public about a proposed wind energy system.

(7) JOINT APPLICATION REVIEW PROCESS. (a) If the wind energy system is proposed to be located in more than one political subdivision with jurisdiction over the wind energy system, the political subdivisions involved may conduct a joint application review process on their own motion or upon request. If an owner requests a joint application review, the owner shall include the request in its notice of intent to file an application with the Town under s. 13.105 (1). If the owner requests a joint application review process, the political subdivisions involved shall approve or deny this request within 60 days of receipt of the owner's notice of intent to file an application.

(b) Except as provided in s. 66.0401 (4) (a) 2., Stats., if political subdivisions elect to conduct a joint application review process, the process shall be consistent with this chapter and the political subdivisions shall establish the process within 90 days of the date the political subdivisions receive the owner's notice of intent to file an application. The Town may follow the review process of another political subdivision for purposes of conducting a joint application review process concurrently with the other political subdivision. If a joint application review process is adopted, the owner shall file the joint-review process application with all of the political subdivisions participating in the joint review process.

13.31 Application completeness. (1) COMPLETE APPLICATIONS, (a) An application is complete if it meets the filing requirements under ss. 13.30 (2) and 13.50 (1).

(b) The Town shall determine the completeness of an application, and shall notify the owner in writing of the completeness determination, no later than 45 days after the day the application is filed. An application is considered filed the day the owner notifies the Town in writing that all the application materials have been filed. If the Town determines that the application is incomplete, the notice provided to the owner shall state the reasons for the determination.

(c) An owner may file a supplement to an application that the Town has determined to be incomplete. There is no limit to the number of times that an owner may re-file an application. For incomplete applications, the owner shall provide additional information as specified in the notice under par. (b).

(d) An additional 45-day completeness review period shall begin the day after the Town receives responses to all items identified in the notice under par. (b).

(e) If the Town does not make a completeness determination within the applicable review period, the application is considered to be complete.

(2) **REQUESTS FOR ADDITIONAL INFORMATION.** The Town may request additional information necessary to understand the wind energy system after determining that an application is complete. An owner shall provide additional information in response to all reasonable requests. An owner shall respond to all inquiries made subsequent to a determination of completeness in a timely, complete, and accurate manner.

13.32 Town review of a wind energy system. (1) **APPROVAL BY TOWN.** Except as provided in s. 13.02 (1), the Town may require an owner to obtain approval from the Town before constructing any of the following:

(a) A wind energy system.

(b) An expansion of an existing or previously-approved wind energy system.

(2) **STANDARD FOR APPROVAL.** (a) The Town may not unreasonably deny an application for a wind energy system or impose unreasonable conditions.

(3) **WRITTEN DECISION,** (a) The Town shall issue a written decision to grant or deny an application for a wind energy system. The written decision shall include findings of fact supported by evidence in the record. If an application is denied, the decision shall specify the reason for the denial. The Town may make its approval subject to the conditions in s. 13.33.

(b)1. The Town shall provide its written decision to the owner and to the commission. If the Town approves an application for a wind energy system, the Town shall provide the owner with a duplicate original of the decision.

2. The owner shall record the duplicate original of a decision approving an application with the register of deeds for the county in which the wind energy system is located.

(4) **EFFECT OF OWNERSHIP CHANGE ON APPROVAL.** Approval by the Town of a wind energy system remains in effect if there is a change in the owner of the wind energy system. The Town may require an owner to provide timely notice of any change in the owner of the wind energy system.

(5) **FEES.** (a) The Town may charge an owner a reasonable application fee or require an owner to reimburse the Town for reasonable expenses relating to the review and processing of an application for a wind energy system.

(b) The Town's fee or reimbursement requirement under par. (a) shall be based on the actual and necessary cost of the review of the wind energy system application, and may include the cost of services necessary to review an application that are provided by outside engineers, attorneys, planners, environmental specialists, and other consultants or experts. The Town may by ordinance set standardized application fees based on the size and complexity of a proposed wind energy system.

(c) The Town may require an owner of a wind energy system to submit up to 50 percent of the total estimated amount of the fee or reimbursement for the wind energy system application under par. (a) before issuing a written decision under sub. (3) (a), if the Town gives written notice to the owner of its intent to do so within 10 days of the date the application is deemed complete and the notice contains an estimate of the amount of the fee and the relevant reimbursement requirements.

(d) The Town may not charge an owner an annual fee or other recurring fees to operate or maintain a wind energy system.

Note: See also s. 66.0628(2), Stats., which requires any fee imposed by the Town to bear a reasonable relationship to the service for which the fee is imposed.

13.33 Additional provisions. The following conditions apply to any Town approval of an application to construct a wind energy system:

(1) INFORMATION. The owner shall provide information about whether the owner has consulted with and received any non-binding recommendations for constructing, operating or decommissioning the wind energy system from a state or federal agency, and whether the owner has incorporated such non-binding recommendations into the design of the wind energy system.

(2) STUDIES. The owner shall cooperate with any study of the effects of wind energy systems coordinated by a state agency.

(3) MONETARY COMPENSATION. The owner of a wind energy system shall offer an agreement that includes annual monetary compensation to the owner of a nonparticipating residence, if the residence is located within 0.5 mile of a constructed wind turbine. For one turbine located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed \$600. For two turbines located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed \$800. For three or more turbines located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed \$1,000. The initial annual monetary compensation under this subsection shall apply to agreements entered into in 2011. For agreements entered into in 2012 and thereafter, the initial annual amounts shall increase each year by the greater of two percent or the increase in the Consumer Price Index, as described in s. 196.374 (5) (bm) 2. b., Stats., from the previous year. An agreement offered under this subsection shall specify in writing any waiver of a requirement or right under this chapter and whether the landowner's acceptance of payment establishes the landowner's property as a participating property under this chapter.

(3m) AERIAL SPRAYING. The owner of a wind energy system shall offer an agreement that includes monetary compensation to a farm operator farming on a nonparticipating property located within 0.5 mile of a constructed wind turbine if the farm operator demonstrates all of the following:

(a) Substantial evidence of a history, before the wind energy system owner gives notice under s. 13.105 (1), of using aerial spraying for pest control or disease prevention for growing potatoes, peas, snap beans or sweet corn on all or part of a farm field located within 0.5 mile of a constructed wind turbine.

(b) A material reduction in potato, pea, snap bean or sweet corn production or a material increase in application costs on all or part of a farm field located within 0.5 mile of a constructed wind turbine as a result of the wind energy system's effect on aerial spraying practices.

(4) PERMITS. The owner shall submit to the Town copies of all necessary state and federal permits and approvals.

(5) ANNUAL REPORTS. The owner shall file an annual report with the Town documenting the operation and maintenance of the wind energy system during the previous calendar year.

13.34 Record of decision. (1) RECORDKEEPING, (a) The Town shall keep a complete written record of its decision-making relating to an application for a wind energy system.

(b) If the Town denies an application, the Town shall keep the record for at least 7 years following the year in which it issues the decision.

(c) If the Town approves an application, the Town shall keep the record for at least 7 years after the year in which the wind energy system is decommissioned.

(2) RECORD CONTENTS. The record of a decision shall include all of the following:

(a) The approved application and all additions or amendments to the application.

(b) A representative copy of all notices issued under ss. 13.105 (1) (a), 13.30 (5) and 13.42 (1).

(c) A copy of any notice or correspondence that the Town issues related to the application.

(d) A record of any public meeting under s. 13.30 (6) (c) and any hearing related to the application. The record may be an electronic recording, a transcript prepared from an electronic recording, or a transcript prepared by a court reporter or stenographer. The record shall include any documents or evidence submitted by meeting or hearing participants.

(e) Copies of any correspondence or evidentiary material that the Town considered in relation to the application, including copies of all written public comments filed under s. 13.30 (6) (b).

(f) Minutes of any Town, board, council or committee meetings held to consider or act on the application.

(g) A copy of the written decision under s. 13.32 (3) (a).

(h) Other materials that the Town prepared to document its decision-making process.

(i) A copy of any Town ordinance cited in or applicable to the decision.

(3) **POST-CONSTRUCTION FILING REQUIREMENT.** Within 90 days of the date a wind energy system commences operation, the owner shall file with the Town and the commission an as-built description of the wind energy system, an accurate map of the wind energy system showing the location of all wind energy system facilities, geographic information system information showing the location of all wind energy system facilities and current information identifying the owner of the wind energy system. An owner shall in the filings under this subsection label each wind turbine location with a unique identifier consistent with the information posted at the wind turbine location under s. 13.18 (1) (g).

13.35 Modifications to an approved wind energy system. (1) MATERIAL CHANGE.

(a) An owner may not make a material change in the approved design, location or construction of a wind energy system without the prior written approval of the Town that authorized the wind energy system, unless the Town automatically approves the material change by taking either of the steps specified in s. 13.32 (2) (b) 1. or 2.

(b) An owner shall submit an application for a material change to an approved wind energy system to the Town that authorized the wind energy system.

(2) **REVIEW LIMITED,** (a) On receipt of an application for a material change to a wind energy system under sub. (1) (b) may not reopen the merits of the earlier approval but shall consider only those issues relevant to the proposed change.

(b) An application for a material change is subject to ss. 13.30 (1), (3) to (5), (6) (a) and (b) and (7) and 13.31 to 13.34.

(c) An application for a material change shall contain information necessary to understand the material change.

(d) The Town may hold at least one public meeting to obtain comments on and to inform the public about a proposed material change to an approved wind energy system.

13.36 Monitoring compliance. (1) MONITORING PROCEDURE. The Town may establish a procedure to monitor compliance by the owner with any condition on an approved wind energy system or to assess when wind energy system facilities are not maintained in good repair and operating condition. The procedure may include timelines, provide for payment of reasonable fees for conducting an assessment, and provide for notification to the public.

(2) **THIRD-PARTY INSPECTOR DURING CONSTRUCTION.** The Town may require an owner to pay a reasonable fee for a third-party inspector to monitor and report to the Town regarding the owner's compliance with permit requirements during construction. An inspector monitoring compliance under this subsection shall also report to a state permitting authority upon the state permitting authority's request.

13.40 Complaint process. (1) MAKING A COMPLAINT, (a) An aggrieved person may make a complaint regarding failure by an owner to comply with an obligation under this chapter.

(b) A complaint under par. (a) shall be made first to the owner of the wind energy system

pursuant to a complaint resolution process developed by the owner.

(c) A complainant may petition the Town for review of a complaint that is not resolved within 45 days of the day the owner receives the original complaint.

(d) The Town's decision under par. (c) is subject to review under s. 66.0401 (5), Stats.

(2) COMPLAINT RESOLUTION, (a) An owner shall use reasonable efforts to resolve complaints regarding a wind energy system and shall investigate complaints regarding a wind energy system at the owner's expense.

(b) Upon receipt of a complaint, an owner shall provide the complainant with a copy of the notice described in s. 13.42 (1). Within 30 days of receiving a complaint, an owner shall provide an initial response to the complainant.

(c) An owner shall make a good faith effort to resolve complaints within 45 days of receiving a complaint. An owner shall notify the Town of complaints that have not been resolved within 45 days of the date the owner received the original complaint.

(d) An owner shall maintain a log of all complaints received regarding the wind energy system. The owner shall include in the log the name and address of each complainant, the nature of each complaint, and the steps taken to resolve each complaint. An owner shall provide a copy of a complaint log monthly, at no cost, either to a monitoring committee established under s. 13.41 or, if a monitoring committee has not been established, to the Town. An owner shall make any complaint log available to the commission upon request.

(e) An owner shall develop a complaint resolution process that is consistent with this subsection.

13.41 Monitoring committee. (1) COMMITTEE. Except as provided in sub. (3), the Town may establish a monitoring committee to oversee resolution of complaints regarding a wind energy system. A monitoring committee shall include on the committee a member who is a local employee of an owner of a wind energy system and, if in existence, at least one nonparticipating landowner residing in the Town within 0.5 mile of a wind turbine that is located in the Town.

(2) DUTIES. A monitoring committee established under sub. (1) may do any of the following:

(a) Maintain a record of all complaints brought to it.

(b) Require the owner to provide the committee with information regarding the owner's response to any complaint forwarded to the owner by the committee.

(c) Recommend to the Town a reasonable resolution to a complaint based upon the information gathered by the committee.

(3) MULTIPLE JURISDICTIONS. If a wind energy system is located in more than one political subdivision with jurisdiction over the wind energy system and multiple political subdivisions decide to establish a monitoring committee, the political subdivisions shall jointly establish a single monitoring committee to oversee resolution of complaints regarding the wind energy system.

13.42 Notice to property owners and residents. (1) NOTICE OF PROCESS FOR MAKING COMPLAINTS. Before construction of a wind energy system begins, an owner shall provide written notice of the process for making complaints and obtaining mitigation measures to all residents and landowners within 0.5 mile of any wind energy system facility. An owner shall include in the notice the requirements under s. 13.40 (1) for submitting a complaint to the owner, a petition for review to the Town, and an appeal to the commission, and shall include a contact person and telephone number for the owner for receipt of complaints or concerns during construction, operation, maintenance and decommissioning.

(2) NOTICE TO TOWN. An owner shall provide a copy of the notice under sub. (1) to any Town with jurisdiction over the wind energy system, and the owner shall keep the contact person and telephone number current and on file with the Town.

II. SMALL WIND ENERGY SYSTEM REGULATION.

13.60 Exemptions from this chapter. All of the provisions in this chapter apply to a small wind energy system except ss. 13.14 (4) (d) and (6) (b), 13.15 (1) (c), (3) (b) to (e) and (5), 13.16 (2) to (4), 13.18 (1) (g), (2) (b) and (c), (3) (am), (b) and (c), and (4) (b) to (f), 13.19 (1) (c) to (e), (3) and (4), 13.30 (2) (L) and (m), 13.33 (1) to (3m) and (5), 13.34 (3), 13.36, 13.40 (2) (b) to (e), 13.41 and 13.42.

13.61 Modifications to this chapter. The following provisions in this chapter are modified to apply to a small wind energy system as follows:

(1) NOTICE. Under s. 13.105 (1), the notice shall be filed at least 60 days before an owner files an application to construct a small wind energy system and the notice shall be provided only to adjacent landowners and the political subdivisions with jurisdiction over the small wind energy system.

(2) LAND USE. Section 13.12 (1) applies only to existing land uses and enterprises that are located on adjacent nonparticipating properties.

(3) SETBACK DISTANCES. In s. 13.13 (1):

(a) Table 1 is replaced with Table 2.

(b) The owner of an adjacent nonparticipating residence or adjacent occupied community building may waive the applicable turbine setback distances in Table 2.

Table 2

Setback Description

Setback Distance

Occupied Community Buildings

1.0 times the maximum blade tip height

Participating Residences

None

Nonparticipating Residences

1.0 times the maximum blade tip height

Participating Property Lines

None

Nonparticipating Property Lines

1.0 times the maximum blade tip height

Public Road Right-of-Way

None

Overhead Communication and Electric Transmission or Distribution Lines - Not including utility service lines to individual houses or outbuildings

1.0 times the maximum blade tip height

Overhead Utility Service Lines - Lines to individual houses or outbuildings

None

(4) NOISE. Under s. 13.14 (6) (b), an owner shall provide notice of the requirements of s. 13.14 only to each adjacent nonparticipating residence or occupied community building before the initial operation of the small wind energy system.

(5) USEFUL LIFE. Under s. 13.19 (1), a small wind energy system is presumed to be at the end of its useful life if it generates no electricity for a continuous 540-day period.

(6) EFFECTS ON LAND USES. Under s. 13.30 (2) (g), the information regarding the anticipated effects of the small wind energy system on existing land uses shall only be for parcels adjacent to the wind energy system.

(7) APPLICATION NOTICE. Under s. 13.30 (5) (a), written notice of the filing of the application shall be provided only to property owners and residents located adjacent to the small wind energy system.

(8) MEETINGS. Under s. 13.30 (6) (c), the Town may hold at least one public meeting to obtain comments on and to inform the public about a proposed small wind energy system.

14.01 AUTHORITY.

Pursuant to the provisions of §101.65, Wis. Stats., the Town Board does hereby ordain a building code for new one and 2 family dwellings in the Town.

14.02 STATE CODES ADOPTED. (Rep. & rec. #93-341)

(1) WISCONSIN ADMINISTRATIVE CODE. Except as otherwise specifically provided in this code, the current and future provisions describing and defining regulations of the Department of Industry, Labor and Human Relations are hereby adopted and made part of this chapter by reference as if fully set forth herein. Any act required to be performed or prohibited by any current or future provision incorporated herein by reference is required or prohibited by this Code. Any future additions, amendments, revision or modifications to the regulations incorporated hereby are intended to be made a part of the Code in order to secure uniform state-wide regulation. If there is a conflict between codes or interpretations, the most restrictive code or interpretation shall be enforced. The code adopted herein includes, but is not limited to, the following:

- (a) Chapter Comm 20-25 "Uniform Dwelling Code".
- (b) Chapter Comm 50-64 "Building and Heating, Ventilating and Air Conditioning Code" commonly referred to as the "Commercial Building Code".
- (c) Chapter Comm 70 "Historic Building Code".
- (d) Chapter Comm 75-79 "Existing Buildings Code".

(2) Pursuant to Comm §20.02(1)(c), Wis. Adm. Code, the Town Board hereby extends the requirement of the Uniform Dwelling Code and all future amendments, modifications and additions thereto to include all construction, additions, alterations or repair to any existing structure in the Town and any new structures.

(3) ENFORCEMENT.

- (a) The Building Inspector, the Town Fire Department and any other designee of the Town Board shall enforce this section.
- (b) Non-exclusivity.

1. Other Ordinances. Adoption of this section does not preclude the Town Board from adopting any other ordinance or providing for the enforcement of any other law or ordinance relating to the same or other matter.

2. Other Remedies. The issuance of a citation hereunder shall not preclude the Town Board or any authorized officer from proceeding under any other ordinance or law or by any other enforcement method to enforce any ordinance, regulation or order.

14.03 BUILDING PERMIT REQUIRED. (Rep. & rec. 2009-003)

No building or structure or any part thereof shall hereafter be built, enlarged, altered, structurally repaired or moved within the Town or without the Town if such structure is to be located within the Town, unless a permit therefore is first obtained by the owner or his agent from the Building Inspector. No building or structure or any part thereof shall be demolished unless a permit therefore is first obtained by the owner or his agent pursuant to §17.03(9)(A) of this Code. Once a building permit, zoning permit, electrical

permit, plumbing permit, temporary occupancy permit or demolition permit has been issued under this Code, if that permit expires after commencement of the work without the work being completed, no new permit shall be issued for the project without the express approval of the Town Board. If the Town Board approves such permit, the Town Board may impose reasonable conditions which may include, but not limited to, requiring immediate actions by the applicant to minimize adverse impacts of the project and a financial guarantee in a form and amount approved by the Town Board to ensure compliance with such conditions and timely final completion.

14.04 FEES.

Fee for building permits and all other permits shall be as established by the Town Board by separate resolution.

14.05 COMPLETION DEPOSIT REQUIRED. (Cr. 01-533)

A deposit is required for all new single-family homes. The fee for the deposit shall be as established by Town Board, from time to time, by separate resolution. The sums deposited shall be retained by the Town Clerk until after permanent landscaping of the street yard and any draining ditch has been completed as specified by Section 8.02 (3). In the event any damage is done to the drainage system or road servicing as a result of the construction activities on the property, the deposit shall be used to defray the Town's expense to repair any such damage. The balance of the deposit, after deducting such expenses incurred by the Town to repair the damage, shall be returned to the property owner after the landscaping has been completed and the Building Inspector has found that the building complies with all applicable codes, including the address permanently installed pursuant to Section 8.16(9). The deposit shall be forfeited if occupancy occurs before final inspection or extends after a temporary occupancy permit expires. It shall also be forfeited if the exterior is not finished within 2 years of the date the permit is issued. In the event application for reimbursement of a ditch bond is not made within two (2) years of issuance of the final occupancy permit, or in the event application is made but refused because of the failure of the applicant to comply with the ordinances of the Town of Delafield, such bond shall be forfeited and the money shall be placed in the general fund of the Town of Delafield.

The Building Inspector shall receive a fee pursuant to Section 1.08 from the deposit, or such other sum as may be approved by the Town Board from time to time, to defray the cost of inspecting the premises to ensure compliance with this ordinance, as well as other applicable regulations and ordinances of the Town of Delafield.

14.06 COMMERCIAL PROPERTY EXTERIOR MAINTENANCE CODE. (Cr. 2002-08-012)

(1) This Section shall be known as the Town of Delafield Commercial Property Exterior Maintenance Code.

(2) APPLICABILITY. The provisions of this section shall apply uniformly to the maintenance of all buildings or structures and surrounding areas, irrespective of when or under what condition or conditions such building were originally constructed.

(3) DEFINITIONS.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Accessory building or structure means a detached building or structure in a secondary or subordinate capacity from the main building.

Approved means approved by the local authority having such administrative authority.

Basement means a portion of the building partly underground but having less than half its clear height below the average grade of the adjoining ground.

Blight means an impaired condition leading to deterioration.

Blighting influence means a condition having an adverse effect on surrounding properties.

Commercial Building means a structure enclosed within exterior walls or fire walls, built, erected and framed of component-structured parts designed for non-residential purposes and for the generation of income, including multi-family buildings as defined herein.

Debris means broken concrete, bricks, blocks or other mineral matter; bottles, porcelain and other glass or crockery; boxes; lumber (new or used), posts, sticks or other wood; tree branches, brush, yard trimmings, grass clippings, and other residues; paper, rags, cardboard, excelsior, rubber, plastic, wire, tin and metal items; discarded goods or appliances, junk lawn mowers, tar paper, residues from burning, or any similar materials which constitute health, fire or safety hazards or a serious blighting influence upon the neighborhood or the Town in general.

Deterioration means the condition or appearance of a building or structure, characterized by breaks, holes, rot, crumbling, cracking, peeling, rusting, inadequate paint or other evidence of decay or neglect.

Dilapidated means a condition of decay or partial ruin by neglect or misuse.

Multi-family building for purposes of this ordinance means multi-family residential buildings with three or more dwelling units.

Noxious weeds means as defined in Section 66.0407, Wis. Stats. (1999-2000).

Premises means lot, plot or parcel of land, including the buildings or structures or any part of the land.

Reasonably tight means that the item so described shall fit so as to exclude wind, rain or moisture or vermin, pests, bugs, insects, rodents or other similar items.

Refuse means the same as debris.

Rubbish means combustible and noncombustible waste materials, except garbage; and the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard clippings, tin cans, metals, mineral matter, glass, crockery and dust, and other similar materials.

Workmanlike means accomplished in a reasonably skillful manner.

Yard means an open space at grade on the same lot as the building or structure located between such building or structure and the adjoining lot line, and/or the street line.

(4) INTENT AND PURPOSE.

(a) Purpose. The purpose of this Section is to recognize the private and public benefits resulting from the safe, sanitary, and attractive maintenance of commercial buildings, structures, yards, or vacant areas as well as multi-family buildings. Attractive and well-maintained property will enhance the neighborhood and Town and provide a suitable

environment for increasing physical and monetary values.

(b) Unsafe and Dangerous Conditions. It is recognized that there may now be or may, in the future, be commercial buildings, structures, yards, or vacant areas and combinations thereof which are so dilapidated, unsafe, dangerous, unhygienic, or inadequately maintained so as to constitute a menace to the health, safety, and general welfare of the people ' The establishment and enforcement of minimum commercial property maintenance standards is necessary to preserve and promote the private and public interest.

(5) SAFE, SANITARY, AND ATTRACTIVE MAINTENANCE OF PROPERTY. Minimum Requirements. Every owner or operator shall improve and maintain all property under their control to comply with the following minimum requirements:

(a) Drainage. All courts, yards, or other areas on the premises shall be properly graded to divert water away from any building or structure so as to prevent the accumulation of stagnant water on any such surface. Driveways shall be maintained in good condition and repair.

(b) Weeds. All exterior property areas shall be kept free from noxious weeds as required by this Code of Ordinances. Where weed cutting is required, the Weed Commissioner shall perform said weed cutting or arrange for said weed cutting and process the charge therefore as a special assessment against the benefitted property.

(c) Debris. Every commercial building or structure and shall have adequate refuse, garbage or rubbish storage facilities. Garbage containers shall all have tight covers and shall be kept in place at all times. No occupant shall accumulate rubbish, boxes, lumber, metal, animal feces or other materials, which may provide harborage for rodents or vermin. All animal feces shall be removed within twenty-four (24) hours.

(d) Fence and Retaining Wall Requirements. No person shall allow or permit any fence or retaining wall to deteriorate to a condition that is not in accord with the following provisions:

1. All fences shall be properly maintained and kept in good repair or shall be removed. If paint or other preservatives have been applied to the exterior surface, it shall be repainted, resurfaced or otherwise treated in a workmanlike manner when its conditions is a serious blighting influence on surrounding property.

2. Retaining walls shall be structurally sound. No retaining wall shall be constructed or maintained in such a manner as to cause the repeated spillage of mud, gravel or debris upon any public sidewalk, street, alley or adjoining property.

(e) Exterior Surfaces.

1. Exterior Walls and Foundation. Every exterior wall shall be free of holes, breaks, loose or rotting boards or timbers, and any other conditions, which might admit rain or dampness to the interior portions of the walls or to the occupied spaces of the building and shall be capable of affording privacy. Every foundation and exterior wall shall be reasonably weather tight, rodent proof and insect proof. The foundation elements shall adequately support the building at all points. Any hazardous sagging or bulging shall be properly repaired to a level or

plumb position. All chimneys and breaching shall be constructed and maintained so as to insure that it safely and properly removes the products of combustion from the building.

2. Paint Exterior surfaces of buildings and structures not inherently resistant to deterioration shall be treated with a protective coating of paint or other suitable preservative, which will provide adequate resistance to weathering and maintain an attractive appearance. Any exterior surface treated with paint or other preservative shall be maintained so as to prevent chipping, cracking or other deterioration of the exterior surface or the surface treatment and to present an attractive appearance. All paint or other preservative shall be applied in a workmanlike fashion when its condition is a serious blighting influence on surrounding property.

3. Roofs. All roofs shall be maintained so as not to leak, and all water shall be so drained and conveyed from the roof so as not to cause damage to the exterior walls, eaves, soffits or foundation. Gutters and downspouts, when provided, shall be adequately secured, kept free of obstruction, and in a reasonably good state of repair.

(f) Yard Areas. Yard areas of real estate shall not be permitted to deteriorate or remain in a condition that is not in accord with the following: Yard areas shall be kept in a clean and sanitary condition, free from any accumulation of combustible or non-combustible materials (which are not used as an integral part of the authorized business carried out on the premises), debris, or refuse. Unless in a properly zoned district and screened by a visual barrier at least five (5) feet high, yards shall not be used to store appliances, furnaces, hot water heaters, water softeners, or building material not used within five (5) days, or any unsightly bulk items, unless these items are raw materials used in the business carried out on the premises.

Exterior areas in a natural state shall be kept free of diseased or fallen trees, branches, brush, debris and noxious weeds.

(g) Sidewalks, Walks and Drives.

1. Sound Condition and Good Repair. Sidewalks, walks, drives, parking areas and other concrete, asphalt, bricked, graveled, stoned or similarly treated areas shall be kept in sound condition and good repair. Conditions resulting in dust, dirt, loose stones or other aggregate being repeatedly deposited upon the adjacent public or private property shall be corrected. Approved walks shall provide all-weather access to buildings or structures.

2. Snow and Ice Removal. The owner, occupant or person in charge of a commercial building in the Town, fronting upon or adjoining any street, and the owner or person in charge of any unoccupied commercial residence building or lot, fronting or adjoining any street, shall remove and clear away or cause to remove and clear away, all snow and ice from the public sidewalk and any curb ramps for the handicapped, in front of or adjoining such commercial building or unoccupied lot, as the case may be, within 24 hours after the snow or ice has ceased falling; provided that when ice has formed on any sidewalk that it cannot be

removed, then hazard shall be minimized by the use sand, abrasive material or any product designed to prevent ice from forming or hasten melting so as not to be injurious to the health and safety of the public, until removal can be completed.

3. **Dumping Snow.** No person shall plow or dump snow on any public street, alley or public property or upon the property of another, without the express permission of the owner of the property.

4. **Penalty.** Any person who shall violate any of the provisions of this subsection shall be required to forfeit not less than \$1.00 nor more than \$5.00 for the first offense. Each day a violation continues or occurs shall constitute a separate offense and shall be subject to a forfeiture of \$5.00 for each day the violation continues. Failure to pay may result in a term not exceeding five days in the county jail.

(h) **Erosion.** Whenever erosion of the soil repeatedly causes the soil to spill over into the sidewalk, street, alley or adjoining property, the condition shall be corrected as necessary through: erection a retaining wall; grading; installation of sod; and the planting of grass or other suitable ground cover.

(i) **Windows and Doors.** Every window, storm-window or door combination, screen, exterior door, and basement hatchway shall be weather tight, watertight, and rodent proof and kept in sound condition and in proper repair. All door and window hardware shall be installed and maintained in proper working condition. Exterior doors, when closed, shall fit reasonably well within their frames. Every window sash shall be fully supplied with glass windowpanes, glazing or an approved substitute, which is without open cracks or holes. Windows, other than fixed windows, shall be easily opened and shall be held in position by window hardware. Every basement hatchway shall prevent the entrance of rodents, rain and surface drainage water into the building or structure.

(j) **Outside Stairs and Porches.** Every outside stair, every porch, and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon, and shall be kept in proper condition and repair and shall present an attractive appearance. All exterior stairs and steps and every appurtenance thereto shall comply with the requirements specified in the Wisconsin Administrative Code and shall have rail and balustrade firmly fastened and maintained.

(k) **Accessory Structures.** Every accessory structure shall be kept in good condition and repair, shall not obstruct access of light or air to doors or windows, shall not obstruct a safe means of access to any building or structure, shall not create fire or safety hazards and shall not provide rat or vermin harborage. All accessory structures, which are in, deteriorated condition and which are not repairable shall be removed.

(l) **Removal of Debris.**

1. No person shall dispose of rocks, trees, stumps, waste building material, or other debris from land development, building construction, street grading, or installation of underground utilities upon the surface of any land in the Town, except at approved disposal sites.

2. No landowner shall allow an accumulation of rocks, trees, stumps,

waste building material or other debris from land development, building construction, street grading, or installation of underground utilities upon the surface of his land for a period of more than ten (10) days.

3. All land filling operations shall be leveled off to permit the mowing of the weeds between June 1 and November 1. This includes the removal of stones, bottles, wire, and other debris that will interfere with mowing operations.

(m) Vandalism and/or Dilapidation.

1. Danger of vandalism and/or dilapidation. If it is found upon inspection of any vacated commercial building within the Town that the building is in danger of vandalism and/or dilapidation by the weather or elements, the Town shall order the owner to make the building secure against vandalism and/or dilapidation in a workmanlike manner.

2. Restoration. Damaged or vacant commercial buildings need to be restored to comply with this Code within three months of the original damage or vacation.

3. Windows. Boarded-up windows will- not be allowed except in the case of fire, natural disaster or an emergency. In the case of an emergency, the boarded-up windows will only be allowed for a three-month period.

(n) Chimneys and Towers. All chimneys, towers, cooling towers, smoke stacks and similar appurtenances shall be maintained in a structurally safe condition and in good repair.

(o) Overhead Extensions. All canopies, marquees, signs, metal awnings, fire escapes, stand pipes, exhaust ducts and similar overhead extensions shall be maintained in good repair and be properly anchored so as to be kept in a safe condition.

(p) Graffiti.

1. Definition. Within this section, "graffiti" means the intentional inscription, word, figure or design marked, scratched,, etched, drawn or painted with spray paint, liquid paint, ink, chalk, dye or other similar permanent substance on property without the expressed permission of the owner or operator of the commercial property. Commercial property includes without limitation, real or personal property such as buildings, fences, structures equipment, walls,, signs or parts thereof, whether permanent or not.

2. Public Nuisance. The existence of graffiti on commercial property within the Town is expressly declared to be a public nuisance as it affects the public health, safety and welfare.

3. Graffiti Prohibited. No owner or operator of commercial property within the Town may maintain or allow any graffiti to remain upon the property when the graffiti is visible from the street or other public or

private property.

4. Notification.

a. If it is determined by the Code Enforcement Officer or authorized representative, that graffiti exists on commercial property in violation of this section, the Town shall notify the property owner or operator of property in writing with the issuance of a notice to abate. The notice may be given to the property owner or operator by certified mail, return receipt requested, or in the manner provided for service of summons in the circuit court. If the owner or operator cannot be found, the notice may be served by posting it on the main entrance to the property.

b. The notice shall identify the commercial property affected, describe the location of the graffiti and direct that the graffiti be removed within 30 days of receipt of the notice. If the owner or operator of property fails to remove graffiti within the time specified in the notice, the owner or operator of property may be subject to penalties as provided within the Town code.

5. Abatement

a. Abatement shall be completed within 30 days of receipt of the notice.

b. The minimum compliance of any order shall be obliteration of graffiti by primer paint. Removal of the graffiti with primer paint and matching building paint or other suitable removal system appropriate to the surface shall be encouraged.

c. Payment of a monetary forfeiture does not relieve the owner or operator of property of the duty to abate the graffiti nuisance.

6. Penalty.

a. Upon the failure of an owner or operator of property to abate the graffiti within the prescribed time, an owner or operator of property shall be subject to the issuance of a citation and monetary forfeiture in an amount as set forth in the penalty section of the Town Code.

b. In addition to the penalties set forth herein, the Town may commence a nuisance action in the Waukesha County Circuit Court to abate a violation of this section.

(6) FIXING RESPONSIBILITY OWNERS, OPERATORS AND OCCUPANTS. Every owner, operator, or occupant of a commercial property, or part thereof shall maintain that portion of the exterior of the

property controlled by him.

(7) ENFORCEMENT, SERVICE OF NOTICES AND ORDERS AND HEARINGS.

(a) Enforcement. The Code Enforcement Officer shall enforce the provisions of this article and is authorized and directed to make inspections in response to a complaint or when he has good reason to believe a violation is being committed. Whenever the Code Enforcement Officer determines that there are reasonable grounds to believe that there has been a violation of any provision of this Chapter or ' of any rule or regulation adopted pursuant thereto, he shall give notice of such alleged violation to the person or persons responsible therefore and commence an enforcement action as set forth in this subsection or through Section §25.04 of this Code.

(b) Entrance Onto and Into Property. For the purpose of making inspections, the Code Enforcement Officer is authorized to enter onto commercial property and into property to examine and survey at all reasonable times the exterior portions of all commercial buildings, structures or premises. If the Code Enforcement Officer is denied access to a commercial building, structure or premises, he may apply to the circuit court for a special inspection warrant.

(c) Notice of Violation. Whenever the Code Enforcement Officer determines that any commercial building or structure and/or other exterior area fails to meet the requirements as set forth in this article, he shall issue a notice in writing setting forth the alleged failures or violations and advising the owner, occupant or agent that such failures or violations must be corrected, and specifying a specific date for their correction. Notice shall be sent by certified mail.

(d) Enforcement. The Code Enforcement Officer, shall enforce the provisions of this article by forfeiture action and/or injunction.

(e) Appeals. Any person aggrieved by an order of the Code Enforcement Officer in the enforcement of this article may, within twenty (20) days from the date of receipt of such order, appeal to the board of zoning appeals of the Town. Jurisdiction over such appeals is granted to such board of zoning appeals. Such appeal shall be made and shall be governed by the provisions of law relating to appeals to the board of zoning appeals under the zoning code.

(8) EXCEPTIONS. This article does not apply to farms and to residential properties with less than three (3) dwelling units.

14.10 PENALTY.

Except as otherwise provided herein, any person who shall violate any of the provisions of this chapter or any rule, regulation or order made hereunder shall, upon conviction thereof, be subject to a penalty as provided in §25.04 of this Code.

15.01 PURPOSE.

Acting under the powers of a village board, pursuant to the provisions of §§60.18(12) and 60.29(13), Wis. Stats., the Town Board hereby intends to regulate the construction, installation and inspection of plumbing, all as authorized by §§61.34(1) and 145.13, Wis. Stats.

15.02 WISCONSIN STATE PLUMBING CODE.

The provisions and regulations contained in the Wisconsin State Plumbing Code as amended from time to time and such additional rules and regulations as may be adopted by the Town shall extend over and govern all plumbing and drainage in the Town.

15.03 PLUMBING DEFINED.

For the purpose of this chapter, plumbing is defined as stated in §145.01(10), Wis. Stats.

15.04 INSPECTION AND SUPERVISION.

There is hereby created the position of Plumbing Supervisor who shall be appointed by the Town Board. He shall perform such duties as are provided for in §145.05, Wis. Stats., and shall make an annual report to the Town Board. He shall enforce all of the provisions of this chapter. He shall prepare suitable forms for application, permits and other reports.

15.05 AUTHORITY OF PLUMBING SUPERVISOR.

The Plumbing Supervisor shall have authority, which is hereby granted, to enter all buildings and premises in the Town in the performance of his duties between the hours of 6 a.m. and 6 p.m. daily to determine whether the person securing such permit, his agents, servants or employees are complying with the plumbing permit and the lawful orders of the Plumbing Supervisor and any person who shall willfully or knowingly resist or obstruct the Plumbing Supervisor in the performance of his duties shall be deemed guilty of a violation of this chapter.

15.06 REFUSAL TO APPROVE APPLICATIONS.

The Plumbing Supervisor is authorized to refuse to approve any application for plumbing permits to any person who has not complied with a lawful order of the Plumbing Supervisor. The issuing and approving of a plumbing permit may be withheld until such time as a lawful order has been complied with. However, the person refused such permit may appeal within 10 days to the State Plumbing Inspector whose decision in the controversy shall govern.

15.07 APPLICATIONS AND PERMITS.

(1) No plumbing shall be installed in the Town without first filing an application and receiving a permit. Each application must receive the approval of the Plumbing Supervisor before the permit can be issued. Licensed master plumbers or restricted license holders only may receive such permits.

(2) No person shall do any plumbing within the Town without first having executed unto the Town a corporate surety bond.

15.08 INSPECTION AND TESTS.

For the purpose of this chapter inspections will be made and tests required as prescribed in the State Plumbing Code.

15.09 FEES.

All plumbing fees pertaining to this chapter are adopted by separate resolution and are hereby adopted by reference as if fully set forth herein and may be amended from time to time by the Town Board.

15.10 REINSPECTION FEE. (Cr. 2008-001)

To compensate for inspection and administrative costs, a fee may be charged for any reinspection to determine compliance with an order to correct conditions to conform with the provisions of the Town of Delafield Code under the jurisdiction of the Town Plumbing Supervisor or assigned to the Town Plumbing Supervisor, except no fee shall be charged for the reinspection when compliance is recorded. An increased fee may be charged for a second reinspection, and a further increased fee may be charged for each subsequent reinspection. Reinspection fees shall be charged against the real estate upon which the reinspections were made, shall be a lien upon the real estate, and shall be assessed and collected as a special charge. All reinspection fees pertaining to this chapter are adopted by separate resolution and are hereby adopted by reference as if fully set forth herein and may be amended from time to time by the Town Board.

15.15 PENALTIES.

Any person who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this chapter shall be subject to a penalty as provided in §25.04 of this General Code.

CHAPTER 16
ELECTRICAL CODE

16.01	STATE CODES ADOPTED
16.02	ENFORCEMENT
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- 16.01 STATE CODES ADOPTED. (Rep. & rec. #2019-03)
- (1) OBJECT AND PURPOSE. The object and purpose of this section is to safeguard persons and property from hazards arising from the use of electrical energy by establishing minimum standards for the installation and maintenance of electrical systems. The licensing of electrical contractors and examination of master electricians does not mean that such licensed electrical contractors or electricians are of equal competency or reliability.
- (2) WISCONSIN ADMINISTRATIVE CODE. Except as otherwise specifically provided in this Code, the current and future provisions describing and defining regulations of the State of Wisconsin Department of Safety and Professional Services are hereby adopted and made part of this section by reference as if fully set forth herein. Any act required to be performed or prohibited by any current or future provision incorporated herein by reference is required or prohibited by this Code. Any act required to be performed or prohibited by any current or future provision incorporated herein by reference is required or prohibited by this Code. Any future additions, amendments, revision or modifications to the regulations incorporated hereby are intended to be made a part of the Code in order to secure uniform state-wide regulation. If there is a conflict between codes or interpretations, the most restrictive code or interpretation shall be enforced. The code adopted herein includes, but is not limited to, the following:
- (a) Chapter SPS 316 "Electrical".
- (b) SPS 320 Uniform Dwelling Code, for inspection of electrical wiring installations for the construction of new one- and two-family dwellings.
- (3) ENFORCEMENT.
- (a) Other Ordinances. Adoption of this section does not preclude the Town Board from adopting any other ordinance or providing for the enforcement of any other law or ordinance relating to the same or other matter.
- (b) Other Remedies. The issuance of a citation hereunder shall not preclude the Town Board or any authorized officer from proceeding under any other ordinance or law or by any other enforcement method to enforce any ordinance, regulation or order.
- 16.02 ENFORCEMENT. (Rep. & rec. #93-341) The Electrical Inspector, the Fire Department and any other designee of the Town Board shall enforce the regulations of this chapter.
- 16.03 INTERPRETATIONS. Pursuant to this chapter, the Electrical Inspector shall have the authority to render interpretations of the regulations of this chapter.
- 16.04 RIGHT OF ENTRY.
- (1) The Electrical Inspector or his authorized representative, shall have the authority to enter all buildings and premises, and all parts thereof, in order to make an inspection, reinspection, observation, examination or test of the electrical equipment or wiring contained therein or thereon to enforce the regulations of this chapter.
- (2) The Electrical Inspector or his representative, may order the removal of any and all obstructions including lath, plaster, lumber, boards and partitions and break all seals and open all doors, windows, locks, latches and catches for the purpose of gaining access to and inspection of electrical equipment or wiring.
- 16.05 INSPECTIONS. Upon the completion of any installation, alteration or replacement of electrical equipment which requires a permit, it shall be the duty of the licensee making the installation, alteration or replacement, to notify the Electrical Inspector, who shall inspect the installation, alteration or replacement as soon thereafter as practicable. When any electrical equipment requiring a permit is to be concealed by the permanent placement of parts of the building, the licensee installing the electrical equipment shall notify the Electrical Inspector to that effect and such equipment shall not be concealed by the person installing such parts of the building until it has been inspected and approved by the Electrical Inspector. On installations where the concealment of electrical equipment proceeds continuously, the licensee installing the electrical equipment shall give the Electrical Inspector due notice and inspections shall be made periodically during the progress of work.
- 16.06 COMPLAINTS. Complaints on improper or defective electrical equipment (§16.02) shall be

investigated and action shall be taken as regulated in §16.17. Where complaints disclose inadequacy of electrical equipment, the Electrical Inspector shall notify the owner of the premises to that effect.

16.07 INFORMATION.

- (1) All requests for information pertaining to and involving an interpretation of this chapter shall be submitted in detail to the Electrical Inspector.
- (2) The Electrical Inspector shall not design or layout any electrical installation or act in the capacity of a consulting (electrical) engineer.

16.08 RECORDS. The Electrical Inspector shall keep a record of all electrical permits and other electrical matters. The Electrical Inspector may destroy such records other than permits at any time after such records become 7 yrs. old.

16.09 PERMIT REQUIRED.

- (1) No person shall install, alter, repair, replace, connect, disconnect or maintain any electrical equipment without having an electrical permit.
- (2) Permits to install, alter, repair, remove, renew, replace, disturb, connect, disconnect or maintain electrical equipment may be entered into by persons who are not holders of a license as regulated in this section, provided such fact is made known to all parties concerned and the responsibility for such work is that of the person to whom the permit was issued.

16.10 PLANS AND SPECIFICATIONS.

- (1) At the time of the issuance of a permit, the Electrical Inspector may require the manufacturer, owner, installer or user of electrical equipment to submit plans (drawings), data and specifications, schedules or literature, information, materials, samples or tests as may be necessary to determine the fitness of equipment for safe installation and use.
- (2) The approval of general building plans and specifications by the Electrical Inspector shall not be considered as including electrical plans and specifications or electrical equipment.

16.11 PERMITS.

(1) PERMIT REQUIRED. No electrical equipment shall be installed, altered, renewed, replaced or connected without first procuring a permit therefore. No permit shall be required for the repair, removal, disturbance or disconnection of any existing branch lighting circuit switches, sockets or receptacles.

(2) APPLICATION FOR PERMITS.

- (a) Any holder of a license desiring a permit as required by this chapter shall file with the Electrical Inspector an application for such permit in writing on a form furnished for such purpose. Such application shall be signed by the licensee.
- (b) Such application shall describe and enumerate the electrical equipment to be installed and shall give other reasonable information as may be required by the Electrical Inspector and, when required, shall be accompanied by further information as regulated in other sections of this chapter.

(3) ISSUANCE OF PERMITS.

- (a) If, upon examination, it is found that the information on the application is complete, the Electrical Inspector shall issue a permit provided that the licensee agrees and expressly states that he is fully capable, and in possession of knowledge and ability to design, lay out, install, alter or replace the work designated in the application in accordance with the regulations of this chapter and all other laws and ordinances pertinent thereto, and will install electrical equipment as described in the application for permit in a safe, legal and workmanlike manner.
- (b) The issuance of any permit or the serving of any notice shall not preclude compliance with all ordinances or other laws relating to occupancy and use, construction or zoning.
- (c) No other electrical work shall be done except work as described in the application for permit.

(4) WORK WITHOUT PERMIT. When any work is begun on the installation, alteration or replacement of any electrical equipment without first obtaining a permit therefor, the Electrical

Inspector shall have the power and authority to disconnect or order the disconnection immediately of any such equipment and to stop such work until a permit has been procured.

(5) LAPSE OF PERMIT.

- (a) When any electrical work for which a permit has been issued is not started within 6 mos. from the date of the issuance of the permit, or if there is a cessation of such work which has been started for more than 6 mos., then the permit shall lapse and be void, and no electrical work shall be begun or resumed until a new permit is obtained and the fees prescribed in §18.12 are paid therefor.
- (b) No refund of any permit fees paid into the Town treasury shall be made, except by action of the Board of Supervisors.

16.12 PERMIT FEES.

(1) The fees for permits required by this chapter shall be as from time to time established by resolution of the Board of Supervisors. Such resolution shall remain on file with the Town Clerk and in the office of the Electrical Inspector.

(2) Double fees charged for any work started before filing application.

16.13 INSTALLATION STANDARDS. All methods and materials shall conform to and comply with all laws, rules, orders and regulations of Wisconsin.

16.14 CONNECTIONS TO INSTALLATIONS. No person shall make any connection from any source to supply electricity to any electrical equipment for which a permit is required, or which has been disconnected or ordered disconnected by the Electrical Inspector until a certificate of authorization has been issued by the Electrical Inspector authorizing the connection and use of such equipment.

16.15 APPROVAL OF ELECTRICAL EQUIPMENT.

(1) No person shall install or use any type or kind of electrical equipment in the Town which has not been approved by the authority enforcing this chapter.

(2) The Electrical Inspector shall approve, subject to the regulations of this chapter, any type or kind of electrical equipment which has been approved by the National Bureau of Standards or any nationally recognized testing laboratory or the State.

16.16 INSTALLATION OF ELECTRICAL EQUIPMENT. Only that equipment which has been expressly made for electrical purposes shall be installed for electrical purposes. Except as otherwise regulated in this chapter, all electrical equipment which has been expressly made for electrical purposes shall be installed or used in the exact manner and for the exact purpose indicated by the manufacturer's instructions, markings or labels. Old or secondhand equipment shall not be installed unless such equipment is in a safe condition and approved. Approved electrical equipment and the original manufacturer's ratings, markings or labels thereon shall not be changed or altered in any manner, except that normal replacements and repairs do not change the original characteristics or design.

16.17 UNSAFE OR ILLEGAL ELECTRICAL EQUIPMENT.

(1) When the Electrical Inspector finds any electrical equipment to be unsafe or dangerous to persons or property, the person owning or using such electrical equipment shall be notified in writing by the Electrical Inspector to remove or cause to be removed, or to make any changes or repairs as determined by the Electrical Inspector so as to restore such electrical equipment to a safe condition. Failure to comply with such notice within the time specified in such notice shall be sufficient cause for the Electrical Inspector to disconnect or order the removal or discontinuance of electric service to the electrical equipment, or to cause the arrest of such person owning or using such electrical equipment.

(2) In any case of emergency affecting the safety of persons or property, or where electrical equipment interferes with the work of the Fire Department or is not installed in conformity with the regulations of this chapter, the Electrical Inspector may disconnect immediately or cause the removal or disconnection of any such electrical equipment.

(3) When the Electrical Inspector disconnects or causes to be disconnected electric current from electrical equipment, he shall attach an official notice, tag, lock or seal to such electrical equipment to prevent the use of electricity. No unauthorized person shall attach such official notice, tag, lock, seal or break open, change, remove, destroy, tear, alter, mutilate, cover or otherwise deface or injure any such official notice, tag, lock or seal.

16.18 APPEAL. Whenever the Electrical Inspector shall determine that all or part of the electrical work of any building is not in strict compliance with the provisions of this chapter, he shall, in cases where the construction is in progress, give 5 days' written notice thereof to the contractor on the job; in all other cases, he shall give 5 days' notice thereof to the owner or his authorized agent or attorney. Such contractor or owner may, within 5 days after receiving such notice, file a petition in writing for a review of the action of the Electrical Inspector. The petition may be filed either with the Chairman or with any one of the members of the Town Board upon receipt thereof.

16.19 REINSPECTION FEE. To compensate for inspection and administrative costs, a fee may be charged for any reinspection to determine compliance with an order to correct conditions to conform with the provisions of the Town of Delafield Code under the jurisdiction of the Town Electrical Inspector or assigned to the Town Electrical Inspector, except no fee shall be charged for the reinspection when compliance is recorded. An increased fee may be charged for a second reinspection, and a further increased fee may be charged for each subsequent reinspection. Reinspection fees shall be charged against the real estate upon which the reinspections were made, shall be a lien upon the real estate, and shall be assessed and collected as a special charge. All reinspection fees pertaining to this chapter are adopted by separate resolution and are hereby adopted by reference as if fully set forth herein and may be amended from time to time by the Town Board.

16.20 PENALTY. Any person who shall violate any of the provisions of this chapter shall, upon conviction of such violation, be subject to a penalty as provided in §25.04 of this General Code.

**ZONING ORDINANCE
FOR
TOWN OF DELAFIELD, WISCONSIN**

**ADOPTED BY THE TOWN BOARD JULY 20, 1998
WITH CURRENT AMENDMENTS**

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SECTION 17.01

INTRODUCTION

1. **TITLE.**

This ordinance shall be known, cited and referred to as the TOWN OF DELAFIELD Zoning Ordinance except as referred to herein, where it shall be known as the “ordinance” or “chapter”.

2. **AUTHORITY.**

For the purpose of this chapter, certain words and phrases shall be defined as follows:

Abutting. Having a common border with, or being separated from such common border only by an easement.

Access. A means of vehicular approach, i.e., entry to a property from a street, road or highway, or exit from a property to a street, road or highway.

Accessory buildings and structures. (Amd. 00-507a) Buildings and structures, including private detached garages and boathouses, that are customarily incidental to the permitted uses in the District and located upon the same lot occupied by the principal building or structure.

Accessory use. Subordinate uses that are customarily incidental to the permitted uses in the District and located upon the same lot occupied by the principal use or principal structure.

Acre. 43,560 square feet.

Addition. Any new construction whereby an existing building or structure, or building or structure in course of construction, is expanded in perimeter or height.

Adjacent. Having a common border with, or being separated from such common border only by an easement.

Administrative official. Town Clerk, Town Engineer, Code Enforcement Officer, Building Inspector, Plan Commission, and Superintendent of Public Works.

Adult-oriented establishment. Repealed and recreated at §12.08, Town of Delafield Municipal Code per Ord. 00-515.

Aggrieved person. Any person who alleges that he or she has been injured by an error in an order, requirement, decision or determination made by an administrative official in the enforcement of § 62.23, Wis. Stats., or of this chapter.

Agriculture. All uses, commonly classified as agriculture, horticulture, floriculture, viticulture, or forestry, such as: the tilling of soil, crop and tree farming, truck farming, gardening, plant nurseries, dairy farming, keeping or raising of domestic livestock or poultry and sod farming together with the operation of any machinery or vehicles that are incidental to the above uses and any agricultural business such as fruit packing, dairying or similar activities.

Air pollution. Dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof excluding uncombined water vapor.

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Airport. Transportation facility providing takeoff, landing, servicing, storage or other services to any type of air transportation.

Alley. A public right-of-way usually of reduced width which affords a secondary means of access to abutting property.

Animal hospital. An enclosed structure principally used to medically or surgically treat animals, which may include a commercial kennel as an accessory use.

Antique. A business engaged in selling or exhibiting works of art, pieces of furniture, decorative objects or other things that were made at an earlier time, generally at least twenty years earlier.

Apartment. A room or suite of rooms in a multiple family dwelling which is arranged, intended or designed to be occupied as a residence by one individual or by one family.

Apartment House. *See Multiple family dwelling.*

Appeal. A means for obtaining review of a decision, determination, order or failure to act pursuant to the terms of this chapter as expressly authorized by the provisions of section 10 of this chapter.

Arts and crafts studio. A business operated by an individual who is a painter, sculptor, potter, furniture builder, or similar crafter or artisan of material goods, where the product of the individual's work is sold, exhibited or both.

Automobile service station (Convenience store). A place where petroleum products, stored in underground tanks for the operation of motor vehicles are offered for sale directly to the public, including but not limited to such facilities that also sell motor vehicle parts and accessories, groceries, or any other products or services.

Base Setback Line. The street line as established by this chapter from which all required setbacks shall be computed.

Basement. A story that is more than one-half under grade level.

Bed and breakfast establishment. Any place of lodging that provides six (6) or fewer rooms for rent to guests, 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. "Breakfast" shall mean any meal served between 6:00 a.m. and 11:00 a.m.

Bedroom. A room in a residence that is marketed, designed, or otherwise likely to function primarily for sleeping.

Boat. A vessel that is designed to carry at least one individual on the surface of a body of water, and is propelled by oars, paddles, sail or motor power. Motor power includes, but is not limited to, power generated by steam engine, electric motor or combustion engine of any kind.

Boathouse. A structure designed to protect or store boats and not for human habitation.

Building. A structure that has a roof supported by columns or walls that is used, designed or intended for the protection, shelter or enclosure of individuals, animals or property. *See also,*

Accessory building, Height of building, Principal building and Public and Semi-public building.

Building separation. The narrowest distance between two buildings.

Building setback line. A line parallel to the base setback line located at the minimum setback distance as set forth in the individual zoning district.

Building size. Synonymous with floor area.

Business. Any commercial or industrial activity or establishment.

Business park. A building project that is developed as a coordinated entity with similar building facades, landscaping, common parking and access drives, and unified site design.

Campground. A plat of ground designated for two (2) or more sites for temporary occupancy with tents and/or recreational vehicles.

Code enforcement officer. The Town employee charged with the application and interpretation of this chapter.

Commercial greenhouse. A business that grows and sells primarily plants and related goods on a retail or wholesale basis, and that includes a structure for the cultivation of plants.

Commercial kennel. An establishment, structure or premises where dogs or other household pets are raised, sold, bred, boarded, trained or groomed for commercial purposes. *See also, Hobby kennel.*

Commercial stable. A tract of land on which horses or other livestock are kept for hire, board, training, sale or any other commercial use.

Commercial truck. Any motor vehicle used for business or institutional purposes that weighs more than 10,000 pounds.

Commercial truck parking. The parking of a commercial truck.

Communication tower. Free-standing broadcasting, receiving, or relay structures, and any office, studio or other land uses directly related to the function of the tower.

Comprehensive plan. The comprehensive plan of the Town of Delafield, as adopted and as subsequently amended.

Conditional uses. A land use which requires a conditional use permit in order to be developed.

Corner lot. A lot abutting on 2 or more streets at their intersection, provided that the interior angle of such intersection is less than 135 degrees.

Cul-de-sac. A local street or way with only one entrance/exit which is designed to allow the safe and convenient reversal of the direction of traffic movement.

Deck. A structure, other than a stoop or walkway, characterized by a flat open horizontal surface or platform either at grade or suspended above the grade of the land it covers and which may or may not be supported by posts, beams, cantilevers or by any other methods, including a flat roof of a structure intended to be occupied for recreational purposes.

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Density. The number of dwelling units or housing structures per unit of land.

Developer. The legal or beneficial owner(s) (including, but not limited to, optionee(s) or contract purchaser(s)) of a lot or parcel of any land proposed for inclusion in a development.

Development. The division of a parcel of land into two or more parcels; the erection, construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any buildings or structures; any use or change in use of any buildings, structures or land; any extension of any use of land; or any clearing, grading, or other movement of land, for which permission may be required pursuant to this chapter. Also, the result of said acts.

Direct access. A condition of immediate physical connection resulting from adjacency of a road or right-of-way abutting a property.

District. A specifically delineated area in a municipality within which regulations and requirements uniformly govern the use, placement, spacing and size of land and structures.

Drainage. The removal of surface water or groundwater from land by drains, grading, or other means. Drainage includes the control of runoff, to minimize erosion and sedimentation during and after development, and the means necessary for water supply preservation or alleviation of flooding.

Dwelling. A residential building or one or more portions thereof occupied or intended to be occupied exclusively for residential purposes, but not including habitations provided in nonresidential uses such as lodging uses and commercial campgrounds. *See also, Multiple family dwelling, One family dwelling, Two family dwelling, and Dwelling unit.*

Dwelling unit. A room or group of rooms, providing or intended to provide living quarters for not more than one (1) family.

Easement. A right given by an owner of land to another party for a specific limited use of that land or portion thereof.

Eave. The lower border of a roof that overhangs the wall.

Efficiency apartment. A small, usually furnished, apartment with minimal kitchen and bathroom facilities.

Elderly housing. Residential development designed to meet the needs of and reserved exclusively for senior citizens.

Elderly housing unit. Synonymous with elderly housing.

Erosion. The detachment and movement of soil or rock fragments by water, wind, ice, and/or gravity.

Established grade. The elevation of the finished street at the centerline or curb as fixed by the Town Engineer or by such authority as shall be designated by law to determine such an elevation.

Family. One or more individual(s) related by blood, adoption or marriage, or 3 or fewer individual(s) not so related, living together in one dwelling and maintaining a common household.

Farm. The location of a farming operation.

Farming. Engaging in a farming operation.

Farming operation. One or more parcel(s) of land under a single ownership and/or management upon which natural fibers, animals, and/or plants for human or animal consumption are produced.

Farm roadside stand. A farm building or structure used or intended to be used for the sale of unprocessed farm products raised on said farm solely by the owner or tenant of the farm on which such building is located.

Farmstead. That portion of a farm which consists of the home and adjacent accessory buildings.

Fast food restaurant. An establishment whose principal business is the sale of prepared or rapidly prepared food directly to the consumer in a ready-to-consume state for consumption either within the restaurant building or off-premises.

Feed lot operation. A plot of land on which livestock are fattened for market.

Fence. A structure which is used as a boundary or means of protection, screening, barrier, confinement or architectural treatment.

First floor level. Livable floor area that is not above any other livable floor area.

Flood. A temporary rise in water level that results in water overtopping land banks and inundating adjacent areas.

Floodplain. Land which has been or may be covered by flood water during the regional flood. The floodplain includes the floodway, shallow depth flooding, flood storage and coastal floodplain areas.

Floor area. The sum of the gross horizontal areas of the several floors of a building measured from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but not including interior parking spaces, loading space for motor vehicles, or any space where the floor-to-ceiling height is less than six feet.

Frontage. The length of any one property line of a premises that abuts a street right-of-way, waterway, or end of a dead-end street.

Frontage street (Frontage road). A street (road) contiguous and parallel to a traffic artery and affording direct vehicular access to abutting property.

Front lot line. A lot line which abuts a public or private street right-of-way. In the case of a lot which has two or more street frontages, the lot line most closely parallel with the front door of the house shall be the front lot line.

Front yard. A yard extending along the full width of the front lot line between side lot lines and extending from the abutting front street right-of-way line to a depth required in the yard regulations for the District in which such lot is located.

Fur farm. A farming operation devoted in whole or part to the raising of fur bearing animals for commercial purposes.

Garage. *See Private Garage.*

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Gift shop. A business engaged in selling merchandise that is suitable for, and often is, transferred by the purchaser to another without compensation.

Glare. The brightness of a light source which causes eye discomfort.

Gravel Pit. A type of quarry.

Gross floor area. Synonymous with Floor area.

Group day care center. A facility, that is not in an occupied residence, where care and supervision is provided for four (4) or more children under the age of seven (7) for less than 24 hours a day.

Grub. To clear the vegetation from an area of land by digging up roots and stumps.

Hard or impervious surface. The area of a lot devoid of grass, trees or other natural landscape features that is developed in a manner that prevents filtration of water into the underlying soil.

Height of building (base - principal). (Amd. 00-507a) The greatest vertical distance between the elevation of the lowest finished grade and the eave, measured on the side(s) of the building having the lowest finished grade.

Height of building (base - accessory) (Created 00-507a) The vertical distance between the elevation of the highest finished grade and the eave measured on the side of the building having the highest finished grade.

Highway. A right-of-way for the principal purpose of providing vehicular thoroughfare and not necessarily affording direct access to abutting property.

Hobby kennel. A non-commercial establishment, structure or premises accessory to the principal use of the property where 3 or more household pets of 6 months minimum age are kept for such private purposes as pets, field trials, shows or hobby. The occasional raising of not more than 2 litters of household pets per year on the premises and the sale or disposal of the animals within 6 months of the birth shall also be considered a hobby kennel. *See also, Commercial kennel.*

Home Occupation. A gainful occupation or profession conducted by a member or members of a family within his, her or their dwelling, where the space used is incidental to the principal residential use of the property.

Horticulture. The act of cultivating plants for private ornamental use and/or the cultivation of fruits or vegetables for private use.

Hospital. An institution providing primary health services and medical or surgical care to individuals, primarily inpatients, suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions, and including, as an integral part of the institution, related facilities such as laboratories, outpatient facilities or training facilities.

Hotel. A building in which lodging, with or without meals, is offered for compensation and which has more than 5 sleeping rooms for this purpose.

House trailer. Synonymous with Mobile Home.

Household pets. Common household animals such as dogs, cats, parrots, and other domestic animals kept for pleasure and not for utility, excluding domesticated wild animals not usually found in the home.

Human habitation. Entrance or presence of any individual for any purpose other than maintenance.

Individual. A human being.

Industrial park. A large tract of land that has been planned, developed and operated as an integrated facility for a number of individual industrial uses, with special attention to circulation, parking, utility needs, aesthetics, and compatibility.

In law unit. A room or suite of rooms used or occupied as a separate housekeeping entity and located in a single-family dwelling occupied by individuals related by blood or marriage to the family or individuals occupying the single-family dwelling.

Institutional. Uses, facilities, or organizations dedicated to public service.

Intermediate day care home. Occupied residence in which a qualified individual or individuals provide child care for 9 to 15 children.

Junkyard. Any area, lot, land, parcel, building or structure or part thereof used for the storage, collection, processing, purchase, sale or abandonment of wastepaper, rags, scrap metal or other scrap or discarded goods, materials, or machinery or two or more unregistered, inoperable motor vehicles or other work materials.

Kennel. Either a commercial or hobby kennel.

Lake resort. A commercial enterprise that is located adjacent to a lake and that provides overnight lodging, recreation and entertainment, especially to vacationers.

Legal nonconforming lot. Any lawfully established lot or parcel of land at the time of the enactment of this chapter or any amendment applicable thereto which does not meet the requirements for minimum lot width and area for the District in which it is located.

Legal nonconforming structure. Any lawfully established building or structure at the time of the enactment of this chapter or any amendment applicable thereto that does not conform to the use regulations or dimensional regulations for the District in which it is located.

Legal nonconforming use. Any lawfully established use of land, premises, building or structure at the time of the enactment of this chapter or any amendment applicable thereto that does not conform to the use regulations for the District in which it is located.

Light industrial. Industrial establishments such as those engaged in warehousing, wholesaling and distribution, assembly, fabrication, repair and maintenance services that comply with the standards listed in this chapter.

Livable floor area. Floor area measured at each level from the outside edge of wall to outside edge of wall and for purposes of computing total floor area shall not include attached or detached garages, or other outbuildings, open unheated porches and breezeways or basements.

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Livestock. Domestic farm animals that are typical of this area including, but not limited to, cattle, horses and sheep.

Local residential street. A road which primarily serves to collect traffic originating directly from residential driveways and private residential courts and streets.

Lot. A designated parcel, tract or area of land established by plat, subdivision, or as otherwise permitted by law. *See also, Corner lot, Front lot line, Legal nonconforming lot, Lot lines, Lot area, Lot of record, Lot width, Rear lot line, Shore lot line, Side lot line, and Street lot line.*

Lot area. The area of contiguous land bounded by lot lines, exclusive of the area between the base setback line and the existing property line ultimately to be included in the street, but may include land zoned "Wetland-Floodplain" subject to compliance with this chapter.

Lot lines. The lines bounding a lot as defined herein.

Lot of record. A platted lot or lot described in a certified survey map or metes and bounds description which has been approved by the Town, and has been recorded in the office of the Register of Deeds.

Lot width. The length of the building setback line.

Manufacturing. The mechanical or chemical transformation of materials or substances into new products including the assembling of component parts, the manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins or liquors.

Marina. A tract of land together with associated structures on the land and in the water where boat launching, boat mooring, boat anchoring, and/or dry land boat storage is provided to boat owners for a fee or other remuneration.

Master plan. A plan, map, report, or other document pertaining to the physical development of the Town which has been adopted by the Town Plan Commission, as described in Wisconsin Statutes § 62.23 (2) and (3).

Minor street. A minor street as set forth in Chapter 18 of the Town of Delafield Municipal Code.

Mobile home. A constructed unit 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 thereto.

Mobile home park. A planned residential development containing sublots for stationing individual mobile home units and providing on site sanitary facilities, laundry facilities and recreational facilities, with public sewer, public water supply service, gas and electric power utilities for connection directly to each mobile home unit and having interior roads and walks permanently surfaced.

More restrictive. A regulation imposed by this chapter is more restrictive than another if it prohibits or limits development to a greater extent or by means of more detailed specifications.

Motel. A building or series of buildings in which lodging, without meals, is offered for

compensation and which may have more than 5 sleeping rooms or units for this purpose and which is distinguished from a hotel primarily by reason of providing direct independent access and adjoining parking for each rental unit.

Multiple family dwelling. A structure arranged or designed to be occupied by three or more families living independently of each other.

Nonconforming use, building or structure. *See Legal nonconforming lot, Legal nonconforming structure, and Legal nonconforming use.*

Nuisance. An unreasonable interference with the enjoyment and use of one's property as defined in Chapter 10.02 of the Town of Delafield Code of Ordinances.

Occupancy permit. A required permit that allows occupancy of a building, structure, land, or use, which certifies that the occupancy complies with the provisions of this chapter and any other applicable governmental regulations.

Office. A room or group of rooms used for conducting the affairs of a business, profession, service, industry, or government.

Office park. A project owned, developed and managed by a single owner or a group of owners similar to a business park with the primary establishments being a related group of offices including, but not limited to corporate, medical, financial, insurance and real estate.

Offset. (Amd. 00-507a) The horizontal distance between the side or rear lot lines of a lot and the nearest foundation wall of a structure.

Off-street parking space. A usable off-street area with independent access designated for the parking of motor vehicles.

Open space. A natural area or manmade landscaped area not occupied by any structures, impervious surfaces, gravel drives, or parking areas.

Ordinary high water line. A point on the bank or shore of a body of water up to which the presence and action of surface water is so continuous as to leave a distinctive mark by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation or other easily recognizable characteristics.

Outdoor recreational facilities. Land, buildings and structures along with accessory equipment, designed and utilized for leisure time activities of a predominantly outdoor nature.

Outdoor storage. The keeping, in an unenclosed area, of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four hours.

Owner. The person or persons having the right of legal title.

Parcel. A lot.

Parking area. Any public or private land area designed and used for parking motor vehicles including parking lots, garages, private driveways and legally designated areas of public streets. *See also, Off-street parking space.*

Patio. A type of deck.

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Performance standard. Criterion established to control and limit the impacts generated by, or inherent in, uses of land or buildings.

Permanent structure. A structure placed on or in the ground or attached to another structure in a fixed and determined position, and intended to remain in place for a period of more than four (4) months.

Permitted use. A use that is permitted by right, subject to the provisions of this chapter.

Person. An individual, firm, corporation, voluntary association, owner or agent.

Pig farm. A farming operation devoted in whole or in part to the raising and feeding of pigs and/or hogs.

Plan commission. The Plan Commission of the Town of Delafield.

Planting screen. An area landscaped with natural growing evergreen type of plants that are sufficiently dense and of adequate height at all times as to effectively screen off from view the object that is intended to be hidden.

Plat. A map or plan of a parcel of land showing such data as the location, boundaries, dimensions, bearings, lot or unit location and designation, and ownership of individual properties in accordance with Chapters 236 and 703 of the Wisconsin Statutes.

Poultry farm. A farming operation devoted in whole or in part to the raising of poultry or fowl, such as chickens, ducks, geese and turkeys for commercial purposes.

Preliminary plat. A map showing the salient features of a proposed subdivision submitted to an approving authority for purposes of preliminary consideration.

Premises. A distinct and definite locality, as determined from the context in which the word is used, and may include, but is not limited to, a room, shop, building, yard, or lot.

Principal building or structure. A building or structure used or intended to be used for the principal use as permitted on such lot by the regulations of the zoning District in which it is located.

Principal use. The main or primary use of land, premises, buildings or structures as permitted by the regulations of the District in which such use is located.

Private club. Real property exclusively used for regular or periodic meetings or gatherings of a group of persons solely organized for a nonprofit purpose.

Private garage. (Amd. 00-507a) Any structure for the primary purpose of keeping private vehicles and wherein such use is accessory to the residential use of the property on which it is located.

Private stable. A tract of land on which horses or other livestock are kept for the non-commercial use of the individual residing on the tract of land.

Processing. A series of operations, usually in a continuous and regular action or succession of

actions, taking place or carried on in a definite manner. The term processing is generally associated with the transformation of raw materials or substances into new products. For purposes of use in this chapter, processing shall not include heavy industrial uses such as tanneries, meat packing, foundries, hazardous waste recycling, chemical production, and other similar uses.

Professional office. The office of a doctor, dentist, minister, architect, landscape architect, professional engineer, lawyer, author, musician or other similar recognized profession.

Public and semipublic buildings. Structures that serve a public need such as: hospitals, rest homes, nursing homes, schools (including, but not limited to, private academic schools and nursery schools), libraries, museums, post offices, police and fire stations, public and private utilities and other similar public services; but not including bars, restaurants or recreation facilities.

Public improvement. Any improvement, facility, or service, together with customary improvements and appurtenances thereto, necessary to provide for public needs such as: streets, roads, alleys or pedestrian walks or paths, storm sewers, flood control improvements, water supply and distribution facilities, sanitary sewage disposal and treatment, public utility and energy services.

Public utility. Any person or municipal department duly authorized, under public regulation, to furnish electricity, gas, steam, telephone, communication, transportation or water to the public.

Quarrying. The removal of rock, slate, gravel, sand, topsoil or other natural material from the earth by excavation, stripping, leveling or any other such process, excluding the removal solely of sod.

Quasi-public. Owned or operated by a non-profit, religious or charitable institution and providing educational, cultural, recreational, religious or similar types of public programs.

Rear lot line. The lot line opposite to and most distant from the front lot line.

Rear yard. A yard extending along the full width of the rear lot line between the side lot lines and extending toward the front lot line for a depth as specified in the yard regulations for the District in which such lot is located.

Recreational vehicle or equipment. A vehicle or piece of equipment which can be towed, hauled, carried or driven and designed as a temporary living accommodation for recreational camping and travel use and including but not limited to travel trailers, truck campers, tent trailers, camping trailers, self propelled motor homes, and boats.

Refuse disposal site. A tract of land operated by a public or private person where more than one family takes refuse for disposal.

Regional flood. A flood having an average frequency of the 100 year recurrence interval flood.

Residential planned unit development. An area of a minimum contiguous size, as specified by this chapter, to be planned and developed as a single entity containing one or more residential unit(s).

Residential zoned. A property located in a residential District.

Restaurant. A commercial establishment where food and beverages are prepared, served and consumed primarily within the principal building, and where food sales constitute more than

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eighty percent of the gross sales receipts for food and beverages. *See also, Fast food restaurant.*

Retail. The sale of commodities or goods in small quantities to ultimate consumers.

Revetment. A facing (as of stone or concrete) to sustain an embankment.

Riding stable. Any structure and/or land used, designed or arranged for the maintenance or rental of horses, mules, ponies or donkeys either with or without a bridle path or riding area, but excluding structures and/or land used, designed or arranged for the maintenance of horses or mules used exclusively for agricultural purposes.

Right-of-way. A strip of land acquired by reservation, dedication, forced dedication, or condemnation and occupied or intended to be occupied by a street, cross-walk, railroad, electric transmission line, oil or gas pipeline, water line, sanitary or storm sewer and other similar uses.

Riprap. A layer of rocks, stones, or chunks of concrete thrown together without order either on an embankment slope to prevent erosion, or not on an embankment slope to create a sustaining wall or foundation.

Road. Synonymous with street.

Roadside stand. Synonymous with Farm roadside stand.

Rustic structure. (cr. 2002-09-002A) Any existing structure permanently located on property, which is set apart from other structures as being distinct due to its construction technique, materials, age, local historic significance or design, and characteristic of past agricultural practice and which is structurally safe.

Safe vehicular access. An access of sufficient width and adequate horizontal alignment to accommodate emergency vehicles and having a slope not to exceed 12% at any point.

Sand Pit. A type of quarry.

Secondary access. A means of vehicular or non-vehicular approach, i.e., entry to a property from a source other than a public street or highway, or exit from a property to a source other than a public street or highway.

Sedimentation. The deposition of soil that has been transported from its site of origin by water, ice, wind, gravity, or other natural means as a result of erosion.

Service establishments. Establishments primarily engaged in providing services for individuals, business and government establishments and other organizations; including hotels and other lodging places; establishments providing personal business, repair and amusement services; health, legal, engineering, and other professional services; educational institutions; membership organizations, and similar establishments.

Setback. The horizontal distance between the base setback line and the nearest portion or projection of a building.

Sewage Treatment Plant. Any facility designed for the treatment of sewage which serves in

excess of two (2) structures or dwelling units.

Shore lot line. The ordinary high water line of the lake or stream which the lot abuts.

Shrub. A low-lying deciduous or evergreen plant.

Side lot line. Any boundary of a lot which is not a front lot line, a street lot line, a shore lot line, or a rear lot line.

Side yard. A yard extending along the side lot line between the front and rear yards, having a width as specified in the yard regulations for the District in which such lot is located.

Sign. See section eight (8) of this chapter.

Single family dwelling (One family dwelling). A dwelling designed for and occupied exclusively by one family.

Single floor area. Livable floor area that is not over any other livable floor area.

Sod. The grass-covered surface of the ground, and the soil below the surface only to the depth of the roots of the grass.

Soil Processing. An operation which entails the import of soil material for purposes of machine processing, sifting, pulverizing, blending or like process, for resale.

Solid fence. Any fence which cannot be seen through. Such fences include but are not limited to basketweave fences, stockade fences, and plank fences.

Stable. Either a private stable or a commercial stable.

Stoop. A structure, which is less than 12 square feet in area, intended to provide ingress and egress to a building.

Storage structure. A detached structure, other than a principal garage, that is used for the parking and/or storage of motor vehicles, boats, campers, recreational vehicles, and lawn/garden equipment owned by the resident household.

Story. That portion of a building included between the surface of a floor and the surface of the floor next above it or, if there is no floor above it, then the space between the floor and the ceiling next above it.

Street. Any public or private way dedicated or permanently open to pedestrian and vehicular use.

Street dedication. The designation by plat, certified survey map, or written deed of a certain area to be used for public street purposes pursuant to Section 236.29, Wisconsin Statutes. A dedication transfers title to the dedicated area from the private landowner to the public domain.

Street Line. A dividing line between a lot, tract or parcel of land and a contiguous street.

Street lot line. Any lot line adjacent to a street.

Street reservation (road reservation). The designation by plat, certified survey map, or written deed of a certain area reserved for possible future public street purposes. A reservation does not

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transfer title of the reserved area to the public domain unless the area is accepted by the Town Board for public street purposes.

Street width. The total width of the strip of land dedicated or reserved for public travel, including roadway, curbs, gutters, sidewalks and planting strips.

Strip development. A pattern of land uses typified by nonresidential and/or multi-family development located along one or both sides of a street which is generally only one lot deep and which is characterized by many curb cuts, low green space ratios, low landscape surface ratios, and/or low quantities of landscaping.

Structure. Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, and uses standard building materials.

Structural alterations. Any change in the supporting members of a building or any substantial change in the roof structure or in the exterior walls.

Subdivision. The division of a lot, parcel or tract of land as defined in Chapter 18 of the Town of Delafield Code of Ordinances.

Summer Home. A dwelling designed and intended to be used, and which is used, only a few months each year, principally during the warm months of the year.

Supper club. A type of restaurant.

Surveyor. A licensed and certified land surveyor authorized to do business in the State of Wisconsin under Section 443.06 of the Wisconsin Statutes.

Sustained Yield Forestry. The management of forested lands to provide annual or periodic crops of forest products.

Swimming Pool. A structure, whether above or below grade level, designed to hold water more than thirty inches deep to be used for recreational purposes.

Tavern. An establishment where alcoholic beverages are sold to be consumed on the premises.

Telecommuting. Engaging in a gainful occupation or profession by a member or members of a family within his, her or their dwelling, while maintaining periodic communication with a principal office outside of the dwelling by the use of a computer modem.

Temporary Uses and Structures. Any uses or buildings or structures intended to remain in place for not more than four (4) months.

Topsoil. Generally, the top layer of soil, characterized by having a high organic matter content and by being optimal for the growth of plants.

Townhouse. A single family residence, usually 2 or more stories, attached on one side or both sides by party walls to other single family residences of similar type having individual street and rear yards, the end units only having a single side yard on the unattached side.

Traffic artery. Synonymous with Highway.

Two family dwelling. A dwelling designed for and occupied exclusively by 2 families.

Unenclosed. In reference to "unenclosed" storage of materials, vehicles, etc., unenclosed shall be defined as being within reasonable view of surrounding properties due to lack of adequate screening or enclosure.

Utility Structure. (am. 2002-03-008). A structure used for the primary purpose of housing telecommunications, electrical, cable television and similar equipment including, but not limited to, utility cabinets, buildings and underground vaults.

Variance. Permission to depart from the literal requirements of this chapter.

Vision setback. An unoccupied triangular space, at the street corner of a corner lot.

Walkway. A passage at ground level, 4 feet or less in width, intended for pedestrian traffic.

Warehouse. A building used primarily for the storage of business generated goods and materials and/or as a distribution center.

Wetland. An area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet condition.

Wholesale trade. Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

Yard. A required open space on a lot, which is unoccupied and unobstructed by a structure from its lowest ground level to the sky, except as expressly permitted in this chapter. A yard shall extend along a lot line and at right angles to such lot line to a depth or width specified in the yard regulations for the District in which it is located. *See also, Front yard, Rear yard, and Side yard.*

SECTION 17.02

RULES AND DEFINITIONS

1. RULES.

The language set-forth in the text of this chapter shall be interpreted in accordance with the following rules of construction:

- A. The singular number includes the plural, and the plural the singular;
- B. The present tense includes the past and future tense, and the future the present;
- C. The word "shall" is mandatory, while the word "may" is permissive;
- D. The masculine gender includes the feminine and neuter genders.
- E. Whenever a word or term defined hereinafter appears in the text of this chapter, its meaning shall be construed as set-forth in the definition thereof; and any word appearing in parentheses between a word and its definition herein shall be construed in the same sense as that word;
- F. The phrase "including, but not limited to" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.
- G. (Created 2013-01) References in this Chapter to sections of the United States Code, or State of Wisconsin Statutes, or the Wisconsin Administrative Code shall be interpreted to include such amendments, repeal, renumbering and binding judicial interpretation of such State and federal laws as may be made from time to time, unless expressly stated otherwise. No such reference to State or federal law shall be interpreted to delegate interpretation authority to any person or entity outside of the Town of Delafield municipal government, however, and the Town of Delafield reserves to itself the right to interpret applicable laws and to appeal interpretations that it believes are incorrect, and to seek the repeal or amendment of laws that it believes are not in the best interests of the Town of Delafield.

2. SPECIFIC WORDS AND PHRASES.

For the purpose of this chapter, certain words and phrases shall be defined as follows:

Abutting. Having a common border with, or being separated from such common border only by an easement.

Access. A means of vehicular approach, i.e., entry to a property from a street, road or highway, or exit from a property to a street, road or highway.

Accessory buildings and structures. (Amd. 00-507a) Buildings and structures, including private detached garages and boathouses, that are customarily incidental to the permitted uses in the District and located upon the same lot occupied by the principal building or structure.

Accessory use. Subordinate uses that are customarily incidental to the permitted uses in the District and located upon the same lot occupied by the principal use or principal structure.

Acre. 43,560 square feet.

Addition. Any new construction whereby an existing building or structure, or building or structure in course of construction, is expanded in perimeter or height.

Adjacent. Having a common border with, or being separated from such common border only by an easement.

Administrative official. Town Clerk, Town Engineer, Code Enforcement Officer, Building Inspector, Plan Commission, and Superintendent of Public Works.

Adult-oriented establishment. Repealed and recreated at §12.08, Town of Delafield Municipal Code per Ord. 00-515.

Aggrieved person. Any person who alleges that he or she has been injured by an error in an order, requirement, decision or determination made by an administrative official in the enforcement of § 62.23, Wis. Stats., or of this chapter.

Agriculture. All uses, commonly classified as agriculture, horticulture, floriculture, viticulture, or forestry, such as: the tilling of soil, crop and tree farming, truck farming, gardening, plant nurseries, dairy farming, keeping or raising of domestic livestock or poultry and sod farming together with the operation of any machinery or vehicles that are incidental to the above uses and any agricultural business such as fruit packing, dairying or similar activities.

Air pollution. Dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof excluding uncombined water vapor.

Airport. Transportation facility providing takeoff, landing, servicing, storage or other services to any type of air transportation.

Alley. A public right-of-way usually of reduced width which affords a secondary means of access to abutting property.

Animal hospital. An enclosed structure principally used to medically or surgically treat animals, which may include a commercial kennel as an accessory use.

Antique. A business engaged in selling or exhibiting works of art, pieces of furniture, decorative objects or other things that were made at an earlier time, generally at least twenty years earlier.

Apartment. A room or suite of rooms in a multiple family dwelling which is arranged, intended or designed to be occupied as a residence by one individual or by one family.

Apartment House. *See Multiple family dwelling.*

Appeal. A means for obtaining review of a decision, determination, order or failure to act pursuant to the terms of this chapter as expressly authorized by the provisions of section 10 of this chapter.

Arts and crafts studio. A business operated by an individual who is a painter, sculptor, potter, furniture builder, or similar crafter or artisan of material goods, where the product of the individual's work is sold, exhibited or both.

Automobile service station (Convenience store). A place where petroleum products, stored in underground tanks for the operation of motor vehicles are offered for sale directly to the public, including but not limited to such facilities that also sell motor vehicle parts and accessories, groceries, or any other products or services.

Base Setback Line. The street line as established by this chapter from which all required setbacks shall be computed.

Basement. A story that is more than one-half under grade level.

Bed and breakfast establishment. Any place of lodging that provides six (6) or fewer rooms for rent to guests, 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. "Breakfast" shall mean any meal served between 6:00 a.m. and 11:00 a.m.

Bedroom. A room in a residence that is marketed, designed, or otherwise likely to function primarily for sleeping.

Boat. A vessel that is designed to carry at least one individual on the surface of a body of water, and is propelled by oars, paddles, sail or motor power. Motor power includes, but is not limited to, power generated by steam engine, electric motor or combustion engine of any kind.

Boathouse. A structure designed to protect or store boats and not for human habitation.

Building. A structure that has a roof supported by columns or walls that is used, designed or intended for the protection, shelter or enclosure of individuals, animals or property. *See also, Accessory building, Height of building, Principal building and Public and Semi-public building.*

Building separation. The narrowest distance between two buildings.

Building setback line. A line parallel to the base setback line located at the minimum setback distance as set forth in the individual zoning district.

Building size. Synonymous with floor area.

Business. Any commercial or industrial activity or establishment.

Business park. A building project that is developed as a coordinated entity with similar building facades, landscaping, common parking and access drives, and unified site design.

Campground. A plat of ground designated for two (2) or more sites for temporary occupancy with tents and/or recreational vehicles.

Chicken Coop. (amended 2012-02) A covered enclosure used to keep chickens.

Chicken Run. (amended 2012-02) A covered, permeable, fenced in area allowed for chickens to run outside of the chicken coop.

Code enforcement officer. The Town employee charged with the application and interpretation of this chapter.

Commercial greenhouse. A business that grows and sells primarily plants and related goods on a retail or wholesale basis, and that includes a structure for the cultivation of plants.

Commercial kennel. An establishment, structure or premises where dogs or other household pets are raised, sold, bred, boarded, trained or groomed for commercial purposes. *See also, Hobby kennel.*

Commercial stable. A tract of land on which horses or other livestock are kept for hire, board, training, sale or any other commercial use.

Commercial truck. Any motor vehicle used for business or institutional purposes that weighs more than 10,000 pounds.

Common Open Space. (Amd. 05-003) Land within a subdivision or other development that has been designated, dedicated, reserved, or restricted in perpetuity from further development and is set aside for the use and enjoyment by residents of the community. Common Open Space may have varied forms of ownership including but not limited to: fractional share of the owners of property within a subdivision or development; public ownership; and fee simple or easement interest by a third party land trust. Common open space is typically free of structures, but may contain historic or rustic structures, share recreational structures including but not limited to pool houses or stables, as may be indicated on the approved development plan.

Communication tower. Free-standing broadcasting, receiving, or relay structures, and any office, studio or other land uses directly related to the function of the tower.

Comprehensive plan. The comprehensive plan of the Town of Delafield, as adopted and as subsequently amended.

Conditional uses. A land use which requires a conditional use permit in order to be developed.

Condominium. (Amd. 05-003) A community association combining individual unit ownership with share use or ownership of common property or facilities, established in accordance with the Condominium Ownership Act and §703 Wisconsin Statutes.

Corner lot. A lot abutting on 2 or more streets at their intersection, provided that the interior angle of such intersection is less than 135 degrees.

Deck. A structure, other than a stoop or walkway, characterized by a flat open horizontal surface or platform either at grade or suspended above the grade of the land it covers and which may or may not be supported by posts, beams, cantilevers or by any other methods, including a flat roof of a structure intended to be occupied for recreational purposes.

Density. The number of dwelling units or housing structures per unit of land.

Detailed Site Analysis. (Amd. 05-003) A plan or set of plans designed to provide the clear identification of permanently protected green space and open space areas on a site which is proposed for development, and which identifies permanently protected natural resource areas defined as required protected areas under State and Federal regulation; any environmental corridor component identified by the Southeastern Wisconsin Regional Planning commission, including primary corridors, secondary corridors, and isolated natural resource areas; or any other environmental feature designated in the Town Land Use Plan requiring a Detailed Site Analysis and Mitigation Plan in conjunction with development review.

Developer. The legal or beneficial owner(s) (including, but not limited to, optionee(s) or contract purchaser(s) of a lot or parcel of any land proposed for inclusion in a development.

Development. (Amd. 05-003) The combination of parcels; division of a parcel of land into two or more parcels; the erection, construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or structure; any use or change in use of any buildings, structures or land; any extension of any use of land; or any clearing, grading, or other movement of land, for which permission may be required pursuant to this Chapter. Also, the result of said acts.

Development Envelope. (Amd. 05-003) That portion of a parcel of land which is intended to be cleared, graded, and built upon including areas for accessory uses and structures.

Direct access. A condition of immediate physical connection resulting from adjacency of a road or right-of-way abutting a property.

District. A specifically delineated area in a municipality within which regulations and requirements uniformly govern the use, placement, spacing and size of land and structures.

Drainage. The removal of surface water or groundwater from land by drains, grading, or other means. Drainage includes the control of runoff, to minimize erosion and sedimentation during and after development, and the means necessary for water supply preservation or alleviation of flooding.

Dwelling. A residential building or one or more portions thereof occupied or intended to be occupied exclusively for residential purposes, but not including habitations provided in nonresidential uses such as lodging uses and commercial campgrounds. *See also, Multiple family dwelling, One family dwelling, Two family dwelling, and Dwelling unit.*

Dwelling unit. A room or group of rooms, providing or intended to provide living quarters for not more than one (1) family.

Easement. A right given by an owner of land to another party for a specific limited use of that land or portion thereof.

Eave. The lower border of a roof that overhangs the wall.

Efficiency apartment. A small, usually furnished, apartment with minimal kitchen and bathroom facilities.

Elderly housing. Residential development designed to meet the needs of and reserved exclusively for senior citizens.

Elderly housing unit. Synonymous with elderly housing.

Erosion. The detachment and movement of soil or rock fragments by water, wind, ice, and/or gravity.

Established grade. The elevation of the finished street at the centerline or curb as fixed by the Town Engineer or by such authority as shall be designated by law to determine such an elevation.

Family. One or more individual(s) related by blood, adoption or marriage, or 3 or fewer individual(s) not so related, living together in one dwelling and maintaining a common household.

Farm. The location of a farming operation.

Farming. Engaging in a farming operation.

Farming operation. (Amd. 06-007) One or more parcel(s) of land under a single ownership and/or management upon which natural fibers, animals, and/or plants for human or animal consumption are produced for profit.

Farm roadside stand. A farm building or structure used or intended to be used for the sale of unprocessed farm products raised on said farm solely by the owner or tenant of the farm on which such building is located.

Farmstead. That portion of a farm which consists of the home and adjacent accessory buildings.

Fast food restaurant. An establishment whose principal business is the sale of prepared or

rapidly prepared food directly to the consumer in a ready-to-consume state for consumption either within the restaurant building or off-premises.

Fence. A structure which is used as a boundary or means of protection, screening, barrier, confinement or architectural treatment.

First floor level. Livable floor area that is not above any other livable floor area.

Flood. A temporary rise in water level that results in water overtopping land banks and inundating adjacent areas.

Floodplain. Land which has been or may be covered by flood water during the regional flood. The floodplain includes the floodway, shallow depth flooding, flood storage and coastal floodplain areas.

Floor area. The sum of the gross horizontal areas of the several floors of a building measured from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but not including interior parking spaces, loading space for motor vehicles, or any space where the floor-to-ceiling height is less than six feet.

Frontage. The length of any one property line of a premises that abuts a street right-of-way, waterway, or end of a dead-end street.

Frontage street (Frontage road). A street (road) contiguous and parallel to a traffic artery and affording direct vehicular access to abutting property.

Front lot line. A lot line which abuts a public or private street right-of-way. In the case of a lot which has two or more street frontages, the lot line most closely parallel with the front door of the house shall be the front lot line.

Front yard. A yard extending along the full width of the front lot line between side lot lines and extending from the abutting front street right-of-way line to a depth required in the yard regulations for the District in which such lot is located.

Fur farm. A farming operation devoted in whole or part to the raising of fur bearing animals for commercial purposes.

Garage. *See Private Garage.*

Gift shop. A business engaged in selling merchandise that is suitable for, and often is, transferred by the purchaser to another without compensation.

Glare. The brightness of a light source which causes eye discomfort.

Gravel Pit. A type of quarry.

Gross floor area. Synonymous with Floor area.

Group day care center. A facility, that is not in an occupied residence, where care and supervision is provided for four (4) or more children under the age of seven (7) for less than 24 hours a day.

Grub. To clear the vegetation from an area of land by digging up roots and stumps.

Hard or impervious surface. The area of a lot devoid of grass, trees or other natural landscape features that is developed in a manner that prevents filtration of water into the underlying soil.

Height of building (base - principal). (Amd. 00-507a) The greatest vertical distance between the

elevation of the lowest finished grade and the eave, measured on the side(s) of the building having the lowest finished grade.

Height of building (base - accessory) (Created 00-507a) The vertical distance between the elevation of the highest finished grade and the eave measured on the side of the building having the highest finished grade.

Highway. A right-of-way for the principal purpose of providing vehicular thoroughfare and not necessarily affording direct access to abutting property.

Hobby kennel. A non-commercial establishment, structure or premises accessory to the principal use of the property where 3 or more household pets of 6 months minimum age are kept for such private purposes as pets, field trials, shows or hobby. The occasional raising of not more than 2 litters of household pets per year on the premises and the sale or disposal of the animals within 6 months of the birth shall also be considered a hobby kennel. *See also, Commercial kennel.*

Home Occupation. A gainful occupation or profession conducted by a member or members of a family within his, her or their dwelling, where the space used is incidental to the principal residential use of the property.

Horticulture. The act of cultivating plants for private ornamental use and/or the cultivation of fruits or vegetables for private use.

Hospital. An institution providing primary health services and medical or surgical care to individuals, primarily inpatients, suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions, and including, as an integral part of the institution, related facilities such as laboratories, outpatient facilities or training facilities.

Hot Tub. (Amd. 2008-004) A structure, being a large tub or small pool of water, used for soaking, relaxation, massage or hydrotherapy, in most cases with jets for massage purposes.

Hotel. A building in which lodging, with or without meals, is offered for compensation and which has more than 5 sleeping rooms for this purpose.

House trailer. Synonymous with Mobile Home.

Household pets. Common household animals such as dogs, cats, parrots, and other domestic animals kept for pleasure and not for utility, excluding domesticated wild animals not usually found in the home.

Human habitation. Entrance or presence of any individual for any purpose other than maintenance.

Individual. A human being.

Industrial park. A large tract of land that has been planned, developed and operated as an integrated facility for a number of individual industrial uses, with special attention to circulation, parking, utility needs, aesthetics, and compatibility.

In law unit. A room or suite of rooms used or occupied as a separate housekeeping entity and located in a single-family dwelling occupied by individuals related by blood or marriage to the family or individuals occupying the single-family dwelling.

Institutional. Uses, facilities, or organizations dedicated to public service.

Intermediate day care home. Occupied residence in which a qualified individual or individuals provide child care for 9 to 15 children.

Junkyard. Any area, lot, land, parcel, building or structure or part thereof used for the storage, collection, processing, purchase, sale or abandonment of wastepaper, rags, scrap metal or other scrap or discarded goods, materials, or machinery or two or more unregistered, inoperable motor vehicles or other work materials.

Kennel. Either a commercial or hobby kennel.

Lake resort. A commercial enterprise that is located adjacent to a lake and that provides overnight lodging, recreation and entertainment, especially to vacationers.

Legal nonconforming lot. Any lawfully established lot or parcel of land at the time of the enactment of this chapter or any amendment applicable thereto which does not meet the requirements for minimum lot width and area for the District in which it is located.

Legal nonconforming structure. Any lawfully established building or structure at the time of the enactment of this chapter or any amendment applicable thereto that does not conform to the use regulations or dimensional regulations for the District in which it is located.

Legal nonconforming use. Any lawfully established use of land, premises, building or structure at the time of the enactment of this chapter or any amendment applicable thereto that does not conform to the use regulations for the District in which it is located.

Light industrial. Industrial establishments such as those engaged in warehousing, wholesaling and distribution, assembly, fabrication, repair and maintenance services that comply with the standards listed in this chapter.

Livable floor area. Floor area measured at each level from the outside edge of wall to outside edge of wall and for purposes of computing total floor area shall not include attached or detached garages, or other outbuildings, open unheated porches and breezeways or basements.

Livestock. Domestic farm animals that are typical of this area including, but not limited to, cattle, horses and sheep.

Local residential street. A road which primarily serves to collect traffic originating directly from residential driveways and private residential courts and streets.

Lot. A designated parcel, tract or area of land established by plat, subdivision, or as otherwise permitted by law. *See also, Corner lot, Front lot line, Legal nonconforming lot, Lot lines, Lot area, Lot of record, Lot width, Rear lot line, Shore lot line, Side lot line, and Street lot line.*

Lot area. The area of contiguous land bounded by lot lines, exclusive of the area between the base setback line and the existing property line ultimately to be included in the street, but may include land zoned "Wetland-Floodplain" subject to compliance with this chapter.

Lot lines. The lines bounding a lot as defined herein.

Lot of record. A platted lot or lot described in a certified survey map or metes and bounds description which has been approved by the Town, and has been recorded in the office of the Register of Deeds.

Lot width. The length of the building setback line.

Manufacturing. The mechanical or chemical transformation of materials or substances into new

products including the assembling of component parts, the manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins or liquors.

Marina. A tract of land together with associated structures on the land and in the water where boat launching, boat mooring, boat anchoring, and/or dry land boat storage is provided to boat owners for a fee or other remuneration.

Master plan. A plan, map, report, or other document pertaining to the physical development of the Town which has been adopted by the Town Plan Commission, as described in Wisconsin Statutes § 62.23 (2) and (3).

Minor street. A minor street as set forth in Chapter 18 of the Town of Delafield Municipal Code.

Mitigation Area. (Amd. 05-003) The portion of a lot or development site which could be included in a Development Envelope, but which is restricted for use as undeveloped open space in order to alleviate or less the impact of development.

Mobile home. A constructed unit 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 thereto.

Mobile home park. A planned residential development containing sublots for stationing individual mobile home units and providing on site sanitary facilities, laundry facilities and recreational facilities, with public sewer, public water supply service, gas and electric power utilities for connection directly to each mobile home unit and having interior roads and walks permanently surfaced.

More restrictive. A regulation imposed by this chapter is more restrictive than another if it prohibits or limits development to a greater extent or by means of more detailed specifications.

Motel. A building or series of buildings in which lodging, without meals, is offered for compensation and which may have more than 5 sleeping rooms or units for this purpose and which is distinguished from a hotel primarily by reason of providing direct independent access and adjoining parking for each rental unit.

Multiple family dwelling. A structure arranged or designed to be occupied by three or more families living independently of each other.

Nonconforming use, building or structure. *See Legal nonconforming lot, Legal nonconforming structure, and Legal nonconforming use.*

Nuisance. An unreasonable interference with the enjoyment and use of one's property as defined in Chapter 10.02 of the Town of Delafield Code of Ordinances.

Occupancy permit. A required permit that allows occupancy of a building, structure, land, or use, which certifies that the occupancy complies with the provisions of this chapter and any other applicable governmental regulations.

Office. A room or group of rooms used for conducting the affairs of a business, profession, service, industry, or government.

Office park. A project owned, developed and managed by a single owner or a group of owners similar to a business park with the primary establishments being a related group of offices

including, but not limited to corporate, medical, financial, insurance and real estate.

Offset. (Amd. 00-507a) The horizontal distance between the side or rear lot lines of a lot and the nearest foundation wall of a structure.

Off-street parking space. A usable off-street area with independent access designated for the parking of motor vehicles.

Open Cell Pavers. (Amd. 2008-004) Pervious paving materials of at least 50% open area, used to reduce the imperviousness of firm surfaces such as patios, walkways, driveways, fire lanes, and parking areas, for the purpose of reducing surface runoff and increasing filtration. Open Cell Pavers may include pervious interlocking concrete blocks, concrete grid pavers, turf block and perforated brick pavers.

Open space. (Amd. 2008-004) A natural area or manmade landscaped area not occupied by any structures, impervious surfaces, gravel drives, or gravel parking areas.

Ordinary high water line. A point on the bank or shore of a body of water up to which the presence and action of surface water is so continuous as to leave a distinctive mark by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation or other easily recognizable characteristics.

Outdoor recreational facilities. Land, buildings and structures along with accessory equipment, designed and utilized for leisure time activities of a predominantly outdoor nature.

Outdoor storage. The keeping, in an unenclosed area, of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four hours.

Owner. The person or persons having the right of legal title.

Parcel. A lot.

Parking area. Any public or private land area designed and used for parking motor vehicles including parking lots, garages, private driveways and legally designated areas of public streets. *See also, Off-street parking space.*

Patio. A type of deck.

Performance standard. Criterion established to control and limit the impacts generated by, or inherent in, uses of land or buildings.

Permanent structure. A structure placed on or in the ground or attached to another structure in a fixed and determined position, and intended to remain in place for a period of more than four (4) months.

Permitted use. A use that is permitted by right, subject to the provisions of this chapter.

Person. An individual, firm, corporation, voluntary association, owner or agent.

Pig farm. A farming operation devoted in whole or in part to the raising and feeding of pigs and/or hogs.

Plan Commission. The Plan Commission of the Town of Delafield.

Planned Unit Development (PUD). (Amd. 05-003) A self contained development in which subdivision and zoning controls are applied to the project as a whole rather than to individual lots, and in which specific benefits are provided to the community as well as the developer and the

future citizens who will reside within the development. Within PUD's, densities are calculated for the entire development, usually permitting a trade-off between clustering of homes and provisions of common open space.

Planting screen. An area landscaped with natural growing evergreen type of plants that are sufficiently dense and of adequate height at all times as to effectively screen off from view the object that is intended to be hidden.

Plat. A map or plan of a parcel of land showing such data as the location, boundaries, dimensions, bearings, lot or unit location and designation, and ownership of individual properties in accordance with Chapters 236 and 703 of the Wisconsin Statutes.

Poultry farm. A farming operation devoted in whole or in part to the raising of poultry or fowl, such as chickens, ducks, geese and turkeys for commercial purposes.

Preliminary plat. A map showing the salient features of a proposed subdivision submitted to an approving authority for purposes of preliminary consideration.

Premises. A distinct and definite locality, as determined from the context in which the word is used, and may include, but is not limited to, a room, shop, building, yard, or lot.

Principal building or structure. A building or structure used or intended to be used for the principal use as permitted on such lot by the regulations of the zoning District in which it is located.

Principal use. The main or primary use of land, premises, buildings or structures as permitted by the regulations of the District in which such use is located.

Private club. Real property exclusively used for regular or periodic meetings or gatherings of a group of persons solely organized for a nonprofit purpose.

Private garage. (Amd. 00-507a) Any structure for the primary purpose of keeping private vehicles and wherein such use is accessory to the residential use of the property on which it is located.

Private stable. A tract of land on which horses or other livestock are kept for the non-commercial use of the individual residing on the tract of land.

Processing. A series of operations, usually in a continuous and regular action or succession of actions, taking place or carried on in a definite manner. The term processing is generally associated with the transformation of raw materials or substances into new products. For purposes of use in this chapter, processing shall not include heavy industrial uses such as tanneries, meat packing, foundries, hazardous waste recycling, chemical production, and other similar uses.

Professional office. The office of a doctor, dentist, minister, architect, landscape architect, professional engineer, lawyer, author, musician or other similar recognized profession.

Public and semipublic buildings. Structures that serve a public need such as: hospitals, rest homes, nursing homes, schools (including, but not limited to, private academic schools and nursery schools), libraries, museums, post offices, police and fire stations, public and private utilities and other similar public services; but not including bars, restaurants or recreation facilities.

Public improvement. Any improvement, facility, or service, together with customary improvements and appurtenances thereto, necessary to provide for public needs such as: streets, roads, alleys or pedestrian walks or paths, storm sewers, flood control improvements, water supply and distribution facilities, sanitary sewage disposal and treatment, public utility and energy services.

Public utility. Any person or municipal department duly authorized, under public regulation, to furnish electricity, gas, steam, telephone, communication, transportation or water to the public.

Quarrying. The removal of rock, slate, gravel, sand, topsoil or other natural material from the earth by excavation, stripping, leveling or any other such process, excluding the removal solely of sod.

Quasi-public. Owned or operated by a non-profit, religious or charitable institution and providing educational, cultural, recreational, religious or similar types of public programs.

Rear lot line. The lot line opposite to and most distant from the front lot line.

Rear yard. A yard extending along the full width of the rear lot line between the side lot lines and extending toward the front lot line for a depth as specified in the yard regulations for the District in which such lot is located.

Recreational vehicle or equipment. A vehicle or piece of equipment which can be towed, hauled, carried or driven and designed as a temporary living accommodation for recreational camping and travel use and including but not limited to travel trailers, truck campers, tent trailers, camping trailers, self propelled motor homes, and boats.

Refuse disposal site. A tract of land operated by a public or private person where more than one family takes refuse for disposal.

Regional flood. A flood having an average frequency of the 100 year recurrence interval flood.

Residential planned unit development. An area of a minimum contiguous size, as specified by this chapter, to be planned and developed as a single entity containing one or more residential unit(s).

Residential zoned. A property located in a residential District.

Restaurant. A commercial establishment where food and beverages are prepared, served and consumed primarily within the principal building, and where food sales constitute more than eighty percent of the gross sales receipts for food and beverages. *See also, Fast food restaurant.*

Retail. The sale of commodities or goods in small quantities to ultimate consumers.

Retaining Wall. (Amd. 06-007) A vertical structure used to hold back earth or keep earth from sliding.

Revetment. A facing (as of stone or concrete) to sustain an embankment.

Riding stable. Any structure and/or land used, designed or arranged for the maintenance or rental of horses, mules, ponies or donkeys either with or without a bridle path or riding area, but excluding structures and/or land used, designed or arranged for the maintenance of horses or mules used exclusively for agricultural purposes.

Right-of-way. A strip of land acquired by reservation, dedication, forced dedication, or condemnation and occupied or intended to be occupied by a street, cross-walk, railroad, electric

transmission line, oil or gas pipeline, water line, sanitary or storm sewer and other similar uses.

Riprap. A layer of rocks, stones, or chunks of concrete thrown together without order either on an embankment slope to prevent erosion, or not on an embankment slope to create a sustaining wall or foundation.

Road. Synonymous with street.

Roadside stand. Synonymous with Farm roadside stand.

Rustic structure. (cr. 2002-09-002A) Any existing structure permanently located on property, which is set apart from other structures as being distinct due to its construction technique, materials, age, local historic significance or design, and characteristic of past agricultural practice and which is structurally safe.

Safe vehicular access. An access of sufficient width and adequate horizontal alignment to accommodate emergency vehicles and having a slope not to exceed 12% at any point.

Sand Pit. A type of quarry.

Secondary access. A means of vehicular or non-vehicular approach, i.e., entry to a property from a source other than a public street or highway, or exit from a property to a source other than a public street or highway.

Sedimentation. The deposition of soil that has been transported from its site of origin by water, ice, wind, gravity, or other natural means as a result of erosion.

Self-storage facility. A facility consisting of individual self-contained storage units or spaces leased to individuals, organizations or businesses for storage of personal property. A storage facility that is accessory to the principal use on the property and used solely by occupants of the property where located is excluded from this definition of a self-storage facility.

Service establishments. Establishments primarily engaged in providing services for individuals, business and government establishments and other organizations; including hotels and other lodging places; establishments providing personal business, repair and amusement services; health, legal, engineering, and other professional services; educational institutions; membership organizations, and similar establishments.

Service Pedestal. (Amd. 2008-004) A cabinet, box or enclosure that houses transformers, distribution equipment or metering equipment servicing residential, industrial or commercial properties that is less than 20 cubic feet in size and is less than 3 feet in height. Service pedestals shall not be considered structures.

Setback. The horizontal distance between the base setback line and the nearest portion or projection of a building.

Sewage Treatment Plant. Any facility designed for the treatment of sewage which serves in excess of two (2) structures or dwelling units.

Shore lot line. The ordinary high water line of the lake or stream which the lot abuts.

Shrub. A low-lying deciduous or evergreen plant.

Side lot line. Any boundary of a lot which is not a front lot line, a street lot line, a shore lot line, or a rear lot line.

Side yard. A yard extending along the side lot line between the front and rear yards, having a width as specified in the yard regulations for the District in which such lot is located.

Sign. See section eight (8) of this chapter.

Single family dwelling (One family dwelling). A dwelling designed for and occupied exclusively by one family.

Single floor area. Livable floor area that is not over any other livable floor area.

Sod. The grass-covered surface of the ground, and the soil below the surface only to the depth of the roots of the grass.

Soil Processing. An operation which entails the import of soil material for purposes of machine processing, sifting, pulverizing, blending or like process, for resale.

Solid fence. Any fence which cannot be seen through. Such fences include but are not limited to basketweave fences, stockade fences, and plank fences.

Stable. Either a private stable or a commercial stable.

Stoop. A structure, which is less than 12 square feet in area, intended to provide ingress and egress to a building.

Storage structure. A detached structure, other than a principal garage, that is used for the parking and/or storage of motor vehicles, boats, campers, recreational vehicles, and lawn/garden equipment owned by the resident household.

Story. That portion of a building included between the surface of a floor and the surface of the floor next above it or, if there is no floor above it, then the space between the floor and the ceiling next above it.

Street, Arterial. (Amd. 05-003) A street used or intended to be used, primarily for fast or heavy through traffic. Arterial street shall include freeways and expressways as well as standard arterial streets, highway and parkways.

Street Collector. (Amd. 05-003) A street used or intended to be used, to carry traffic from minor streets to the major system of arterial streets including the principal entrance streets to residential developments.

Street, Cul-De-Sac. (Amd. 05-003) A minor street with only one outlet and having an appropriate turnaround for the safe and convenient reversal or traffic movement.

Street dedication. The designation by plat, certified survey map, or written deed of a certain area to be used for public street purposes pursuant to Section 236.29, Wisconsin Statutes. A dedication transfers title to the dedicated area from the private landowner to the public domain.

Street Frontage. (Amd. 05-003) A minor street auxiliary to and located on the side of an arterial street for control of access and for service to the abutting development.

Street Line. A dividing line between a lot, tract or parcel of land and a contiguous street.

Street lot line. Any lot line adjacent to a street.

Street, Minor (Local). (Amd. 05-003) A street used, or intended to be used, primarily for access to abutting properties.

Street reservation (road reservation). The designation by plat, certified survey map, or written deed of a certain area reserved for possible future public street purposes. A reservation does not transfer title of the reserved area to the public domain unless the area is accepted by the Town Board for public street purposes.

Street width. The total width of the strip of land dedicated or reserved for public travel, including roadway, curbs, gutters, sidewalks and planting strips.

Strip development. A pattern of land uses typified by nonresidential and/or multi-family development located along one or both sides of a street which is generally only one lot deep and which is characterized by many curb cuts, low green space ratios, low landscape surface ratios, and/or low quantities of landscaping.

Structure. Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, and uses standard building materials.

Structural alterations. Any change in the supporting members of a building or any substantial change in the roof structure or in the exterior walls.

Subdivision. The division of a lot, parcel or tract of land as defined in Chapter 18 of the Town of Delafield Code of Ordinances.

Summer Home. A dwelling designed and intended to be used, and which is used, only a few months each year, principally during the warm months of the year.

Supper club. A type of restaurant.

Surveyor. A licensed and certified land surveyor authorized to do business in the State of Wisconsin under Section 443.06 of the Wisconsin Statutes.

Sustained Yield Forestry. The management of forested lands to provide annual or periodic crops of forest products.

Swimming Pool. A structure, whether above or below grade level, designed to hold water more than thirty inches deep to be used for recreational purposes.

Tavern. An establishment where alcoholic beverages are sold to be consumed on the premises.

Telecommuting. Engaging in a gainful occupation or profession by a member or members of a

family within his, her or their dwelling, while maintaining periodic communication with a principal office outside of the dwelling by the use of a computer modem.

Temporary Uses and Structures. Any uses or buildings or structures intended to remain in place for not more than four (4) months.

Topsoil. Generally, the top layer of soil, characterized by having a high organic matter content and by being optimal for the growth of plants.

Townhouse. A single family residence, usually 2 or more stories, attached on one side or both sides by party walls to other single family residences of similar type having individual street and rear yards, the end units only having a single side yard on the unattached side.

Traffic artery. Synonymous with Highway.

Two family dwelling. A dwelling designed for and occupied exclusively by 2 families.

Unenclosed. In reference to "unenclosed" storage of materials, vehicles, etc., unenclosed shall be defined as being within reasonable view of surrounding properties due to lack of adequate screening or enclosure.

Utility Structure. (Amd. 2008-004) A structure, greater than 20 cubic feet in size or greater than 3 feet in height, used for the primary purpose of housing telecommunications, electrical, cable television and similar equipment including utility cabinets, buildings and underground vaults.

Variance. Permission to depart from the literal requirements of this chapter.

Vision setback. An unoccupied triangular space, at the street corner of a corner lot.

Walkway. A passage at ground level, 4 feet or less in width, intended for pedestrian traffic.

Warehouse. A building used primarily for the storage of business generated goods and materials and/or as a distribution center.

Wetland. An area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet condition.

Wholesale trade. Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

Yard. A required open space on a lot, which is unoccupied and unobstructed by a structure from its lowest ground level to the sky, except as expressly permitted in this chapter. A yard shall extend along a lot line and at right angles to such lot line to a depth or width specified in the yard regulations for the District in which it is located. *See also, Front yard, Rear yard, and Side yard.*

SECTION 17.03

GENERAL REGULATIONS

1. GENERAL PERMIT REGULATIONS.

A. Building and Zoning Permit.

1. **Required.** (repealed and recreated 2011-002) No building or structure shall be erected, converted, relocated, enlarged, structurally altered or moved from one location to another, unless and until a building permit is secured from the Code Enforcement Officer and a zoning permit is secured from the Zoning Administrator, certifying that such building or structure complies with the provisions of this chapter and with the building code and other applicable codes of the Town.
2. **Application.** An application for a building and zoning permit shall be made in conformity with the requirements of the Wisconsin Uniform Dwelling Code and shall include, for the purpose of proper enforcement of the regulations of this chapter, three copies of the following data:
 - a. A description of the proposed use and occupancy of the property involved and of all buildings or structures presently or proposed to be erected thereon.
 - b. **Plat of Survey.** (repealed and recreated 2011-002). Except as described in subsection (e.), below, a plat of survey of the proposal involved, drawn to a reasonable scale and properly dimensioned, shall be prepared and certified by a surveyor registered by the State. Such survey shall bear the date of the survey, which shall be within one year of the application for the building permit. The survey shall also show the following:
 - (1) The boundaries of the property involved.
 - (2) The location of the centerline of any abutting streets.
 - (3) The ordinary high water line of any stream or lake on which the property abuts.
 - (4) The location on the property of any existing buildings, structures, hard surfaces, proposed additions or proposed new buildings and structures, including the measured distances between such buildings and structures and the lot lines, and a chart indicating the area, measured in square feet, of each structure or hard surface.
 - (5) The location and grade of the proposed driveways and parking areas.
 - (6) The nearest portion of such buildings and structures and the centerline of any abutting street.
 - (7) The nearest portion of such buildings and structures and the ordinary high water line of any abutting stream or lake.
 - (8) The proposed floor elevation of any proposed buildings and structures in relation to the existing and/or established grade of any abutting streets and the ordinary high water line of any abutting stream or lake.
 - (9) The elevation and setback of any existing buildings or structures on adjacent parcels within 200 feet of any proposed new buildings, structures or additions.

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- (10) The location and elevation of sanitary sewer or percolation tests and soil borings, location of proposed septic tank and leach bed and location of proposed well.
- c. If within six months of the date of issuance of a permit the proposed construction or preparation of land for use has not commenced or if within 24 months an occupancy permit has not been issued, the building permit shall expire. Upon showing of valid cause, the Town Board may grant an extension of such permit for a period not to exceed six months.
- d. One copy of the above described data shall be retained by the Code Enforcement Officer, one copy shall be retained by the applicant and one copy shall be filed with the Town Clerk as a public record.
- e. **Plat of Survey Exceptions.** The following exceptions apply to the survey otherwise required by subsection b. above:
 - (1) For zoning permits that do not involve construction of a building (e.g. landscape, hardscape, driveway modifications) and do not need a building permit, a site plan containing all required information above, prepared and stamped by a registered engineer, registered landscape architect or registered architect may be substituted for the plat of survey.
 - (2) For proposals for interior modifications only, that do not change the open space on the property, no plat of survey is required.
 - (3) For zoning permits or building permits on lots that have at least 1,500 square feet more open space than the minimum by this Code, no plat of survey is required, subject to the following. This option is available if the Applicant or the Zoning Administrator produce, for the zoning Administrator's use current, clear, readable aerial photography to determine the existing amount of open space and dimensional elements of a site. If the Zoning Administrator determines under this subsection that a plat of survey is not required, then in lieu of the plat of survey the Applicant shall designate and show an area equal to the open space on an aerial photo acceptable to the Zoning Administrator which encompasses all the existing and proposed hard surface improvements, and the Zoning Administrator shall review this alternative document when conducting the open space review procedure of Section 17.03 1.A.3. of this Code.
- 3. **Fees.** Before receiving approval for a building and zoning permit, a fee shall be paid as designated from time-to-time by resolution of the Town Board.
- 4. **No Undesirable Structures.** No building or structure shall be erected, converted, relocated, enlarged, structurally altered, occupied or reoccupied and no lumber, materials, furniture, equipment or excess excavation shall be stacked, piled or stored in a manner which adversely affects the property values or general desirability of the neighborhood.
 - a. The Code Enforcement Officer shall submit any such case in question respecting undesirable structures to the Plan Commission for its determination.
 - b. The Plan Commission shall base its determination upon the following considerations:
 - (1) Design or appearance of such unorthodox or abnormal character in relation to the surroundings as to be considered unsightly or offensive to the degree that would have an

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adverse effect on the property values or general desirability of the neighborhood; or

- (2) Identical design and appearance with adjoining buildings or structures to the degree that monotony and commonness would have an adverse effect on the property values and general desirability of the neighborhood.

- c. The decision of the Plan Commission shall be stated in writing, including the reason for the decision.

5. Prior Permit.

- a. **Construction Permitted.** Nothing herein contained shall require any change in the plans, construction, size or designated use of any building or structure or part thereof for which a building and zoning permit has been issued before the effective date of this chapter and for which the construction of which shall have been substantially started within six months from the date of such permit.
- b. **Subsequently Nonconforming.** Any such use which does not conform to the use regulations of the District in which it is located shall, however, subsequently be considered a legal nonconforming use.

6. Open Space Review Procedure by Zoning Administrator. (created 2011-002)

- a. Documents are received by the Zoning Administrator and checked for completeness.
- b. Zoning Administrator shall walk the site to determine if the plat of survey or site plan captured all the existing hard surfaces and structures. If there are items missing, the applicant will be contacted and shall be required to provide this information.
- c. Zoning Administrator completes the zoning permit using the information on the plat of survey/site plan, unless the Zoning Administrator finds it to be inaccurate. If the Zoning Administrator finds it to be inaccurate, the applicant will be contacted and shall be required to provide this information.
- d. The Zoning Administrator reviews, as applicable the subdivision plat, conditional use and any other conditions put on the zoning of the property by the Town that dictates restrictions related to open space, land disturbance, tree removal or anything else that may affect the development of the property.
- e. Zoning Administrator informs the Applicant and the Owner of the property in writing of the current and required open space on the property via information on the zoning permit.
- f. For (i) any improvements to homes on lots directly adjacent to Pewaukee Lake, and (ii) new homes, additions, or lots with substantial hardscape improvements that reduces the open space to within 500 square feet or less of what is required; an as-constructed survey shall be prepared and submitted to the Zoning Administrator showing the final location of all improvements and a chart indicating the areas of all improvements on the site and the open space calculation. No occupancy permit shall be issued unless and until this document is submitted to and has received the approval of, the Zoning Administrator. The Zoning Administrator shall review the calculations and update the zoning permit as needed to reflect the final calculation of open space on the property. The Zoning Administrator shall place the as-constructed drawing and the final

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zoning permit in the Town property file. No temporary occupancy permit can be issued for such a property, unless the Property Owner first provides a cash deposit of \$1.00 per square foot of floor space as defined on the building permit, with a minimum deposit of \$1,500 for completion of the as-constructed survey. Such cash deposit shall be retained by the Town Treasurer until such time as the Town Treasurer receives written notice from the Zoning Administrator that the as-constructed survey requirement has been met and the cash deposit should be refunded. It is the Applicant's responsibility to request the return of the deposit when the Applicant believes that the work is completed. The deposit is returnable only to the party who made the deposit unless satisfactory proof is shown that this right to claim the deposit has been assigned to a different claimant. In the event application for return of the deposit is not made within two (2) years of issuance of the temporary occupancy permit, the deposit shall be forfeited, and upon forfeiture the amount forfeited shall be owned by the Town without claim from the person making the deposit or from any other person. In the event a deposit is forfeited, this does not relieve the Applicant of the obligation to comply with the as-constructed survey requirements of this subsection, and forfeiture of the deposit by the Town is in addition to such other penalties and remedies as may apply.

B. Occupancy Permit.

1. **Required.** No vacant land shall be used or occupied and no building or structure shall hereafter be used or occupied until a zoning or occupancy permit has been issued certifying that any such building or structure, use or occupancy complies with the provisions of this chapter and any other applicable governmental regulations. No occupancy permit shall be issued until each of the requirements of this ordinance has been fulfilled by the applicant. A like permit shall be obtained before any change is made in the type of use including, but not limited to, the conversion of summer homes to year-round residences, or before any nonconforming use is resumed, changed, extended, expanded or granted conditional use status, or before new occupancy of vacant land or an existing building or existing structure.
2. **Application.** A zoning permit shall be applied for with the application for a building permit, and shall be accompanied by a statement by the applicant of the intended use of the land, premises, building or structure. Within ten days after the notification of the completion of the occupancy of the land or the erection, conversion, relocation, enlargement or structural alteration of the premises, building or structure, the Code Enforcement Officer shall make an inspection of the premises, building or structure and shall then issue an occupancy permit if the building and the intended use thereof comply with the requirements of this chapter.
3. **Temporary Occupancy Permit.** (repealed and recreated 2011-002). Pending the issuance of a regular permit, a temporary permit may be issued for a period not exceeding six months during the completion of alterations or during partial occupancy of land, premises, building or structure pending its permanent occupation. Such temporary permit shall not be issued except under such restrictions and provisions as will adequately ensure the safety of the occupants, and in any event will not be issued until the complete plumbing and electrical wiring and outlets are installed and approved and until the plastering, if any, and the outside wall insulation are completed. There shall be a charge for the temporary permit as set from time-to-time by resolution of the Town Board. Upon expiration of the temporary permit, the temporary permit shall be void and the occupancy must cease until such time as all provisions of this chapter are met. No temporary occupancy permit can be issued on properties subject to an as-constructed survey requirement per Section 17.03 1.A.6.f., except upon payment of a cash deposit as described therein.

4. **Fees.**

- a. Before receiving approval of an occupancy permit, the applicant shall pay the occupancy permit fees as designated from time-to-time by resolution of the Town Board.
 - b. In addition to the permit fees as required herein, the applicant for the permit shall deposit with the Code Enforcement Officer a certified check or cash in a sum as established by the Town Board from time-to-time for the purpose of guaranteeing that all other fees required by the Town shall be paid prior to the issuance of an occupancy permit and guaranteeing that occupancy does not occur until an occupancy permit is issued or temporary occupancy permit is issued and all conditions of occupancy are satisfied. The deposit shall be retained by the Town Treasurer until an occupancy permit is issued. The deposit shall be released upon fulfillment of the following provisions:
 - (1) The issuance of an occupancy permit and satisfaction of all conditions of the same;
 - (2) A written report from the Code Enforcement Officer that at the time of the issuance of the occupancy permit all other fees required by the Town, such as electrical and plumbing inspection fees, have been paid;
 - (3) A written report from the Code Enforcement Officer that the necessary culverts, drainage ditches and road improvements have been made and have not been damaged during construction;
 - (4) A sworn statement from the applicant that the portion of the building or structure under construction has not been occupied prior to the issuance of the occupancy permit or temporary occupancy permit and that no party occupies the premises by moving in any furniture or personal belongings or in any way occupying the premises as the tenant, owner or person waiting to move into the premises;
 - (5) A statement from the Code Enforcement Officer that the builder has complied with all of the building code requirements of the Town and that no one has occupied the premises prior to the issuance of the occupancy permit, temporary occupancy permit or that portion of the building or structure under construction.
 - c. The Clerk shall attach the statement and documents to a voucher to be signed by the permittee for return and release of the deposit if the conditions have been met. If the occupancy permit is not issued within 24 months from the date that the building permit was issued or within an extension granted by the Town Board, or if the other fees required to be paid have not been paid, or the necessary certificate and statement have not been filed by the time of occupancy, or occupancy has occurred prior to issuance of an occupancy permit or temporary occupancy permit, or any conditions of occupancy were violated, the deposit shall be forfeited.
5. **Site Restoration.** Within 12 months after occupancy of any premises, building or structure, all disturbed areas shall be graded and either seeded or restored to their natural state and all drives and parking areas shall be graded and either gravel, asphalt or concrete installed.

C. **Site Plan and Plan of Operation Review and Approval.**

1. **Purpose.** The purpose of this section is to specify the requirements and procedures for the review and approval of site plan applications. The provisions of this section are designed to ensure that all

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proposed land use complies with the requirements of this chapter.

2. **Required.** No vacant land shall be occupied or used and no building or structure shall be used or occupied until, if required by this chapter, an approved site plan and plan of operation are approved by the Plan Commission. A like approval shall be obtained before any change is made in the type of use, or before any nonconforming use is resumed, changed, extended or granted conditional use status, or before new occupancy of vacant land or existing building or structure. Proceedings for approval of a site plan and plan of operation shall be initiated by the owner(s) of the subject property, or their legally authorized representative(s).
3. **Application.** All applications for proposed site plans and plan of operation shall be filed in the office of the Code Enforcement Officer and shall be accompanied by all of the following:
 - a. A small location map showing the subject property and illustrating its relationship to the nearest street intersection. (A photocopy of a Town street name map with the subject property clearly indicated shall suffice to meet this requirement.)
 - b. A main site drawing which includes:
 - (1) A title block which indicates the name and address of the current property owner;
 - (2) The date of the original plan and the latest date of revision to the plan;
 - (3) A north arrow and a graphic scale. Said scale shall not be smaller than one inch equals 100 feet;
 - (4) All property lines and existing and proposed right-of-way lines with bearings and dimensions clearly labeled;
 - (5) All existing and proposed easement lines and dimensions with a key provided and explained on the margins of the plan as to ownership and purpose;
 - (6) All existing and proposed buildings, structures, and paved areas, including walks, drives, decks, patios, fences, utility poles, drainage facilities, and walls;
 - (7) All required building setback lines;
 - (8) A legal description of the subject property;
 - (9) The location, type, and size of all signage on the subject property;
 - (10) The location, type and orientation of all exterior lighting on the subject property;
 - (11) The location of all access points, parking and loading areas on the subject property, including a summary of the number of parking stalls and labels indicating the dimension of such areas;
 - (12) The location of all outdoor storage areas;
 - (13) The location and type of any permanently protected green space areas;

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- (14) The location of existing and proposed drainage facilities; and
- (15) In the legend, data for the subject property:
 - (a) Lot Area;
 - (b) Floor Area;
 - (c) Building Height.
- c. A landscaping plan of the subject property, at the same scale as the main plan, showing the location of all required buffer-yard and landscaping areas.
- d. A written description of the type(s) of land use existing and proposed to be located on the subject property per the land use categories.
- e. A completed plan of operation form.
- f. (created 2005-003) A Detailed Site Analysis and Mitigation Plan shall be required in accordance with Section 18.14 of the Land Division and Development Control Ordinance, for all Site Plans and Plan of Operations which contain:
 - 1. Permanently protected natural resource areas defined as required protected areas under State and Federal regulation.
 - 2. Any environmental corridor component identified by the Southeastern Wisconsin Regional Planning Commission, including primary corridors, secondary corridors, and isolated natural resource areas.
 - 3. Any other environmental feature designated in the Town Land Use Plan requiring a Detailed Site Analysis and Mitigation Plan in conjunction with development review.
- g. **Application.** (repealed and recreated 2010-005) All application forms for action by the Plan Commission shall be signed by the owner of the property on which the approval is being requested.
- 4. **Review and Approval.** The proposed site plan and plan of operation shall be reviewed by the Code Enforcement Officer to ensure compliance with all of the requirements for the submittal and complete compliance with the provisions of this chapter and any other applicable Town Ordinances, as well as with the intent of this chapter. Said review shall be completed within ten working days of receipt of a complete site plan and plan of operation by the Code Enforcement Officer. Upon satisfaction of all of the requirements of this section which demonstrates complete compliance with the provisions of this chapter, the Plan Commission shall review the site plan and plan of operation. The approved site plan and plan of operation shall be submitted as part of an application for any subsequently sought development for the subject property, including a building and zoning permit and/or an occupancy permit.
- 5. **Initiation of Land Use or Development Activity.** Absolutely no land use or development activity, including site clearing, grubbing, or grading shall occur on the subject property prior to the approval of the required site plan and plan of operation. Any such activity prior to such approval shall be a violation of this chapter and shall be subject to all application enforcement mechanisms and penalties.

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6. **Modification of an Approved Site Plan and Plan of Operation.** Any and all variation between development and/or land use activity on the subject property and the approved site plan and plan of operation is a violation of this chapter. An approved site plan and plan of operation shall be revised and approved via the procedures of this section so as to clearly and completely depict any and all proposed modification to the previously approved site plan and plan of operation prior to the initiation of said modifications.
7. **Fee.** Before receiving approval of a site plan and plan of operation, a fee shall be paid as designated from time-to-time by resolution of the Town Board.
8. **Expiration.** (Repealed and Recreated 2010-005) Any site, grading, landscape or lighting plan or plan of operation that requires Town Plan Commission approval shall automatically expire one year after the date of such approval unless building permits have been obtained and significant construction has begun on the development or unless extended by the Town of Delafield Plan Commission.

D. Home Occupation Permit.

1. **Purpose.** The purpose of this section is to specify the requirements and procedures for the review and approval of home occupation permit applications. The provisions of this section are designed to ensure that the proposed use complies with the requirements of this chapter and does not negatively impact the surrounding properties.
2. **Required.** No home occupation shall be conducted until a permit has been issued by the Plan Commission pursuant to this section. Proceedings for approval of a home occupation permit shall be initiated by the owner(s) of the subject property, or their legally authorized representative(s).
3. **Conditions.** The Plan Commission shall review Home Occupation Permit Applications. The Plan Commission shall not grant a Home Occupation Permit unless all of the following conditions have been met:
 - a. The home occupation shall be conducted only completely within the dwelling unit, and not in any accessory building or structure, and not within any garage or on any porch, deck, patio or other unenclosed or partially-enclosed portion of the dwelling unit.
 - b. The home occupation shall be conducted by a resident of the dwelling unit, and no more than 1 other person shall be employed on the premises, on either a part-time or full-time basis in the business.
 - c. No more than 25% of the total living area of the dwelling (exclusive of garage and porch areas) shall be used for the home occupation.
 - d. The portion of the dwelling unit used for the home occupation shall not serve as a storage facility for a business conducted off-premises.
 - e. The sale of items at the location of the home occupation shall be limited to items produced on-site and shall be conducted only on an appointment basis.
 - f. No activity, materials, goods, or equipment incidental to the home occupation shall be externally visible.

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- g. Only 1 sign, not to exceed 3 square feet, may be used to advertise a home occupation. Said sign shall not be located within a right-of-way, and shall be of an appearance which is harmonious with nearby residential areas.
 - h. The use of the dwelling unit for a home occupation shall in no way be incompatible with the character of nearby residential areas.
 - i. Multiple home occupations may be carried on in any single dwelling unit, if all uses meet the conditions of the home occupation regulations and if the plans of operations do not negatively affect adjacent or surrounding neighbors. (amd. 00-508)
 - j. No more than 2 customers (or 2 parties of customers) shall be within the residence at any one time.
 - k. Regardless of the number of home occupations taking place in a single dwelling unit, a minimum of 2 off-street parking spaces reserved for business use shall be provided on site. (amd. 00-508)
 - l. In the case of rental properties, the property owner's written permission must be obtained and submitted as part of the conditional use permit petition.
4. **Application.** (repealed and recreated 2010-005). All applications for home occupation permits shall be filed in the office of the Code Enforcement Officer and shall include a plan of operation of sufficient detail to enable the Plan Commission to make a determination as to the appropriateness of the proposed use. The application shall be signed by the owner of the property on which the approval is being requested.
5. **Review and Approval.** The proposed home occupation permit application shall be reviewed by the Code Enforcement Officer to ensure compliance with all of the requirements for the submittal and complete compliance with the provisions of this chapter and any other applicable Town Ordinances, as well as with the intent of this chapter. Said review shall be completed within ten working days of receipt of a complete home occupation permit application by the Code Enforcement Officer. Upon satisfaction of all of the requirements of this section which demonstrates complete compliance with the provisions of this chapter, the Plan Commission shall review the home occupation permit application, and determine whether a permit shall issue. If a permit is issued, the permit shall be submitted as part of an application for any subsequently sought development for the subject property, including a building and zoning permit and/or an occupancy permit.
6. **Modification of an Approved Site Plan and Plan of Operation.** Any and all variation between development and/or land use activity on the subject property and the approved home occupation permit is a violation of this chapter. An approved home occupation permit shall be revised and approved via the procedures of this section so as to clearly and completely depict any and all proposed modification to the previously approved site plan and plan of operation prior to the initiation of said modifications.
7. **Fee.** Before receiving approval of a site plan and plan of operation, a fee shall be paid as designated from time-to-time by resolution of the Town Board.
8. **Expiration.** (Repealed and Recreated 2010-005) A Home Occupation permit that has been approved by the Town Plan Commission shall expire one year after the date of such approval, unless the home occupation has been implemented by the applicant. If the home occupation is not used for a period of twelve months, the Home Occupation permit shall be considered null and void, unless

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extended by the Town of Delafield Plan Commission.

E. Revocation of Permits.

1. It shall constitute a violation of this chapter for any person, firm, corporation, or voluntary association, either owner or agent, to do any of the things required by this chapter without having first obtained the required permits.
2. It shall constitute a violation of this chapter for any person, firm, corporation or voluntary association, either owner or agent, to give false statements when applying for a required permit. A permit issued upon a false statement of any fact which is material to the issuance thereof shall be void. Whenever the fact of such false statement shall be established to the satisfaction of the Code Enforcement Officer, the Code Enforcement Officer shall forthwith revoke the permit by notice in writing to be delivered to the holder of the void permit upon the premises where the violation has occurred, or if such holder be not found there, by mailing the said notice of revocation by certified letter to the holder's last known address.

2. USE REGULATIONS.

- A. **Compliance.** Except as may be otherwise specifically provided, the use of land, premises, buildings or structures now existing or hereafter erected, converted, relocated, enlarged, structurally altered, occupied or reoccupied, shall be in compliance with the regulations established herein for the District in which the same is located.
- B. **Uses Restricted.** In any District, no land, premises, buildings or structures shall be used and no building shall be erected, converted, relocated, enlarged, structurally altered, occupied or reoccupied except for the uses as permitted in that District and in compliance with the regulations established for that District in this chapter.
- C. **Permitted Uses.** Permitted uses are permitted by right, subject to the provisions of this chapter.
- D. **Accessory Uses Buildings and Structures.** Accessory uses, buildings and structures are customarily incidental to the permitted uses in the District and located upon the same lot occupied by the principal use, building or structure. Any accessory use building or structure shall conform to the established regulations of the District in which it is located.
- E. **Conditional Uses.** Conditional uses may be granted by the Town Board, following a recommendation of the Plan Commission, upon a determination of acceptable project impact and imposition of appropriate conditions as provided in Section 17.05 of this ordinance.
- F. **Legal Nonconforming Uses.** A legal nonconforming use is any lawfully established use of land, premises, building or structure at the time of enactment of this chapter that does not conform to the use regulations for the District in which it is located subject to the regulations of Section 17.07.
- G. **Unclassified Uses.** Any use not specifically listed as a permitted use shall be considered to be prohibited except as may be otherwise specifically provided hereinafter. In case of question as to the classification of use, the question shall be submitted to the Plan Commission for determination.
- H. **Principal Uses.** These uses represent the main or primary use of land, premises, buildings or structures as permitted by the regulations of the District in which such use is located.

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- I. **Principal Structure.** A structure used or intended to be used for the principal use as permitted on such lot by the regulations of the zoning District in which it is located.
- J. **Temporary Uses and Structures.** Any temporary uses or temporary buildings or structures intended to remain in place for less than eight (8) days, may be permitted subject to the approval of the Code Enforcement Officer upon review of potential impacts of the use, building and/or structure. Any temporary use or temporary building or structure intended to remain in place for more than seven (7) days, but less than four (4) months, and any temporary use or temporary building or structure which does not comply with the use, setback and/or offset requirements of the District in which it is located may be permitted subject to approval of the Plan Commission upon review of potential impacts of the use, building and/or structure. In all cases where the temporary building and/or temporary structure do not comply with the offset requirements of the District in which it is located, the written approval of the abutting property owners affected must be obtained. No temporary use, temporary building or temporary structure shall be permitted for more than four (4) months.
- K. **Nuisance Uses.** Any use, in any District, which becomes hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood may be required to be corrected or improved by such measures as are directed by the Town Board, or its authorized representative.

3. SITE REGULATIONS.

- A. **Buildings and Structures Must Be On Lot.** Every building and structure hereafter erected, converted, relocated, enlarged or structurally altered shall be located on a lot. In no case shall there be more than one principal building or structure on a lot, except upon a showing to the satisfaction of the Plan Commission that such approval will not be contrary to the spirit and intent of this chapter, upon prior approval of the Plan Commission, upon satisfying all conditions of the Plan Commission and provided that sufficient lot area is provided and the buildings or structures are so located so as to individually meet the setback, offset, lot size and open space requirements of the District in which they are located.
- B. **Buildings and Structures on Public Street or Way.** Every building or structure hereafter erected, structurally altered or relocated shall be located on a lot which abuts a public street, road or highway except if permitted under section C. below.
- C. **Buildings and Structures On Private Street, Road or Highway.** Subject to approval of the Plan Commission, a building or structure may be permitted on a tract of land which does not abut a public street or officially approved way, if such tract of land is at least three acres in area, has access by permanent easement of at least 33 feet in width to an improved public street or way and does not conflict with plans for future development of the area. If the easement serves more than one parcel of land or a singular parcel in excess of six acres, it shall be 66 feet in width, unless otherwise designated by the Plan Commission. Before recording a plat or certified survey map containing such an easement, an agreement acceptable to the Town shall be filed designating financial responsibility and maintenance of the easement. Private streets constructed in easements serving more than one building or structure site shall meet the same minimum standards on width and construction standards established for "Minor Streets" except that a seal coat pavement may be installed in lieu of the bituminous concrete pavement, unless these standards are waived by the Plan Commission and the Town Board.
- D. **Site Maintenance.** In order to protect the health, safety and welfare of the residents of the Town and to maintain the desirability, amenities and property values of the residential, commercial and industrial neighborhoods of the Town, it shall be the responsibility of the owners, occupants and lessees of any premises to maintain their property in accordance with the following standards.

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1. **General Maintenance.** The exterior of every structure or accessory structure shall be maintained free of broken glass, loose shingles, excessive paint peeling, crumbling stone or brick, loose boards or other conditions reflective of deterioration or inadequate or deferred maintenance.
2. **Litter Control.** Construction sites shall be maintained in such a manner so as to prevent litter from being blown off the site. Accordingly, all litter from construction activities shall be picked up at the end of each workday and placed in appropriate containers. Litter collection and storage areas shall be maintained in a clean condition to ensure that all litter on the premises is controlled and disposed of properly. Additionally, prime contractors shall also be responsible to abide by this provision.
3. **Outside Storage.** No unenclosed storage of materials, equipment or supplies including, but not necessarily limited to, unused or junked appliances, furniture, lumber, bricks, and cement blocks shall be permitted where such storage is readily visible from any public place or from any surrounding private property. Dumpster and recycling areas for development occurring subsequent to this chapter being adopted shall be adequately screened.
4. **Application.** All applications for home occupation permits shall be filed in the office of the Code Enforcement Officer and shall include a plan of operation of sufficient detail to enable the Plan Commission to make a determination as to the appropriateness of the proposed use. The application shall be signed by the owner of the property on which the approval is being requested.

4. BUILDING REGULATIONS.

- A. **Restrictions.** No building or structure shall hereafter be erected, converted, relocated, enlarged, structurally altered or moved from one location to another except in conformity with the following locational regulations as hereinafter specified for the District in which it is located.
- B. **Purpose and Intent.** The purpose and intent of regulating building and structure location is as follows:
 1. To require the provision of a buffer zone between noise-intolerant land uses (e.g. residences, nursing homes, day care centers, schools, churches) and noise generating land uses, adjacent streets, roads or highways to effectively attenuate noise and buffer such developments from the pollution and hazards attendant to other uses and vehicular traffic;
 2. To require the provision of adequate physical separation between uses to minimize conflict;
 3. To allow exposure to optimum amounts of light, air, and ventilation;
 4. To attenuate noise, odors, fumes and dust generated by land use before they infringe upon adjacent land use;
 5. To provide aesthetic open space of sufficient size to accommodate landscaping and to soften, compliment and enhance architectural design of buildings, parking areas, loading facilities and utilities;
 6. To provide adequate area for snow piling;
 7. To ensure adequate separation between pedestrian and vehicular circulation;
 8. To promote cluster development and other internally oriented living, shipping and working environments and to discourage strip development;

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9. To provide adequate area to detain, retain and facilitate surface drainage;
10. To protect and preserve the quality and quantity of ground water resources;
11. To prevent development which may result in unacceptable non-point source pollution;
12. To provide diversified and balanced growth.

C. **Setbacks.** Unless otherwise specified within an individual District or allowed through appropriate variance or appeal, the proximity of any portion of a building or structure to the street lot lines shall be regulated by setback provisions as follows:

1. Base setback lines, from which a building or a structure shall be measured are hereby established for all streets, roads, highways and driveways providing legal access for more than one property whether or not used by more than one property in the Town as follows, unless otherwise specified by action of the Plan Commission:
 - a. On all public streets, roads or highways, the base setback line shall be located at a distance from the center line equal to 1/2 such established width as designated as the proposed width on the "Official Street Map" of the Town. Such base setback line shall be 33 feet from the center line of all Town roads unless designated on the "Official Street Map" to the contrary. On all private streets, roads, highways and driveways providing legal access to more than one property whether or not used by more than one property, the base setback line shall be located at a distance from the center line equal to one-half such established width as designated on the document establishing the private street, road, highway or driveway and if no such document exists or if such document does not clearly establish a width, the base setback line shall be 33 feet from the actual centerline of the private street, road, highway or driveway.
 - b. On all cul-de-sacs, the base setback line shall be 75 feet from the center point of the cul-de-sac unless specifically designated otherwise by the Plan Commission.
 - c. Such base setback lines shall be parallel to and measured at right angles to the centerline of the public or private streets, roads, highways or driveways.
2. Vision setback lines at the intersection of public or private streets, roads, highways or driveways providing legal access for more than one property whether or not used by more than one property and at the intersection of one of the same with a railroad where the grade is not separated, are hereby established as follows:
 - a. Across each sector between the intersection of one of the above with a railroad, a vision setback line shall be established by a straight line, connecting points on the base setback line and the railroad right-of-way line which points are located 120 feet from the intersection of the base setback line and the railroad right-of-way.
 - b. Across each sector between the intersection of one of the above with other than a railroad, one or more of which has an established width of 100 feet or more, a vision setback line shall be established by a straight line connecting two points on the intersecting base setback line, which points are located 60 feet distant from the intersection of the base setback lines.
 - c. Across each sector between any other intersection, a vision setback line shall be established by a straight line connecting two points on the intersecting base setback lines, which points are

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located 30 feet distant from the intersection of the base setback line.

3. In the vision setback area, no building or structure of any kind shall be permitted which exceeds a height of three feet above the elevation of the center of the intersection except for necessary highway and traffic signs, public utility lines and open fences through which there is clear vision, nor shall any plant material be permitted which obscures safe vision of the approaches to the intersection.
 4. No principal building or structure or accessory buildings or structures shall be hereafter erected, converted, relocated, enlarged, or structurally altered so that any portion or projection thereof is closer to the base setback line than the setback distance hereinafter specified by the regulation for the District in which the same is located with the following exceptions applicable only where the setback requirements of the properties involved are identical:
 - a. Where the nearest principal building or structure on one side of a proposed principal building or structure is within 500 feet and has less than the required setback and the nearest principal building or structure on the other side of a principal building or structure is 500 feet or greater away, the average between such existing setback of the nearest principal building or structure and the required setback shall apply.
 - b. Where the nearest principal buildings or structures on both sides of a proposed principal building or structure are within 500 feet, but neither is closer than 300 feet to the proposed principal building or structure and each have less than the required setback, the average of such existing setbacks of the nearest principal building or structure and the required setback shall apply.
 - c. Where the nearest principal buildings or structures on both sides of a proposed building or structure are each within 300 feet of the proposed principal building or structure and each have less than the required setback, the average between such existing principal buildings or structures setbacks shall apply.
 - d. In the case of a proposed addition to an existing building or structure which has less than the required setback, such existing proposed building or structure may be considered the "nearest principal building or structure" in order to apply the aforesaid exceptions in determining required setback for the proposed addition.
 5. (amd. 2008-004) The only buildings or structures permitted within such setback area, upon receipt of all required governmental approvals, shall be necessary highway and traffic signs, underground structures as regulated by this chapter, walls and fences, mail boxes, and signs as permitted under the individual District regulations, and, with the approval of the Plan Commission, temporary structures, and outdoor lighting installations and necessary public utility lines, poles and structures.
- D. **Offsets.** Unless otherwise specified within an individual District or allowed through appropriate variance or appeal, the proximity of any portion of a building or structure to the side or rear lot line shall be regulated by offset provisions as follows:
1. No principal building or structure, or its accessory buildings or structures, shall be hereafter erected, converted, relocated, enlarged, structurally altered or moved from one location to another so that the foundation wall is closer to any lot line than the offset distance hereinafter specified by the regulations for the District in which the same is located with the following exception: in the case of any lot of record which has been created prior to the adoption of this chapter, and which has a lot width less than 100 feet, the offset for the principal structure from a side lot line shall be 15% of the

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lot width provided, however, that no offset shall, in any case, be less than seven and one-half feet, and no principal building is closer than 20 feet to any other structure on an adjoining lot measured from the outward-most points of the two structures. Offsets for detached accessory buildings and structures on lots of 100 feet in width or less shall be five feet, provided that no detached accessory building or structure shall be located closer than ten feet to any other accessory building or structure. No offset of a principal building or structure shall, in any case be less than seven and one-half feet and only as authorized above. Furthermore, a grading and drainage plan shall be submitted to and approved by the Town Engineer for any principal structure with an offset of less than 15 feet.

2. Where principal buildings or structures or accessory building and structures have an eave or building overhang of greater than 18 inches, the offset distance shall be increased by the difference between the eave/overhang and 18inches.
3. Where a lot abuts a District boundary line, the offsets from such line in the District of less restricted use shall be not less than that required for the District of more restrictive use.
4. No principal building or structure, its accessory building, structure or sewage disposal system, shall be placed within 75 feet of a WF-1 Wetland-Floodplain District.
5. In the case of multiple family or commercial use principal building or structure, the offsets may be modified to allow two or more principal buildings or structures on adjoining lots to be erected with common or directly adjoining walls provided the requirements of the State Industrial Code relative to such construction are complied with and provided that at both ends of such "row" type principal buildings or structures the applicable offset requirements shall be complied with.
6. No principal building or structure or accessory buildings or structures shall be hereafter erected, converted, relocated, enlarged, or structurally altered so that any portion or projection thereof is closer to the shore lot line than the offset distance hereinafter specified by the regulation for the District in which the same is located with the following exceptions applicable only where the shore lot line offset requirements of the properties involved are identical:
 - a. Where the nearest principal building or structure on one side of a proposed principal building or structure is within 500 feet and has less than the required shore lot line offset and the nearest principal building or structure on the other side of a principal building or structure is 500 feet or greater away, the average between such existing shore lot line offset of the nearest principal building or structure and the required shore lot line offset shall apply.
 - b. Where the nearest principal buildings or structures on both sides of a proposed principal building or structure are within 500 feet, but neither is closer than 300 feet to the proposed principal building or structure and each have less than the required shore lot line offset, the average of such existing shore lot line offset of the nearest principal building or structure and the required shore lot line offset shall apply.
 - c. Where the nearest principal buildings or structures on both sides of a propose building or structure are each within 300 feet of the proposed principal building or structure and each have less than the required shore lot line offset, the average between such existing principal buildings or structures shore lot line offset shall apply.
 - d. In the case of a proposed addition to an existing building or structure which has less than the required shore lot line offset, such existing proposed building or structure may be considered the "nearest principal building or structure" in order to apply the aforesaid exceptions in

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- e. determining required shore lot line offset for the proposed addition.
- 7. (Cr. 2008-004) the only structures permitted within such offset area, upon receipt of all governmental approvals, shall be underground structures as regulated by this chapter, walls, fences, mailboxes and signs as permitted under the individual District regulations, and, with the approval of the Plan Commission, temporary structures, outdoor lighting installations and necessary public utility lines, poles and structures.
- E. **Maintenance and Use of Setback and Offset Areas.** Any such required setback or offset area shall be landscaped and kept clean and free from the accumulation of debris or refuse and shall not be used for the storage or display of equipment, products, vehicles or any other material.
- F. **Accessory Building and Structure Location.** No detached accessory building shall be erected, converted, relocated, enlarged, structurally altered, occupied or reoccupied on a lot so that a portion or projection thereof is closer than 10 feet to the principal building on the lot, nor any closer to the lot line as required in subparagraphs B. and C. above.
- G. **Street Grade.** Every building or structure hereafter erected, converted, relocated, enlarged, structurally altered, occupied or reoccupied shall be located on a lot which abuts a public street, road or highway (except as otherwise provided in this chapter) at a grade approved by the Town Engineer as being in satisfactory relationship with the established grades, if any, and if not, with existing street, road or highway grade, with particular consideration for proper drainage and safe vehicular access.

5. AREA REGULATIONS.

A. Floor Area

- 1. **Minimum Floor Area, Residential.** Any building or structure intended in whole or part for residential purposes shall provide a minimum floor area as hereinafter specified by the regulations for the District in which such building or structure is located.
 - a. The minimum required floor area is stated in terms of that of a single floor building or structure.
 - b. The single (or first) floor level is defined as that livable floor area which is not over any other livable floor area.
 - c. The minimum required floor area shall be increased by 200 square feet for any building or structure not having a basement of at least 300 square feet in area.
 - d. In multistoried buildings or structures, the minimum required first floor area may be reduced by 1-1/2 square feet for each square foot by which the total floor area, as determined by the formula described in subparagraph 1.e. below exceeds the specified minimum single floor area. The following table shows examples of minimum first and second floor combinations to satisfy requirements of minimum required single floor area.

DEVELOPMENT STANDARDS

Combined Floor Area Regulations - Minimum Required			
Single Floor Building (sq. ft.)	2 - Story: First Floor (sq. ft.)	2 - Story: Second Floor (sq. ft.)	Total (sq. ft.)

Combined Floor Area Regulations - Minimum Required			
1,200.00	—	—	1,200.00
	1,050.00	250.00	1,300.00
	900.00	500.00	1,400.00
	750.00	750.00	1,500.00
1,350.00	—	—	1,350.00
	843.75	843.75	1,687.50
1,500.00	—	—	1,500.00
	1,350.00	250.00	1,600.00
	1,200.00	500.00	1,700.00
	1,050.00	750.00	1,800.00
	937.50	937.50	1,875.00
1,650.00	—	—	1,650.00
	1,500.00	250.00	1,750.00
	1,350.00	500.00	1,850.00
	1,200.00	750.00	1,950.00
	1,031.25	1,031.25	2,062.50

- e. Livable floor area shall be measured at each level from the outside edge of wall to outside edge of wall and for purposes of computing total floor area shall not include attached or detached garages, other outbuildings, open unheated porches and breezeways or basements. The second floor of 1-1/2 and two story buildings or structures may be included in computing total minimum floor area according to the following schedule:
- (1) That portion of the second floor of 1-1/2 and two story buildings or structures which has a minimum distance between ceiling face and the top of the first floor of seven feet shall be included in computing the total minimum floor area, provided there is a permanent stairway leading from the first floor to the second floor.
 - (2) In split level units, floor area shall be computed as follows:
 - (a) If less than one-half of the lower level is above ground, such level shall be considered a basement and cannot be included in total floor area of the building or structure, unless such basement qualifies as an exposed basement.
 - (b) If more than one-half of the lower level is aboveground, such areas shall be included in determining the floor area. If there is no basement below this level, 200

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square feet of floor area shall be required in addition to the floor area requirement of the zoning District. This required floor area shall be finished as an integral part of the building or structure within 18 months of the date upon which the building and zoning permit is issued.

2. **Minimum Floor Area, Nonresidential.** Any building or structure intended in whole or in part for nonresidential purposes shall provide a minimum floor area as defined in § 17.02 of this chapter and as specified by the regulations for the District in which such building or structure is located.
3. **Exceptions.** The Plan Commission may grant an exception to permit a single story building or structure of less than the required minimum floor area where such grant would not be contrary to the spirit or intent of the chapter, and provided the proposed building or structure would not be of such character or quality as to depreciate the property values of the surrounding area and provided further that in no case shall a minimum floor area of less than 1,100 square feet be permitted.

B. Lot Size.

1. No building or structure shall be erected on a lot of less area or width than hereinafter specified by the regulations of the District in which such building or structure is proposed to be located, except as modified herein.
2. For the purpose of this chapter, the lot area shall be measured from the base setback line and shall be exclusive of the area between the base setback line and the existing property line ultimately to be included in the street, but may include land zoned “Wetland-Floodplain” subject to compliance with this chapter.
3. Lot width shall be the length of the building setback line, and shall be no less than the District's stated minimum lot width.
4. No lot area or lot width shall be reduced by any means so as to create a lot of less than the required area or width or so that the existing offsets, setbacks, open space or lot area would be reduced below that required by the regulations for the District in which such lot is located.
5. Any lot which illegally existed prior to enactment of this chapter shall not be made legal solely by the adoption of this chapter.
6. In the case of an existing substandard legal nonconforming lot of record, such lot may be used for any purpose permitted in such District but not for residential purposes for more than one family, provided however, that in no case, except as provided in this chapter, shall the setback, offset or open space requirements be reduced except by a grant of a variance.
7. In the case of an existing substandard legal nonconforming lot of record at the time of the passage of this chapter which does not conform to the zoning regulations of the Town, and which adjoins along a side lot line of property held in the same ownership, whether a conforming legal lot or legal nonconforming lot, neither lot shall be conveyed to another owner nor shall building permits be issued for a building or structure on either lot except in conformity with the following:
 - a. **Petition for Determination.** The owner of said lots may at any time prior to a conveyance of either lot or request for building and zoning permit for either lot, petition the Town Board for a

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determination as to the status of the lots.

- b. **Referral to Plan Commission.** Such petition shall be referred to the Plan Commission for a study to determine the practical possibility of a re-division of such lots to provide lots which will be in conformity, if possible, or otherwise in substantial conformity to the underlying zoning regulations of the Town.
- c. **Criteria.** The Plan Commission in making its recommendation and the Town Board in making its determination shall give consideration, among others, to the following factors:
 - (1) **Compatibility.** The size, quality, and character of existing lots and building development in the immediate area with a view to maintaining compatibility and protecting existing values.
 - (2) **Sewage Disposal.** Where public sewer is not available, the lot size necessary to insure safe sewage disposal.
 - (3) **Practicability.** The economic and engineering practicality of any possible re-division.
 - (4) **Hardship.** The degree of practical hardship which may be imposed upon the owner.
- d. **Method of Re-division.** Such re-division may be accomplished as is appropriate by:
 - (1) Vacation and replatting of all or a part of a recorded plat.
 - (2) Combining of lots or parts of lots by Certified Survey Map.
- e. **Determination of Ownership.** For the purposes of this section, lots are to be considered in the same ownership when owned by: the same individual or corporation; an individual and another in joint tenancy, or as tenants in common, and either of said joint or common tenants owns other lots individually or as a joint tenant or tenant in common with another; an individual and other lots are owned by a spouse, parents, grandparents, children, grandchildren, or the spouse of any child or grandchild, or a brother or sister or spouse of a brother or sister of such person; and when any of said lots are owned by an individual and other lots are owned by a corporation in which said individual is an officer or director or controlling stockholder.

C. Open Space.

- 1. No building or structure shall be erected, converted, relocated, enlarged, structurally altered or moved on a lot so as to reduce the usable open area of such lot to less than that hereinafter specified by the regulations of that District.
- 2. To be considered usable, such open space shall be readily accessible and not be used for buildings or structures, parking and accessory uses and be of a size and shape which can be reasonably considered to provide for the amenities and necessities of light, air, play space, garden and the like. Crop, pasture and wooded land may be included in computing such open area.
- 3. No part of the open space provided for any building or structure shall be included as part of the open space required for another building, except as hereinafter provided for in a Planned Unit Development.

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4. (Amd. 2008-004) No portion of a public right-of-way or private platted road shall be used in the calculation of open space. For public roads that pass through properties (i.e. former mill tax roads or lake roads), the right-of-way designated for that roadway on the official highway width map for the Town, shall not be used in the calculation of the overall area of the parcel or used in the determination of open space. Lands on which there is an easement for private or public purposes shall be included in the calculation of the overall parcel area and evaluated as part of the open space requirement.

5. (Amd. 2008-004) At least 50% of the open space requirement shall consist of vegetation.

D. **Residential Density.** Residential density shall not exceed the density hereinafter specified by the regulation of that District in which the development is located, except as otherwise regulated by this chapter.

6. HEIGHT REGULATIONS. (created 2011-004)

A. **Height Regulations.** (Rev. 00-507a) There are two standards for regulation of the height of buildings and structures under this Code: base height and overall height regulations. All buildings and structures must comply with both regulations. The base height regulations are set forth in the regulations for each District. The overall maximum height regulation is set forth in this subsection.

Overall Maximum Height Restricted. Except as specifically provided at Section 17.04 5.F.4.b., 17.04 5.G.4.b., and 17.04 5.H.4.b., no building or structure shall be hereafter erected, converted, relocated, enlarged or structurally altered to a height in excess of that hereinafter specified below:

1. No building and zoning permit shall be issued for any principal building or structure with a greater overall height of 45 feet, as measured from the lowest grade along the perimeter of the building or structures to the highest point of the building or structure except as provided in this subsection.
2. No building and zoning permit shall be issued for any accessory building or structure with a greater overall height of 20 feet as measured from the lowest grade along the perimeter of the building or structure to the highest point of the building or structure except as provided in this subsection.

B. **Exceptions, No Plan Commission Approval Required.** The following shall be accepted from the height regulations of all Districts:

1. Chimney and flues;
2. Electrical transmission and distribution facilities;
3. Roof mounted television and radio receiving antennas not exceeding ten (10) feet in height from the roof and roof mounted licensed amateur radio operator antennas not exceeding ten (10) feet in height from the roof.

C. **Exemptions, Plan Commission Approval Required.** The following shall be exempted from the height regulations of all Districts, subject to the approval of the Plan Commission: Cooling towers, elevator bulkheads, fire towers, monuments, penthouses, stacks, scenery lofts, tanks, water towers, ornamental towers, spires, masts, free-standing towers, roof-mounted licensed amateur radio operator antennas exceeding ten (10) feet in height from the roof, aerial and necessary mechanical appurtenances.

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- D. **Increase Permitted.** Subject to obtaining necessary Conditional Use Grants and the approval of the Plan Commission, providing all required offsets and setbacks are increased by one foot for each foot which such building or structure exceeds the height limit of the District in which it is located unless otherwise waived by the Plan Commission, the maximum height of any building or structure, other than those buildings and structures listed in subparagraph C. above, may be increased by not more than ten (10) feet and the height of any of the buildings or structures outlined in Subparagraph C. above may increase to any height.
- E. **Additional Requirements. (created 2011-004)**
1. No building and zoning permit shall be issued for any principal building or structure greater than 30 feet measured to the highest eave immediately above the lowest grade along the perimeter of the building or structure unless the Plan Commission has granted approval of the height increase to no more than 35 feet based upon consideration of the following factors:
 - (a). review and comments by the fire department
 - (b). consideration of obstacles that would prevent access to all sides of the building.
 - (c). location of the building or structure in relationship with other buildings or structures on site.
 - (d). location of upper decks and balconies
 - (e). length and/or percent of the building where the height to the eave is greater than 30 feet.
 - (f). installation of a fire sprinkler system

7. DRAINAGE REGULATIONS.

- A. **Adequate Drainage Required.** No building or structure shall be erected, converted, relocated, enlarged or structurally altered on land which is not adequately drained at all times nor which is subject to periodic flooding.
- B. **Obstruction to Drainage Prohibited.** The damming, filling, grading, redirecting or relocating or otherwise interfering with the natural flow of surface water along any surface water drainage channel or natural watercourse shall not be permitted, except with approval of the Plan Commission.
- C. **Diversion of Drainage Prohibited.** No person shall grade, fill, excavate or alter the existing topography or absorption characteristics of land by paving in such a manner as to cause drainage to run on adjoining lands, except along an existing natural watercourse or along a watercourse or drainage ditch approved by the Plan Commission.
- D. **Building Restricted Adjacent to Drainage Channel, Lake or Watercourses.** No building or structure other than a bridge, dam, boathouse or revetment subject to the Plan Commission approval shall be erected, converted, relocated, enlarged or structurally altered so that the lowest floor of the building is less than three feet above the ordinary high water line of such surface water drainage channel, lake or watercourse.
- E. **Preservation of Topography.** In order to preserve the natural topography as much as possible and in order to protect against danger and damage caused by man-made changes in the existing topography and to avoid unsightly and hazardous exposed earth sections, the following conditions shall be met:
1. No change in the existing topography or drainage courses on any land shall be allowed which would result in adversely altering the drainage or increasing any portion of the existing slope through fill and/or grading to a ratio greater than three horizontal to one vertical except as set forth in this subsection.

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2. (Rep. and Rec. 2006-007) Construction of retaining walls shall be regulated under section 17.06 4.C. of the Zoning Code.
3. Fill or grading considered by the Code Enforcement Officer to be necessary backfill and/or excavation for an otherwise permitted building or structure may be permitted by the Code Enforcement Officer as long as such fill or grading is accessory to such construction and does not create slopes greater than three horizontal to one vertical, does not extend to a distance greater than 20 feet from the foundation and does not divert runoff directly onto adjacent property or adversely affect adjoining property or roadside drainage.
4. Filling, grading or altering of existing topography may be allowed by the Code Enforcement Officer under any circumstance which does not alter the topography in a way which will adversely affect the surrounding land.
 - a. In making such a determination, the Code Enforcement Officer shall have the authority to determine the affect of the construction, fill or grading on surrounding property and shall require improvements and/or facilities as may be in the best interests of preserving the topography and drainage system and which will have the effect of lessening the impact on either upstream, downstream, or adjacent properties.
 - b. A grading plan must be submitted to the Code Enforcement Officer for approval and a permit to proceed may only be issued by the Code Enforcement Officer after such approval has been granted in writing. The plan shall consist of:
 - (1) A topographical survey made by a registered engineer or licensed surveyor showing existing elevations of the property and adjacent property to that being filled or excavated and showing the existing cross-sections, type of soil and drainage of the ground affected.
 - (2) A plan showing a typical cross-section of the proposed slope, riprap or retaining wall; the proposed drainage pattern; the protective fencing type of material used, method of construction, the establishment of vegetative cover, date of completion, seeding schedule and method of protection of surrounding land and water areas from erosion and sedimentation during construction, together with construction details in the event of a retaining wall.
 - c. The Code Enforcement Officer may issue a written permit to allow the requested filling, grading or altering of the existing topography. Any such approval shall be subject to any conditions of the Code Enforcement Officer including construction of silt fencing or screening.
 - d. In the case of a disputed question arising as to:
 - (1) The adversity or effect of the project on either the property owner, adjacent owners or the general public; or
 - (2) The denial of permission by the Code Enforcement Officer; or
 - (3) A dispute or question arising out of any condition imposed by the Code Enforcement Officer on any permission, said issue shall be submitted to the Plan Commission for resolution.

8. **SANITATION AND WATER SUPPLY REGULATIONS.**

A. **Safe Sewage Disposal Possible.**

1. No principal building or structure shall be erected, converted, relocated, enlarged, structurally altered or moved from one location to another unless it has been certified by the Code Enforcement Officer and Plumbing Inspector that it conforms to all Town ordinances and other governmental regulations applicable to sewage disposal systems and that satisfactory evidence has been submitted to show that suitable provisions for disposal of sewage is possible, and suitable area for a replacement system is available, based on the proposed use, on the lot if it is not served by an approved municipal or other State approved sewage disposal system.
2. While every attempt has been made, through control of minimum lot size, building location and plumbing standards, to insure that proper disposal of sewage will be provided on any lot, it is recognized that no such standard will completely insure adequate disposal in every situation. This section has been written for the purpose of giving the community the authority to require whatever additional provisions are necessary to prevent a sanitary problem from developing in a situation where the normal requirements will not insure proper sewage disposal.

B. **Approved Sewage Disposal System.** No principal building or structure shall be erected, structurally altered or relocated unless a sewer is installed running to an approved sewage disposal system designed and located in accordance with the Town ordinances and other governmental laws or regulations then applicable to sewage disposal systems or to an approved municipal or other State approved sewage disposal system.

C. **Outhouses Prohibited.** No outhouse or privy shall be hereafter erected or relocated, enlarged, structurally altered or reoccupied.

D. **Water Supply Required.** No occupancy and/or building and use permit shall be issued for a building or structure used for residential purposes unless provision is made for a safe and adequate supply of water in or within 300 feet of the building or structure or connection is to be made to an approved municipal or community water system.

9. **SPECIFIC REGULATIONS.**

A. **Demolition Permit.**

1. **Required.** All persons who demolish or cause to be demolished any building or structure or part of the same within the Town shall apply for and obtain a demolition permit from the Code Enforcement Officer prior to undertaking any steps to demolish the building or structure.
2. **Application.** An application for a permit to demolish all or part of a building or structure shall include the following information:
 - a. Name and address of the owner of the building or structure on date of application and, if different, on date of demolition.
 - b. Name, address and telephone number of the contractor(s) performing the demolition work.
 - c. Date upon which demolition is to commence.

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- d. Date by which demolition shall be complete.
 - e. A list of all hazardous waste and hazardous and toxic substances as defined by §§NR 181.12 and NR 158.03(4), Wis. Adm. Code contained in the building or structure; a statement as to whether the building or structure contains asbestos, as defined by §140.04(1)(a), Wis. Stats., and a detailed description of the method to be used in removing, transporting and disposing of any hazardous and toxic substances and asbestos.
 - f. A detailed description of how and where the waste materials resulting from the demolition will be transported and disposed of, including the description of the route to be used by trucks in hauling the waste.
 - g. A description of the method of demolition to be used.
 - h. A description in detail of all methods to be used to prevent water run-off and soil erosion from the site to neighboring properties and to prevent releasing unreasonable amounts of dust from the site.
 - i. Along with the application for permit for demolition, the applicant shall present a release from all utilities serving the property, stating their respective service connections and appurtenant equipment such as meters and regulators have been removed or sealed and plugged in a safe manner.
3. **Demolition.** The demolition shall be conducted in a manner that is safe and that does not adversely affect the environment.
4. **Burning of Buildings, Structures or Debris.**
- a. No building or structure shall be razed or demolished by burning without the written approval and supervision of the burning by the Fire Department. The Fire Department may, as it deems necessary, charge a reasonable fee for the supervision, equipment and manpower necessary to ensure public safety.
 - b. No materials from a razed or demolished building or structure shall be burned without the express written approval of the Fire Chief following inspection by the Fire Department. The Fire Department reserves the right to place conditions upon the manner of burning such materials and reserves the right to deny approval so as to ensure public safety. The Fire Department may, as it deems necessary, charge a reasonable fee for supervision, equipment and manpower to be provided.
5. **Clearing and Leveling Site.**
- a. The site of any demolition shall be properly cleared of debris, rubbish and pavement and shall be properly graded and leveled to conform with the adjoining grade of the neighboring property. When the site is graded and leveled, it shall be seeded, sodded or treated in some other manner acceptable to the Code Enforcement Officer so as to prevent blowing dust, dirt or sand. Excavations remaining after demolition shall be filled, graded and leveled off, not later than 30 consecutive days after demolition is completed.

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- b. Excavations from demolished buildings or structures shall not be filled with any materials subject to deterioration. The Code Enforcement Officer, upon notification by the permit holder, the owner or the agent, in writing and upon forms provided by the Inspector for that purpose, shall within 72 hours inspect each excavation or part thereof before filling. No person shall fill any excavation without inspection and approval of the Code Enforcement Officer. Voids in filled excavations shall not be permitted. The permit holder, owner or agent may retain the services of a certified, qualified municipal inspection service to obtain an opinion that approves filling of the excavation. Such opinion shall be deemed a sufficient approval by the Town if a copy of the opinion is delivered to the Town Clerk at least 48 hours before filling of the excavation commences.
6. **Removal and Disposal.** Removal, transportation and disposal of all hazardous waste, hazardous and toxic substances and asbestos shall be conducted in compliance with all applicable State, federal and local statutes, ordinances and regulations. The permit holder shall give the Code Enforcement Officer 72 hours' written notice prior to any removal, transportation or disposal of hazardous waste, hazardous and toxic substances and asbestos.
7. **Permit Fees.** Application for a demolition permit shall be accompanied by a permit fee as established by the Town Board by resolution from time-to-time.

B. Airport Safety Zone.

1. **Maximum Height.** No building or structure or object of natural growth, located within two miles of the boundaries of any airport, landing field or landing and takeoff strip and within a band 500 feet on each side of the centerline extended of any runway, shall hereafter be erected, altered or permitted to grow to a height above the elevation of the nearest point of such runway greater than 1/15 of the distance from the point.
2. **Control of Use.** No building, structure or land located within two miles of the boundary of any airport, landing field or landing and takeoff strip shall be used in a manner that produces a hazard to the operation of aircraft by reason of the emission of smoke, gas or other pollutants.
3. **Exceptions.** The aforesaid regulations shall not apply to growing field crops which are harvested at least once a year nor to fences not over five feet high.

C. Mobile Homes and House Trailers.

1. **Human Habitation Prohibited.** Unless stationed in a mobile home park, trailer court or campground approved by the Town Board under the terms of a conditional use permit, no mobile home, house trailer, camping trailer, camper unit whether or not truck mounted, buses or other self-propelled dwelling unit vehicles shall be used for the purpose of human habitation.
2. **Outside Storage.** Mobile homes, house trailers, camper trailers, camper units whether or not truck mounted, buses or other self-propelled dwelling unit vehicles may be stored on any lot provided that the unit is screened by a landscaped fence, wall or planting screen along the side abutting or fronting on a residential District.

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10. FIRST AMENDMENT PROTECTED ADULT-ORIENTED ESTABLISHMENTS

A. Findings of Fact

1. The Board finds that Adult-Oriented Establishments, as defined and otherwise regulated by the Town in its Adult-Oriented Licensing and Regulation Ordinance, require special zoning in order to protect and preserve the health, safety, and welfare of the Town.
2. Based its review of studies conducted in Phoenix AZ, Garden Grove CA, Los Angeles CA, Whittier CA, Indianapolis IN, Minneapolis MN, St. Paul MN, Cleveland OH, Oklahoma City OK, Amarillo TX, Austin TX, Beaumont TX, Houston TX, Seattle WA, and the findings incorporated in *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Coleman A. Young v. American Mini-Theaters, Inc.*, 427 U.S. 50 (1976), the Board finds that there is convincing evidence that the secondary effects of Adult-Oriented Establishments include an increased risk of prostitution, high-risk sexual behavior, crime, and other deleterious effects upon existing businesses and surrounding residential areas, and decreased property values.
3. The Board intends to control the impact of these secondary effects in order to protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and areas.
4. It is not the intent of the Board to suppress any speech activities protected by the First Amendment, but to enact a content-neutral ordinance which addresses the secondary effects of Adult-Oriented Establishments while providing an outlet for First Amendment protected activities.
5. In order to minimize and control the secondary effects of Adult-Oriented Establishments upon the Town, it is the intent of the Board to prevent the concentration of Adult-Oriented Establishments within a certain distance of each other and within a certain distance of other specified locations which are incompatible with and would suffer from the secondary effects of Adult-Oriented Establishments.
6. Based upon its review of materials linking alcohol consumption and high-risk sexual behavior and materials linking alcohol consumption and crimes such as sexual assault, the Board finds that a geographic separation of Adult-Oriented Establishments from alcohol beverage licensed premises is warranted.

B. LOCATION OF FIRST AMENDMENT PROTECTED ADULT-ORIENTED ESTABLISHMENTS

1. The First Amendment and other provisions of the United States Constitution, as interpreted by the United States Supreme Court and other courts, require that Adult-Oriented Establishments, as defined and otherwise regulated by the Town, are entitled to certain protections, including the opportunity to locate in the Town. Therefore, if an Adult-Oriented Establishment License has been granted by the Town, and if all the requirements of this Section of the Zoning Code are met, an Adult-Oriented Establishment shall be an allowed use in the M-1 zoning district and shall be a prohibited use in any other zoning district. No other requirements of the Zoning Code need be satisfied, but for those required in order to obtain an Adult-Oriented Entertainment License from the Town.
2. Adult-Oriented Establishments shall be located at least 1,000 feet from:
 - a. any residential district line, playground lot line, or public park lot line;

Section 17.03 10. B. 2. b.

- b. any structure used as a residence, place of religious worship, public or private school, or Youth Facility as defined in the Town's Adult-Oriented Establishment Licensing and Regulation Ordinance;
 - c. any other structure housing an Adult-Oriented Establishment; any structure housing an establishment which holds an alcohol beverage license.
3. Distance requirements are to be measured in a straight line in any direction regardless of intervening structures, from the structure housing the Adult-Oriented Establishment to the above residential district boundary lines, to the lot line of any lot used for a park, playground, or the lot line of any structure listed in 2(b),(c) and (d), above.
 4. The measurements from a structure shall be taken from the farthest point a structure extends in the direction of the measurement, including overhanging roofs or similar projections.
 5. For Adult-Oriented Establishments located in conjunction with other buildings and clearly separate from other establishments such as in a shopping center, measurements shall be taken from the boundaries of the space occupied by the Adult-Oriented Establishment.
 6. For any Adult-Oriented Establishment located above ground level in a multi-story structure and clearly separate from other establishments within the structure, the distance measurements shall be taken from the ground floor public entrance/exit nearest the Adult-Oriented Establishment (excluding emergency exits).
 7. A licensed Adult-Oriented Establishment is not disqualified from holding an Adult-Oriented Establishment License by the location subsequent to the grant or renewal of its license of any of the establishments described in 2, above, within 1,000 feet of the licensed premises. This provision applies only to the renewal of an existing license and does not apply when an application for a license is submitted after a license for that location has not been renewed or has been revoked.

SECTION 17.04

ZONING DISTRICTS

1. ESTABLISHMENT OF DISTRICTS

In order to carry out the purposes and provisions of this chapter, the Town is hereby divided into the following zoning Districts. All property in the Town shall be placed in one of the following Districts:

RESIDENTIAL DISTRICTS

R-1	Residential District	[1.5 acre min. lot]
R-1(A)	Residential District	[1.0 acre min. lot]
R-2	Residential District	[30,000 sq. ft. min. lot]
R-3	Residential District	[20,000 sq. ft. min. lot]
R-L	Residential Lake District	[20,000 sq. ft. min. lot]

AGRICULTURAL DISTRICTS

A-1	Agricultural District
A-E	Exclusive Agricultural District
A-2	Rural Home District
A-3	Suburban Home District

BUSINESS DISTRICTS

B-1	Restricted Business District
B-2	Shopping Center District
B-3	Business Park District

INDUSTRIAL DISTRICTS

M-1	Industrial District
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PARK & CONSERVANCY DISTRICTS

P-1	Park and Recreation District
WF-1	Wetland-Floodplain District

2. ZONING DISTRICT MAPS.

- A. **Districts Mapped.** The boundaries of the Districts are shown upon a map designated as the Zoning Map of the Town, which, together with all the notations, references and other information shown thereon is as much a part of this chapter as if fully set forth herein. The Zoning Map shall be kept on file in the offices of the Town and any copy attached hereto is correct only as of the date of publication and is for general information purposes only.
- B. **Amendments.** Amendments to the Zoning Map shall be accomplished under the procedures that apply to amendments of this chapter, as set forth in this chapter.

Section 17.04 3.

3. DETERMINATION OF DISTRICT BOUNDARIES.

District boundaries shall be determined by measurement from and as shown on the Zoning Map and in case of any question as to the interpretation of such boundary lines, the Code Enforcement Officer shall interpret the map according to the reasonable intent of this chapter.

- A. Unless otherwise specifically indicated or dimensioned on the maps, the District boundaries are normally lot lines; section, quarter section or sixteenth section lines; or the centerlines of streets, roads, highways, railways or alleys.
- B. The boundaries of the W-F Wetland-Floodplain Districts as drawn are intended to represent the edge of swamp, marsh, or the ordinary high water line along a stream or watercourse and shall be finally determined by the actual conditions in each specific situation.
- C. The boundaries of the R-L Residential Lake District as drawn are intended to include all lots which abut a lake, and only such lots. Should such a lot be subdivided so as to create an additional lot or lots which do not abut the lake, the latter lot or lots will be removed from the Residential Lake District and become a part of the District which bordered the original lot and must meet all requirements of the bordering District.
- D. The boundaries of shorelines shall be construed to follow such shoreline, and in the event of change in the shoreline, shall be construed as moving with the actual shoreline.

4. DEVELOPMENT STANDARDS.

The following is a summary of the development standards as outlined in this chapter ^{(a),(h)&(g):}

<u>District</u>	<u>Minimum Lot Area</u>	<u>Min. Avg. Lot Width</u>	<u>Min. Setback</u>	<u>Min. Offset</u>	<u>Min. Floor Area</u>	<u>Max. Access. Bldg. Size</u>
R-1	1.5 acres	200'	50'	20'	1,500sf	1,000sf
R-1A	1 acre	150'	50'	20'	1,650sf	1,000sf
R-2	30,000sf	120'	50'	20'	1,350sf	720sf
R-3	20,000sf	120'	50'	20'	1,200sf	720sf
R-L	20,000sf	100' ^(e)	50' ^(f)	15'	1,500sf	720sf
A-1	40 acres ^(b)	200'	50' ^(c)	20' ^(d)	1,500sf	1%l.a.
A-E	35 acres	660'	100'	50'	1,500sf	1%l.a.
A-2	3 acres	200'	50' ^(c)	30' ^(d)	1,650sf	1%l.a.
A-3	2 acres	200'	50'	25'	1,500sf	1,000sf
B-1	20,000sf	120'	50'	10'/20' ⁽ⁱ⁾	1,200 sf	None
B-2	20,000sf	120'	50'	10'	None	None
B-3	5 acres	330'	100'	50' ^(j)	None	None
M-1	3 acres	200'	100'	100'/50' ^(k)	None	None
P-1	1 acre	150'	100'	50'	None	None
WF-1	None	None	100'	100'	None	None

^(a)No structure or sewage disposal system shall be placed within 75' of a WF-1 Wetland-Floodplain District.

^(b)Land can only be subdivided as planned unit development.

Section 17.04 4.

(c)100' for buildings housing animals.

(d)50' for buildings housing animals.

(e)Also minimum of 100' frontage at shore lot line.

(f)150' from shoreline.

(g)See District regulations for exceptions.

(h)Each residential dwelling must have a private garage of 480 sf minimum. The maximum size of an attached garage shall be 1440 sf. (See Section 17.06 4. D.)

(i)10' minimum for buildings used solely for commercial purposes; 20' minimum for buildings used in part for residential purposes. (See Section 17.04 5.1.3.)

(j) Where the adjacent District is a residential or agricultural district, a 100' minimum offset shall be required. (See Section 17.04 5. K. 3.)

(k)100' minimum offset shall be required where adjacent to a residential or agricultural district; 50' minimum shall be required where not adjacent to a residential or agricultural district. (See Section 17.04 5. L. 3)

5. SPECIFIC DISTRICT.

The Town is hereby divided into the following zoning Districts.

A. R-1 RESIDENTIAL DISTRICT

1. STATEMENT OF INTENT

The **R-1 Residential District** is intended to provide for low density single family residential development.

2. USE REGULATIONS

a. Permitted Uses

Single family dwellings.

b. Permitted Accessory Uses. The following accessory uses shall be permitted in the R-1 Residential District:

(1) Accessory buildings. No more than 2 detached accessory buildings shall be permitted. The total composite area of all accessory buildings shall not exceed 1,000 square feet.

(a) Private, detached garages, not to exceed 960 square feet, not involving the conduct of business and not including any sanitary facilities or living quarters.

(b) Other accessory buildings not to exceed 400 square feet.

- (2) The keeping of household pets.
- (3) Horticulture.
- (4) (repealed 2012-03, 2-14-12)
- (5) Outdoor recreational structures.
- (6) Telecommuting.
- (7) Home Occupation(s) with a valid permit issued under § 17.03 1. D. of this Code.
- (8) Any other structure or use normally accessory to the principal uses permitted.
- (9) (created 2012-02, 2-14-12) The keeping of chickens in accordance with Section 17.06 5.

3. BUILDING LOCATION

- a. **Setback** 50 feet minimum.
- b. **Offset** 20 feet minimum.

4. BASE HEIGHT REGULATIONS

- a. **Principal Residence** 30 feet maximum.
- b. **Accessory Structures** 12 feet maximum.

5. AREA REGULATIONS

- a. **Lot Size**
Minimum area shall be 1.5 acres.
- b. **Lot Width**
Minimum lot width shall be 200 feet.
- c. **Floor Area**
Minimum required area of principal residence shall be:
 - (1) Single Floor: 1,500 square feet.
 - (2) All Other: See §17.03 5. A.
- d. **Open Space**
With the exception of rustic structures, which shall be permitted, 85% of each lot shall remain as open space. (rep & rec 2012-09)

Section 17.04 5. B. 1.

B. R-1A RESIDENTIAL DISTRICT

1. STATEMENT OF INTENT

The **R-1A Residential District** is intended to provide for low density single family residential development.

2. USE REGULATIONS

a. Permitted Uses

Single family dwellings.

b. Permitted Accessory Uses The following accessory uses shall be permitted in the R-1A Residential District:

- (1) Accessory buildings. No more than 2 detached accessory buildings shall be permitted. The total composite area of all accessory buildings shall not exceed 1,000 square feet.
 - (a) Private, detached garages, not to exceed 960 square feet, not involving the conduct of business and not including any sanitary facilities or living quarters.
 - (b) Other accessory buildings not to exceed 400 square feet.
- (2) The keeping of household pets.
- (3) Horticulture.
- (4) (Repealed 2012-03, 2-14-12)
- (5) Outdoor recreational structures.
- (6) Telecommuting.
- (7) Home Occupation(s) with a valid permit issued under § 17.03 1. D. of this Code.
- (8) Any other structure or use normally accessory to the principal uses permitted.
- (9) (Created 2012-02, 2-14-12) The keeping of chickens in accordance with Section 17.06 5.

3. BUILDING LOCATION

- a. Setback** 50 feet minimum.
- b. Offset** 20 feet minimum.

4. **BASE HEIGHT REGULATIONS**

- a. **Principal Residence** 30 feet maximum.
- b. **Accessory Structures** 12 feet maximum.

5. **AREA REGULATIONS**

- a. **Lot Size**
Minimum area shall be 1 acre.
- b. **Lot Width**
Minimum lot width shall be 150 feet.
- c. **Floor Area**
Minimum required area of principal residence shall be:
 - (1) Single Floor: 1,650 square feet.
 - (2) All Other: See §17.03(5)A.
- d. **Open Space**
With the exception of rustic structures, which shall be permitted, 85% of each lot shall remain as open space. (rep & rec 2012-09)

C. **R-2 RESIDENTIAL DISTRICT**

1. **STATEMENT OF INTENT**

The **R-2 Residential District** is intended to provide for medium density single family residential development.

2. **USE REGULATIONS**

- a. **Permitted Uses**
The following uses shall be permitted in the R-2 Residential District:
 - (1) Single family dwellings.
- b. **Permitted Accessory Uses** (amd. 00-507a)
The following accessory uses shall be permitted in the R-2 Residential District:
 - (1) Accessory Buildings. No more than 2 detached accessory buildings shall be permitted. The total individual structure and composite area of all accessory buildings shall not exceed the maximums set forth in the following table:

Lot Size (s.f.)	Maximum Garage Size	Maximum Accessory Building Size	Maximum Total Composite Area
up to and including	720	200	720

Lot Size (s.f.)	Maximum Garage Size	Maximum Accessory Building Size	Maximum Total Composite Area
20,000			
20,000 - 24,999	770	240	780
25,000 - 29,999	820	285	830
30,000 -34,999	870	325	900
35,000-43,559	920	360	960
greater than 43,560	960	400	1000

- (2) The keeping of household pets.
- (3) Horticulture.
- (4) Public Parks and recreation areas.
- (5) Telecommuting.
- (6) Home Occupation with a valid permit issued under § 17.03 1.D. of this Code.
- (7) (created 2012-002, 2-14-12) The keeping of chickens in accordance with Section 17.06 5.

3. BUILDING LOCATION

- a. **Setback** 50 feet minimum.
- b. **Offset** 20 feet minimum.

4. BASE HEIGHT REGULATIONS

- a. **Principal Residence** 30 feet maximum.
- b. **Accessory Structures** 12 feet maximum.

5. AREA REGULATIONS

- a. **Lot Size**
Minimum area shall be 30,000 square feet.
- b. **Lot Width**
Minimum lot width shall be 120 feet.
- c. **Floor Area**
Minimum required area of principal residence shall be:

(1) Single Floor: 1,350 square feet.

(2) All Other: See §17.03 5.A.

d. Open Space (rep & rec 2002-02-002A)

With the exception of rustic structures, for lots 20,000 square feet or larger, a minimum of 85% of each lot shall remain as open space. For existing lots with an area less than 20,000 square feet, the following scale shall be used:

<u>Lot Size (square foot)</u>	<u>Open Space Percentage (%)</u>
19,400 - 19,999	85
18,800 - 19,399	84
18,200 - 18,799	83
17,600 - 18,199	82
17,000 - 17,599	81
16,400 - 16,999	80
15,800 - 16,399	79
15,200 - 15,799	78
14,600 - 15,199	77
14,000 - 14,599	76
13,400 - 13,999	75
12,800 - 13,399	74
12,200 - 12,799	73
11,600 - 12,199	72
11,000 - 11,599	71
10,400 - 10,999	70
9,800 - 10,399	69
9,200 - 9,799	68
8,600 - 9,199	67
8,000 - 8,599	66
7,400 - 7,999	65

<u>Lot Size (square foot)</u>	<u>Open Space Percentage (%)</u>
6,800 - 7,399	64
5,600 - 6,199	62
5,000 - 5,599	61
4,999 or less	60

D. R-3 RESIDENTIAL DISTRICT

1. STATEMENT OF INTENT

The **R-3 Residential District** is intended to provide for medium density single family residential development.

2. USE REGULATIONS

a. Permitted Uses

- (1) Single family dwellings.

b. Permitted Accessory Uses

The following accessory uses shall be permitted in the R-3 Residential District:

- (1) Accessory Buildings. No more than 2 detached accessory buildings shall be permitted. The total individual structure and composite area of all accessory buildings shall not exceed the maximums set forth in the following table:

Lot Size (s.f.)	Maximum Garage Size	Maximum Accessory Building Size	Maximum Total Composite Area
up to and including 20,000	720	200	720
20,000 - 24,999	770	240	780
25,000 - 29,999	820	285	830
30,000 -34,999	870	325	900
35,000-43,559	920	360	960
greater than 43,560	960	400	1000

- (2) Accessory buildings, not to exceed 200 square feet No more than 2 detached accessory buildings shall be permitted. The total composite area of all accessory buildings, and detached garages shall not exceed 720 square feet.
- (3) The keeping of household pets.
- (4) Horticulture.

- (5) Public Parks and recreation areas.
- (6) Telecommuting.
- (7) Home Occupation with a valid permit issued under § 17.03 1.D. of this Code.
- (8) The keeping of chickens in accordance with Section 17.06 5.

3. BUILDING LOCATION

- a. **Setback** 50 feet minimum.
- b. **Offset** 20 feet minimum.

4. BASE HEIGHT REGULATIONS

- a. **Principal Residence** 30 feet maximum.
- b. **Accessory Structures** 12 feet maximum.

5. AREA REGULATIONS

- a. **Lot Size**
Minimum area shall be 20,000 square feet.
- b. **Lot Width**
Minimum lot width shall be 120 feet.
- c. **Floor Area**
Minimum required area of principal residence shall be:
 - (1) Single Floor: 1,200 square feet.
 - (2) All Other: See §17.03 5.A.

- d. **Open Space.**(rep & rec 2002-02-002A)
With the exception of rustic structures, for lots 20,000 square feet or larger, a minimum of 85% of each lot shall remain as open space. For existing lots with an area less than 20,000 square feet, the following scale shall be used:

<u>Lot Size (square foot)</u>	<u>Open Space Percentage (%)</u>
19,400 - 19,999	85
18,800 - 19,399	84
18,200 - 18,799	83
16,400 - 16,999	80

<u>Lot Size (square foot)</u>	<u>Open Space Percentage (%)</u>
15,800 - 16,399	79
15,200 - 15,799	78
14,600 - 15,199	77
14,000 - 14,599	76
13,400 - 13,999	75
12,800 - 13,399	74
12,200 - 12,799	73
11,600 - 12,199	72
11,000 - 11,599	71
10,400 - 10,999	70
9,800 - 10,399	69
9,200 - 9,799	68
8,600 - 9,199	67
8,000 - 8,599	66
7,400 - 7,999	65
6,800 - 7,399	64
6,200 - 6,799	63
5,600 - 6,199	62
5,000 - 5,599	61
4,999 or less	60

E. R-L RESIDENTIAL LAKE DISTRICT

1. STATEMENT OF INTENT

The **R-L Residential Lake District** is intended to provide for medium density single family residential development on lots located on any lake.

2. USE REGULATIONS

a. Permitted Uses

(1) Single family dwellings.

b. Permitted Accessory Uses (rev. 00-507a)

The following accessory uses shall be permitted in the R-L Residential District:

- (1) Accessory buildings. No more than 2 detached accessory buildings shall be permitted. The total composite area of all accessory buildings shall not exceed 1,200 square feet.
 - (a) Private, detached garages, not to exceed 720 square feet, not involving the conduct of business and not including any sanitary facilities or living quarters.
 - (b) Other accessory buildings not to exceed 200 square feet.
 - (c) Boathouses. One private boathouse per lot shall be permitted. A boathouse must contain a minimum of 200 square feet of boat storage and no more than 600 feet of total area. Boathouses shall have a maximum width of 20 feet along the shore lot line and the maximum distance from the shore lot line to the rear of the boathouse structure shall be 35 feet. The boathouse shall be constructed with permanent foundations with frost footings and shall be equipped with garage-type doors opening towards the lake. No metal boathouses shall be permitted.
- (2) The keeping of household pets.
- (3) Horticulture.
- (4) Public Parks and recreation areas.
- (5) Telecommuting.
- (6) Home Occupation with a valid permit issued under § 17.03 1.D. of this Code.
- (7) (created 2012-02, 2-14-12) The keeping of chickens in accordance with Section 17.06 5.

3. BUILDING LOCATION

- a. Setback** 50 feet minimum.

b. Offset (rev. 00-507a)

	Boathouses	Other Structures
Non-shoreline	5 feet	* See additional chart
Shoreline	5 feet	150 feet

*** Other Structures Offset Chart:**

Lot Width	Offset
100 feet or greater	15 feet
50 - 100 feet	15% of the lot width **
less than 50 feet	7.5 feet **

**** No principal building can be closer than 20 feet to any other structure on an adjoining lot measured from the outward-most points of the two structures.**

4. BASE HEIGHT REGULATIONS

- a. Principal Residence** 30 feet maximum.
- b. Accessory Structures**
Boathouses 12 feet maximum above ordinary high water mark.
- c. All others** 12 feet maximum.

5. AREA REGULATIONS

- a. Lot Size**
Minimum area shall be 20,000 square feet.
- b. Lot Width**
Minimum lot width shall be 100 feet.
- c. Floor Area**
Minimum required area of principal residence shall be:
 - (1) Single Floor: 1,200 square feet.
 - (2) All Other: See §17.03 5. A.
- d. Open Space** (rep & rec 2002-02-002A)

With the exception of rustic structures, for lots 20,000 square fee or larger, a minimum of 75% shall remain open space. For existing parcels less than 20,000 square fee, the following scale shall be used:

<u>Lot Size (s.f.)</u>	<u>Open Space Percentage (%)</u>
19,000 - 19,999	74
18,000 - 18,999	73
17,000 - 17,999	72
16,000 - 16,999	71
15,000 - 15,999	70
14,000 - 14,999	69
13,000 - 13,999	68
12,000 - 12,999	67
11,000 - 11,999	66
10,000 - 10,999	65
9,000 - 9,999	64
8,000 - 8,999	63
7,000 - 7,999	62
6,000 - 6,999	61
5,999 or less	60

- e. **Shore lot line**
Minimum shore lot line shall be 100 feet.

F. A-1 AGRICULTURAL DISTRICT

1. STATEMENT OF INTENT

The **A-1 Agricultural District** is intended to provide for the needs of agriculture as a primary use as well as residential uses associated with such use, and to maintain in agricultural uses those lands generally suited for such use which may have the ultimate potential for other use. To maintain open space, it is intended that residential development be limited to planned unit development.

2. USE REGULATIONS (repealed and recreated 2011-004)

a. Permitted Uses

- (1) Single family dwellings.
- (2) Farming and agricultural use.
- (3) Grazing.
- (4) The harvesting of wild crops such as marsh hay, ferns, moss, berries, tree fruits and tree seeds.
- (5) Hunting and fishing unless prohibited by other ordinances or laws.
- (6) Sustained yield forestry and tree farms.
- (7) The following uses may be permitted, subject to approval of the Plan Commission after consideration of the building, site and operational plans:
 - (a) Substations and other utility installations.
 - (b) Sewage treatment plants.
- (8) Creameries (amended 2019-04)

b. Permitted Accessory Uses

- (1) Private, detached garages not involving the conduct of business and not including any sanitary facilities.
- (2) Accessory buildings, including but not limited to stables, barns, silos, poultry houses, farm storage buildings and other farm related buildings.
- (3) The keeping of household pets.
- (4) Roadside stands, provided off-street parking is made available for at least four vehicles.
- (5) Telecommuting.
- (6) Home occupation with a valid permit issued under § 17.03 1. D. of this Code.
- (7) Nonresidential structures used solely in conjunction with the raising of water fowl, minnows and other similar lowland animals, fowl or fish.
- (8) Outdoor recreational structures.
- (9) Any other structure or use normally accessory to the principal uses permitted.
- (10) (amended 2019-04) Quarters for Household or Farm Employees

- (a) Quarters shall be occupied only by a full-time employee who works on the premises and members of the employee's family.
- (b) Number of employees that can have quarters on the premises is five (5).
- (c) A deed restriction shall be filed in the Register of Deeds office prior to allowance of the use indicating that the living unit is for employees on the farm and their families, and that there can be no more than 5 employees that can have quarters on the farm.

3. BUILDING LOCATION

- a. **Setback**
 - 100 feet minimum for buildings housing animals.
 - 30 feet minimum for roadside stands.
 - 50 feet minimum for all other buildings or structures.
- b. **Offset**
 - 50 feet minimum for buildings housing animals.
 - 20 feet minimum for all other buildings or structures.

4. BASE HEIGHT REGULATIONS

- a. **Principal Residence** 30 feet.
- b. **Accessory Structures** 90 feet maximum for farm accessory buildings or structures.
12 feet maximum for all other buildings.

5. AREA REGULATIONS

- a. **Lot Size** (amended 2019-04)
Minimum area shall be 40 acres.
- b. **Lot Width**
Minimum lot width shall be 200 feet.
- c. **Floor Area**
Minimum required area of principal residence shall be:
 - (1) Single Floor: 1,500 square feet.
 - (2) All Other: See §17.03 5. A.
- d. **Open Space** (rep & rec 2002-02-002A)
With the exception of rustic structures which shall be permitted, 95% of each lot shall remain as open space.

With the exception of rustic structures, the total space occupied by all accessory buildings shall not exceed 1% of the total lot area.

G. A-E EXCLUSIVE AGRICULTURAL DISTRICT

1. STATEMENT OF INTENT

The **A-E Exclusive Agricultural District** is intended to implement the Wisconsin Farm Preservation Act, or other similar Federal, State or local initiatives, and is intended to provide for the preservation of existing large-scale farming operations and for smaller farm units of 35 acres or more located in areas which are predominantly agricultural in character.

2. USE REGULATIONS

a. Permitted Uses

1. Single family dwellings in conjunction with an agricultural operation to be occupied by the farmer or a person working on the farm.
2. Any permitted use in the A-1 Agricultural District.

b. Permitted Accessory Uses

1. Any accessory use permitted in the A-1 Agricultural District.

3. BUILDING LOCATION

a. Setback 100 feet minimum.
30 feet minimum for roadside stands.

b. Offset 50 feet minimum.

4. BASE HEIGHT REGULATIONS

a. Principal Residence 30 feet.

b. Accessory Structures 90 feet maximum for farm accessory buildings or structures.

12 feet maximum for all other buildings or structures.

5. AREA REGULATIONS

a. Lot Size
Minimum area shall be 35 acres.

b. Lot Width
Minimum lot width shall be 660 feet.

c. Floor Area
Minimum required area of principal residence shall be:

1. Single Floor: 1,500 square feet.
2. All Other: See §17.03 5. A.

d. Open Space (rep & rec 2002-02-002A)

With the exception of rustic structures which shall be permitted, 95% of each lot shall remain as open space.

With the exception of rustic structures which shall be permitted, the total space occupied by all accessory buildings shall not exceed 1% of the total lot area.

H. A-2 RURAL HOME DISTRICT

1. STATEMENT OF INTENT

The **A-2 Rural Home District** is intended to provide for low density single family residential development and limited, controlled farming and associated uses.

2. USE REGULATIONS (repealed and recreated 2011-004)

a. Permitted Uses

- (1) Single family dwellings.
- (2) The keeping of poultry, fowl and domestic livestock subject to the following conditions:
 - (a) One large animal (those animals with a mature weight of 50 pounds or more) or two fowl (not including chickens which are governed by subsection (d) below) or two small animals, or combination thereof shall be allowed on lots of 3 acres. One additional large animal or equivalent fowl or small animal may be added per acre of land over 3 acres (2 fowl or 2 small animals equal 1 large animal).
 - (b) (repealed and recreated 2019-04) If more large animals or equivalent fowl or small animal(s) or combination thereof is desired, beyond the maximum allowed on the lot per subsection a. (2) (a), above, they shall only be permitted as a Conditional Use under section 17.05. 5. J. Keeping of Poultry or Livestock.
 - (c) Notwithstanding the foregoing, the keeping of any type of animal that is described in Section 17.05 of this Code as a conditional use in the A-2 district, and the keeping of any animal under circumstances described in Section 17.05 as a conditional use in the A-2 district, is not a permitted use but is a conditional use as described therein.
 - (d) Keeping of chickens is permitted, subject to the requirements of Section 17.06 5. of this code.
- (3) Grazing.

- (4) The harvesting of wild crops such as marsh hay, ferns, moss, berries, tree fruits and tree seeds.
- (5) Hunting and fishing unless prohibited by other ordinances or laws.
- (6) Sustained yield forestry and tree farms.
- (7) Normal crop farming consistent with the preservation of the District's character, provided such use is not described as a conditional use in the A-2 District in Section 17.05 of this Code.
 - (a) Permitted on lots of 10 acres or more.
 - (b) On lots of less than 10 acres, with Plan Commission approval.
- (8) The following uses may be permitted, subject to approval of the Plan Commission after consideration of the building, site and operational plans:
 - (a) Substations and other utility structures
 - (b) Sewage treatment plants

b. Permitted Accessory Uses

- (1) Private, detached garages not involving the conduct of business and not including any sanitary facilities.
- (2) Accessory buildings, including but not limited to stables, barns, silos, poultry houses, farm storage buildings and other farm related buildings.
- (3) The keeping of household pets.
- (4) (repealed and recreated 2019-04) Roadside stands, provided off-street parking is made available for at least four vehicles.
- (5) Telecommuting.
- (6) Home occupation with a valid permit issued under § 17.03 1. D. of this Code.
- (7) (amended 2019-04) Quarters for Household or Farm employees on Farms over 10 acres.
 - (a) Quarters shall be occupied by only a full-time employee who works on the premises and members of the employee's family.
 - (b) Number of employees that can have quarters on the premises is five (5).
 - (c) A deed restriction shall be filed in the Register of Deeds office prior to allowance of the use indicating that the living unit is for employees of the farm and their families, and that there can be no

more than 5 employees that can have quarters on the farm.

3. **BUILDING LOCATION**

- a. **Setback** 100 feet minimum for buildings housing animals.
50 feet minimum for all other buildings or structures.
30 feet minimum for roadside stands.
- b. **Offset** 50 feet minimum for buildings housing animals.
30 feet minimum for all other buildings or structures.

4. **BASE HEIGHT REGULATIONS**

- a. **Principal Residence** 30 feet maximum.
- b. **Accessory Structures** 90 feet maximum for farm accessory buildings or structures.
12 feet maximum for all other buildings or structures.

5. **AREA REGULATIONS**

- a. **Lot Size** (amended 2019-04)
Minimum area shall be 3 acres. If land is developed into a subdivision, it shall meet the PUD requirements of Section 18.16 of the Town Code, subject to the allowance stated in Chapter 18.16 6. d.
- b. **Lot Width**
Minimum lot width shall be 200 feet.
- c. **Floor Area**
Minimum required area of principal residence shall be:
(1) Single Floor: 1,650 square feet.
(2) All Other: See §17.03 5. A.
- d. **Open Space** (rep & rec 2012-09)
With the exception of rustic structures, which shall be permitted, 85% of each lot shall remain as open space.
With the exception of rustic structures, the total space occupied by all accessory buildings shall not exceed 1% of the total lot space unless the land is greater than 10 acres in which case the accessory buildings can be 2%.

I. **A-3 SUBURBAN HOME DISTRICT.**

1. **STATEMENT OF INTENT**

The **A-3 Suburban Home District** is intended to provide for low density single family residential development.

2. USE REGULATIONS

a. Permitted Uses

- (1) Single family dwellings.

b. Permitted Accessory Uses The following accessory uses shall be permitted in the A-3 Residential District:

- (1) Accessory buildings. No more than 2 detached accessory buildings shall be permitted. The total composite area of all accessory buildings shall not exceed 1,000 square feet.
 - (a) Private, detached garages, not to exceed 960 square feet, not involving the conduct of business and not including any sanitary facilities or living quarters.
 - (b) Other accessory buildings not to exceed 400 square feet.
- (2) The keeping of household pets.
- (3) Horticulture.
- (4) Telecommuting.
- (5) Home occupation with a valid permit issued under § 17.03 1. D. of this Code.
- (6) (Repealed 2012-03, 2-14-12)
- (7) Outdoor recreational structures.
- (8) Any other structure or use normally accessory to the principal uses permitted.
- (9) (Created 2012-02, 2-14-12) The keeping of chickens in accordance with Section 17.06 5.

3. BUILDING LOCATION

- a. Setback** 50 feet minimum.
- b. Offset** 25 feet minimum.

4. BASE HEIGHT REGULATIONS

- a. Principal Residence** 30 feet maximum.
- b. Accessory Structures** 12 feet maximum.

5. **AREA REGULATIONS**

a. **Lot Size**

Minimum area shall be 2 acres.

b. **Lot Width**

Minimum lot width shall be 200 feet.

c. **Floor Area**

Minimum required area of principal residence shall be:

(1) Single Floor: 1,500 square feet.

(2) All Other: See §17.03 5. A.

d. **Open Space** (rep & rec 2012-09)

With the exception of rustic structures, which shall be permitted, 85% of each lot shall remain as open space.

J. **B-1 RESTRICTED BUSINESS DISTRICT.**

1. **STATEMENT OF INTENT**

The **B-1 Restricted Business District** is intended to provide for individual or small groups of retail and customer service establishments serving primarily the convenience of a local neighborhood and the character, appearance and operation of which are compatible with the character of the surrounding area.

2. **USE REGULATIONS**

a. **Permitted Uses**

The following uses shall be permitted in the B-1 Restricted Business District, subject to approval by the Plan Commission, of building, site and operational plans:

(1) Retail stores and shopping, offering convenience goods and personal services.

(2) Business, professional or public service offices.

(3) (repealed and recreated 2019-04) Customer service establishments such as restaurants excluding drive-through or drive-in restaurants, shoe repair, barber and beauty shops, studios and similar uses.

(4) (repealed and recreated 2019-04) Antique shops, gift shops, arts and craft studios and similar uses.

b. **Permitted Accessory Uses**

(1) One family dwelling in conjunction with a permitted business use occupied by an owner or person working at the business.

- (2) Off street parking.
- (3) Garages for storage of vehicles used only in conjunction with the operation of the business.

3. BUILDING LOCATION

- a. **Setback** 50 feet minimum.
- b. **Offset** 10 feet minimum for buildings used solely for commercial purposes.
20 feet minimum for buildings used in part for residential purposes.

4. BASE HEIGHT REGULATIONS

- a. **Principal Structure** 30 feet maximum.
- b. **Accessory Structures** 12 feet maximum.

5. AREA REGULATIONS

- a. **Lot Size**
Minimum area shall be 20,000 square feet.
- b. **Lot Width**
Minimum lot width shall be 120 feet.
- c. **Floor Area**
Minimum required area of principal building shall be:
 - (1) Single Floor: 1,200 square feet.
 - (2) All Other: See §17.03 5. A.
- d. **Open Space** (rep & rec 2002-02-002A)
With the exception of rustic structures which shall be permitted, 50% of each lot shall remain as open space.

K. B-2 SHOPPING CENTER DISTRICT.

1. STATEMENT OF INTENT

The **B-2 Shopping Center District** is intended to provide for the orderly and attractive grouping at appropriate locations of retail stores, shops, offices and service establishments serving the daily needs of the surrounding local community area. The size and location of such Districts shall be based upon evidence of justifiable community need, of adequate customer potential, of satisfactory relationship to the traffic circulation system and other related facilities and of potential contribution to the economic welfare of the community.

2. USE REGULATIONS

a. Permitted Uses

The following uses shall be permitted in the **B-2 Shopping Center District**, subject to approval by the Plan Commission, of building, site and operational plans:

- (1) Retail stores and shopping, offering convenience goods and personal services.
- (2) Business, professional, public service, banking and savings and loan offices.
- (3) (repealed and recreated 2019-04) Customer service establishments such as restaurants excluding drive-through and drive-in restaurants, shoe repair, barber and beauty shops, studios and similar uses.
- (4) Laundromats, dry cleaning establishments and laundry or dry cleaning pick-up stations.
- (5) Dental and medical clinics.
- (6) Display galleries and training schools.
- (7) Public utility offices.
- (8) (repealed and recreated 2019-04) Antique shops, gift shops, arts and craft studios and similar uses.

b. Permitted Accessory Uses

- (1) Off street parking.
- (2) Garages for storage of vehicles used only in conjunction with the operation of the business.

3. BUILDING LOCATION

- a. Setback** 50 feet minimum.
- b. Offset** 10 feet minimum.

4. BASE HEIGHT REGULATIONS

- a. Principal Building** 30 feet maximum.
- b. Accessory Structures** 12 feet maximum.

5. AREA REGULATIONS

a. District Area

The District area shall be a minimum of 200,000 contiguous square feet.

- b. **Lot Size**
Minimum area shall be 20,000 square feet.
- c. **Lot Width**
Minimum lot width shall be 120 feet.
- d. **Floor Area**
There shall be no minimum floor area.
- e. **Open Space** (rep & rec 2002-02-002A)
With the exception of rustic structures which shall be permitted, 50% of each lot shall remain as open space.

L. B-3 BUSINESS PARK DISTRICT.

1. STATEMENT OF INTENT

The **B-3 Business Park District** is intended to provide attractive settings for corporate offices and business centers. It is intended that each site created shall be in an exclusive site screened from all residentially zoned lands.

2. USE REGULATIONS

a. Permitted Uses

The following uses shall be permitted in the **B-3 Business Park District**, subject to approval by the Plan Commission, of building, site, landscape and operational plans:

- (1) (repealed and recreated 2019-04) Professional offices, corporate offices, administrative offices, studios, business centers, laboratories and similar operations not involving retail or commercial sales, industrial use or residential use.
- (2) (repealed and recreated 2019-04) Restaurants (excluding drive-through and drive-restaurants).

b. Permitted Accessory Uses

- (1) Off street parking, provided all lots and driveways are hard surfaced.

3. BUILDING LOCATION

- a. **Setback** 100 feet minimum.
- b. **Offset** 50 feet minimum except that where the adjacent District is a residential or agricultural District, a 100 feet minimum offset shall be required.

4. BASE HEIGHT REGULATIONS

- a. **Principal Building** 30 feet maximum.

- b. **Accessory Structures** 12 feet maximum.

5. **AREA REGULATIONS**

- a. **Lot Size**
Minimum area shall be 5 acres.
- b. **Lot Width**
Minimum lot width shall be 330 feet.
- c. **Floor Area**
There shall be no minimum floor area.
- d. **Open Space** (rep & rec 2002-02-002A)
With the exception of rustic structures which shall be permitted, 80% of each lot shall remain as open space.

6. **ADDITIONAL REGULATIONS**

- a. Building exteriors shall be of an attractive material or must be faced with an attractive material such as face brick, natural stone, wood or other substantial materials as approved by the Plan Commission.
- b. The exterior of all structures, fences, planting screens, etc., shall be kept in good condition at all times by painting, trimming or other acceptable maintenance procedures. Subsequent additions or changes in the building and grounds shall conform to or enhance the original construction and be consistent therewith.
- c. All appurtenances placed on the roof of any structure such as air conditioning unit shall be housed in a penthouse or otherwise screened from view.
- d. Outside storage of all materials shall be prohibited.

M. M-1 INDUSTRIAL DISTRICT

1. **STATEMENT OF INTENT**

The **M-1 Industrial District** is intended to provide for the needs of those industries which require attractive settings and whose operations are such as to make them compatible and attractive neighbors in an otherwise residential community.

2. **USE REGULATIONS**

a. **Permitted Uses**

The following uses shall be permitted in the M-1 Industrial District subject to approval by the Plan Commission of building, site, landscape and operational plans:

- (1) Farming and agricultural use.
- (2) (repealed and recreated 2019-04) Industrial and commercial operations, the character of which complements the surrounding

area and which are not for any reason detrimental thereto. Self-storage facilities as defined herein shall be regulated as a Conditional Use.

- (3) Soil processing for resale either at wholesale or retail.
- (4) Grazing.
- (5) The harvesting of wild crops such as marsh hay, ferns, moss, berries, tree fruits and tree seeds.
- (6) Hunting and fishing unless prohibited by other ordinances or laws.
- (7) Sustained yield forestry and tree farms.
- (8) Public, or private group outdoor recreational facilities whether commercial or noncommercial.
- (9) Substations and other utility installations.
- (10) Sewage treatment plants.
- (11) (amended 2019-04) Commercial Greenhouses.
- (12) (amended 2019-04) Laboratories for testing, experimental or analytical purposes.

b. Permitted Accessory Uses

- (1) Off street parking, provided all lots and driveways are hard surfaced.

3. BUILDING LOCATION

- a. Setback** 100 feet minimum.
- b. Offset** 100 feet minimum where adjacent to a Residential or Agricultural District.
50 feet minimum where not adjacent to a Residential or Agricultural District.

4. BASE HEIGHT REGULATIONS

- a. Principal Building** 30 feet maximum.
- b. Accessory Building** 12 feet maximum.

5. AREA REGULATIONS

- a. Lot Size**
Minimum area shall be 3 acres.

- b. Lot Width**
Minimum lot width shall be 200 feet.
- c. Floor Area**
There shall be no minimum floor area.
- d. Open Space** (rep & rec 2002-02-002A)
With the exception of rustic structures which shall be permitted, 65% of each lot shall remain as open space.

6. ADDITIONAL REGULATIONS

- a.** Building exteriors must be of an attractive material or must be faced with an attractive material such as face brick, natural stone, wood or other substantial materials as approved by the Plan Commission.
- b.** The exterior of all structures, fences, planting screens, etc., shall be kept in good condition at all times by painting, trimming or other acceptable maintenance procedures. Subsequent additions or changes in the building and grounds shall conform to or enhance the original construction and be consistent therewith.
- c.** All appurtenances placed on the roof of any structure such as air conditioning units shall be housed in a penthouse or otherwise screened from view.
- d.** All materials and all vehicles (other than employee and visitor parking), when not in use shall be stored inside except where it is demonstrated that such storage can be adequately shielded from view by planting screen or decorative fencing. In no event shall such storage be permitted within the base setback area.
- e.** All parking lots and driveways shall be hard surfaced.
- f.** Parking lots shall be shielded from adjoining properties by planting screen or decorative fencing and shall not be permitted within the base setback area.
- g.** All lands not used for buildings, parking lots, driveways, etc., shall be landscaped and kept in good appearance at all times, including required watering of lawns and shrubbery.
- h.** The site and operational plans shall include design features necessary to ensure that traffic generated by the operation, especially that involving heavy trucks, does not have an adverse effect on existing or planned roads and traffic movement considering especially adequacy, safety and efficiency.
- i.** (amended 2019-04) The operation plan submitted for Plan Commission approval shall specify and quantitatively describe any noise, vibration, dust, gas, smoke, toxic matter and odors produced by the operation and plans for containing or abating such nuisance, including fertilizers or chemicals.

- j. The planned hours of operation and nighttime lighting plans shall be included in the plan of operation submitted for Plan Commission approval.

N. P-1 PARK AND RECREATION DISTRICT

1. STATEMENT OF INTENT

The **P-1 Park and Recreation District** is intended to provide for areas where the open space and recreational needs of the citizens of the Town can be met without undue disturbance of natural resources and adjacent uses.

2. USE REGULATIONS

a. Permitted Uses.

The following uses shall be permitted in the **P-1 Park and Recreation District**, subject to the approval of the building, site, landscape and operational plans by the Town Board following recommendations by the Plan Commission and Park and Recreation Committee:

- (1) Botanical gardens and arboretums.
- (2) Public golf course.
- (3) Hiking, nonmotorized biking and nature trails.
- (4) Historic monuments or sites.
- (5) Nature preserves.
- (6) Neighborhood tot lots.
- (7) Outdoor skating rinks.
- (8) Parks and playgrounds.
- (9) Picnicking areas.
- (10) Play fields or athletic fields.
- (11) Swimming beaches.
- (12) Swimming pools.
- (13) Tennis courts.
- (14) Other recreational uses similar in nature.
- (15) Grazing.
- (16) The harvesting of wild crops such as marsh hay, ferns, moss, berries, tree fruits and tree seeds.
- (17) Hunting and fishing unless prohibited by other ordinances or laws.

- (18) Sustained yield forestry and tree farms.
- (19) The following uses may be permitted, subject to approval of the Plan Commission after consideration of the building, site and operational plans:
 - (a) Normal crop farming consistent with the preservation of the District's character.
 - (b) Public, or private group outdoor recreation facilities whether commercial or noncommercial.
 - (c) Substations and other utility installations.
 - (d) Sewage treatment plants.

b. Permitted Accessory Uses

- (1) Buildings accessory to the permitted use.

3. BUILDING LOCATION

- a. **Setback** 100 feet minimum.
- b. **Offset** 50 feet minimum.

4. BASE HEIGHT REGULATIONS

- a. **Any Building** 25 feet.

5. AREA REGULATIONS

- a. **Lot Size**
Minimum area shall be 1 acre.
- b. **Lot Width**
Minimum lot width shall be 150 feet.
- c. **Floor Area**
There shall be no minimum floor area.
- d. **Open Space** (rep & rec 2019-04)
Ninety percent (90%) of each lot shall remain as open space except as follows: (1) the footprint of rustic structures shall not be counted as impervious area in the open space calculation.

O. WF-1 WETLAND-FLOODPLAIN DISTRICT

1. STATEMENT OF INTENT

The WF-1 Wetland-Floodplain District is intended to protect environmentally sensitive wetlands and areas included in designated floodplains.

2. USE REGULATIONS

a. Permitted Uses

- (1) Grazing.
- (2) The harvesting of wild crops such as marsh hay, ferns, moss, berries, tree fruits and tree seeds.
- (3) Hunting and fishing unless prohibited by other ordinances or laws.
- (4) Sustained yield forestry and tree farms.
- (5) The following uses may be permitted, subject to approval of the Plan Commission after consideration of the building, site and operational plans:
 - (a) Normal crop farming consistent with the preservation of the wetland character.
 - (b) Public, or private group outdoor recreation facilities whether commercial or noncommercial.
 - (c) Substations and other utility installations.
 - (d) Sewage treatment plants.

b. Permitted Accessory Uses

- (1) Nonresidential structures used solely in conjunction with the raising of water fowl, minnows and other similar lowland animals, fowl or fish.
- (2) Outdoor recreational structures.
- (3) Any other structure or use normally accessory to the principal uses permitted.

3. BUILDING LOCATION

- a. Setback** 100 feet minimum.
- b. Offset** 100 feet minimum.

4. BASE HEIGHT REGULATIONS

- a. Any Structure** 30 feet maximum.

5. AREA REGULATIONS

There shall be no minimum or maximum Area Regulations.

6. ADDITIONAL REGULATIONS

- a.** The filling or drainage of marsh or wetlands, removal of topsoil or peat, the

creation of ponds, damming or relocating of any watercourse shall not be permitted except with the approval of the Plan Commission.

- b. Such approval may be granted only after determination by the Town Engineer and the Commission that the proposed alteration in the existing conditions will not create an adverse effect in terms of surface drainage, groundwater recharge potential, potential flooding, storage capacity of any floodland, sewage disposal or the value of the surrounding properties.
- c. Where any such approved alteration of the existing conditions in Wetland-Floodplain District results in eliminating the Wetland-Floodplain characteristics, the corrected District boundaries shall be established by processing a zoning map change for such revised boundary and proposed new District classification for the reclaimed lands.

P. C-1 UPLAND ENVIRONMENTAL CORRIDOR OVERLAY DISTRICT (created 05-003)

1. STATEMENT OF INTENT.

The Upland Environmental Corridor Overlay District is intended to be used to preserve, protect, enhance, and restore significant woodlands, upland wildlife habitat areas, scenic overlooks, slopes exceeding 12%, and upland wooded areas, while also affording an opportunity to use the site for limited residential purposes. The Upland Environmental Corridor Overlay District superimposes certain additional restrictions and requirements upon a basic underlying zoning district without disturbing the requirements of the basic district. When there is a conflict in requirements, the more strict requirements shall apply.

2. USE REGULATIONS.

a. Permitted Uses:

- (1.) Any uses permitted in the WF-1 Wetland-Floodplain District.
- (2.) Single family dwellings.
- (3.) Keeping poultry and domestic livestock, if allowed in the underlying zoning district, except that the keeping of hogs, male goats or fur bearing animals shall not be permitted on less than twenty (20) acres.

b. Permitted Accessory Uses:

The following accessory buildings and uses, subject to the conditions specified and if allowed in the underlying zoning district.

- (1.) Private garages, when located on the same lot, and not involving the conduct of a business; provided, however, that no private garage shall be erected unless that principal building to which such garage is an accessory use has been erected or is to be erected simultaneously with said garage.

3. **BUILDING LOCATION.**

- a. **Setback:** In accordance with the underlying zoning district.
- b. **Offset:** In accordance with the underlying zoning district.

4. **BASE HEIGHT REGULATIONS.**

- a. **Principal Building:** In accordance with the underlying zoning district.
- b. **Accessory Building:** In accordance with the underlying zoning district.

5. **AREA REGULATIONS.**

- a. **Floor Area:** In accordance with the underlying zoning district
- b. **Lot Size:**
 - (1.) Minimum area: the overall density of parcels lying entirely within the Upland Environmental Corridor shall not be less than one dwelling unit per five (5) acres of corridor area, with no lot area being less than 30,000 square feet size. On parcels which contain area outside of the environmental corridor or partially within the environmental corridor and in a zoning category requiring less than a five (5) acre lot, the five (5) acre density requirement shall not apply and the lot can be the size required for that zoning category as long as any earth altering activity and/or building envelopes are located outside of the corridor area and appropriately restricted as such on the face of the Certified Survey Map, Subdivision Plat or other appropriate matter and recorded in the office of the Register of Deeds. The overall goal of this requirement is to obtain a maximum density of building activity within the environmental corridor of not more than one (1) dwelling unit for each five (5) acres of environmental corridor lands.
- c. **Preservation of Open Space:**
 - (1.) For parcels lying entirely within an Upland Environmental Corridor Zoning District, all earth altering activities and vegetative removal shall comply with the following performance standards:
 - A. **Building Sites:** Land disturbance shall be limited to an area extending no more than twenty-five (25) feet from three sides of the Development Envelope, and 35 feet from the fourth side of the Development Envelope, as defined by this Code.
 - B. **Drives and accesses:** Land disturbance shall not exceed twenty feet in width extending from the edge of roadway to the area of Development Envelope disturbance.
 - C. **Sanitation:** Private on-site sanitary systems in approved locations and required to serve permitted uses of the property shall be permitted in addition to the Development Envelope performance standards described herein

- (2.) For parcels which lie partially within and partially outside of the environmental corridor, the area of disturbance shall be limited to the area outside of the upland environmental corridor unless otherwise permitted by a Development Envelope on the certified survey map, subdivision plat or other document so designated by the Town Plan Commission. In instances where drives and accesses are required to extend through the upland environmental corridor in order to reach an approved Development Envelope outside of the upland environmental corridor, all such drives and accesses shall not exceed twenty feet in width within the corridor.

17.04 5. Q PLO PEWAUKEE LAKE NON-SHORELINE REDEVELOPMENT OVERLAY DISTRICT (created 05-003)

1. STATEMENT OF INTENT.

The Pewaukee Lake Redevelopment Overlay District is intended to be used to promote the redevelopment of off-lake lands, which are proximate to Pewaukee Lake, through the consolidation of parcels and reconfiguration of buildable lands, where the application of modern site development standards to off-lake properties is hindered by their original and obsolete platting. Obsolete platting characteristics include faulty lot layouts in relation to size, adequacy, accessibility and usefulness. When there is a conflict in requirements, the more strict requirements shall apply.

2. USE REGULATIONS.

- a. **Permitted Uses:** In accordance with the underlying zoning district.
- b. **Permitted Accessory Uses:** In accordance with the underlying zoning district.

3. BUILDING LOCATION.

- a. **Setback:** In accordance with the underlying zoning district.
- b. **Offset:** In accordance with the underlying zoning district.

4. BASE HEIGHT REGULATIONS.

- a. **Principal Building:** In accordance with the underlying zoning district.
- b. **Accessory Building:** In accordance with the underlying zoning district.

5. AREA REGULATIONS.

- a. **Floor Area:** In accordance with the underlying zoning district
- b. **Lot Size:** In accordance with the underlying zoning district.
- c. **Preservation of Open Space:** In accordance with the underlying zoning district.

BASIC REGULATIONS

17.05 Conditional Uses (Gold Section)

1. Approval Required
2. Basis of Approval
3. Procedure
4. Determination
5. Conditional Uses Permitted
 - A. Animal Hospitals and Kennels
 - B. Bed and Breakfast Establishments
 - C. Churches, Synagogues and Other Buildings for Religious Assembly
 - D. Commercial Planned Unit Development
 - E. Conversion
 - F. Elderly Housing Units
 - G. Group Day Care Center
 - H. Hobby Kennels
 - I. Intermediate Day Care Home
 - J. Keeping of Poultry or Livestock
 - K. Legal Nonconforming Uses
 - L. Master Sign Program
 - M. Private Clubs and Outdoor Recreational Facilities Such as Recreational Camps, Golf Courses, Bathing Beaches and Resorts
 - N. Quarrying
 - O. Riding Academies or Commercial Stables
 - P. Self-storage Facilities
 - Q. Solar Energy Systems

SECTION 17.05

CONDITIONAL USES

(repealed and recreated 2019-04)

1. APPROVAL REQUIRED.

Certain uses and situations are of such a special nature, or are so dependent upon actual contemporary circumstances as to make impractical the predetermination of permissibility or the detailing in the chapter of the specific standards, regulations or conditions which would permit such use. Therefore, these uses, upon determination in each individual situation, may be permitted as conditional uses in such district, subject to such requirements as are hereinafter specified for each situation.

2. BASIS OF APPROVAL.

The determination of such conditional use by the Town Board shall be based on whether or not the proposed use will violate the spirit or intent of the chapter; be contrary to the public health, safety or general welfare; be hazardous, harmful, noxious, offensive or a nuisance by reason of noise, dust, smoke, odor or other similar factor; or for any other reason cause an adverse effect on the property values and general desirability of the neighborhood. Except as may be specifically otherwise provided, any such use shall conform to the building location, height, area, yards, parking, loading, traffic and highway access regulations of the district in which it is located and the approving body may require compliance with such other conditions as may be deemed necessary in the specific situation in addition to any which may be herein stated. The location, building plan, site plan, and plan of operation shall be in sufficient detail to enable the Town to make its determination as to the appropriateness of the proposed grant of conditional use. The Town may take into consideration architectural and landscape treatments. Satisfactory provision shall be made for parking and circulation needs, for drainage and sewage disposal, for adequate planting screen where necessary, for operational control devices where necessary to eliminate noise, dust, odor or smoke; and such other factors as would be pertinent to such determination. Variances shall only be granted as provided in section 17.10 of this Chapter.

3. PROCEDURE.

A. Petition.

A request for grant of conditional use status shall be submitted in writing to the Town Clerk who shall promptly refer such petition to the Plan Commission for recommendation.

B. Data Required.

Such petition shall be accompanied by appropriate data and information necessary for proper evaluation of the request including specifically the following:

1. Names, addresses and phone numbers of the applicant, owner of the site, architect, engineer, and contractor.
2. The site legal description, location, zoning district, building and site plans, and plan of operation.

3. An accurate map of the property drawn to a reasonable scale, including indication of general terrain and topographic characteristics, the location of all significant terrain features such as streams, ponds, tree growth, etc., and the location of all existing structures.
4. An accurate and complete written description of the use for which conditional grant is being requested including pertinent statistics and operational characteristics (plan of operation).
5. An accurate and complete description of the current use of existing building and land.
6. Plans and other drawings showing proposed development of the site and buildings including landscape plans, location of parking and service areas, driveways, exterior lighting, type of building material, etc.
7. The names and complete mailing address, including zip code of the owners of all properties within 300 feet of any part of the land included in the proposed use.
8. Any other pertinent information required by the Code Enforcement Officer, Town Engineer, Plan Commission or Town Board as set forth in forms supplied by the Town including percolation test results and well water data.
9. The person applying for a conditional use permit shall certify on the application that the information contained therein is accurate and complete to the best of that person's knowledge.

C. Public Hearing.

Within a reasonable time after an application and all required information has been filed, a public hearing shall be held by the Town Board jointly with the Plan Commission pursuant to section 17.10 of this chapter. Within 40 days after the public hearing and all investigation, the Plan Commission shall make a recommendation to the Town Board unless the time is extended by the Petitioner.

D. Fee.

Any petition shall be accompanied by a fee as set from time-to-time by the Town Board to defray the cost of notification and holding of public hearing. Costs incurred by the Town in obtaining legal, planning, engineering and other technical and professional advice in connection with the review of the conditional use and preparation of the conditions to be improved shall be charged to the Petitioner.

4. DETERMINATION.

The Town Board shall make a decision on the application within a reasonable time after receipt of the Plan Commission recommendations. Said decision shall be stated in writing and a copy made a permanent part of the Town records. If conditional use status is not granted, the reasons therefor will be included in such record. A grant of conditional use status, subsequent changes or additions thereto and terminations thereof shall be in accordance with the following:

A. Recording.

1. An official record of such conditional grant shall be prepared by the Town Clerk on a form prescribed therefor which shall include the description of the use for which the grant is given and all conditions attached thereto as well as a copy of the resolution of the Town Board approving the grant. A copy of the completed form shall be recorded at the Waukesha County Register of Deeds as a covenant on the title for the premises for which the conditional use was granted.
2. The occupancy permit shall be appropriately noted as to the conditional status granted.
3. Indication shall also be made on the zoning map by appropriate code number or symbol.

B. Changes or Additions.

Subsequent change or addition to the approved plans or use shall first be submitted for approval to the Plan Commission and, if in the opinion of the Plan Commission, such change or addition constitutes a substantial alteration, a public hearing before the Plan Commission shall be required, and notice thereof be given pursuant to this Chapter.

C. Conditions.

Conditions such as landscaping, architectural design, type of construction, floodproofing, anchoring of structures, construction commencement and completion dates, sureties, lighting, fencing, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or parking requirements may be required by the Plan Commission upon its finding that these are necessary to fulfill the purpose and intent of this Chapter.

D. Termination.

Where a conditional use does not continue in conformity with the conditions of the original approval, or where it appears that the information shown on the Petitioner's application was not accurate or complete, or where a change in the character of the surrounding area or of the use itself causes it to be no longer compatible with surrounding areas or for any cause based upon consideration for the public welfare, the conditional grant may be terminated by action of the Town Board following referral to the Plan Commission for public hearing and recommendation thereon.

E. Standard Conditional Use Conditions.

The standard conditions listed below are automatically incorporated into the terms of a Conditional Use Permit issued under this section, unless otherwise stated in the Conditional Use Permit.

1. Any use not specifically listed as permitted shall be considered to be prohibited except as may be otherwise specifically provided herein. In case of a question as to the classification of use, the question shall be submitted to the Town Plan Commission for determination.
2. No use is hereby authorized unless the use is conducted in a lawful, orderly and peaceful manner. Nothing in this order shall be deemed to authorize any public or private nuisance or to constitute a waiver, exemption or exception to any law, ordinance, order or rule of either the municipal governing

body, the County of Waukesha, the State of Wisconsin, the United States of America or other duly constituted authority, except only to the extent that it authorizes the use of the subject property above described in any specific respects described herein. This order shall not be deemed to constitute a building permit, nor shall this order constitute any other license or permit required by Town ordinance or other law.

3. This conditional use hereby authorized shall be confined to the subject property described, without extension or expansion other than as noted herein, and shall not vary from the purposes herein mentioned unless expressly authorized in writing by the Town Plan Commission as being in compliance with all pertinent ordinances.
4. All buildings and grounds shall be maintained in a neat, attractive and orderly way.
5. The property shall comply with all rules and regulations of the Town of Delafield and the local Fire Department, including submission to routine inspections by Town and Fire Department staff.
6. The site shall meet all Waukesha County storm water requirements and gain Waukesha County stormwater management plan approval prior to the execution of the Conditional Use Permit, if said site meets the applicability criteria found in Section 14.333 of the Waukesha County Stormwater ordinance
7. Should the permitted conditional use be abandoned in any manner, or discontinued in use for twelve (12) months, or continued other than in strict conformity with the conditions of the original approval, or should the petitioner be delinquent in payment of any monies due and owing to Town, or should a change in the character of the surrounding area or the use itself cause it to be no longer compatible with the surrounding area or for similar cause based upon consideration of public health, safety or welfare, the conditional use may be terminated by action of the Town Plan Commission, pursuant to the enforcement provisions of this Conditional Use Order, and all applicable ordinances.
8. Any change, addition, modification, alteration and/or amendment of any aspect of this conditional use, including but not limited to an addition, modification, alteration, and/or amendment to the use, premises (including but not limited to any change to the boundary limits of the subject property), structures, lands or owners, other than as specifically authorized herein, shall require a new permit and all procedures in place at the time must be followed.
9. Unless this conditional use permit expressly states otherwise, plans that are specifically required by this conditional use order may be amended upon the prior approval of the Town Plan Commission if the Town Plan Commission finds the plan amendment to be minor and consistent with the conditional use permit. Any change in any plan that the Town Plan Commission feels, in its sole discretion, to be substantial shall require a new permit, and all procedures in place at the time must be followed.
10. Petitioner and Owner Agreement. As a condition precedent to the issuance of the conditional use permit, the owner of the Subject Property shall approve the issuance of this conditional use permit upon the terms and conditions described herein in writing, and the Petitioner is required to accept the terms and conditions of the same in its entirety in writing.
11. Professional fees. Petitioner shall, on demand, reimburse the Town for all costs and expenses of any type that the Town incurs in connection with this application, including the cost of professional services incurred by the Town (including engineering, legal, planning and other consulting fees) for the review and preparation of the necessary documents or attendance at meetings or other related professional services for this application, as well as for any actions the Town is required to take to enforce the conditions in this conditional approval due to a violation of these conditions.

12. Payment of charges. Any unpaid bills owed to the Town by the Subject Property Owner or his or her tenants, operators or occupants, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees owed to the Town; shall be placed upon the tax roll for the Subject Property if not paid within thirty (30) days of billing by the Town, pursuant to section 66.0627, Wisconsin Statutes. Such unpaid bills also constitute a breach of the requirements of this conditional approval that is subject to all remedies available to the Town, including possible cause for termination of this approval.
13. Current Address. The Petitioner is obligated to file with the Town Clerk a current mailing address and current phone number at which the Petitioner can be reached, which must be continually updated by the Petitioner if such contact information should change, for the duration of this conditional use. If the Petitioner fails to maintain such current contact information, the Petitioner thereby automatically waives notice of any proceedings that may be commenced under this conditional approval, including proceedings to terminate this conditional use.
14. Conditions Shown in Minutes Incorporated. All conditions of approval imposed by duly adopted motion of the Town Board in its consideration of the Petitioner's application, as noted in the Minutes of the Town Board meeting at which approval was granted, are specifically incorporated herein by reference.
15. Should any paragraph or phrase of this conditional use permit be determined by a Court to be unlawful, illegal or unconstitutional, said determination as to the particular phrase or paragraph shall not void the rest of the conditional use and the remainder shall continue in full force and effect.
16. If any aspect of this conditional use permit or any aspect of any plan contemplated and approved under this conditional use is in conflict with any other aspect of the conditional use or any aspect of any plan of the conditional use, the more restrictive provision shall be controlling as determined by the Town Plan Commission.

F. Performance Standards.

1. It is the intent of this Section to describe performance standards for the regulation of uses and to establish an objective and equitable basis for control and to insure that the community is adequately protected from potential hazardous and nuisance-like effects. These performance standards are designed to limit, restrict, and prohibit the effects of those uses outside their premises or zoning district. In addition, these performance standards are intended to comply with other applicable local, state and federal codes and standards. All structures, lands, air and water shall hereafter comply with the following performance standards.
2. **Control of Odors**

No operation or activity shall emit any substance or combination of substances in such quantities that create an objectionable odor. The Plan Commission reserves the right to request an odor control plan from the applicant to identify potential odors and implement recommendations from the plan.
3. **Control of Fire and Explosive Hazards**
 - a. All uses involving the manufacturing, utilization, processing, or storage of flammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion and with adequate firefighting and fire suppression equipment and devices as may be required by the Fire Prevention Code.
 - b. All materials that range from active to intense burning shall be manufactured, utilized, processed, and stored only in completely enclosed buildings which have noncombustible exterior walls and

an automatic fire extinguishing system.

- c. The storage of fuels and other materials that produce flammable or explosive vapors shall be permitted only after review and approval by the Town of Delafield Fire Department and in accord with their requirements to minimize fire and explosive hazards.

4. Glare, Heat and External Lighting

- a. No operation or activity shall produce any intense lighting, glare or heat with the source directly visible beyond the boundary of the property line. Operations producing light, glare, or heat shall be conducted within an enclosed building.
- b. External lighting shall be shielded so that light rays do not adversely affect adjacent uses.

5. Water Quality Standards

- a. No activity shall locate, store, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that might runoff, seep, percolate, or wash into surface or subsurface waters so as to contaminate, pollute or harm such waters or cause nuisances such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste or unsightliness, or be harmful to human, animal, plant, or aquatic life.
- b. No activity shall withdraw water or discharge any liquid or solid materials so as to exceed or contribute toward exceeding the minimum standards and those other standards and the application of those standards set forth in Wis. Adm. Code NR 102 or in other applicable Chapters which regulate water quality.

6. Noise

No operation or activity shall transmit any noise beyond the boundaries of the property so that it becomes a nuisance.

7. Vibration

- a. No operation or activity shall transmit any physical vibration that is above the vibration perception threshold of an individual at or beyond the property line of the source. Vibration perception threshold means the minimum ground- or structure-borne vibrational motion necessary to cause a reasonable person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects.
- b. Vibrations not directly under the control of the property user and vibrations from temporary construction or maintenance activities shall be exempt from the above standard.

8. Traffic Impact

- a. The Plan Commission reserves the right to require a traffic impact study in order to identify impacts to adjacent properties and roadways and to identify improvements or actions required to minimize or eliminate impacts. No use shall be approved unless the applicant implements the conclusions and recommendations of the study unless otherwise approved by the Plan Commission. The traffic study shall be prepared by a registered professional engineer in accordance with the following standards:

- Manual on Transportation Studies (Institute of Transportation Engineers (ITE))

- Traffic Impact Analysis Guidelines (Wisconsin Department of Transportation)
- Manual on Uniform Traffic Control Devices (Federal Highway Administration)
- Trip Generation Manual (Institute of Transportation Engineers)
- Other local, county or state standards

5. CONDITIONAL USES PERMITTED.

Subject to the foregoing, in addition to such uses enumerated in the district regulations, the following may be permitted as conditional uses in the districts specified, provided further that a public hearing pursuant to this Chapter shall be held before approval for any such conditional use is granted.

A. Animal Hospitals and Kennels. This provision does not apply to hobby kennels as defined by section 17.02. Hobby kennels are separately provided for in this chapter.

1. **Where Permitted.** Subject to the provisions of subsection 2. animal hospitals and kennels, are conditional uses which may be permitted in the following districts:

<u>Animal Hospitals</u>	<u>Kennels</u>
A-1 Agricultural District	A-1 Agricultural District
B-2 Shopping Center District	A-2 Rural Home District
M-1 Industrial District	M-1 Industrial District
B-3 Business Park District	

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to animal hospitals or kennels unless all of the following standards are met:

- a. Except for animal hospitals, no such use shall be permitted on a lot less than 5 acres in area.
- b. No building other than one used only for residential purposes shall be closer than 75' to the lot line of an adjoining lot in a district permitting residential use.
- c. Any building having indoor kennels shall be adequately soundproofed.
- d. The facility shall be maintained in a sanitary condition. Plan shall be submitted and approved for waste removal and method of addressing odors.
- e. Dogs allowed to be in outside kennels or fenced in play areas shall be at least 150 feet from any property line.
- f. Dogs taken outside the kennel area or fenced in play area (e.g. for a walk) shall be on a leash and shall remain on the property.
- g. Drop off and pick-up times shall be between 6 am and 10 pm.
- h. Traffic circulation shall be designed to minimize light and sound to adjacent landowners.

B. Bed and Breakfast Establishments.

1. **Where Permitted.** Subject to the provisions of subsection 2., bed and breakfast establishments are conditional uses which may be permitted in the following districts:

R-1 Residential District
R-2 Residential District
R-L Residential Lake District
A-1 Agricultural District
A-2 Rural Home District

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to bed and breakfast establishments unless all of the following standards are met:

- a. Use of the facility as a bed and breakfast establishment automatically terminates a transfer or sale of property.
- b. All bed and breakfast establishments shall be subject to and comply with Wisconsin Administrative Code HSS 197 which is hereby incorporated by reference. Any future amendments, revisions or modifications of the current or future codes incorporated herein are intended to be a part of this Code in order to secure uniform statewide regulation of bed and breakfast establishments.
- c. Each bed and breakfast establishment shall be required to keep a register and require all guests to sign such register using their actual names and address before being assigned quarters. The register shall be available for inspection by the Police Department and Code Enforcement Officer for a period of not less than one year.
- d. No guest may be permitted to occupy space in a bed and breakfast establishment for a longer period than fourteen (14) consecutive days.
- e. A minimum of one off-street parking stall is provided for every guest bedroom with a minimum of two additional for the owner/proprietor. All parking areas meet the size requirements of the Town Code and must be hard-surfaced and maintained in a reasonably dustless condition. The parking areas abutting residential properties is screened from view using a minimum 6' high solid fence or comparable screening. No off- street parking shall be allowed within the front yard setback area and shall be a minimum of 3' from any side yard property line.
- f. Sign proposed meets Town sign code requirements.
- g. Every bed and breakfast establishment shall be properly addressed with numbers on the front of the structure, a minimum of 5" high and of contrasting color so as to be visible from the street.
- h. The applicant shall provide evidence that the proposed use will not impact the surrounding neighborhood and proximity to any existing bed and breakfast establishment.
- i. Applicant has received an occupancy permit and is in compliance with all state and local regulations and ordinances.

- j. Use of the bed and breakfast facility for any special gathering (i.e. wedding receptions, parties, etc.) is prohibited.
- k. The owner of a bed and breakfast shall live on the premises.
- l. All refuse containers shall be screened from view.

C. Churches, Synagogues and Other Buildings for Religious Assembly.

1. **Where Permitted.** Subject to the provisions of subsection 2., churches, synagogues, or other buildings for religious assembly are conditional uses which may be permitted in the following districts:

R-1 Residential District
 R-1 A Residential District
 R-2 Residential District
 R-3 Residential District
 R-L Residential Lake District
 A-1 Agricultural District
 A-2 Rural Home District
 A-3 Suburban Home District
 B-1 Restricted Business District
 B-2 Shopping Center District
 B-3 Business Park District
 M-1 Industrial District

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to churches, synagogues or other buildings for religious assembly unless all of the following standards are met:

- a. The structure conforms to double the offset requirements of the district in which it is located; however, no building shall be closer than 75' to the lot line of an adjoining lot in a district permitting residential use.
- b. The height limitation of the district in which the use is located does not exceed 50' provided the minimum required setback and offsets shall be increased 2' for every additional foot of height in excess of the permitted maximum in that district. The aforesaid height regulation shall not apply to the spire or belfry of a church except where airport safety zone regulations specifically limit the maximum height.
- c. The open space for the facility shall be a minimum of 50%.
- d. Site meets Town parking requirements.
- e. Access locations meet site distance requirements.
- f. A traffic study shall be prepared by a registered professional engineer to identify impacts to adjacent properties and roadways and to identify improvements or actions required to minimize or eliminate impacts. No use shall be approved unless the applicant implements

the conclusions and recommendations of the study unless otherwise waived by the Plan Commission. The traffic study shall be prepared in accordance with the following standards:

- Manual on Transportation Studies (Institute of Transportation Engineers (ITE))
- Traffic Impact Analysis Guidelines (Wisconsin Department of Transportation)
- Manual on Uniform Traffic Control Devices (Federal Highway Administration)
- Trip Generation Manual (Institute of Transportation Engineers)
- Other local, county or state standards

g. The lot is at least 3 acres in area, except that this area requirement shall not apply in the following districts:

B-1 Restricted Business District
B-2 Shopping Center District
B-3 Business Park District
M-1 Industrial District

h. No lighting installations shall be permitted which create a hazard to traffic or nuisance to surrounding property. The use of flashing or revolving spot lights and the like, other than traffic control lights, are specifically prohibited.

D. Commercial Planned Unit Development

1. **Where Permitted.** Subject to the provisions of subsection 2. commercial planned unit developments are conditional uses which may be permitted in the following districts:

B-2 Shopping Center District
B-3 Business Park District
M-1 Industrial District

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to a commercial planned unit development unless all of the following conditions are met:

- a. No structures or sewage disposal systems shall be allowed in the Wetland-Floodplain District or within 75' of the district.
- b. A minimum amount of permanent common open space shall be set aside in each development as shown in Table 17-1.
- c. The unified and planned development of a site, in single or corporate ownership at the time of development, may be permitted in a planned development without the customary division into individual lots and without requiring strict compliance with the specific district regulations, subject to the requirements of this section. In order to accomplish this intended unified planned development, the Town shall consider all structures and uses on the entirety of each Lot that is included, or included in part, within the jurisdiction of the Town of Delafield Zoning ordinance, in the development. By petitioning for a Commercial Planned Unit Development conditional use, the

petitioner accepts that the Town will exercise this authority, even on portions of Lots that may be partially outside of the Town of Delafield's zoning jurisdiction.

- d. Approval of a development shall be in accordance with the following conditions:
 - (1) All sanitary provisions must conform to the requirements of the State Department of Commerce, the Waukesha County Health Department, the local sanitary district and the Town;
 - (2) The proposed development must be in conformity with the Town comprehensive plan, must not be contrary to the general welfare or economic balance of the community and the benefits and amenities of the resultant development must justify the variation from the normal requirements of the district in which it is located as determined by the Town Board
 - (3) The provisions of sections 18.06 and 18.07 of this General Code shall govern the design and construction of all roads and public improvements. Any modification of these standards must be consistent with good engineering practices and be approved in writing by the Town Board;
 - (4) The provisions of section 18.07 shall govern with respect to dedication of public sites or payment in lieu of dedication; and
 - (5) The application of these regulations shall be limited to parcels of not less than 10 acres in area.
- e. Table 17-1 shall be utilized to determine the minimum amount of open space per development, minimum permanent common open space, minimum lot size and minimum open space per lot to be utilized for the development of a commercial planned unit development and associated platting of lots in the planned unit development:

TABLE 17-1

District	Title	Minimum Open Space for Development Area	Minimum Permanent Common Open Space	Minimum Individual Lot Size	Minimum Open Space Per Lot
B-2	Shopping Center District	50%	25%	2 acres	25%
B-3	Business Park District	75%	40%	2 acres	25%
M-1	Industrial District	60%	35%	2 acres	25%

- f. Lot width, setback, offsets and height shall follow the regulations found for each zoning district in 17.04.
- g. Adequate guarantee shall be provided for permanent retention of open space resulting from these regulations, either by private reservation for use of the building or property

owners within the development or by public dedication. Any lot containing permanent common open space shall be owned in common by the owners of the properties that make up the development or by a business owners association and shall not be further divided nor shall they be used for residential, commercial or development purposes. Buildings or structures for noncommercial, recreational or accessory facilities may be permitted in such open space area subject to specific grant in the conditional use permit. Perpetual care and maintenance of such open space areas shall be provided for and an operational plan shall be submitted for specific approval and inclusion in the terms of the permit. Ownership and tax liability of the open space areas shall be established in a manner acceptable to the Town and shall be made a part of the conditions of approval.

- h. A traffic study shall be prepared by a registered professional engineer to identify impacts to adjacent properties and roadways and to identify improvements or actions required to minimize or eliminate impacts. No use shall be approved unless the applicant implements the conclusions and recommendations of the study, unless otherwise waived by the Plan Commission. The traffic study shall be prepared in accordance with the following standards:
- Manual on Transportation Studies (Institute of Transportation Engineers (ITE))
 - Traffic Impact Analysis Guidelines (Wisconsin Department of Transportation)
 - Manual on Uniform Traffic Control Devices (Federal Highway Administration)
 - Trip Generation Manual (Institute of Transportation Engineers)
 - Other local, county or state standards
- i. Public sanitary sewer shall be available to service the development. If approved by the Town Board and, if applicable, the Waukesha County Environmental Health Department and local sanitary district, a private sewerage disposal system may be accepted as an alternative to the public facility required.
- j. The developer shall submit a development plan and enter into an appropriate contract with the Town to guarantee the implementation of the development according to the terms and conditions established as part of the development plan approval.
- k. The Plan Commission in making its recommendation and the Town Board in making its determination as to the approval or denial of the conditional use permit for the commercial planned unit development shall give consideration to the purposes in this section and be satisfied as to the following:
- (1) That the proposed development is consistent with the spirit and intent of the chapter, is in conformity with the general character of the Town and would not be contrary to the general welfare and economic prosperity of the Town or of the immediate neighborhood, but rather that the benefits from the anticipated improved design of the resultant development justifies the variation from the normal requirements of this chapter through the application of this planned development section.
 - (2) That the size, quality and architectural design of all buildings in the project will not have an adverse effect upon the general character of the Town and surrounding neighborhood.

- (3) That the provisions and facilities of the open space areas being provided is of such quality, size and aesthetic value to justify the approval of the project.
 - (4) That the setbacks shall be maintained along any boundary street of the project area as required by the existing underlying basic district.
 - (5) That no building shall be permitted closer to a side or rear boundary street of the project area as required by the existing underlying basic district.
 - (6) That there shall be no further division of any lot within the development without consideration and approval of a new conditional use permit.
 - (7) That deed restrictions or an appropriate contract with the Town assuring implementation of the development according to the above requirements is filed with the Waukesha County Register of Deeds.
- l. The approval of a petition for conditional use shall be based on and include as conditions thereto the building, site and operational plans for the development as approved, as well as all other commitments offered as required in regard to project value, character or other factors pertinent to an assurance that the proposed development will be carried out as presented for the project. After all conditions of a planned unit development project are certified by the Town Board as being completed, the uses established pursuant to the approved development plan and conditional use order shall be deemed to be permitted uses in the district in which it is located; however, the conditional use order shall remain in effect for purposes of ongoing compliance with the development plan.
- m. Any subsequent change or addition to an approved development plan shall first be submitted for approval to the Plan Commission and, if in the Commission's opinion such change or addition is not substantial, it may recommend approval to the Town Board without public hearing. If the Plan Commission deems that any proposed change is not acceptable, it shall recommend accordingly to the Town Board. Without limitation to the Plan Commission's right to determine any other change substantial, a change in any of the following respects shall be automatically construed as substantial:
- (1) An increase in the number of buildings from that shown in the approved comprehensive project plan.
 - (2) A significant change in the size, value or type of structure from that indicated in the approved comprehensive project plan.
 - (3) The addition of any principal uses not included in the approved comprehensive project plan.
 - (4) A change in the basic concept of site development which would significantly alter the relationship of uses or open space to adjoining properties.
 - (5) Change of ownership.

E. Conversion.

1. **Where Permitted.** Subject to the provisions of subsection 2., conversion of the use of barns and farm buildings for the storage of machinery, equipment, vehicles, boats, furniture and similar items are conditional uses which may be permitted in the following districts

A-1 Agricultural District
A-2 Rural Home District
A-E Exclusive Agricultural
M-1 Industrial District

2. **Standards Under Which Permitted.**

Conditional use status will not be granted to any conversion of the use of barns or farm buildings for the storage of machinery, equipment, vehicles, boats, furniture and similar items unless all of the following standards are met:

- a. Use shall be on lots of 10 acres or more.
- b. Buildings shall consist of the buildings as now exist on the premises. No additional buildings or additions may be made without the express approval of the Town in accordance with the terms of the applicable ordinances.
- c. A signed and sealed plat of survey shall be submitted detailing the size and offsets of all existing buildings.
- d. Access shall be from a public street.
- e. There shall be no storage outside.
- f. Water supply facilities and septic system, if any, shall be in accordance with the rules of the Waukesha County Division of Health and Department of Industry, Labor and Human Relations.
- g. Noise after the conversion shall be no greater than the noise level prior to the conversion.
- h. No commercial signs permitted.
- i. Site shall be landscaped prior to issuance of an occupancy permit.
- j. Hours and days of operation shall be no more than 7:00 AM to 7:00 PM, Monday through Sunday.
- k. No more than 20 drop-offs or withdrawals of allowed storage items per week.

F. Elderly Housing Units.

1. **Where Permitted.** Subject to the provisions of subsection 2., elderly housing units are conditional uses which may be permitted in the following districts:

R-1 Residential District
R-1(A) Residential District
R-2 Residential District
R-3 Residential District
R-L Residential Lake District
A-1 Agricultural District
A-2 Rural Home District
A-3 Suburban Home District

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to elderly housing units unless all of the following conditions are met:

- a. The minimum lot area shall be 20,000 sq. ft.
- b. The minimum unused lot area per dwelling unit shall be 1500 sq. ft. This shall not include parking spaces or buildings.
- c. Side yard and rear yard setbacks shall be a minimum of 10' on each side and the road setback requirement shall be maintained.
- d. There shall be a minimum living area of 400 sq. ft. for an efficiency apartment, 550 sq. ft. for a one bedroom apartment and 750 sq. ft. for a two bedroom apartment. No dwelling unit shall have more than two bedrooms.
- e. There shall be one covered parking space per dwelling unit.
- f. Multi-story housing for the elderly shall be provided with elevators.
- g. Restrictions shall be placed on the development consistent with State and Federal regulations governing elderly housing.
- h. In the case of phased development of an elderly project as defined, the developer shall present evidence to the Plan Commission that at least 50% of all previous phases are occupied.

G. Group Day Care Center.

1. **Where Permitted.** Subject to the provisions of subsection 2., group day care centers are conditional uses which may be permitted in the following districts:

R-1 Residential District
R-1A Residential District
R-2 Residential District
R-3 Residential District
R-L Residential Lake District
B-1 Restricted Business District
B-2 Shopping Center District
B-3 Business Park District

A-1 Agricultural District
A-2 Rural Home District
A-3 Suburban Home District
M-1 Industrial District

2. **Standards Under Which Permitted.**

- a. Conditional use status shall not be granted to a group day care center unless the property owner's written permission is obtained and submitted as part of the conditional use permit application.
- b. The facility may not open until proof of licensure from the State of Wisconsin is provided to the Town Clerk.
- c. Access to the site meets WisDOT site distance standards.
- d. Drop-off and pick-up areas can accommodate projected traffic.
- e. Parking stalls are provided for employees in accordance with Section 17.09 I. of the Town Code.

H. Hobby Kennels.

1. **Where Permitted.** Subject to the provisions of subsection 2., a hobby kennel, as defined in section 17.02, is a conditional use which may be permitted in the following districts:

R-1 Residential District
R-1A Residential District
R-2 Residential District
R-3 Residential District
R-L Residential Lake District
A-1 Agricultural District
A-2 Rural Home District
A-3 Suburban Home District
A-E Exclusive Agricultural District

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to a hobby kennel unless all of the following standards are met:

- a. The applicant must provide an annual report that they meet the standards herein, summary of complaints, if any and any changed conditions in the neighborhood.
- b. The lot must be at least 1 1/2 acres in area.
- c. Applicant shall provide a signed and sealed plat of survey showing the location of all features on the lot, adjacent structures, outdoor kennel location, fences and areas where household pets will be let out.

- d. Plan shall be submitted to address household pets that get out of the kennel.
- e. Plan shall be submitted detailing safety measures to be taken to assure that household pets do not run loose in the area.
- f. The kennel must be a minimum of 50' from the closest lot line.
- g. No more than 3 household pets shall be permitted on a 1 1/2 acre site, plus 2 household pets per additional acre up to 10 household pets maximum.

I. Intermediate Day Care Home.

1. **Where Permitted.** Subject to the provisions of subsection 2., intermediate day care homes are conditional uses which may be permitted in the following districts:

R-1 Residential District
 R-1(A) Residential District
 R-2 Residential District
 R-3 Residential District
 R-L Residential Lake District
 A-1 Agricultural District
 A-2 Rural Home District
 A-3 Suburban Home District

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to an intermediate day care home unless all of the following conditions are met:

- a. The lot is at least 7200 square feet in area.
- b. A minimum of 140 square feet of living space per child is provided.
- c. A minimum of 100 square feet of fully enclosed outside play area shall be provided per child at maximum permitted occupancy.
- d. Conditional use status shall not be granted to a group day care center unless the property owner's written permission is obtained and submitted as part of the conditional use permit application.
- e. The facility may not open until proof of licensure from the State of Wisconsin is provided to the Town Clerk.
- f. Access to the site meets WisDOT site distance standards.
- g. Drop-off and pick-up areas can accommodate projected traffic.
- h. Parking stalls are provided for employees in accordance with Section 17.09 I. of the Town Code.

J. Keeping of Poultry or Livestock.

1. **Where Permitted.** Subject to the provisions of subsection 2., the keeping of poultry or livestock is a conditional use which may be permitted in the following districts:

A-2 Rural Home District

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to the keeping of poultry or livestock unless all of the following standards are met:

- a. The keeping of poultry, other than chickens, fowl and domestic livestock must be on lots of 3 acres or more.
- b. Maximum practical conditions of neatness and sanitation are maintained and all fowl are kept confined or enclosed.
- c. Not more than one head of livestock or ten fowl shall be kept per acre of land except where such use existed prior to the date of the chapter as principal commercial or agricultural use, such use may be continued subject to the limitations regulating a nonconforming use as regulated by this chapter.

The keeping of hogs, male goats or furbearing animals must be on lots of 20 acres or more.

K. Legal Nonconforming Uses.

Where Permitted. Subject to the provisions of Section 7 of this Chapter, a legal nonconforming use may be granted conditional use status in the district in which it is located subject to submitting a petition under this section.

L. Master Sign Program.

1. **Where Permitted.**

A-1 Agricultural District
A-E Exclusive Agricultural District
A-2 Rural Home District
B-1 Restricted Business District
B-2 Shopping Center District
B-3 Business Park District
M-1 Industrial District
P-1 Park and Recreation District
WF-1 Wetland-Floodplain District

2. **Standards Under Which Permitted.**

- a. All signs shall be uniform in theme, size, color and style.

- b. Use shall be for multi-tenant operations, office parks, industrial parks, multi-tenant office and retail buildings, and commercial developments that include separate commercial activities.
- c. Applicant shall provide mock ups of all signs and include dimensions, area, colors, height, material, method of attachment, lighting and site plan with location shown.
- d. The requirements of Section 17.08 may be modified by the express terms of the Master Sign Program conditional use order.

M. Private Clubs and Outdoor Recreational Facilities Such as Recreational Camps, Golf Courses, Bathing Beaches and Resorts.

- 1. **Where Permitted.** Subject to the provisions of subsection 2., private clubs and outdoor recreational facilities such as recreational camps, golf courses, bathing beaches and resorts are conditional uses which may be permitted in the following districts:

All Districts.

- 2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to private clubs or outdoor recreational facilities such as recreational camps, golf courses, bathing beaches and resorts unless all of the following conditions are met:

- a. The lot is at least 3 acres in area, except that this area requirement shall not apply in the following districts:
 - B-1 Restricted Business District
 - B-2 Shopping Center District
 - B-3 Business Park District
 - M-1 Industrial District
- b. No building, other than one used only for residence purposes, shall be closer than 75' to the lot line of an adjoining lot in a district permitting residential use.
- c. No such permitted use shall include the operation of a commercial facility such as a bar or restaurant except as may be specifically authorized in the grant of permit.
- d. No lighting installations shall be permitted which create a hazard to traffic or nuisance to surrounding property. The use of flashing or revolving spot lights and the like, other than traffic control lights, are specifically prohibited.

N. Quarrying.

- 1. **Where Permitted.** Subject to the provisions of subsection 2., quarrying, as defined in this chapter, is a conditional use which may be permitted in the following districts:

M-1 Industrial District

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to a quarrying operation unless all of the following standards are met:

- a. A quarrying permit for such operation must be obtained from the Town Board. Such permit shall be for an initial period as is deemed appropriate to the specific situation but not to exceed 5 years and may be renewed thereafter for periods not to exceed 3 years provided application therefor shall be made at least 60 days and no more than 120 days before expiration of the original permit. Application after such date shall be treated as an original application.
- b. Application for a quarrying permit shall be made on forms supplied by the Town Clerk.
- c. The application for a quarrying permit shall be accompanied by: a fee as set from time to time by the Town Board to defray the cost of notification and holding of public hearing; a full and adequate description of all phases of the contemplated operation and the specific mention of type of machinery and equipment which will be or might be necessary to carry on the operation; where the operation is to include the washing of sand and gravel, the estimated daily quantity of water required, its source and its disposition shall be made part of the description; a legal description of the proposed site with a map showing its location with indications of existing or proposed private access roads, and of existing or proposed public highways adjacent to the site which will be affected by the operation; a topographic map of the area at a minimum contour interval of 5' extending beyond the site to the nearest public street or highway or to a minimum distance of 300' on all sides; a restoration plan as required by subparagraph d. below; the names and addresses of the owners of all properties within 1/2 mile of the perimeter of the proposed quarrying operation.
- d. In order to insure that the area of quarrying operation shall be restored to a condition of practical usefulness and reasonable physical attractiveness, the owner or operator shall, prior to the issuance of a permit, submit to the Town Board a plan for such restoration in the form of the following:
 - (1) An agreement with the Town whereby the applicant contracts to restore the premises to a condition and within a time satisfactory to the Town;
 - (2) A physical restoration plan showing the proposed contours after restoration, plantings and other special features of restoration and the method by which such restoration is to be accomplished;
 - (3) A certified check or other financial guarantee satisfactory to the Town, in an amount sufficient in the opinion of the Town Board to secure the performance of the restoration agreement;
 - (4) Such agreement and financial guarantee shall be in a form approved by the Town Attorney;

- (5) In the event of the applicant's failure to fulfill this agreement, such bond, check or other financial guarantee shall be deemed forfeited for the purpose of enabling the Town to perform the restoration;
 - (6) Restoration shall proceed as soon as practicable and at the order and direction of the Town Engineer. However, the owner or operator may, at his option, submit a plan for progressive restoration as the quarrying operation is being carried on. The required bond in such case may cover progressive stages of the restoration for periods of not less than 2 years;
 - (7) At any stage during the restoration, the plan may be modified by mutual agreement between the Town Board, after referral to the Plan Commission and the owner or operator;
 - (8) Where there is any backfilling, the clean material used or the method of fill shall not be such as to create a health hazard nor which would be objectionable because of odor, combustibility or unsightliness. No more than 10 loads per day shall be allowed to dump clean fill into the site. In any case, the finished grade of the restored area, except for rock faces, outcroppings, water bodies or areas of proposed building or paving construction shall be of a sufficient depth of earth to support plant growth;
 - (9) Within one year after the cessation of the operation, all temporary structures (excepting fences), equipment, stockpiles, rubble heaps or other debris shall be removed or backfilled into the excavation so as to leave the premises in a neat and orderly condition;
 - (10) In any restoration procedure which takes place in sand or gravel pits or on other sites where the material is of a loose or friable nature, no slope shall be left which is steeper than a ratio of four horizontal to one vertical. In no case shall any slope exceed the normal angle of slippage of the material involved.
- e. The application and all data and information pertaining thereto shall be referred to the Town Board for a joint public hearing with the Plan Commission, after which the Plan Commission shall provide a report and recommendation to the Town Board within a reasonable time after the public hearing.
 - f. Notices shall be sent through the mail or otherwise placed in the hands of all owners of land in the Town and to the Clerks of adjoining municipalities who have land which lies within 1/4 mile of the perimeter of the proposed quarrying operation. These notices shall be mailed or delivered at least 10 days prior to the date of hearing. Substantial compliance with the notice requirements of this section shall be deemed sufficient.
 - g. The Town Board shall, within a reasonable time after receipt of the recommendation, approve or disapprove the application for the proposed quarrying operation and shall be guided by consideration of the public health, safety and welfare and shall give particular consideration to the following factors in making their decision: the effect of the proposed operation on existing roads and traffic movement in terms of adequacy, safety and efficiency; the effect of the proposed operation on drainage and water supply; the possibility of soil erosion as a result of the proposed operation; the degree and effect on dust, noise, smoke and air pollution as a result of the proposed operation; the practical possibility of restoration of the site; the effect of the proposed operation on the natural

beauty, character, tax base, land value and land uses in the area; the most suitable land use for the area with particular consideration for future residential value.

- h. Any conditions necessary to the granting of a permit shall be in writing and copies made a part of the permit and a part of the records of the Town.
- i. The procedures set forth above shall also apply to applications for renewal of a permit. Determination in regard to renewal shall be based particularly on an evaluation of the effect of the continuance of the use with relation to changing conditions in the area. Where renewal is not granted, the reasons for refusal shall be presented to the applicant in writing and made a part of the records of the Town.
- j. No part of the quarrying operation shall be permitted closer than 1,000', nor shall any accessory access road, parking area or office building be permitted closer than 500' to the district zoned Rural Home, Suburban Home or Residential at the time of the grant of the permit, except with the written consent of the owners of a Rural Home, Suburban Home or Residentially zoned properties within 1,000' but in no case shall such operation be permitted closer than 200' to a Residential District; no quarrying operation shall be permitted if 30 or more families reside within a band 1/2 mile wide around the perimeter of the proposed operation.
- k. No part of the quarrying operation other than access roads shall be located closer than 200' nor shall any accessory parking area, stock pile or office building be located closer than 100' to the base setback line along any street or highway.
- l. No part of the quarrying operation shall be permitted closer than 200', nor shall any accessory access road, parking area or office building be permitted closer than 50' to any property line except with the written consent of the owner of the adjoining property or except where the line is abutting an existing quarrying operation, but in no case shall such operation be closer than 20' to any property line except by agreement between abutting quarrying operations or be in conflict with the provisions of this chapter relating to preservation of topography.
- m. Fencing or other suitable barrier shall be erected and maintained around the site or around portions of the site where, in the determination of the Town Board, such fencing or barrier is necessary for the protection of the public, and shall be of a type approved by the Town Board.
- n. All machinery and equipment used in the quarrying operation shall be constructed, maintained and operated in such a manner as to minimize dust, smoke, air pollution, noise and vibration.
- o. Access and haulage roads on the site shall be maintained in a dust free condition by surfacing or treatment as directed by the Town Engineer.
- p. The crushing, washing, refining or other processing other than the initial removal of material, may be permitted as an accessory use only as specifically authorized under the terms of the grant of permit.

- q. In stone quarries the production or manufacturing of veneer stone, sills, lintels, cut flagstone, hearthstones, paving stone and similar architectural or structural stone and the storing or stockpiling of such products on the site shall be considered a permissible part of the operation, provided such production does not require the use of crushing or other heavy machinery except as may be specifically authorized under the terms of the permit.
- r. The manufacture of concrete building blocks or other similar blocks, the production or manufacture of lime products, the production of ready-mixed concrete and any similar production or manufacturing processes which might be related to the quarrying operation may be permitted as an accessory use only as specifically authorized under the terms of the permit.
- s. The washing of sand and gravel shall be prohibited in any operation where the source of water is of doubtful capacity or where the quantity of water required will, in the opinion of the Town Engineer, seriously affect the supply of water for other uses in the area or where the drainage from such washing would result in silting or pollution of the stream or water course.
- t. The planting of trees and shrubs and other appropriate landscaping shall be provided where deemed necessary by the Town Board to screen the operation so far as practical from normal view, to enhance the general appearance from the public right-of-way, and generally to minimize the damaging effect of the operation on the beauty and character of the surrounding country side. Such planting shall be started as soon as practical, but no later than one year after quarrying operations have begun and shall be done according to the decision of the Town Board.
- u. Quarrying operations shall not begin before the hour of 7 a.m. and shall not continue after the hour of 6 p.m. and no operation shall take place on Sundays or legal holidays. During periods of national or unusual emergency, time and hours of operation may be altered at the discretion of the Town Board and through the issuance of a special permit which shall be renewable at 30 day intervals.
- v. When the operation is limited to the removal of topsoil, the Town Board may, consistent with the intent of these regulations, modify any or all of the provisions of this section, provided however, that in no case shall operations be permitted closer than 10' from any property line, or to a depth in excess of 18" or so as to adversely affect the drainage of the area and in such instances the operator shall restore the excavated area with topsoil to a depth of 4" and seed the same with grass.
- w. The provisions of this section shall not apply to an operation which is incident to the legitimate use of the premises, provided, however, where such operation involves the commercial disposal of the material removed, approval of the Town Board shall be required and such operation shall be limited to a maximum period of 6 months.
- y. Application to existing operations:
 - (1) Within 60 days after the adoption of this chapter, all existing quarrying operations shall be required to register with the Town Clerk submitting pertinent data relative to the present operation including the boundaries of the actual operation and of the ownership. A quarrying permit shall be granted to such existing operation subject to compliance with the operation requirements herein where they can be reasonably applied under existing circumstances.

- (2) There shall be required within one year after adoption of this chapter, the submission of a plan for restoration of the site of any existing quarrying operation as provided by subparagraph d. above. The plan for restoration in such case shall not, however, impose requirements which are economically unreasonable or unreasonable from an engineering standpoint with respect to conditions resulting from operations prior to enactment of this chapter.
- (3) Within 3 years after the date of this chapter any such existing operation shall be required to make application for a renewal permit the same as for reapplication in the case of a new operation under this chapter.

O. Riding Academies or Commercial Stables.

1. **Where Permitted.** Subject to the provisions of subsection 2., riding academies and commercial stables are conditional uses which may be permitted in the following districts:

A-1 Agricultural District
A-2 Rural Home District
A-E Exclusive Agricultural District

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to riding academies or commercial stables unless all of the following conditions are met;

- a. The lot is at least 7 ½ acres in area.
- b. Building location:
 - (1) All buildings shall comply with the setback and offset provisions of the underlying zoning district, except as provided below.
 - (2) No new building housing animals shall be closer than 100' to the lot line of an adjoining lot in a district permitting residential use. All other new buildings shall meet the offset and/or setback requirements of the zoning district in which they are located.
 - (3) Existing buildings constituting legal nonconforming structures may remain although their use may be restricted in the grant of permit.
 - (4) No existing building, except one designated as a rustic structure pursuant to Town ordinance, which is located closer than 100' to the lot line of an adjoining lot in a district permitting residential use, may be used to house animals except as may be specifically authorized in the grant of permit after review by the Plan Commission of the following factors:
 - the overall size of the property;
 - the nature of the building's use;
 - the intensity of the building's use, including the type and number of animals to be housed, and the hours and days of operation,

- the pattern and location of other activity on the property;
- the location and use of buildings on neighboring properties;
- the activities conducted on neighboring properties;
- the consent of neighboring property owners to the intended use; and, - provisions for manure storage and disposal.
- the location of the existing building in relationship with the adjacent property line.

Any such building may be reconstructed or enlarged only as specifically authorized in the grant of permit or an amendment thereto.

- c. No such permitted use shall include the operation of a commercial facility such as a bar or restaurant except as may be specifically authorized in the grant of permit.
- d. No lighting installations shall be permitted which create a hazard to traffic or nuisance to surrounding property. The use of flashing or revolving spot lights, are specifically prohibited.
- e. Applicant shall submit a manure management plan to Waukesha County Environmental Health Division and the Town for approval, which includes the following information and any other information required by Waukesha County:
 - (1) number and kind of animals
 - (2) scaled site plan
 - (3) detailed soil investigation with reference to ground water and bedrock presence
 - (4) details of any structures to be built for animal waste management
 - (5) construction timeline
 - (6) details of manure transfer system
 - (7) plans for utilization of the manure, including information on land availability, soil types, and methods and rates of application
- f. A lighting location and iso-footcandle plan shall be submitted showing cut-off type fixtures, pole types, height. Light at all property lines shall be 0 foot-candles.

P. Self-storage Facilities.

- 1. **Where Permitted.** Subject to the provisions of subsection 2., self-storage facilities as defined in Section 17.02, are conditional uses which may be permitted in the following district:

M-1 Industrial District

- 2. **Standards Under Which Permitted.**

Conditional use status will not be granted to a self-storage facility unless all of the following standards are met:

- a. Lot must be a conforming lot and shall be 3 acres or more.
- b. Building location, base height and area regulations shall be as provided for in the underlying M-1 zoning district regulations.
- c. Buildings shall consist of quality materials such as brick, wood, stone, decorative concrete block and glass. The Plan Commission may allow the use of metal building

components and exterior finish insulation systems (EFIS) if it is incidental to the primary building architecture or screened from public view. Metal siding shall not be permitted. Flat roofed buildings shall not be permitted. Pitched roof shall be 4:12 or steeper. Access doors to individual storage units shall not be located on the exterior of any structure, except as follows: 1. In the case of a structure that contains interior storage spaces, up to two vehicle access doors may be allowed on the exterior face of the structure; 2. In the case of multiple buildings that have exterior access to individual storage units, only those locations that face another interior storage exterior building face with individual doors shall be allowed. The exterior walls of the outermost buildings and ends of the individual buildings shall not include any doors or individual storage units. Color scheme for the buildings shall be shown on the plans and samples submitted to the Plan Commission for approval. Colors that are out of character with the surrounding developments and residential areas shall be prohibited.

- d. A signed and sealed plat of survey shall be submitted detailing the size and offsets of all existing buildings.
- e. Access shall be from a public street.
- f. There shall be no outside storage.
- g. Water supply facilities and septic system, if any, shall be in accordance with the rules of the Waukesha County Division of Environmental Health and the Wisconsin Department of Commerce.
- h. Hours and days of operation shall be no more than 6:00 AM to 9:00 PM, Monday through Sunday unless other hours are approved by the Plan Commission and Town Board.
- i. The exterior of all structures, fences, planting screens, etc., shall be kept in good condition at all times by painting, trimming or other acceptable maintenance procedures. Subsequent additions or changes in the building and grounds shall conform to or enhance the original construction and be consistent therewith.
- j. All appurtenances placed on the roof of any structure such as air conditioning units shall be housed in a penthouse or otherwise screened from view.
- k. Perimeter security fencing shall be provided for safety and electronic surveillance. Security lighting from dusk to dawn is required. Perimeter fencing shall be ornamental/decorative fencing (no wood paneling or chain link type fencing) and shall not be permitted within the base setback area. Where walls or fencing is used, plant material shall be placed intermittently along the wall or fence to soften the effect of the wall or fence.
- l. Landscaping shall meet the following standards:
 - 1. All lands not used for buildings, parking lots, driveways, etc., shall be landscaped and kept in good appearance at all times, including required watering of lawns and shrubbery.
 - 2. The landscape features shall provide sufficient screening to shield adjacent properties and roadways from adverse effects of the facility and shield the development from the negative impacts on adjacent uses or streets.

3. Applicant shall prepare and submit a landscape plan. The plan shall be prepared and stamped by a licensed landscape architect. The plans shall include existing and proposed features of the site; proposed vegetation to provide screening of the facility; a plant schedule indicating the material names and types, number of plants and size of plants at time of planting; and planting details. After installation of the landscape features, a certification from the landscape architect stating that all plants have been installed according to the approved plans shall be submitted.
 4. Each tree shall have an initial caliper of no less than two inches and a height of at least seven feet. Shrubs and bushes shall be a minimum of 3 feet in height at time of planting.
 5. The owner shall be responsible for the maintenance of all landscaping and maintaining the landscaping in good condition as to represent a healthy, neat and orderly appearance that shall be kept free from refuse and debris. The owner shall promptly replace any landscaping which has died or is damaged beyond repair. The replacement plantings shall be the same size and quality as the approved landscape plan. The site's landscaping shall be maintained perpetually in accordance with the approved landscape plan.
- m. The site and operational plans shall include design features necessary to ensure that traffic generated by the operation, especially that involving heavy trucks, does not have an adverse effect on existing or planned roads and traffic movement considering especially adequacy, safety and efficiency.
 - n. The operation plan submitted for Plan Commission approval shall specify and quantitatively describe any noise, vibration, dust, gas, smoke, toxic matter and odors produced by the operation and plans for containing or abating such nuisance.
 - o. The hours of operation and nighttime (security) lighting plans shall be included in the plan of operation submitted for Plan Commission approval.
 - p. A lighting location and iso-footcandle plan shall be submitted showing cut-off type fixtures, pole types and height. Light at all property lines shall be 0 footcandles.

Q. Solar Energy Systems

1. **Where Permitted.** Subject to the provisions of this subsection, solar energy systems as defined in Wisconsin Statutes Section 13.48(2)(h) 1.g. are a conditional use which may be permitted in any district in the Town of Delafield.
2. **Standards Under Which Permitted.**
 - a. District Regulations. The location, height, area, yard, parking, loading, traffic and highway access and other regulations of the district in which the use is located shall not apply to the solar energy system, unless the Town Board finds that the restriction satisfies one of the following conditions.
 - i. Serves to preserve or protect the public health or safety.
 - ii. It does not significantly increase the cost of the system or significantly decrease its efficiency.
 - iii. It allows for an alternative system of comparable cost and efficiency.

If one or more of the foregoing conditions is found to apply with regard to any such restriction of this Code, then such restriction shall apply to the solar energy system.

- b. The Town Plan Commission may recommend, and the Town Board may require compliance with such other conditions as may be deemed necessary in the specific situation, provided that any such restriction imposed must be found to meet the following conditions:
 - i. Serves to preserve or protect the public health or safety.
 - ii. It does not significantly increase the cost of the system or significantly decrease its efficiency.
 - iii. It allows for an alternative system of comparable cost and efficiency.

SECTION 17.06

ACCESSORY USES, ACCESSORY BUILDINGS AND OTHER STRUCTURES

1. ACCESSORY USES RESTRICTED.

In any District, no land, accessory building or accessory structure shall be used and no accessory building or accessory structure shall be erected, converted, relocated, enlarged, structurally altered, occupied or reoccupied except for the uses as stated for that District and in compliance with the regulations established for that District in this chapter. No accessory building or accessory structure shall be erected until the principal building or principal structure has been constructed or is under construction. No occupancy permit for any accessory building or accessory structure shall be issued until the principal building or principal structure is occupied.

2. ACCESSORY USE REQUIREMENTS.

In any District, accessory uses, accessory buildings and accessory structures customarily incident to the permitted uses in that District and located upon the same lot occupied by the principal use, building or structure, shall conform to the established requirements for the District in which it is located.

3. ACCESSORY BUILDINGS OR STRUCTURES. (rep & rec 2002-09-002A)

- A. Any accessory building or accessory structure over 200 square feet in area in any District may be submitted to the Plan Commission if deemed necessary by the Code Enforcement Officer for approval. The accessory building or accessory structure shall be constructed in such a way that its exterior appearance is compatible with the principal building or structure on the lot and on adjacent lots.
- B. **Boathouses.** Boathouses, as defined by this chapter, are permitted in the R-L Residential Lake District, subject to the regulations of this chapter. Boathouses may be permitted in the W-F Wetland Floodplain District abutting an R-L Residential Lake District and any Business Districts abutting the lake as a conditional use.
- C. **Garages.** A private garage at least 480 square feet in area shall be required for each dwelling unit hereafter erected. Such structures shall be either attached or detached and conform to the offset and setback requirements of the District involved. The maximum size of a detached garage shall not exceed the requirement for the District in which it is located. The maximum size of an attached garage shall not exceed 1440 square feet. In the event that the size of an attached garage exceeds 960 square feet, that amount of square footage in excess of 960 square feet shall be deducted from the maximum allowable size for any detached garages or other accessory building in the District in which the building is located and the maximum size for all such accessory buildings built upon the same property shall be reduced by the amount by which the attached garage exceeds 960 square feet. Garages may have no more than four (4) single bay doors or no more than three (3) double bay doors, which shall be of uniform height not to exceed nine feet. The total linear width of all bay doors may not exceed 48 feet. Any application for a permit to construct garage doors of non-uniform height or for a door or doors in excess of nine (9) feet shall be subject to Plan Commission approval.
- D. **Rustic Buildings and Structures.** As defined at §17.02 2. of the Town Zoning Code, rustic buildings or structures may be allowed in any district. Rustic structures shall not be counted in determining whether a proposed use complies with the open space, accessory building or other restrictions of that district. If there is a question as to whether a structure meets the definition of rustic so as to exempt it from District requirements, the Code Enforcement Officer or the Property Owner may request an opinion from the Plan Commission. In those instances, the Plan Commission shall make the final determination as to any such issues.

Section 17.06 3. D. 1.

1. Rustic structures shall be subject to a maintenance agreement acceptable to the Town Board which shall be recorded with the Waukesha County Register of Deeds. The maintenance agreement shall set forth the minimum standards agreeable to the owner and the Town that will preserve the rustic structure in the form that it is at the time of approval. The owner may, at any time, permanently remove the structure; however, any subsequent building must meet the requirements of the zoning district in which it is located.
2. Any such structure shall be used in conformance with permitted uses of an accessory building and shall not be used for the following:
 - a. any income producing business;
 - b. storage of vehicles that are not personal vehicles of the lot owner or occupant;
 - c. keeping of animals beyond that which is allowed in the underlying zoning district.

The owner shall include the restrictions above in a deed restriction on the property prior to issuance of a building permit or approval by the Plan Commission and/or Town Board.

3. The footprint of any rustic structure shall not occupy more than 25% of the parcel area.
4. Rustic structures may be permitted on lot or outlots, without a principal building, subject to the maintenance and deed restrictions provisions herein.

4. STRUCTURES OTHER THAN BUILDINGS. (amended 12-001)

- A. **Structures other than Fences and Retaining Walls.** Structures, other than fences and retaining walls, not classified as buildings shall be subject to the setback, offset, height and open space requirements of this chapter, except as may be specifically otherwise provided.
- B. **Fences.** Fences and other architectural screening devices where anchored to supports embedded in the ground shall be considered permanent structures and shall be subject to the following:
 1. No fence or other architectural screening device as described above may be constructed unless a zoning permit is first secured through the building inspection department, except a fence to enclose a farming operation.
 2. Any such structures not in excess of three feet in height may be permitted anywhere on the lot consistent with standards set forth in this chapter, subject to acquiring a zoning permit as specified in 1 above.
 3. Any such structure greater than three feet in height and up to six feet in height may be permitted anywhere behind the nearest portion or projection of the principal structure as measured from the right-of-way, extended to the side lot line, except as regulated below, subject to acquiring a zoning permit as specified in 1 above.
 4. Any such structure greater than three feet in height located between the road right-of-way line and the nearest portion or projection of the principal structure measured from the right-of-way line, extended to the side lot lines may be permitted with the approval of the Plan Commission.
 5. Any such structure located between the Ordinary High Water Mark (OHWM) (as determined by the Wisconsin Department of Natural Resources (WDNR)) of a lake or stream and the nearest portion or projection of the principal structure measured from the OHWM, extended to the side lot lines, shall be no greater than three feet, without Plan Commission approval.

Section 17.06 4. B. 6.

6. Any such structure greater than six feet in height may be permitted, provided it conforms to the height, offset and setback requirements of the district in which it is located, subject to the approval of the Plan Commission; however, any such structure may be permitted closer to the required offset from the adjoining lot line with the written consent of the adjoining property owners and subject to the approval of the Plan Commission.
 7. Any fence shall be erected so that the finished side faces the abutting property.
- C. **Retaining Walls.** (created 06-007) Retaining walls shall be considered permanent structures and shall be subject to the following, in addition to the requirements of Section 17.03 7. of the Code of Ordinances:
1. Any retaining wall located within five (5) feet of an adjoining property line may be permitted subject to:
 - a. A hearing before the Plan Commission at which the adjoining neighbor has been given notice at least 10 days prior to the meeting of the time and place of the hearing by the applicant. The applicant shall certify in writing to the Town Clerk at least 7 days prior to the meeting that notice has been provided to the adjoining owner.
 - b. Submission of plans showing the location and elevation of the retaining wall, materials, and schedule for building the retaining wall. Submission of a drainage plan may also be required if requested by the Town Engineer.
 - c. Plan Commission approval.
 2. Any retaining wall, 2 feet in height or less, located greater than five feet from the adjoining property line may be permitted without the approval of the Code Enforcement Officer or Plan Commission.
 3. Any retaining wall greater than 2 feet in height and located greater than 5 feet from the adjoining property line may be permitted with the approval of the Code Enforcement Officer. If, in the opinion of the Code Enforcement Officer, the retaining wall may adversely affect drainage, aesthetic values to the surrounding area or safety, the Code Enforcement Officer may require that the applicant gain approval through the Plan Commission.
- D. (Rep. and Rec. 2008-004) **Walks and Driveways Serving a Single Lot.** Walks 3 feet or less in width and driveways shall be permitted in setback and offset areas, but not closer than three feet offset from an adjacent property.
- E. **Signs.** See § 17.08 of this chapter.
- F. **Swimming Pools.** (Am. 2008-004)
1. **Use Permitted.** Swimming pools are permitted in any District provided they comply with the following conditions and requirements:
 - a. **Exclusive Private Use.** The pool is intended and used solely for the enjoyment of the occupants of the principal use of the property on which it is located and their guests.
 - b. **Offset and Setback Requirements.** No pool shall hereafter be erected or structurally altered so that any part thereof is closer to any lot line or base setback line than the offset and setback distances specified for the District in which it is located.

Section 1706. 4. F. 1. c.

- c. **Enclosing the Pool.** Every swimming pool, whether heretofore or hereafter erected, shall be completely enclosed before filling the same, by a secure fence or wall not less than four feet above ground elevation. Such fence or wall shall be provided with a self-closing and self-latching gate or door with the latch located at the top of the gate or door or made inaccessible to small children in any other manner approved by the Code Enforcement Officer. An unobstructed areaway of not less than four feet shall be provided between the pool and such fence. No such fence or wall shall be required in the case of aboveground pools whose walls are perpendicular to the ground and are not less than four feet high, provided that the ladder or steps leading up to the pool is hinged at the top thereof and capable of being raised out of the reach of small children.
 - d. **Electricity to Pool.** All electrical connections to any swimming pool shall be properly grounded so that no electrical current can be discharged into any part of such pool or surrounding fences. No electrical wires or other electrical conductor shall be strung over any swimming pool.
- 2. **Permit Required.** No swimming pool will be constructed unless a building permit is first secured pursuant to this chapter.
 - 3. (Amd. 2008-004). The provisions of 17.06 4. F. 1.a. through c. shall apply to hot tubs, except that a fence is not required if there is a latched cover on the hot tub.
- G. **Fuel Tanks.** All accessory structures involving the utilization or storage of inflammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion and comply with all the requirements of the Fire Department, the State (DILHR) Flammable Liquids Code and/or Code Enforcement Officer.
- H. **Special Use Structures.** Special use structures, as herein defined, are permitted in any District other than WF-1, when used solely by the occupants of the principal use of the property and subject to the following:
- 1. **Permit Required.** A separate special use permit from the Town Board shall be required for each system. The permit shall be applicable solely to the systems, structures, use and property described in the permit.
 - 2. **Basis of Approval.** The Town Board shall base its determination on general consideration as to the effect of such grant on the property values and general desirability of the neighborhood in which such use would be located. These considerations shall include the effect on the established character and quality of the area, its physical attractiveness, the demand for related services, the possible hazardous, harmful, noxious, offensive or nuisance effect as a result of noise, glare, dust, smoke or odor and such other factors as would be appropriate to carrying out the intent of this chapter.
 - 3. **Types of Special Uses.** (repealed 2014-02)
 - a. ~~**Solar Energy Conversion System.** Such as "active" or "passive" solar collection and heating systems.~~
 - b. **Wind Energy Conversion Systems.** Such as "windmills" or other devices used to produce power.

Section 17.06 4. H. 3. c.

- c. **Communication Systems.** Such as private cable television devices (disks, dishes), etc. not preempted by Federal law.
4. **Fees.** Before receiving approval for a Special Use Structure, a fee shall be paid as designated from time-to-time by resolution of the Town Board.
5. **Permit Procedure.**
 - a. The Town Board is designated as the agency which may approve special use permits and the Code Enforcement Officer is the official to receive, process and, following approval by the Town Board, issue special use permits.
 - b. The permit application shall be made to the Code Enforcement Officer on forms provided by the Town and include the name and address of the applicant, a site plan a plan of operation, describing proposed improvements to the site and any additional information deemed necessary by the Code Enforcement Officer for proper review of the application.
 - c. The Code Enforcement Officer shall review the application and, if the application is complete and contains all required information, shall refer it to the Town Board. The Town Board may refer the matter to the Plan Commission for its recommendation.
 - d. Upon receipt of any requested recommendation from the Plan Commission, and following public hearing per this chapter, when deemed necessary by the Town Board and following necessary study and investigation, the Town Board shall, as soon as practical, render its decision in writing. Such decision shall include an accurate description of the special use permitted, of the property on which permitted and any and all conditions made applicable thereto or, if disapproved, shall indicate the reasons for disapproval. The Board may impose any conditions or exceptions necessary to minimize any burden on any person affected by the granting of the special use permit.
 - e. When a special use does not continue in conformity with the conditions of the original approval, or where a change in the character of the surrounding area or of the use itself cause it to be no longer compatible with surrounding areas, or for similar cause based upon consideration for the public welfare, the special use permit may be terminated by action of the Town Board following a public hearing per this chapter.
6. **Standard Requirements.**
 - a. Except as may be specifically otherwise provided, any such special use shall conform to the structure location, height, structure size and open space regulations of the District in which it is located.
 - b. Building, site and operation plans for the proposed use shall be submitted for approval of the Town Board. Such plans shall be in sufficient detail to enable the Town Board to evaluate the suitability of architectural and landscape treatment; the proper location of the structure on the lot; the satisfactory provision for drainage and sewage disposal, for adequate planting screen where necessary and for operations control devices where necessary to eliminate noise, glare, dust, odor, smoke or other objectionable operating conditions; and the general compatibility of the proposed use within the area in which it is located.

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7. **Special Requirements.** In addition to the general standard requirements as stated in this section such special uses shall be subject to more specific standards and requirements pertinent to the particular use, which standards and requirements may be set out in a supplementary guide for special use regulations adopted by the Town Board and modified from time to time in order that they reflect the best and most contemporary of regulatory practices.
8. **Modification of Regulations.** Requirements applicable to uses by the regulations of this chapter may be modified or waived by the Town Board in their application to special use if in the Town Board's opinion they are not appropriate or necessary to the proper regulations of the special use and where such modification or waiver would not in the Board's opinion result in adverse affect upon the surrounding properties.

I. Television Satellite Dish Antennas Regulations.

1. No television satellite dish antenna unless exempted from local permitting processes by Federal Law shall be installed or erected in the Town without a permit from the Code Enforcement Officer. Applications for a permit shall be on forms provided by the Code Enforcement Officer and shall be accompanied by two copies of a survey and details of the antenna to be installed.
2. All applications for roof dish antennas and other antennae not conforming to Section 3 below shall be referred to the Plan Commission. The Plan Commission shall determine if the proposed antenna conforms with the intent of this subsection, is aesthetically harmonious with the building on which it is to be located and would not adversely affect the appearance of or property values in the neighborhood.
3. Ground dish antennas may be approved by the Code Enforcement Officer on the following conditions:
 - a. Shall be mesh. No solid dishes shall be allowed.
 - b. Shall not be in the setback area.
 - c. Offset shall be equal to or greater than the offset of the particular District.
 - d. Maximum diameter, 10 feet.
 - e. Maximum total height, 12 feet.
 - f. Shall be adequately screened, as determined by the Code Enforcement Officer.
 - g. Color shall harmonize with screening and surroundings.
 - h. Only one dish per lot shall be allowed.
4. Letters of approval or disapproval from neighboring property owners shall be considered by the Code Enforcement Officer or Plan Commission in making their determinations hereunder.

Section 17.06 5.

5. KEEPING OF CHICKENS. (created 2012-02)

Certain zoning districts describe within their use regulations that the keeping of chickens is allowed subject to the requirements of this section. In all such cases, the use is subject to all of the following requirements:

- A. No more than 8 chickens shall be allowed per lot.
- B. Roosters shall be prohibited.
- C. Owners shall acquire and maintain in effect an annual license from the Town of Delafield in accordance with Chapter 12 of the Town Code of Ordinances. The license shall apply to the individual applicant, to authorize keeping of chickens on the parcel that is subject to the application, and shall not be transferable to new persons or entities, or to new properties. The license shall apply to all chickens on the parcel, not to particular chickens which may change over the term of the license.
- D. Chickens shall be kept in a chicken coop and/or chicken run as defined in this code. Slaughtering may take place in an enclosed area on the property. No more than one chicken coop and run shall be allowed on any one property. The chicken coop shall be equal to or less than 50 square feet and shall not be included in the open space calculations, composite area of all accessory buildings or be included in the number of accessory buildings requirement of the district in which they are located.
- E. All chicken coops must meet double the required setback and offset provisions for structures in the district in which they are located; or if said doubled setbacks and offsets cannot be met due to lot dimensions, must be located the maximum distance as far off the property lines as is feasible. Chicken runs shall meet the required setback and offset provisions of the district in which it is located.
- F. No commercial activities shall be permitted by the homeowner, such as sale of eggs at a roadside stand, sale of live or dressed chickens, sale of live chicks, feathers, etc.
- G. Owners shall exercise proper care and control of the chickens to prevent them from becoming a public nuisance.
- H. Chicken coops and chicken runs shall be removed no later than 12 months after the keeping of chickens is no longer a use on the property.

6. WIRELESS TELECOMMUNICATIONS MOBILE SERVICE FACILITIES. (created 2013-10)

- A. **Purpose.** This section is intended to regulate mobile service facilities to the full extent allowed by Wisconsin Statutes Section 66.0404 and other applicable laws. Nothing herein is intended to regulate or to authorize the regulation of mobile service facilities in a manner that is preempted or prohibited by Wisconsin Statutes Section 66.0404 or other applicable laws.
- B. **Definitions.** All terms used herein shall have the meaning described in Wisconsin Statutes Section 66.0404(1).

Section 17.06 6. C.

- C. **New Towers and Facilities.** The siting and construction of a new mobile service support structure and facilities shall be subject to the following requirements:
1. **Application Process.** The applicant shall submit a written application which shall include all of the following information:
 - a. The name and business address of, and the contact individual for, the applicant.
 - b. The location of the proposed tower.
 - c. The location of the mobile service facility.
 - d. A construction plan which describes the tower, equipment, network components, antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new tower.
 - e. An explanation as to why the applicant chose the proposed location, and why the applicant did not choose collocation, including a sworn statement from the responsible party attesting that collocation within the applicant's service area would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome.
 2. **Determination of Completeness within 10 Days of Submittal.** The Town Zoning Administrator shall review the application and determine whether the application is complete. If the application includes all of the foregoing information, the application shall be found to be complete. The Town Zoning Administrator shall notify the applicant in writing within ten days of receiving the application if it is found not to be complete, and such notice shall specify in detail the required information that was incomplete. Applicants are allowed to resubmit their applications as often as necessary until it is complete.
 3. **Conditional Use Review Procedure.** The wireless telecommunications mobile service facility shall be a conditional use, however it is not subject to Section 17.05 of this code, and instead shall be reviewed pursuant to the following procedures:
 - a. **Public Hearing.** Within a reasonable time after an application and all required information has been filed, a public hearing shall be held by the Plan Commission pursuant to this chapter. Within 40 days after the public hearing and all investigation, the Plan Commission shall make a recommendation to the Town Board unless the time is extended by the Petitioner.
 - b. **Fee.** Any petition shall be accompanied by a fee as set from time-to-time by the Town Board to defray the cost of notification and holding of public hearing. Costs incurred by the Town in obtaining legal, planning, engineering and other technical and professional advice in connection with the review of the conditional use and preparation of the conditions to be improved shall be charged to the Petitioner. Such fee shall not exceed the limits established by Wisconsin Statutes Section 66.0404(4)(d).

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c. Requirements.

- i. Conditional use status shall not be granted to communication towers unless the tower is located so that there is sufficient radius of clear land around the tower so that its collapse shall be completely contained on the property, subject to the following. If an applicant provides the Town with engineering certification showing that the tower is designed to collapse within a smaller area than the radius equal to the height of the tower, the smaller area shall be used unless the Town has and provides to the applicant substantial evidence that the engineering certification is flawed.
- ii. Offsets and setback distances shall be increased according to Section 17.036.D. "Increase Permitted" of this Code.
- iii. All facilities shall meet all State and federal codes.

d. Determination. The Town Board shall make a decision on the application within a reasonable time after receipt of the Plan Commission recommendations, provided further that final action shall be taken within 90 days of receipt of a complete application unless the time extended by the Petitioner. Said decision shall be stated in writing and a copy made a permanent part of the Town records. If conditional use status is not granted, the reasons therefor will be included in such record. A grant of conditional use status, subsequent changes or additions thereto and terminations thereof shall be recorded as follows:

- i. An official record of such conditional grant shall be prepared by the Town Clerk on a form prescribed therefor which shall include the description of the use for which the grant is given and all conditions attached thereto as well as a copy of the resolution of the Town Board approving the grant. A copy of the completed form shall be recorded at the Waukesha County Register of Deeds as a covenant on the title for the premises for which the conditional use was granted.
- ii. The occupancy permit shall be appropriately noted as to the conditional status granted.
- iii. Indication shall also be made on the zoning map by appropriate code number or symbol.

e. Changes or Additions. Subsequent change or addition to the approved plans or use shall first be submitted for approval to the Plan Commission and, if in the opinion of the Plan Commission, such change or addition constitutes a substantial alteration, a public hearing before the Plan Commission shall be required and notice thereof be given pursuant to this Chapter.

f. Conditions. Conditions such as landscaping, architectural design, type of construction, floodproofing, anchoring of structures, construction commencement and completion dates, sureties, lighting, fencing, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or parking requirements, among other issues as deemed appropriate may be required by the Plan Commission upon its finding that these are necessary to fulfill the

Section 17.06 6. C. 4.

purpose and intent of this Chapter; subject to the limitations of Section 17.06(6)C.4., below.

4. Limitations upon Authority. The Town review and action in the matter shall be subject to the limitations imposed by Wisconsin Statutes Section 66.0404(4). In the event the applicant believes the Town has exceeded its authority in this regard, the applicant shall notify the Town Board in writing and the Town Board reserves the right to reconsider the matter, to ensure that applicable laws are followed.
 - D. **Modifications.** The construction of modifications to an existing mobile service support structure or mobile service facility shall be subject to the following requirements:
 1. Substantial Modification.
 - a. Application and Review Process. The application and review process for a substantial modification is identical to the application and review process for a new tower, as described in Section 17.066.C. above, except that the required plans should describe the proposed modifications, rather than describe the new structure.
 2. Not Substantial Modifications.
 - a. **Application Information.** The applicant shall submit a written application that describes the applicant's basis for concluding that the modification is not substantial, and all of the following information:
 - i. The name and business address of, and the contact individual for, the applicant.
 - ii. The location of the affected support structure.
 - iii. The location of the proposed facility.
 - b. **Completeness Determination within Five Days.** The Town Zoning Administrator will determine whether the application is complete. If the application includes all of the foregoing information, the application shall be found to be complete. The Town Zoning Administrator must notify the applicant in writing within five (5) days of receiving the application if it is found not to be complete, specifying in detail the required information that was incomplete. The applicant may resubmit as often as necessary until it is complete.
 - c. **Fee.** Any petition shall be accompanied by a fee as set from time-to-time by the Town Board to defray the cost of review. Costs incurred by the Town in obtaining legal, planning, engineering and other technical and professional advice in connection with the review of the conditional use and preparation of the conditions to be improved shall be charged to the Petitioner. Such fee shall not exceed the limits established by Wisconsin Statutes Section 66.0404(4)(d).

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- d. **Determination.** The Town Board shall make a decision on the application within a reasonable time after receipt of the Plan Commission recommendations, provided further that final action shall be taken within 45 days of receipt of a complete application unless the time extended by the Petitioner. Said decision shall be stated in writing and a copy made a permanent part of the Town records. If approval is not granted, the reasons therefor will be included in such record.

- e. **Limitations Upon Authority.** The Town review and action in the matter shall be subject to the limitations imposed by Wisconsin Statutes Section 66.0404(4), and such other laws as may apply which may include 47 USCA §1455. In the event the applicant believes the Town has exceeded its authority in this regard, the applicant shall notify the Town Board in writing and the Town Board reserves the right to reconsider the matter, to ensure that applicable laws are followed.

SECTION 17.07

NONCONFORMING USES, STRUCTURES, AND LOTS

SECTION 1.: CONTINUANCE OF USE

SECTION 2.: CLASSIFICATION AND REGULATIONS

- A. Existing Nonconforming Uses
- B. Existing Conforming Uses on Nonconforming Lots Containing Conforming Structures
- C. Legal Conforming Uses on a Conforming Lot or Nonconforming Lot Containing Legal Nonconforming Structures
- D. Current File
- E. Burden of Proof
- F. Reversion
- G. Substandard Lots
- H. Conditional Use Status

SECTION 17.07

NONCONFORMING USES, STRUCTURES, AND LOTS

1. CONTINUANCE OF USE.

- A. Any lawfully established use of a building, structure or land at the time of the enactment of this chapter or any amendment applicable thereto that does not conform to the use regulations for the District in which it is located shall be deemed to be a legal nonconforming use and may be continued, except as otherwise provided herein.
- B. Any lawfully established construction of a building or structure at the time of the enactment of this chapter or any amendment applicable thereto that does not conform to the dimensional regulations for the District in which it is located shall be deemed a legal nonconforming structure and may be continued, except as otherwise provided herein.
- C. Any lawfully established lot or parcel of land at the time of enactment of this chapter or any amendment thereto which does not meet the requirements for the District in which it is located shall be deemed to be a legal nonconforming lot and may be used in accordance with this chapter and as provided herein.

2. CLASSIFICATION AND REGULATIONS.

A. Existing Nonconforming Uses.

The lawful nonconforming use of land without buildings or structures, or

The lawful nonconforming use of water, or

The lawful nonconforming use in a conforming building or structure, or

The lawful nonconforming use in a nonconforming building or structure, or

The lawful nonconforming use on a conforming lot, or

The lawful nonconforming use on a nonconforming lot, or

The lawful nonconforming use of land with conforming buildings or structures, or

The lawful nonconforming use of land with nonconforming buildings or structures which existed at the time of the enactment of this chapter or any amendment applicable thereto may be continued although the use does not conform with the provisions of this chapter; however:

- 1. Only that use in actual existence at the time of the enactment of this chapter or any amendment applicable thereto may be so continued as a legal nonconforming use and said use may not in any way be extended, enlarged, substituted, intensified, moved, added to or changed.
- 2. No structure containing a legal nonconforming use or, on lands containing a legal nonconforming use, may be extended, enlarged, rebuilt, substituted, intensified, moved, remodeled, modified, or added to except when required to do so by law or until the legal nonconforming use has been made to conform with this chapter.

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3. No lot on lands containing a legal nonconforming use, may be reduced in size, modified, increased in size or changed in any manner except when required to do so by law or until the legal nonconforming use has been made to conform to this chapter.
4. If a legal nonconforming use is discontinued or terminated for a period of twelve months, any future use of the structure, land or water shall conform to the provisions of this chapter.

B. Existing Conforming Uses on Nonconforming Lots Containing Conforming Structures.

1. A conforming building or structure existing at the time of enactment of this chapter or any amendment applicable thereto may be continued, although the lot does not conform to the requirements of this chapter, as long as all uses on the lands containing the building or structure and all uses of the buildings or structures on the lands are legal conforming uses.
2. The aforementioned building or structure may be extended, enlarged, substituted, moved, remodeled, modified, or added to as long as any such change conforms with the established setback, offset, height, parking, loading, and access provisions of this chapter or may be totally rebuilt if such reconstruction is identical in size, style, shape and use to the original building or structure.

C. Legal Conforming Uses on a Conforming Lot or Nonconforming Lot Containing Legal Nonconforming Structures.

1. The legal conforming use of a nonconforming building or structure existing at the time of the adoption or amendment of this chapter whether on a conforming lot or nonconforming lot may be continued, although the building's or structure's size or location does not conform with the established setback, offset, height, parking, loading or access provisions do not conform with this chapter.
2. The aforementioned building or structure may be extended, enlarged, substituted, moved, remodeled, modified or added to as long as any such change conforms with the established setback, offset, height, open space, parking, loading, and access provisions of this chapter. (Amd. 00-507a)
3. Legal nonconforming buildings or structures existing at the time of the adoption or amendment of this chapter with a legal conforming use whether on a conforming or nonconforming lot may be moved and if moved must conform with the established building setback lines along streets and the yard, height, parking, loading, and access provisions of this chapter.
4. (Created 2013-01) Notwithstanding subsections 1, 2, and 3, above, repair, maintenance, renovation, remodeling and restoration of such legal nonconforming building or structure can be conducted under circumstances allowed by Wisconsin Statutes Section 62.23(7)(hb) or (hc), in full compliance with statutes. This subsection (4) is intended to comply with Wisconsin Statutes Section 62.23(7)(hb) and (hc).

D. Current File.

A current file of all legal nonconforming uses, legal nonconforming structures, and legal nonconforming lots, shall be maintained by the Code Enforcement Officer listing the following: owner's name and address, description of all uses of the structure, land or water, a site plan of the property showing the location and size of all structures on the same, a plat map showing the dimensions of the lot, and equalized value of the land and improvements at the time the legal non-conformity was created.

E. Burden of Proof.

The property owner has the burden of showing that a use, structure or lot is legal nonconforming. The determination shall be made by the Plan Commission after a majority of the members of the Plan Commission have been satisfied by proof presented by the property owner or agent that the use, structure and/or lot is in fact legal nonconforming. Appeals from the decision of the Plan Commission concerning the determination of legal non-conformity may be made by any person aggrieved to the Town Board. Such appeal shall be filed with the Clerk within thirty (30) days after the determination by the Plan Commission.

F. Reversion.

Once a legal nonconforming use, legal nonconforming structure or legal nonconforming lot has been changed to conform, it shall not revert back to legal nonconforming status.

G. Substandard Lots.

In any District, substandard lots are regulated by section 17.03 5.B.

H. Conditional Use Status.

Subject to the provisions of section 17.05 of this code, conditional use status may be granted to existing legal nonconforming uses upon petition of the owner where such use is determined to not be any of the following:

1. adverse to any of the following:
 - a. public health,
 - b. safety, or
 - c. welfare;
2. in conflict with the spirit or intent of the chapter; or
3. otherwise detrimental to the community and particularly the surrounding neighborhood.

Section 17.07 2. I.

I. **Limited Shoreland Exception.** (created 2013-01)

Notwithstanding limitations that may apply to structures and lots by this Section 17.07, in locations that are subject to the jurisdiction of the Waukesha County Shoreland and Floodland Protection Ordinance, and State DNR Shoreland Zoning Standards, legal nonconforming structures may be located, maintained, expanded, replaced, repaired or relocated as allowed by the State DNR Shoreland Zoning Standards; and construction of buildings or structures may be allowed on legal nonconforming lots as allowed by the State DNR Shoreland Zoning Standards; provided that this exception applies only to the extent as is required by Wisconsin Statutes Section 59.692(2m).

SECTION 17.08

SIGNS

1. PURPOSE.

It is declared that the regulation of signs within the Town is necessary and in the public interest to: (a) protect property values within the Town; (b) preserve the beauty and the unique character of the Town; (c) aesthetically complement the development which a sign identifies; (d) promote a healthy and properly designed business environment; (e) safeguard the general public from damage and injury which may be caused by the faulty and uncontrolled construction of signs within the Town; (f) protect against hazards to vehicular traffic movement through improper placement of signs; and (g) promote the public safety, welfare, convenience and enjoyment of travel and the free flow of traffic within the Town; (h) prevent blight; (i) prevent clutter; and (j) encourage free speech.

2. REQUIREMENT OF CONFORMITY.

A sign permit is required before the erection, re-erection, construction, alteration, placement, maintenance or location of all signs except as otherwise provided in this chapter. Where signs are illuminated electrically, a separate electrical permit shall be obtained as required by the Electrical Code of the Town. It shall be illegal for a sign to be erected, constructed, repaired, altered, located or maintained in the Town except as provided in this chapter. All new signs constructed or maintained contrary to the provisions of this chapter are declared to be illegal and a public nuisance. Any person or entity violating any provisions of this chapter or failing to comply with any orders or regulations made hereunder shall be subject to the penalties hereof, and those otherwise provided by law.

3. SIGNS PERMITTED IN ALL DISTRICTS WITHOUT A PERMIT.

A permit shall not be required for the following signs or activities; provided, however, that such signs or activities shall be subject to any and all applicable provisions of this chapter.

- A. Any temporary sign eleven (11) square feet or less in area, subject to compliance with all applicable total sign area limitations of the applicable lot.
- B. Repainting of signs without changing wording, composition or colors, or minor non-structural repairs of signs (except electrical repair).
- C. Relocation of signs if required by the Town.
- D. Window signs, as permitted under subsection 6.G.
- E. Signs located in the interior of any building or structure, not visible from the exterior.
- F. Government signs, as defined herein.
- G. The United States flag, State of Wisconsin flag, Waukesha County flag, or flag bearing the official emblem or insignia of the Town of Delafield, and associated poles; as such signs are tantamount to government signs for the observance of the applicable institutions of our participatory democracy.

- H. Address markers and nameplate signs, not to exceed 4 sq. ft. in total area; as such signs are tantamount to government signs, to assist with the provision of emergency services.

4. TEMPORARY SIGNS.

Temporary signs shall be placed in conformance with this Code for no longer than 120 days, unless a longer time is expressly allowed by Wisconsin Statutes Section 12.04, or other applicable laws, or as follows. In the event a longer time is expressly allowed by Wisconsin Statutes Section 12.04 such sign shall be placed for no longer than the time expressly allowed by such statute.

- A. **Signs on Property Under Construction.** Temporary signs may be permitted by the Code Enforcement Officer in any district for the duration of a building permit, where a building permit is in effect and construction is occurring. The Code Enforcement Officer may restrict the number, size, and location of temporary signs on any property to ensure safety for traffic and pedestrians.
- B. **Signs on Property Marketed for Sale or Lease.** Temporary signs may remain on a property for all time that the property is actively marketed, as defined herein, for sale or lease. Whether the property is being actively marketed for sale or lease shall be subject to the determination of the Code Enforcement Officer. Any such sign that would exceed 11 square feet in area shall require a permit, and such sign shall be treated as a permanent sign for purposes of permitting, but shall remain a temporary sign for purposes of removal once the marketing of the property is concluded. The sign must be removed no later than ten calendar days after the marketing of the property is concluded. The total sign area requirements of the district in which the sign is located shall apply.
- C. **Signs on Property Under Development.** Temporary signs may remain on a property under some circumstances while the property is under development, subject to the following limitations. A sign permit is required for any Development Sign. A Development Sign shall be treated as a permanent sign for purposes of permitting, but shall remain a temporary sign for purposes of removal once the approval for the Development Sign expires. All Development Signs may remain on the lot for one year following the date the sign permit is granted, unless otherwise restricted in the grant of the sign permit. Prior to expiration of the sign permit or any extension thereof, upon request of the owner or developer, the Plan Commission may extend the sign permit for successive periods of up to one year each, if the Plan Commission finds the development is actively proceeding and the sign is not otherwise in violation of the standards of this Section. The Development Sign must be removed no later than thirty calendar days following the expiration of the permit unless specified otherwise by the Plan Commission. The total sign area requirements of the district in which the sign is located shall apply, except as follows: if during the process of development, the property is rezoned, the sign area calculations of the original zoning district shall continue to apply for the duration of the development; and if the property being developed includes multiple contiguous parcels, the calculation of sign area shall include all such contiguous parcels as though they were one parcel.

5. MAXIMUM SIGN AREA PERMITTED BY ZONING DISTRICT.

- a) **Residential Districts (R-1, R-1(A), R-2, R-3, R-L, and A-3).** The total sign area allowed on a lot that is zoned R-1, R-1(A), R-2, R-3 R-L, or A-3, shall be eleven (11) sq. ft., subject to such additional square footage as may be permitted by the standards of this Section. Monument signs may be allowed to exceed the

foregoing size limitations, subject to Section 6(E), below. Unless specifically approved as a Monument Sign pursuant to Section 6(E), below, or pursuant to the grant of a conditional use permit for a use described in Section 17.05 5. of this Code, all of the following are prohibited: awning signs; changeable copy signs; electrical message boards; permanent signs; projecting signs; roof signs; seasonal signs; shingle signs; and wall signs.

- b) **Agricultural Districts (A-1, A-E, and A-2).** The total sign area allowed on a lot that is zoned A-1, A-E, and A-2 shall be 11 square feet for every 200 lineal front feet of the lot line abutting a public roadway. In making this calculation, the lineal front feet of the lot line shall be rounded down to the nearest number divisible by 200. Notwithstanding the foregoing, if the lot abuts less than 200 feet of public roadway, the total sign area allowed on the lot is 11 square feet.
- c) **Business Districts (B-1, B-2, and B-3), Industrial Districts (M-1), Park & Conservancy Districts (P-1 and WF-1).** The total sign area allowed on a lot that is zoned B-1, B-2, B-3, M-1, P-1 and WF-1 shall be computed as either .5 sq. ft. x the lineal front foot of the lot line or .65 sq. ft. x the building or structure front foot, whichever is greater, to a maximum of 120 sq. ft. for retail and 80 sq. ft. for office, mixed use, or other uses, as allowed by the Plan Commission in its consideration of the site plan.

6. SIGN REQUIREMENTS FOR SPECIFIC TYPES OF SIGNS.

Particular types of signs are subject to the following requirements, which are in addition to, and not in lieu of, the other requirements of this Section 17.08.

A. **Changeable Copy Signs.**

- 1. The computation of sign area for changeable copy signs shall be included in the total permitted sign area allowed for the building or development, where changeable copy signs are permitted by this chapter and/or by the Plan Commission.
- 2. Changeable copy signs must be integrated into the free-standing or wall sign for such building or development.
- 3. In addition to the uses specifically enumerated elsewhere in this chapter, changeable copy signs may be permitted for businesses of a seasonal nature, public uses, institutional uses, schools, churches, motels/hotels and theaters, if approved by the Plan Commission to be justified at such location and for such use. Unless in the discretion of the Plan Commission such use is justified, changeable copy signs shall not be permitted for retail use.
- 4. Where changeable copy signs are allowed, the following restrictions apply in all cases, subject to further restriction as may be imposed by the Plan Commission to particular applications:
 - a. There shall be only one changeable copy sign on each lot or parcel of land.
 - b. If free-standing, the sign may be double-faced.
 - c. Each sign shall be permanently installed or located.
 - d. Each sign shall be placed in such a manner so as to not interfere with, confuse, or present any hazard to traffic.

B. **Flags.** Except as excluded by subsection 3(G), all flags are subject to the following limitations.

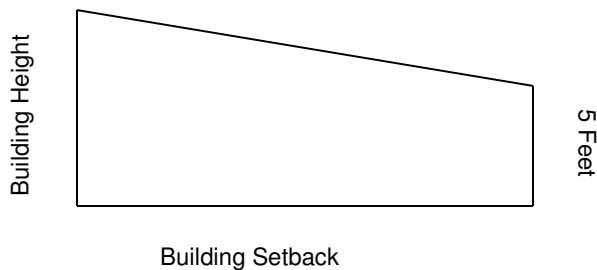
- 1. Maximum area of a flag shall be 24 square feet.
- 2. Flags may be suspended on a pole no higher than 35 feet.

3. The flag pole shall be located in a setting of meaningful open space, as defined in this chapter.

C. Free-standing Signs.

1. Application. All applications for free-standing signs shall be filed with the Code Enforcement Officer and forwarded to the Plan Commission for consideration pursuant to the procedure outlined in subsection 7.B.2.
2. Placement and Construction Requirements.
 - a. A free-standing sign shall be permanent in construction and subject to the requirements of the Building Code of the Town as determined, imposed and inspected by the Code Enforcement Officer.
 - b. The sign may be double-faced if so permitted by the Plan Commission. Only one face of a double-faced sign shall contribute to the calculation of total sign area.
 - c. The height of a free-standing sign shall be regulated and approved by the Plan Commission in consideration of the location of the proposed sign, the height, size, appearance, number and location of other signs in the vicinity of the proposed sign, the propriety of the proposed sign with respect to a master sign plan, if any, and such other facts as the Plan Commission deems appropriate, provided that the height shall not exceed the limits shown in subsection d., below.
 - d. The allowable height of a free-standing sign at a particular site is to be established by drawing a line from the height of the building or structure at setback to a theoretical wall of five (5) feet at the center line of the adjacent road. A free-standing sign must be of no greater height than what can be placed within the area of the resulting geometric figure. (See Figure 1). However, in no event shall the height of such sign be greater than twelve (12) feet for office, retail or mixed use. Notwithstanding the foregoing, the Plan Commission may allow a sign to exceed the limits provided in this subsection if the topography of the lot slopes down from the center line of the adjacent road, by adding the difference between the elevation at the centerline of the adjacent road and the elevation where the sign will be located to the sign height limitations, so that the intent of this subsection is maintained. Dimensions shall be provided by the applicant. An offset of no less than five (5) feet from the ultimate right-of-way line should be maintained.

Figure 1: Sign Height/Setback Standards.



- e. The area of a free-standing sign shall be regulated and approved by the Plan Commission in consideration of the factors enumerated in subsection c., above, subject to the maximum sign area limitations of the district in which it is located. Should the Plan Commission approve both a free-standing sign and a wall sign for a given building or center, the area allowed must be apportioned between these signs.
- f. The sign shall be located in an area of meaningful open space, which shall be appropriately landscaped.
- g. Free-standing signs located on the subject property or adjoining or abutting properties must be at least 150 feet apart.
- h. The sign structure or post of a free-standing sign must be wrapped in or constructed of a material compatible with the materials utilized in the construction of the building or structure to which the sign refers. The sign must also be architecturally compatible with the building or structure to which it refers.

D. Master Sign Program.

A Master Sign Program is required for multi-tenant operations, office parks, industrial parks, multi-tenant office and retail buildings, and commercial developments that include separate commercial activities, and shall be considered by conditional use per Section 17.05 of this Code. The requirements of this Section may be modified by the express terms of the Master Sign Program conditional use order.

E. Monument Signs.

Monument Signs placed at the entrance to a subdivision, residential development or commercial development shall be not less than 5 feet from a side or rear lot line and may be placed in the right-of-way only within an easement granted for said purpose and upon approval of the Town for the same. The Plan Commission shall determine the appropriate size of the sign based on the design of the sign, its impact on traffic safety and its compatibility with adjacent land uses.

F. Wall Signs.

1. Application. All applications for wall signs shall be filed with the Code Enforcement Officer and forwarded to the Plan Commission for consideration pursuant to the procedure outlined in subsection 7.B.2.
2. Total Area. The area of a wall sign shall be regulated and approved by the Plan commission in consideration of the location of the proposed sign, the height, size, appearance, number and location of other signs in the vicinity of the proposed sign, the propriety of the proposed sign with respect to a master sign plan, if any, and such other facts as the Plan Commission deems appropriate.
3. Placement.
 - a. A wall sign may not project more than twelve (12) inches from the wall surface.
 - b. A wall sign must be placed on an exterior wall of the business which the sign identifies.
 - c. No part of a wall sign shall extend more than four (4) feet above the plate line, nor shall a wall sign extend above a roof line except when it is erected on a parapet wall or fascia which

extends above the roof line of a flat roof on at least three (3) sides of a building.

- d. A wall sign may be allowed on a roof surface only if the roof surface is within twenty-five (25) degrees of vertical (such as a mansard roof), and only if the Code Enforcement Officer deems that such use is acceptable.
- e. The height of a free-standing sign shall be regulated and approved by the Plan Commission in consideration of the location of the proposed sign, the height, size, appearance, number and location of other signs in the vicinity of the proposed sign, the propriety of the proposed sign with respect to a Master Sign Plan, if any, and such other factors as the Plan Commission deems appropriate, provided that the height shall not exceed the height that could be allowed for a free-standing sign per Section 6.C.2.d.

G. Window Signs. Permanent window signs do not need a permit if less than ten (10) percent of all of the windows are covered by all of the window signs. If greater than ten (10) percent of the window is covered, a sign permit must be obtained pursuant to the procedures outlined in subsection 7.B. In no instance, may more than twenty-five (25) percent of the window space be covered by window signs. All window signs which are to be illuminated must be inspected and cannot be installed except upon prior written approval by the Code Enforcement Officer.

7. PERMITS, REQUIREMENTS AND PROCEDURES.

A. Permit Application and Expiration.

1. Application. All applications to obtain a sign permit shall be made on forms furnished by the Code Enforcement Officer. All such applications shall be signed by the owner(s) of the premises on which the sign is to be located and the lessee(s) of the premises to which the sign pertains, which signatures shall indicate agreement to be bound by the terms of this ordinance. Throughout this chapter, these owner(s) and lessee(s) may be referred to collectively as holders of the permit, as defined herein.
2. Requirement of Plans. Two copies of specifications, plans, renderings, or other visual representations of nonresidential signs shall be submitted with the application. One copy shall be returned to the applicant(s) at the time the permit is granted. Such submissions shall detail the size of the sign, the method of attachment or support, the location of the proposed sign, the location of any building(s) on the premises and any other signs located or proposed to be located on the premises or within 150 feet of the proposed sign, the materials to be used, and the name, address and profession of the person designing plans and specifications for such sign. The content of the sign message is not required, and need not be submitted. Plans for supports for any sign subject to excessive stress as determined by the Code Enforcement Officer shall be accompanied by structural computations. Sufficient data shall be submitted to show that the supporting surface and other members of an existing building to which the sign is to be attached are in good condition and are adequate to support the load, including the proposed sign.
3. Permit Fees. In conjunction with the filing of an application for a sign permit, the applicants must tender a fee as set from time-to-time by separate resolution of the Town Board, except as follows. No fee is

required to bring a legal nonconforming sign into compliance with the terms of this Section. If work for which a permit is required by this Section began before a permit was obtained, the fees specified shall be quadrupled, but the payment of such quadrupled fee shall not relieve any persons from complying fully with the requirements of this Section in the execution of the work or from any penalties prescribed herein.

B. Procedure.

1. Initial Review. All applications for sign permits shall be reviewed initially by the Code Enforcement Officer, who may issue permits for temporary signs and such other signs which pursuant to this chapter can be issued without review by the Plan Commission. The Code Enforcement Officer shall have the authority to deny such permits if the proposed signs do not comport with the requirements of this chapter.
2. Plan Commission. Should the Code Enforcement Officer conclude, in his discretion, that the Plan Commission should review an application for a sign permit, or should this chapter require such review for a particular sign, the application will be forwarded to the Plan Commission for review at its next regularly scheduled meeting subject to established agenda length limits. The Plan Commission may vote to approve or deny the application based on the following factors:
 - a. The exterior architectural presentation and functional plan of the proposed sign will not be so at variance with or so similar to the exterior architectural presentation and functional plan of signs already constructed or in the course of construction in the area, or so out of harmony with the area, as to potentially contribute to substantial depreciation in the property values of said area.
 - b. The proposed sign conforms to the location, size and style requirements set forth in this chapter.
 - c. The proposed sign conforms to the Town's long-range planning for the area as set forth in the Town's Master Plan as that term is defined in Section 62.23(3), Wis. Stats., and Comprehensive Plan per Section 66.1001, Wis. Stats., or relevant portions thereof.
 - d. The Plan Commission may establish guidelines, with the confirmation of the Town Board, which further define and interpret this chapter. Those guidelines, if any, shall be made available to all sign applicants.

C. Construction Requirements.

1. Wind Pressure and Dead Load Requirements. All signs shall be designed and constructed to withstand a wind pressure of not less than thirty (30) pounds per square feet of area and shall be constructed to receive dead loads as required in the Building Code or other ordinances of the Town.
2. Lighting. Illumination shall be so installed to avoid any glare or reflection into any adjacent property, or onto a street or alley to create a traffic hazard as determined by the Code Enforcement Officer.
3. Town of Delafield Marking. Permanent signs shall be marked prominently with the words "Town of Delafield" beneath the sign content, to aid in the purpose of this chapter, including promotion of the public safety, welfare, convenience, and enjoyment of travel in the Town of Delafield, except as follows: this is not required for signs that require no permit, per subsection 3 or that are temporary signs per Section 4, or

may be waived by the Plan Commission if it finds that the purpose of this subsection would not be met by the Town of Delafield Marking in the circumstances applicable to any particular sign.

D. Prohibitions.

1. Lighting. Bare light bulbs shall not be permitted. No flashing, blinking, or rotating lights shall be permitted for either permanent or temporary signs other than for Time and Temperature signs if so permitted by the Plan Commission.
2. Action Signs. No sign shall be permitted which moves by any means, except flags as permitted in subsection 6.B.
3. Prohibited Signs. It shall be unlawful to erect or maintain the following signs:
 - a. Electronic Message Boards
 - b. Portable Signs
 - c. Projecting Signs
 - d. Off Premise Signs
 - e. Roof Signs
 - f. Pennants or Streamers
 - g. Sandwich Boards

E. Required Signs. Every building or group of buildings must be identified by a street number.

F. Location Requirements.

1. Obstruction of Exits. No sign shall be constructed or maintained so as to obstruct any door, window, stairway or fire escape of any building.
2. Obstruction and interference prohibited. No sign shall be erected, placed, located or maintained at or near the intersection of any streets, roads or highways so as to obstruct free and clear vision; or at any location where, by reason of position, shape and color, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device; or which makes use of the words "STOP", "LOOK", "DANGER" or other word, phrase, symbol or character in such manner as to interfere with, mislead or confuse traffic.
3. Signs Prohibited Within or in Proximity to Limits of any Street or Highway.
 - a. No sign shall be erected, placed, located, or maintained within the limits of any street, road or highway, except as allowed by subsections d., below. Street, road or highway limits include all the dedicated right-of-way, encompassing the travelled portion of the street, road or highway, the shoulders, ditches and adjacent dedicated areas. This prohibition applies to free-standing signs and those placed on trees, utility poles, fence post stakes, and all other structures within the right-of-way limits.
 - b. Failure to comply with the provisions of this subsection shall be a violation of Section 86.19, Wis. Stats., as well as this chapter.
 - c. Any sign in violation of this subsection shall be removed without notice by the Highway Department or the Police Department.
 - d. This prohibition shall not apply to signs placed within the limits of streets, roads or highways by duly constituted municipal, county, or state authorities for the guidance or warning of traffic, as provided in Sections 86.19(1) and (4), Wis. Stats., or to mail boxes and paper

boxes. This prohibition also does not apply to approved Monument Signs.

4. **Construction Over Public Property.** No person or entity shall erect or cause to be erected any sign which projects over any public sidewalk, street, road, highway, alley or public place.
- G. Inspections.** Unless waived by the Code Enforcement Officer, all signs for which a permit is required shall be subject to the following inspections:
1. Electrical Inspection on all illuminated signs.
 2. Site inspection to ensure that the sign has been constructed according to an approved application and a valid sign permit.
- H. Maintenance.** Each sign, including those specifically exempt from the permit requirements of this code, shall be maintained in good structural condition at all times. All signs shall be kept neatly painted, including all metal parts and supports thereof that are not galvanized or of rust-resistant material. The Code Enforcement Officer shall have the authority at any time to inspect and order the painting, repair, alteration, or removal of a sign which constitutes a hazard to safety, health, or public welfare by reason of inadequate maintenance, dilapidation, obsolescence or change in local conditions. The Code Enforcement Officer shall follow the procedure of notification concerning such maintenance or removal as outlined in subsection 13.

8. CONFLICT OF LAWS.

In the event that Wisconsin Statutes Section 12.04 would permit a sign that is larger than the size limitations described in this Section, such sign, regardless of sign content, is allowed only for the period described in Wisconsin Statutes Section 12.04.

9. NON-COMMERCIAL SIGNS PERMITTED.

Any sign authorized or otherwise permitted under this ordinance shall be allowed to contain non-commercial copy in lieu of any other copy.

10. SIGN ORDINANCE VARIANCES.

A. Purpose. Sign Ordinance variances are intended to allow flexibility in sign regulation while fulfilling the purpose of the ordinance. Nothing in this Section, however, is intended to permit the erection or maintenance of signs which create the potential of public harm or for which there is no public benefit or which are in conflict with the Town's Master Plan or relevant portions thereof.

B. Procedure.

1. Any applicant who desires a variance from any provision or requirement of this chapter may request an oral hearing before the Plan Commission by submitting a written request therefor to the Town Clerk not less than twenty one (21) days before the next regularly scheduled meeting of the Plan Commission. A fee of \$75.00 shall be required of the applicant at the time that a request for a hearing before the Plan Commission is made.
2. The Plan Commission shall review such requests for variances using the following criteria:
 - a. Area Enhancements.

- (1) The sign as proposed will not result in an undue concentration of signage which renders it difficult or confusing to read existing signs;
 - (2) The proposed sign is unique and of exceptional design or style, so as to enhance the area.
 - b. Site Difficulties. Unusual site factors preclude the construction of a sign in accordance with this chapter which would be visible to the roadway adjacent to the site frontage.
- 3. Should the Plan Commission find that a variance should be granted, the application will be forwarded to the Code Enforcement Officer with directions to issue a permit in accordance with its decision. If the Plan Commission finds that a variance should not be granted, it shall inform the applicant of the reasons for such decision in writing within ten (10) days of the date of such decision. The decision of the Plan Commission shall be final unless the Plan Commission requests review of same by the Town Board.

11. SIGN ORDINANCE MODIFICATION BY CONDITIONAL USE.

Additional sign square footage and alteration of otherwise applicable height, setback, offset or other standards of this Chapter may be granted by the Town Board in its consideration and grant of a conditional use pursuant to Section 17.05 of this Code. In considering this possible grant, the Plan Commission and Town Board shall be guided by the purpose of this Section 17.08 along with the basis for approval described in Section 17.05(2), without consideration of the content of any such signage.

12. LEGAL NONCONFORMING SIGNS.

- A. Reasonable repairs and alterations may be made to legal nonconforming signs provided that they may not be relocated, expanded, enlarged, repositioned or raised in height. However, in the event any such sign and/or its supporting structure is hereafter damaged or altered to an extent exceeding fifty (50) percent of the reproduction value according to appraisal thereof by competent appraisers, or is removed by any means whatsoever, including an act of God, such sign must be restored, reconstructed, altered or repaired to conform with the provisions of this chapter, subject to the following. Repair, maintenance, reconstruction or replacement is permitted if, and to the extent that, Wisconsin Statutes Section 62.23(7)(hb) or (hc) (applicable per 60.62, and 61.35, Wis. Stats.) specifically preempt local control and permit the same.
- B. Any change in ownership or tenancy of premises which is accompanied by any change in the signs for the premises shall necessitate that the signs for the premises be brought into compliance with the provisions of this chapter.

13. REMOVAL OF SIGNS.

- A. The Code Enforcement Officer is hereby authorized to remove any illegal sign as defined by this chapter.
- B. Except as described in subsection H, below, before taking action to require removal of any illegal sign, the Code Enforcement Officer shall give a written compliance notice to the holders of the permit for the sign or, if no permit has been issued, to the owner(s) of the premises on which such sign is located and to the lessee(s) of the premises to which such sign pertains. The notice shall state the reasons and grounds for removal, specifying the deficiencies or defects in such sign with reasonable definiteness, and the violations charged, if any. Such notice shall specify what repairs, if any, will make the sign conform to the

requirements of this chapter and specify that the sign must be removed or made to conform with the provisions of this chapter within the compliance period provided below. Service of notice shall be made on the parties specified above (a) by delivering personally copies of the notice to said parties, or (b) by leaving a copy of the notice with any person in charge of the premises, or (c) in the event that no such person can be found on the premises, by affixing a copy of the notice in a conspicuous position at an entrance to the premises and by the certified mailing of copies of the notice to the post office addresses of the holders of the permit as specified in the application for the permit, if any, or to the last known post office addresses of the parties specified above.

- C. Except as described in subsection H, below, the compliance period shall be:
 - 1. Ten (10) days for permanent signs.
 - 2. Forty-eight (48) hours for temporary signs.
- D. Re-erection of any sign or any substantially similar sign on the same premises after a compliance notice has been issued shall be deemed a continuance of the original violation.
- E. If the holders of the permit or the owner(s) and lessee(s) of the premises upon which the sign is located have not demonstrated to the satisfaction of the Code Enforcement Officer that the sign has been removed or brought into compliance with the provisions of the chapter by the end of the compliance period, the Code Enforcement Officer shall certify the violations to the Town Attorney for prosecution.
- F. The Code Enforcement Officer is authorized to cause the removal of any sign adjudged to be illegal by a court of competent jurisdiction if the court so orders. The actual cost and expense of any such removal by the Code Enforcement Officer shall be borne by the holders of the permit or, if no permit had been issued, by the owner(s) of the premises on which the sign is located and the lessee(s) of the premises to which such sign pertains. All such parties shall be jointly and severally liable for such cost and expense and subject to the penalties provided by the provisions of this chapter.
- G. In addition to any remedies and penalties noted above, any person who fails to remove a sign after being notified to remove the sign by the Code Enforcement Officer shall be subject to penalties as provided in Section 17.10 of this chapter.
- H. Notwithstanding the foregoing procedures, any temporary sign located in violation of this chapter on Town property or within any right-of-way may be summarily removed by the Code Enforcement Officer immediately upon observing the noncompliant sign. The Code Enforcement Officer shall retain the sign for a period of 48 hours and if the sign is claimed by the owner during such time, the Code Enforcement Officer shall make the sign available to the owner for return. Any such sign not claimed within 48 hours may be summarily destroyed. This exception is intended to preserve the Town's authority as proprietor of Town property, and also to preserve the health, safety and welfare of the traveling public along public rights-of-way.

14. DEFINITIONS.

The following definitions, unless further defined or applied herein, specifically apply to this Section 17.08:

"Actively Marketed" means (1) proactive measures are being taken to connect and engage with potential customers, which may include listing with a real estate agent, publishing advertisements in a newspaper or other print publications, or engaging in online advertising activities, such as posting on a website; and (2) these actions are repeated, updated, and modified regularly to continue to seek engagement with potential purchasers. The mere fact of placing a sign on a lot does not itself demonstrate that the property is being actively marketed.

"Awning Sign" means a fireproof space frame structure with translucent flexible reinforced vinyl or similar covering designed in awning form, but whose principal purpose and use is signage. Such signs may be internally illuminated by fluorescent or other light sources in fixtures approved under national and local electrical codes.

"Area of Sign" means that area enclosed by one continuous line, connecting the extreme limits or edges of writing, representation or similar figures or characters together with any material forming an integral part of the display or forming the backing surface or background on which the message or symbols are displayed on a sign. The area shall be determined using the largest sign area or silhouette visible at any one time from any point. This area does not include the main supporting sign structure, but other ornamental attachments are to be included in determining area of sign.

"Banner Sign" means any sign intended to be hung either with or without frames, possessing characters, letters, illustrations or ornamentations applied to paper, plastic, fabric, or similar flexible material of any kind.

"Building Front Foot" means the maximum building width measured at grade on a straight line parallel to the street on which the building is addressed.

"Business Front Foot" means the lineal distance of the building space occupied by the particular business measured on a straight line parallel to the street. Where a business does not parallel a street, the front foot shall be measured along the exterior of the building space occupied by the particular business.

"Changeable Copy Sign" means a sign that is designed so that characters, letters, or illustrations can be changed or rearranged without altering the face or the surface of the sign.

"Commission" means the Plan Commission of the Town.

"Development Sign" means any temporary sign used to identify future residential or nonresidential development, or such a development under construction or completed.

"Double-faced Sign" means one sign that is constructed in a single plane that has two faces or sides designed for use.

"Electronic Message Board" means a type of changeable copy sign whose message or display is presented with patterns of lights or other means that may be changed at intermittent intervals by an electronic process.

"Flag" means banner sign as defined above.

"Free-Standing Sign" means any sign which is supported by structures or supports in or upon the ground and independent from any building.

"Government Sign" means any sign that is owned, operated, or required by a governmental entity having jurisdiction, including, but not limited to, the signs designated in this chapter as government signs, and signs that are required by applicable laws. Such signs include official traffic, fire and police signs, signals, devices, and markings of the State of Wisconsin and the Town or other public authorities, or posted notices required by law.

"Height of Sign" means the overall height of a sign and/or the supporting structure of a sign, where applicable, measured from the nearest adjacent road grade at the edge of the pavement to the highest point of the sign and/or supporting structure of the sign.

"Holders of Permit" means collectively the owner(s) of the premises on which a sign is located and the lessee(s) of the premises to which such sign pertains, all of whom must sign the application for a sign permit. (See subsection 7.).

"Illegal Sign" means any sign except the following:

- i) A sign allowed by this chapter and not requiring a permit.
- ii) A sign allowed by this chapter carrying a valid permit.
- iii) A sign not allowed by this chapter but which has been legalized by variance or conditional use and proper permit granted.

"Legal Nonconforming Sign" means a sign that met code regulations when it was originally erected, either by adherence to a previous sign ordinance or by a variance granted to that ordinance, but which does not comply with all the present regulations of this chapter.

"Maintenance" means the replacing or repairing of a part or portion of a sign made unusable by ordinary wear, tear or damage beyond the control of the owner, or the reprinting of existing copy without changing the wording, composition or color of said copy.

"Master Sign Program" means the establishment of an identification program for any multi-tenant operation within the town, including but not limited to office parks, industrial parks and multi-tenant office and retail buildings. A Master Sign Program may also include a commercial development in which there exists a number of separate commercial activities, in which there are appurtenant facilities (such as parking or pedestrian mall), and which is designed to provide a single area in which the public can obtain varied products and services. The intent of a Master Sign Program is to give a uniform theme of size, color and style to signs in such a development.

"Meaningful Open Space" means the area around the base of a sign, determined to be necessary for aesthetics and safety by the Board. Meaningful Open Space shall be no less than 250 square feet and shall be landscaped with plantings and grass or ground cover as per site development standards.

"Monument Sign" means a sign placed upon or supported by the ground independent of any other structure for the purpose of delineating a neighborhood or a commercial development area. Monument signs are tantamount to government signs, to identify neighborhoods or commercial development areas, and assist with the provision of emergency services.

"Off-Premise Sign" means a sign which is not appurtenant to the use of the property or to a product sold or a service offered upon the property where the sign is located, and which

does not identify the property where the sign is located as a purveyor or source of the merchandise or services advertised upon the sign.

"Pennant" means a tapered or dove-tailed banner, sign, streamer or flag, with or without any representation or writing thereon.

"Permanent Sign" means any sign which is intended to be and is so constructed as to be lasting and enduring, remaining unchanged in character, condition (beyond normal wear) and position, and in some permanent manner affixed to the ground, wall or building.

"Portable Sign" means any sign not permanently attached to the ground or a building or designed to be permanently attached to the ground or a building, including but not limited to trailorized signs and vehicles.

"Projecting Sign" means any sign other than a wall sign affixed to any structure, building or wall whose leading edge extends beyond such structure, building or wall.

"Roof Line" means the highest point of the main roof structure or highest point on a parapet but shall not include cupolas, pylons, projections or minor raised portions of the roof.

"Roof Sign" means a sign extending above the roof line.

"Sandwich Board" means a two-sided portable sign constructed of wood, cardboard or similar rigid material generally displayed outside of a commercial establishment to identify a product or service.

"Seasonal Sign" means a sign for seasonal commercial establishments, including but not limited to garden centers, Christmas tree lots and fruit and vegetable stands.

"Shingle Sign" means a sign whose front is under a roof overhang, covered walkway, covered porch, or open lattice walkway.

"Sign" means any device for visual communications and the structure which supports it, which is used or is intended to attract the attention of the public, when the display of this device is visible beyond the boundaries of the property upon which the display is made.

"Streamer" means pennant as defined above.

"Temporary Sign" means any sign constructed of cloth, canvas, wood, light fabric, cardboard, wallboard, plastic or other like materials, with or without frames, and any type of sign not permanently attached to the ground, wall or building which is permitted for display for a limited period of time only.

"Wall Sign" means any sign painted on, or attached to and erected parallel to the face of, or erected and confined within the limits of, the exterior wall of any building or structure and supported by such wall, building or structure and which displays only one advertising surface. This definition includes signs composed of individual letters or symbols.

"Window Sign" means any sign placed inside or upon a window facing the outside of a building and which is usually intended to be seen from the exterior of the building. Signs displayed on glass panels which are integral to doors visible from the exterior of the building will be considered to be window signs for purposes of this chapter.

SECTION 17.09

LOADING AND OFF-STREET PARKING

SECTION I. LOADING REQUIREMENTS

SECTION II. PARKING REQUIREMENTS

- A. Approval
- B. Adequate Access
- C. Location
- D. Dimensional Requirement
- E. Parking Spaces for Use by Physically Disabled Persons
- F. Surfacing
- G. Flexibility in Application
- H. Changes in Occupancy or Intensity of Use
- I. Required Number of Stalls
- J. Residential Parking
- K. Parking of Vehicles, Trucks and Equipment
- L. Screening
- M. Offset
- N. Setback
- O. Lighting
- P. Storage Prohibited
- Q. Driveway Slope

SECTION 17.09

LOADING AND OFF-STREET PARKING

1. LOADING REQUIREMENTS.

- A. An individual loading space shall be at least 10 feet wide by 45 feet long and have a minimum clearance of 14 feet.
- B. The number of such spaces provided shall be based upon the operating characteristics of the individual use and shall be subject to approval by the Plan Commission upon the submittal of building, site and operational plans.
- C. No building for commercial or industrial purposes shall be erected on a lot in a manner requiring servicing directly from the abutting public street.
- D. The use of public streets for the maneuvering of trucks to service industrial or commercial buildings is expressly prohibited. Sufficient on-site space shall be provided for such maneuvering.

2. PARKING REQUIREMENTS.

In all Districts and in connection with every use, there shall be provided at the time any use is converted, relocated, enlarged or moved from one location to another or building is erected, converted, relocated, enlarged, structurally altered or moved from one location to another, off-street parking stalls for all vehicles in accordance with the following:

A. Approval.

All business, institutional, multi-family residential and industrial parking areas plans shall obtain approval of the Plan Commission.

B. Adequate Access.

A driveway access to a public street, road or highway shall be provided for each lot and every driveway access shall be at least 10 feet wide for one and two-family dwellings and a minimum of 22 feet wide for all other land, buildings and structures.

C. Location.

Parking shall be located on the same lot as the principal use unless the Plan Commission specifically approves of parking being located on an adjoining parcel with the recording of appropriate access and parking easements and any necessary maintenance agreements and also providing that all parcels involved meet the requirements of this section.

D. Dimensional Requirement.

Parking spaces, driveways and aisles for access to parking spaces shall have the following minimum dimensions unless specifically varied by the Plan Commission.

Stall Width	9 feet
Stall Depth	20 feet
Parking Aisle Width	
Two-Way Traffic (90°).....	25 feet
One-Way Traffic (60°).....	18 feet
Driveway (no parking stalls)	
Two-Way Traffic	22 feet
One-Way Traffic	12 feet

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E. Parking Spaces for Use by Physically Disabled Persons.

Parking spaces for use by physically disabled persons shall be in accordance with State and federal requirements.

F. Surfacing.

All off-street parking areas, and driveways, except parking areas accessory to single-family and two-family dwellings, shall be surfaced with a bituminous or Portland cement concrete pavement. Such parking areas shall be kept free of dust, loose stones, and gravel. Such parking areas shall be so arranged and marked to provide for orderly and safe parking and storage of vehicles and must be completed within one (1) year of issuance of the building and zoning permit.

G. Flexibility in Application.

1. The Town recognizes that, due to the particulars of any given development, the inflexible application of the parking standards set forth in this section may result in a development either with inadequate parking space or parking space far in excess of its needs. The former situation may lead to traffic congestion or parking violations on adjacent streets as well as unauthorized parking in nearby lots. The latter situation wastes money as well as space that could more desirably be used for valuable development or environmentally useful open space. Therefore, the Plan Commission may allow deviations from the requirements of this section whenever it finds that the deviation will not adversely impact traffic circulation or public safety.
2. The site plan must, subject to Plan Commission approval, be designed to provide sufficient open space on the subject site to accommodate the additional parking spaces otherwise required by this section. Such open space shall be in addition to required yards, setbacks, driveways, private streets, loading and service areas and open space requirements. Sufficient open space shall be provided which, if converted to parking spaces, would provide off-street parking to meet the full requirements of this section at the time of application for a deviation from the requirements of this section.
3. The Plan Commission may at any time, at its sole discretion, require that all off-street parking as required by this section be constructed.

H. Changes in Occupancy or Intensity of Use.

When the parking needs of a building, structure or site is increased due to additional employees, gross floor area, seating capacity or due to a change of occupancy, additional parking spaces shall be constructed in the amount necessary to conform to this section, as determined by the Plan Commission.

I. Required Number of Stalls.

The following parking standards shall be applied unless deviations have been specifically approved by the Plan Commission in accordance with §17.09 2. G. or H. of this section.

<u>Type of Use</u>	<u>Number of Stalls</u>
Residential	2 per family
Auditorium	1 per each 3 seats
Church	1 per each 3 seats
Theater	1 per each 3 seats
Retail Business	1 per each 100 sq. ft. of floor area
Nonretail Commercial	1 per each 200 sq. ft. of floor area
Office Building	1 per each 200 sq. ft. of floor area
Customer Service	1 per each 100 sq. ft. of floor area

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Restaurant	1 per each 100 sq. ft. of floor area
Tavern	1 per each 100 sq. ft. of floor area
Club	1 per each 100 sq. ft. of floor area
Industrial*	1 per each 200 sq. ft. of floor area
Industrial*	1 per each 2 employees
Other	As determined by the Plan Commission

*Whichever will provide the greater number of stalls.

J. Residential Parking.

Parking of cars, vans, sport utility vehicles and light duty pick-up trucks accessory to a residential use shall be limited to those actually used by the residents or for temporary parking of guests.

K. Parking of Vehicles, Trucks and Equipment.

1. One commercial panel truck or pick-up truck per lot. Such truck and any attached extraneous material shall not exceed 20 feet 6 inches in length, 8 feet in height nor 7 feet in width.
2. No bus, truck or other equipment shall be parked regularly on road rights-of-way.
3. Recreational vehicles shall be kept in a garage or shall have a planting screen, landscaped fence, or wall at least four feet in initial height along a side abutting or fronting a residential district, except for boats in the R-L district.
4. Recreational equipment parked or stored shall not have fixed connections to electricity, water, gas or sanitary sewer facilities and at no time shall this equipment be used for living or housekeeping purposes.
5. If camping or recreational equipment is parked or stored outside of a garage, it shall be parked or stored subject to the following: There shall be a minimum setback of 50 feet when parked or stored adjacent to a public street or highway. It shall be parked or stored in the rearyard of the lot and it shall be parked or stored not closer than 10 feet from a side or rear lot line. Notwithstanding the above, camping or recreational equipment may be parked anywhere on the premises for loading or unloading purposes for a period of not more than 48 hours.
6. There shall be no parking or storage anywhere in a residential zoned District of any equipment which is no longer capable of the use intended or requiring repair over and above ordinary maintenance. All recreational equipment shall be kept in good condition. The ground area under and immediately surrounding where such recreational equipment is stored shall be maintained free of noxious weeds, debris or overgrowth.

L. Screening.

Any off-street parking area, other than that provided for a residence, which abuts or faces a residential district, shall provide a planting screen, landscaped fence or wall at least 4 feet in initial height along the side abutting or fronting on a residential district.

M. Offset.

In any off-street parking area, other than that provided for a residence, which abuts a residential district, no vehicle shall be allowed to park closer than 10 feet to the abutting residential lot line.

N. Setback.

No vehicle shall be parked closer than 10 feet to the base setback line.

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O. Lighting.

Lights provided in any parking area shall be hooded or beamed so as not to create undesirable glare or illumination of adjacent residential property.

P. Storage Prohibited.

The unenclosed parking or storage of unlicensed, unregistered, inoperable or junk vehicles is expressly prohibited within the Town. The use of any vehicle for storage purposes is expressly prohibited within the Town.

Q. Driveway Slope (created 12-001)

1. The maximum driveway slope shall be 12%, with the following exceptions:

- a. Existing driveways that exceed 12% may remain.
- b. Repair or repaving of existing driveways that exceed 12% shall be allowed; however, shall not increase in slope.
- c. The Plan Commission may grant a driveway slope variance at the petition of the property owners.

**SECTION 17.10
ADMINISTRATION AND ENFORCEMENT**

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SECTION 17.10

ADMINISTRATION AND ENFORCEMENT

1. PLAN COMMISSION.

In addition to the responsibility and authority granted the Plan Commission pursuant to Wisconsin State Statutes, the Plan Commission shall be responsible for the functions identified in this chapter.

2. STAFF.

A. *Unless otherwise specified, the Building Inspector shall be designated as the Code Enforcement Officer, and shall generally be responsible for administering this chapter. The Code Enforcement Officer or authorized appointee is hereby designated as the primary enforcement agency for the provisions of this chapter. The duty of the Code Enforcement Officer, among other things, shall be:*

To interpret and administer this chapter;

To authorize issuance of all permits required by this ordinance;

To keep an accurate record of all building and occupancy permits issued; and

To keep accurate records and maps of the Zoning Code and any amendments or changes thereto.

B. *In the enforcement of this chapter, the Code Enforcement Officer under the direction of the Town Board shall have the power and authority for the following:*

1. *At any reasonable time and for any proper purpose, to enter upon any public or private premises and make inspection thereof.*

2. *Upon reasonable cause or question as to proper compliance, to revoke any building or occupancy permit and issue cease and desist or stop work orders requiring the cessation of any building, moving, alteration or use which is in violation of the provisions of this chapter. Such revocation shall be in effect until reinstated by the Code Enforcement Officer or the Board of Appeals.*

3. *Enforce the provisions of this chapter and the Building Code.*

3. VIOLATIONS.

A. Penalties.

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 chapter, will be subject to a monetary forfeiture as provided in § 25.04 of this General Code. Each day that a violation exists shall constitute a separate violation and be punishable as such.

B. Injunction.

Compliance with the provisions of this chapter may also be enforced by an injunction order at the suit of the Town or one or more owners of real estate situated within an area affected by the regulations of this chapter.

C. **Declared Nuisances.**

Any building erected, converted, relocated, enlarged, occupied, reoccupied, structurally altered, moved or placed on a lot or any use carried on in violation of the provisions of this chapter is hereby declared to be a nuisance per se and the Town may apply to any court of competent jurisdiction to restrain or abate such nuisance.

4. **BOARD OF APPEALS.**

A. **General Administration.**

Board of Appeals administration and authority shall be as follows:

1. **Establishment.**

a. **Authority. (repealed and recreated 2013-02)**

- (1) *There is hereby created a Board of Appeals, pursuant to § 62.23(7)(e), Wis. Stats., to consist of 5 members to be appointed by the Chair of the Town, subject to confirmation by the Town Board for terms of three years, except those first appointed, one shall serve for one year, two for two years and two for three years, respectively; and, thereafter, on January 1 of each year, the new appointments shall be for three year terms. The Town Chair shall also appoint, for staggered terms of three years, two alternate members, to serve as required and established pursuant to § 62.23(7)(e)(2), Wis. Stats. The Board of Appeals is encouraged to establish a procedure which allows all members and alternates to serve on an alternating, random or periodic basis, so that all members and alternates share equivalent work loads and gain equivalent experience.*
- (2) *Members and alternates of the Board of Appeals shall be removable by the Town Chair, for cause, upon written charges and after public hearing.*
- (3) *The Town Chair may appoint for a term of three years two alternate members of such Board, in addition to the five members above provided for, who shall act, with full power, only when a member of the Board refuses to vote because of interest or when a member is absent.*
- (4) *The provisions, with regard to removal and the filling of vacancies, shall also apply to such alternate.*

b. **General.**

- (1) *All members of the Board shall reside within the Town.*
- (2) *The Town Chair shall designate one of the members Chair.*
- (3) *A vacancy shall be filled for the unexpired term of any member whose term becomes vacant, by appointment by the Chair of the Town Board.*

Section 17.10 4. A. 1. b. 4.

- (4) *The members of the Board shall serve at such compensation to be fixed by ordinance, in addition to the actual and necessary expenses incurred by the Board in the performance of its duties.*

2. Rules.

a. General.

- (1) *The Chair, or in his or her absence, the acting Chair, may administer oaths and compel the attendance of witnesses.*
- (2) *The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examination and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.*

b. Meetings.

Meetings of the Board shall be held at the call of the Chair and at such other times as the Board may determine and shall be subject to the open meetings law.

c. Procedural.

The Board shall adopt such other rules governing its procedures as are necessary, consistent with this chapter.

d. Cooperation With Plan Commission.

The Board shall keep the Plan Commission informed as to any matters brought before it and shall request of the Plan Commission such information as is pertinent to the matter under consideration.

B. Powers.

The Board of Appeals shall have the following powers as defined by statute:

1. *Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of § 62.23, Wis. Stats., or of this chapter and such additional other powers as provided by the State statutes.*
2. *To authorize upon appeal in specific cases such variances from the terms of this chapter as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this chapter will result in practical difficulty or unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done.*
3. *Establishment or expansion of a use otherwise prohibited by Chapter 17 shall not be allowed by variance.*

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4. *The Zoning Board of Appeals shall have no authority to grant a variance to the minimum lot size or lot area requirements of this zoning code. (adopted 7/27/04 – Ord. 2004-003)*

C. Additional Variance Requirements. (repealed and recreated 2013-02)

In making its determination the Board shall consider whether the proposed variance would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects; and may impose such requirements and conditions with respect to locations, construction, maintenance and operation, in addition to any which may be stipulated in this chapter, as the Board may deem necessary for the protection of adjacent properties and the public interest and welfare. Any action authorized by a variance granted by the Board shall be completed no later than two years of the date such variance is granted, except as follows. The Board may specify in the variance a specific date by which the action authorized by the variance must be completed, which shall control, provided that such date is less than 2 years from the date the variance is granted.

D. Required Vote. (repealed and recreated 2013-02)

If a quorum is present, the Board may take action under this Section by a majority vote of the members present, including such alternate members as may form part of the quorum. The grounds of every such determination shall be stated.

E. Further Appeal.

Any person or persons aggrieved by a decision of the Board of Appeals, or any taxpayer, or any officer, department, board or bureau of the Town may appeal a decision of the Board of Appeals in the manner provided in § 62.23(7)(e), Wis. Stats., within 30 days after the filing of the decision in the office of the Board of Appeals.

F. Appeals. (repealed and recreated 2013-02)

1. How Filed.

- a. *Appeals to the Board of Appeals may be taken by any person aggrieved or by any taxpayer or any officer, department, board or bureau of the Town affected by any decision of the administrative officer. Such appeal shall be taken within 20 days from the date of the decision appealed from by filing with the administrative officer from whom the appeal is taken and with the Board of Appeals, a notice of appeal specifying the grounds thereof. The administrative officer from whom the appeal is taken shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.*
- b. *The Town Board may, by ordinance or resolution, establish reasonable filing fees for the filing of an appeal to the Board of Appeals. Such filing fees shall be paid at the time of filing of the appeal.*

2. Stay.

An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the administrative officer from whose decision the appeal is taken certifies to the Board of Appeals after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the

Section 17.10 4. F. 3.

Board of Appeals or by a court of record on application, on notice to the administrative officers from whom the appeal is taken and on due cause shown.

3. Hearing.

Each appeal shall be held within a reasonable time from the time the appeal was filed with the Zoning Board of Appeal. Notice of hearing shall be given by publication thereof in a newspaper of general circulation in the Town as a Class 2 notice, under Ch. 985, Wis. Stats., the last insertion to be at least one week prior to the date set for the hearing. If the Town has an official newspaper, the notice shall be published therein. In addition, written notice shall be given to the Plan Commission, any administrative officer whose decision is appealed from, the petitioner, the Town Clerk, the owners of each parcel of land adjoining the land in question and any other specifically interested parties. At the hearing, any person may appear in person, by agent, or by attorney.

4. Decision.

The decision on any appeal shall be in writing and shall be made within a reasonable time after completion of the hearing thereon.

5. AMENDMENTS TO ZONING REGULATIONS OR MAP.

A. Town Board Action.

Pursuant to the provisions of § 62.23(7) of the Wisconsin Statutes, the Town Board may, after first submitting the proposal to the Plan Commission for report and recommendation and after notice and public hearing as hereinafter provided, amend the regulations of this chapter or change the District boundaries.

B. Initiation.

A proposal to amend the text or change the District mapping of this chapter may be initiated by motion of the Town Board or by motion of the Plan Commission. A petition to change the District mapping of this chapter may be initiated by one or more property owners in the area to be affected by the amendment.

C. Filing of Petition.

A petition to change the District mapping of this chapter submitted by a private property owner shall be prepared on printed forms provided for that purpose and filed with the Clerk and shall be accompanied by the appropriately established current fee to defray the cost of giving notice, investigation and other administrative processing.

D. Data Required.

In addition to all information required on the petition form, the petitioner shall supply 3 copies of the following:

- 1. A legal description of the land in question.*
- 2. A plot map drawn to a scale of not less than 100 feet to the inch showing the land in question, its location, the length and direction of each boundary thereof, the location and existing use of all buildings on such land and the principal use of all properties within 600 feet of such land.*

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3. *The names and addresses of owners of all properties within 300 feet of any part of the land included in the proposed change.*
4. *Any further information which may be required by the Code Enforcement Officer or the Plan Commission to facilitate the making of a comprehensive report to the Town Board.*

E. Referral.

1. *The Clerk shall transmit without delay one copy of such petition or motion of the Plan Commission or Town Board to the Town Board at its next meeting for formal referral to the Plan Commission, to be placed on the agenda of the next meeting of the Plan Commission.*
2. *The Plan Commission shall conduct the necessary investigation, hold an informal hearing where deemed desirable and report its recommendation to the Town Board within a reasonable time of the receipt of such petition.*

F. Hearing.

Upon receipt of the Plan Commission report or at least 60 days after submitting the petition or motion to the Plan Commission, the Town Board shall hold a public hearing thereon in the manner provided in § 6 of this section.

G. Action.

1. *As soon as reasonable after such public hearing the Town Board shall act to approve, approve with conditions, modify and approve, modify and approve with conditions, or disapprove the proposed change or amendment.*
2. *Approval shall be by appropriate ordinance and necessary changes in the official zoning map or texts shall be made promptly by the Code Enforcement Officer.*

H. Protest.

In case of protest against a change or amendment duly signed and acknowledged by the owners of 20 percent or more either of the areas of land included in such proposed change, or by the owners of 20 percent or more of the area of the land immediately adjacent and extended 100 feet therefrom, or by the owners of 20 percent or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such change shall require a 3/4 vote of the members of the Town Board for passage.

I. Effective Upon County Approval.

1. *Any such amendatory ordinance when so adopted shall, within 7 days thereafter, be submitted by the Town Clerk to the County Clerk for approval by the County Board.*
2. *Any such amendatory ordinance shall become effective in the Town upon the approval of the County Board.*

5.5 SPECIAL EXCEPTION DUE TO ERRONEOUSLY PERMITTED WORK (created 2013-04)

The Town Board is authorized to grant a special exception to waive or modify any requirements of

Section 17.10 5.5. A.

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

A. Procedures.

1. Petition.

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

- a. Plat of Survey. A plat of survey, drawn to a reasonable scale and properly dimensioned, shall be prepared and certified by a surveyor registered by the State. Such survey shall bear the date of the survey, which shall be within one year of the application for the special exception. The survey shall also show the following:*
 - (1) The boundaries of the property involved.*
 - (2) The location of the centerline of any abutting streets.*
 - (3) The ordinary high water line of any stream or lake on which the property abuts.*
 - (4) The location on the property of any existing buildings, structures, hard surfaces, including the measured distances between such buildings and structures and the lot lines, and a chart indicating the area, measured in square feet, of each structure or hard surface.*
 - (5) The location and grade of the existing driveways and parking areas.*
 - (6) The nearest portion of such buildings and structures and the centerline of any abutting street.*
 - (7) The nearest portion of such buildings and structures and the ordinary high water line of any abutting stream or lake.*
 - (8) The proposed floor elevation of all existing buildings and structures in relation to the existing and/or established grade of any abutting streets and the ordinary high water line of any abutting stream or lake.*
 - (9) The elevation and setback of any existing buildings or structures on adjacent parcels within 200 feet of any existing buildings, structures or additions.*
- b. The names and addresses of the owners of all properties within 300 feet of the property involved.*
- c. A detailed written description of the existing development or use, and conditions for which the special exception is sought.*

Section 17.10 5.5. A. 1. d.

- d. *Any further information as required by the Town Staff, Town Plan Commission, or Town Board to facilitate the making of an evaluation of such request, such as, parking, traffic impact, landscaping treatment, drainage, sanitary sewer, erosion control and other factors as would be pertinent including the impact on public facilities.*

2. **Fee.**

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

3. **Plan Commission Evidentiary Hearing.**

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

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

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

5. **Town Board Action.**

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

B. **Basis of Approval.**

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

1. *Permit Error. That the Petition seeks approval of a structure that was constructed pursuant to a building permit or zoning permit issued by the Town of Delafield Building Inspector or Zoning Administrator, in accordance with the plans filed with the permit application and all conditions of the permit approval, and only after completing construction was the structure found to be in violation of the yard,*

Section 17.10 5.5. B. 2.

building height, area, setback, offset, or open space requirements of this Ordinance.

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

C. Determination.

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

6. PUBLIC HEARINGS.

A. Notice.

In order that the owners of property involved and other legitimately interested parties may have fair opportunity to be heard, adequate notice shall be given of any public hearing required by the provision of this chapter stating the time and place of such hearing and the purpose for which the hearing is being held.

B. Procedure.

1. Posting and Publishing.

- a. *Except as may be otherwise herein specifically provided, notice of hearing shall be given not less than 10 days prior to the date of such hearing by posting such notice in at least 3 public places in the Town, and publishing the notice as a Class 2 notice, under Ch. 985, Wis. Stats., in a newspaper likely to give notice to the area affected. If the Town has an official newspaper the notice shall be published in the official newspaper.*
- b. *When the hearing involves a proposed change in the zoning district classification of any property, or the granting of a conditional use, one of the notices shall be posted in the vicinity of such proposed change of*

Section 17.10 6. B. 2.

conditional use where practical, and notice of the public hearing shall be mailed to the owners of all lands in the Town which lie within 300' of any part of the land included in such proposed change or conditional use at least 10 days before such public hearing. The failure of such notice to reach any property owners provided such failure is not intentional, shall not invalidate any amending ordinance, grant of conditional use or decision. Such mailed notice shall not be required where the Town Board determines that the Zoning District changes are of such a nature that such notice would involve excessive administrative effort and expense and is not necessary for reasonable notification of affected property owners.

2. Fee.

Where a hearing is required by the provision of this chapter, such petition shall be presented in writing to the Town Clerk and shall be accompanied, in addition to the data required, by a fee as set from time-to-time by the Town Board to defray the cost of notification and holding of a public hearing.

7. ADMINISTRATIVE AND ON-SITE DEVELOPMENT FEES.

A. Administration.

All persons, firms or corporations whose application, petition and/or plans require appearance at a public meeting, staff review of plans, staff inspection of site improvements and/or issuance of a permit shall pay a fee to the Town to help defray the cost of administration, investigation, advertising, inspection and processing. All fees shall be established by separate resolution of the Town Board and amended from time-to-time as deemed appropriate.

B. Consultant Fees.

Costs incurred by the Town for retaining outside consultants to assist in review and analysis of any application shall be paid by the applicant.

18.01 PURPOSE AND GENERAL PROVISIONS.

(1) **PURPOSE.** The purpose of this chapter, prepared under the authority granted by §236.45, Wis. Stats., is to promote the public health, safety, morals, property, aesthetics and general welfare of the Town and the regulations are designed 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 adequate provision for transportation, water supply, waste water disposal, schools, parks, playgrounds and other public requirements; prevent scattered development beyond the service areas of community facilities and utilities; conserve the existing and potential value of land, water, air and improvements; provide the best possible environment for human habitation and meet the public demand for aquatic recreation with the least disturbance to shoreland owners; preserve shoreland growth and cover, prevent erosion and sedimentation, and protect surface and subsurface water quality. The regulations of this ordinance are made with reasonable consideration of the character of the Town with a view of conserving the value of the buildings placed upon the lands, providing the best possible environment for human habitation and for encouraging the most appropriate division and use of land throughout the Town.

(2) GENERAL PROVISIONS.

(a) **Jurisdiction.** The provisions of this chapter shall apply within the corporate limits of the Town. Included in this jurisdiction shall be:

1. Any division of land within the Town which results in a subdivision as defined herein shall be surveyed and a plat thereof made, approved and recorded as required by this chapter and by Ch. 236, Wis. Stats.
2. Any division of land other than a subdivision resulting in the creation of 2 parcels or building sites shall be surveyed and a certified survey map or assessor's map shall be prepared and be approved by the Town and recorded with the Register of Deeds as required by this chapter. This shall not pertain to those transfers or divisions of land specifically excluded herein, namely: (Am. #260)
 - a. Transfers of interests in land by will or pursuant to court order.
 - b. Leases for a term not to exceed 10 years, mortgages or easements.
 - c. Cemetery plats made under §157.07 and assessor's plats, unless specifically required by the Town, made under §70.27, Wis. Stats., but such assessor's plats shall comply with §§236.15(a) to (g) and 236.20(1) and (2)(a) to (e), Wis. Stats.
 - d. (Repealed and recreated 2014-08) The sale or exchange of parcels or land between owners of adjoining property if additional lots are not thereby created and the lots resulting are not reduced below the minimum sizes and meet all specifications required by these regulations, the zoning ordinances, and other applicable laws and ordinances, subject to the review procedures described in Section 18.11.

(b) **Basis of Approval** (Repealed and recreated 2013-03)

1. Compliance with Chapter 236 of the Wisconsin Statutes.
2. Compliance with any Town or County ordinance that is in effect when the subdivider submits a preliminary plat or a final plat if no preliminary plat is submitted.
3. Compliance with duly approved comprehensive plans, regional plans, County plans or comprehensive plan component including the Zoning Code and official map adopted by the Town.

4. Compliance with the rules of the Department of Safety and Professional Services, relating to lot size, lot elevation, percolation tests, test borings, etc.
 5. Compliance with the rules of the Division of Highways, Department of Transportation Facilities, relating to traffic safety and preservation of public interest and investment in State trunk highways or connecting streets.
 6. Compliance with rules of the State Department of Natural Resources setting water quality standards, preventing and abating pollution and regulating septic systems.
 7. Compliance with the most restrictive requirements when requirements of approving authorities conflict.
 8. Consideration of the Development Review Checklist as adopted by separate resolution of the Town Board which is attached hereto and incorporated herein as an exhibit, including any amendments that may be made thereto from time to time by the Town Board by separate resolution.
- (c) Land Unsuited for Subdividing. No land shall be subdivided for residential use which the Town Board determines to be unsuitable for such use by reason of flooding, bad drainage, adverse earth or rock conditions, topography or any other feature likely to create a subdivision contrary to the purpose of this chapter.

18.02 DEFINITIONS.

(1) GENERAL INTERPRETATION. All words used in the present tense include the future tense; the singular includes the plural and the plural the singular; the word "person" includes associations, co-partnerships or corporations; and the term "shall" is mandatory while the word "may" is permissive. All terms used which are defined in Ch. 236, Wis. Stats., shall have the same meaning as ascribed in the chapter, and as the chapter may hereafter be amended, unless otherwise defined in this chapter or unless the context and subject matter clearly indicates otherwise. In their interpretation and application, the provisions of this chapter shall be held to the 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 Statutes.

(2) SPECIFIC WORDS AND PHRASES. (Amended 2005-003)

Administering Authority: The designee of the Town Board to administer this section. Generally the administrative authority will be the Town Building Inspector. However, in certain instances the Town Board will designate the Town Engineer or some other qualified person to administer this section.

Agricultural Land Use: Use of land for planting, growing, cultivating and harvesting of crops for human or livestock consumption and pasturing or yarding of livestock.

Commercial Land Use: Use of land for the retail or wholesale sale of goods or services.

Common Open Space: Land within a subdivision or other development that has been designated, dedicated, reserved, or restricted in perpetuity from further development and is set aside for the use and enjoyment by residents of the community. Common Open Space may have varied forms of ownership including but not limited to fractional share of the owners of property with a subdivision or development, public ownership, and fee simple or easement interest by a third party land trust. Common open space is typically free of structures, but may contain historic or rustic structures, shared recreational structures including but not limited to pool houses or stables, as may be indicated on the approved development plan.

Condominium (or condominium plat): A community association combining individual unit ownership with shared use or ownership of common property or facilities, established in accordance with the Condominium Ownership Act and §703 Wisconsin Statutes.

Construction Site Control Measure: A control measure used to meet these requirements.

Control Measure: A practice or combination of practices to control erosion and attendant pollution.

Control Plan: A written description of the number, locations, sizes and other pertinent information of control measures designed to meet the requirements of this section submitted by the applicant for review and approval by the Town's designated administrative authority.

Development Envelope: That portion of a parcel of land which is intended to be cleared, graded, and built upon including areas for accessory uses and structures.

Development: The combination of parcels; division of a parcel of land into two or more parcels; the erection, construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or structure; any use or change in use of any buildings, structures, or land; any extension of any use of land; or any clearing, grading, or other movement of land, for which permission may be required pursuant to this Chapter. Also, the result of said acts.

Erosion: The detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity.

Land Developing Activity: The construction of buildings, roads, parking lots, paved storage areas and similar facilities.

Land Disturbing Construction Activity: Any man-made change of the land surface, including removing vegetative cover, excavating, filling and grading, but not including agricultural land uses, such as planting, growing, cultivating and harvesting of crops, growing and tending of gardens, harvesting of trees and landscaping modifications.

Landowner: Any person holding title to or having an interest in land.

Land User: Any person operating, leasing, renting or having made other arrangements with the landowner by which the landowner authorizes use of his land.

Plan Commission: The Plan Commission of the Town of Delafield.

Planned Unit Development (PUD): A self-contained development in which subdivision and zoning controls are applied to the project as a whole rather than to individual lots, and in which specific benefits are provided to the community as well as the developer and the future citizens who will reside within the development. Within PUDs, densities are calculated for the entire development, usually permitting a trade-off between clustering of houses and provision of common open space.

Plat, Final: A map or plan of a parcel of land showing such data as the location, boundaries, dimensions, bearings, lot or unit location and designation, and ownership of individual properties in accordance with Chapters 236 and 703 of Wisconsin Statutes.

Plat, Preliminary: A map showing the salient features of a proposed subdivision submitted to all approving authorities for the purpose of preliminary consideration.

Runoff. The rainfall, snow melt or irrigation water flowing over the ground surface.

Site. The entire area included in the legal description of the land on which the land disturbing or land development activity is proposed in the permit application.

Street, Arterial. A street used or intended to be used, primarily for fast or heavy through traffic. Arterial street shall include freeways and expressways as well as standard arterial streets, highway and parkways.

Street Collector. A street used or intended to be used, to carry traffic from minor streets to the major system of arterial streets including the principal entrance streets to residential developments.

Street, Cul-De-Sac. A minor street with only one outlet and having an appropriate turnaround for the safe and convenient reversal or traffic movement.

Street, Frontage. A minor street auxiliary to and located on the side of an arterial street for control of access and for service to the abutting development.

Street, Minor (Local). A street used, or intended to be used, primarily for access to abutting properties.

Subdivider. Any person, group, corporation or other entity acting as a unity, or any agent thereof, dividing or proposing to divide land so as to constitute a subdivision or certified survey map as defined herein.

Subdivision. (Repealed and recreated 2014-08) The division of a lot, parcel or tract of land by the owner or his agent for the purpose of sale or building development where: the act of division creates 2 or more parcels or building sites of 5 acres each or less in area; or 2 or more parcels or building sites of 5 acres each or less in area are created by successive divisions of any part of the original property by any person within a period of 5 years; or where the division creates more than three (3) residential parcels or building sites of any size within 5 years. The following shall constitute a subdivision: cemetery plats, assessor's plats, or the sale or exchange of parcels of land between owners of adjoining property, if additional lots are not thereby created and the lots resulting are not reduced below the minimum size required by applicable ordinances (but see Section 18.11).

Town. The Town of Delafield.

18.03 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM. (Rep. & rec. #90-260)

(1) PURPOSE. The purpose of the Residential Development Control System is to establish a system to control the rate of growth of the Town and to encourage the location and development of residential dwellings consistent with protection and wise use of the natural resources of the Town, including its soils, lakes and streams, wetlands, woodlands, wildlife and other environmentally sensitive area; preservation of land areas for agricultural uses in order to maintain the agricultural economy and insure the preservation of those unique rural areas which provide wildlife habitat; preservation of the rural atmosphere of the Town; and development properly related to available and proposed support facilities, including sewage disposal, police, ambulance, fire protection, roads and highways and schools, without imposing an unreasonable tax burden on the taxpayers and residents of the Town and the school district involved.

(2) RESIDENTIAL DEVELOPMENT PERMIT REQUIRED. (Repealed and recreated 2013-03) No development involving proposed residential uses shall be accepted for consideration pursuant to Section 18.04(1) (b) of this chapter or Section 17.05. 5.A.M. of this General Code, unless residential development permits shall have been issued to the development by the Plan Commission.

(3) PROCEDURE.

(a) Annual Allotment. During each calendar year, the Plan Commission shall allot up to the following number of residential development permits to qualifying developments (each residential development permit representing a residential dwelling unit). Lots created by certified survey map between October 1 and September 30 of the preceding year shall be deducted from the annual allotment for the following year:

1. For the year beginning October 1, 1990, through September 30, 1991, there shall be an allotment of 108 residential development permits. Thereafter, the allotment shall remain at 108 residential development permits for each succeeding year.
2. Any residential development permits within the allotment not issued in a given year shall be

carried forward one year only and may be issued only if qualifying development in the succeeding year exceed the residential development permit allotment for that year. If no residential development permits were carried forward into a given year, the Plan Commission may exceed the maximum number of allotted residential development permits in that year by not more than 10%, provided that the total number of residential development permits allotted for any 5 year period does not exceed the total permits for the 5 year period.

(b) Application Procedure.

1. Application for residential development permits shall be made by the developer to the Plan Commission. The application shall be accompanied by the following documents:
 - a. Preliminary layout in general accordance with §18.05(1) showing also the nature and extent of open space and land that will be preserved in agricultural use. Submission of a preliminary layout for purposes of this subsection shall not be considered a filing of a preliminary plat pursuant to §18.04 of this chapter.
 - b. Method of sanitary sewerage disposal. Percolation tests for all developments not served by public sewer.
 - c. Grading plans indicating the existing and proposed grades, the degree of site alterations to the property caused by the proposed development. Such plans shall indicate building sites and driveways to serve these sites.
 - d. Drainage plans indicating the impact of the storm sewer runoff and the methods to control and retain the runoff. Such plans shall include an erosion control plan.
 - e. Preliminary landscape plans, including the existing location of trees over 6" in diameter measured at 6' above the ground and showing the outline of wooded areas and location of trees which are to remain, and including proposed pathways, plantings, lighting and other landscape features.
 - f. Preliminary architectural plans, where applicable, consisting of typical architectural elevations and proposed dwelling unit sizes and numbers.
 - g. Development schedule setting forth a proposed timetable for development and sale.
 - h. Deed restrictions and/or statements as to special amenities proposed for the development.
 - i. Such other information as required by the Plan Commission.
2. All applications for residential development permits to be issued for a calendar year should be submitted by October 1 of the preceding year. Applications submitted after October 1 will be considered only to the extent allotted residential development permits have not been allocated to applications submitted prior to October 1. Upon allocation of all residential development permits allotted for a given year, applications will be held for consideration for the following years' allotment after October 1, unless the application is withdrawn by the developer.

(4) EVALUATION.

- (a) Plan Commission Review. The Plan Commission shall review applications for residential development permits with respect to each of the criteria set forth in par. (b). The Plan Commission may request reports from appropriate Town, county, school district or other governmental agencies, boards or staff as may be required.

(b) Criteria. The Plan Commission shall have the latitude to interpolate between the maximum and minimum score in every category. Such interpolation shall be rounded to the whole number.

1. Sanitary Disposal.

- a. A municipal sewer system consisting of a network of sanitary sewers contributory to a regional sewerage treatment plant approved by the State Department of Natural Resources. (2 points)
- b. A conventional septic tank system or mound system in soils which have been tested and certified by a certified soil tester, which tests indicate that each lot in the proposed subdivision has sufficient area for a septic system and a replacement system. (1 point)
- c. Alternate on-site systems include such nonconventional systems as holding tanks or other means of treating sanitary waste other than sanitary sewer, conventional or mound septic systems. (0 points)

2. Compatibility with Adjacent Development. A proposed development will be considered compatible based on a combination of the surrounding land uses, including existing subdivisions, municipal boundary lines, major highways, parks and permanently preserved open spaces, such as wetlands and the Town's land use plan.

- a. Compatible to surrounding area. (3 points maximum)
- b. Not compatible. (-3 points minimum)

3. Removal of Significant Agricultural Land. The proposed subdivision will be considered as removing substantial agricultural land if either 40 acres or more of land otherwise available for agricultural use will be consumed by the subdivision or 50% or more of the proposed development consists of land otherwise available for agricultural use that will be consumed by the development. (-1 point)

4. Site Alterations. This shall include alterations necessary to create roads, easements for utilities, building sites, driveways and parking areas for each building site.

- a. Minimum site alterations where the only site alterations will be in those areas within proposed street rights-of-way. (1 point)
- b. Average site alterations where not more than 20% of the area outside of the street right-of-way will be graded and not more than 10% of any wooded area outside of the street right-of-way will be disturbed. (0 points)
- c. Substantial site alterations where more than 20% of the area outside of the street right-of-way will be graded or more than 20% of any wooded area outside of the street right-of-way will be disturbed. (-2 points)

5. Surface Drainage.

- a. Good surface drainage where all roadside ditches and other drainage ditches shall have a gradient greater than 0.50% and less than 2% and greater than 50% of the storm water runoff can be retained within the site, and remaining storm water runoff is confined within road rights-of-way or recorded drainage easements with no significant adverse effect upon downstream drainage. (2 points)
- b. Average surface drainage where all roadside ditches and other drainage ditches shall have a gradient less than 8% and at least 25% of the storm water runoff can be retained

within the site and remaining storm water runoff is confined with road rights-of-way or recorded drainage easements. (0 points)

- c. Poor surface drainage where some roadside ditches and drainage ditches are steeper than 8% or there is retention of less than 25% of the storm water runoff within the site. (-3 points)

6. Density Less than Zoning Requirements.

- a. Density substantially less than zoning requirements requires that the proposed development have a density (i.e., number of dwelling units per acre) of 1/2 or less of the maximum density permitted by the zoning ordinance for the district in which the property is located. Up to a maximum of 20% of the area of lands zoned Wetlands-Floodplain within the subdivision may be used to determine the density. However, in no case shall the total area of Wetland-Floodplain zoned lands used in the computation exceed 25% of the net area of the development which is zoned other than Wetland-Floodplain. (3 points)
- b. Density moderately less than zoning requirements requires a density of one dwelling unit per 3 acres, provided that no development shall receive more than 2 points with respect to density. Up to a maximum of 20% of the area of lands zoned Wetland-Floodplain within the subdivision may be used to determine the density. However, in no case shall the total area of Wetland-Floodplain zoned lands used in the computation exceed 25% of the net area of the subdivision which is zoned other than Wetland-Floodplain. (1 point)

7. Substantial Open Space Preserved.

- a. Substantial open space will be deemed to have been preserved for agricultural use if the proposed subdivision contains deed restrictions or other evidence satisfactory to the Plan Commission that either 40 acres or more of the total open space in the development will be used as productive agricultural land or at least 50% of the total area of the development will be used as productive agricultural land. (2 points)
- b. Substantial open space for other uses that equal at least 25% of the total area of the development. (1 point)

8. Traffic Circulation and Capacity of Major Street Serving the Development and/or Through the Development. The collector streets and major streets and highways into which traffic from the proposed subdivision shall flow shall be evaluated as to their existing capacity. Failure of any collector street, major street or highway to satisfy the relevant criteria shall constitute an inadequate major street linkage. Entrance roads serving the development shall also be considered. Developments of 15 or more units will be considered inadequate if only served by one entrance road. Developments which connect to existing dead-end streets and improve circulation to and through the Town shall be considered an improvement.

- a. Improvement. (1 point)
- b. Adequate. (0 points)
- c. Inadequate. (-2 points)

9. Outstanding Site Planning and Architectural Standards. This evaluation is to be made by the Plan Commission upon full review of the proposed layout of the development in relation to its environmental surroundings and with regard to proposed architectural standards to be enforced by private deed restrictions or other techniques satisfactory to the Plan Commission. (2 points)

10. Lands Formerly Used for Sludge Application. Lands upon which sewage sludge has been applied shall be assessed -3 points if development is proposed for the year following sludge application, -2 points if development is proposed 2 years following sludge application and -1 point if development is proposed 3 years following sludge application.
 11. Fire Protection. If the proposed development includes a water system complete with fire hydrants or if a pond is created with a holding tank installed equipped with a stand pipe capable of producing an adequate water supply for fire protection, the development will be awarded one point.
- (5) ALLOCATION.
- (a) Timing. After the first meeting of December of each year with respect to applications submitted by October 1 or within 60 days of application for applications submitted after October 1, the Plan Commission shall notify the developer of its allocation decision in writing.
 - (b) Threshold. No residential development permits shall be issued for a subdivision receiving fewer than 6 points in the Plan Commission evaluation.
 - (c) Allocation of Residential Development Permits.
 1. If the total number of dwelling units in the proposed subdivisions receiving 6 or more points does not exceed the allotment for the year under consideration, residential development permits may be issued for all dwelling units in all developments so qualifying. However, the Plan Commission reserves the right to prorate the allotment over a 3 year period. The balance residential development permits allotted for the year shall be allocated to qualifying subdivisions (those receiving 6 or more points) submitted after October 1 of the preceding year on a time of submission priority basis.
 2. If the total number of dwelling units in the proposed subdivisions receiving 6 or more points exceed the allotment for the year under consideration, the qualifying subdivisions shall be prioritized by point totals. The Plan Commission shall allocate the annual residential development permit allotment among some or all of the qualifying developments, provided that the following principles are recognized:
 - a. The priority must be respected; that is, the development receiving the highest point total must receive some residential development permits and so on down the priority list, to the extent of allotted residential development permits.
 - b. Residential development permits must be allocated for at least 20% of the proposed dwelling units in a development receiving residential development permits. However no development may receive more than 40% of the residential development permits allotted for that year.
 - (d) Reversion of Unused Residential Development Permits. If a development which has been allocated residential development permits does not receive final approval within 24 months from the date of allocation, the residential development permits shall be automatically withdrawn from the property in question.
- (6) COMPLIANCE. The development shall be carried out substantially in compliance with the representations in the application. To assure compliance with the criteria upon which the Plan Commission evaluation of the development was based and the terms of the allocation, the Plan Commission, the Town Board or both may require plat restrictions, deed restrictions or other agreements necessary to assure such compliance.

- (7) APPEAL TO TOWN BOARD. A developer may appeal the decision of the Plan Commission with respect to the allocation of residential development permits to the Town Board. A written appeal shall be filed with the Town Clerk within 20 days after written notice to the developer of the Plan Commission decision respecting allocation of residential development permits to the developer's property. The Town Clerk shall place the matter on the next agenda of the regular town Board meeting or, upon agreement with the developer, on the agenda for a special Town Board meeting. The Town Board shall consider the appeal of such regular or special meeting, at which time the Town Board will hear the developer or his representative and such other person or persons as may be able to assist the Town Board in the determination of the matter on appeal. The Town Board shall not modify the allocation made by the Plan Commission, except by the affirmative vote of $\frac{3}{4}$ of the members of the Town Board present and voting and its decision shall be final and conclusive. The Town Board's decision shall be rendered within 60 days of receipt of the notice of appeal.
- (8) EXCEPTIONS. Exceptions to the residential development permit requirement may be granted by the Town Board in accordance with the provisions of §18.10 of this chapter.
- (9) FEES. The developer of his agent shall pay to the Town all costs incurred for engineering, legal and administrative work necessary to process the application for residential development permits. At the time of application, the developer shall apply an initial fee in an amount as set forth from time to time by resolution of the Town Board. This sum shall be credited against amounts due for engineering, legal and administrative work under §18.04(1)(g)2.f.

18.04 PLAT APPROVAL PROCEDURES. (Repealed and recreated 2013-03)

(1) GENERAL PROCEDURE.

- (a) Preapplication. It is recommended that prior to the filing of an application for the approval of a development, the subdivider shall consult with the Plan Commission and/or its staff to obtain their advice and assistance. This consultation is neither mandatory nor binding but is intended to inform the subdivider of the purpose and objectives of these regulations, the comprehensive plan, comprehensive plan components and plan implementation devices of the Town and to otherwise assist the subdivider in planning his development. In so doing, both the subdivider and planning agency may reach mutual conclusions regarding the general program and objectives of the proposed development and its possible effects on the neighborhood and community and the subdivider will gain a better understanding of the subsequently required procedures.
- (b) Filing. If the Town is used as a forwarding agency, the subdivider shall file an appropriate number of legible copies of the preliminary or final plat with the Town Clerk who shall note the date of filing on each print.
- (c) Forwarding of Plats. Within 2 days after a preliminary or final plat has been submitted for approval, the Clerk shall forward the specified number of copies to the State Department of Development along with a list of all agencies authorized to object or approve the plat and the following:
 1. Four copies to the Waukesha County Park and Planning Commission.
 2. Two copies to the Town Engineer for his report on the technical aspects of the plat, and for his estimates of the costs involved to install the improvements required by this ordinance.
 3. Two copies to the Town Planning Consultant for his comments on the general design of the plat.
 4. Two copies to any municipality exercising extraterritorial plat jurisdiction pursuant to §§236.02(2), 236.10(1)(B) and 236.10(2), Wis. Stats.
- (d) Alternate Forwarding Agency. The County Park and Planning Commission shall also serve as

forwarding agents for plats lying within the Town. Within 2 days after filing of either the preliminary plat or final plat, the Commission shall forward the necessary copies to State agencies required to review the plat and having the right to object, to the Town, to the County Park and Planning Commission, and to any municipality having extraterritorial jurisdiction within the area being platted.

- (e) Alternative Procedures. In lieu of the above procedure, the subdivider or his agent may submit the original plat or legible copies, if acceptable, to each of the agencies authorized to object.
- (f) Objections to Plat. Within 20 days of the date of receiving the copies of the plat, any agency having the authority to object shall notify the subdivider and all approving or objecting authorities of any objection or, if there is no objection, it shall so certify on the face of a copy of the plat and return that copy to the approving authority from which it was received. In the event any agency having the authority to object, objects to the plat, the plat shall be refiled as described above. The Town Engineer and Town Planning Consultant shall make their report to the Town within the same 20 day period.
- (g) Approvals to Plat.
 - 1. Preliminary plat. The subdivider shall submit a preliminary plat in sufficient detail to determine whether the final plat will meet layout requirements. The subdivider shall also submit data required by the DILHR regarding percolation test and soil borings.
 - a. Within 90 days of the date of submittal, the Town Plan Commission shall take action to approve, approve conditionally, or reject such plat and reasons for rejection.
 - b. Failure of the approving authority to act within such 90 days shall constitute an approval of the preliminary plat unless the time is extended by agreement with the subdivider.
 - c. No subdivider shall proceed with any construction work, including grading, until the preliminary plat has been approved.
 - d. The design principles of this chapter shall apply to subdivisions and certified survey maps within the Town.
 - e. To defray the administrative costs resulting from the act of subdividing land within the Town, the subdivider shall pay a fee to the Clerk at the time of plat submittal in an amount to be set from time to time by resolution of the Town Board.
 - 2. Final plat. (repealed and recreated 2013-03) If the final plat conforms substantially to the layout shown in the preliminary plat as approved, including any conditions of that approval, it shall be entitled to approval with respect to such layout.
 - a. If the final plat is submitted within 36 months of the last required approval of the preliminary plat, the Town shall take action to approve or reject the plat. If the final plat is not submitted within 36 months, the Town may refuse to approve the final plat and may require resubmittal of the preliminary plat unless the Town Board has granted an extension for the time for submission of the final plat.
 - b. The final plat may, if permitted by the Town, constitute only that portion of the approved preliminary plat which the subdivider proposes to record at that time. The Town encourages sequential filing of only that portion of the preliminary plat which will immediately be fully improved with respect to the installation of the required improvements.
 - c. The Town Board shall take action to approve or reject the final plat within 60 days of its submission, unless the time is extended by agreement with the subdivider. Prior to

approval of the final plat, the Plan Commission shall certify to the Town Board that all conditions of the Subdivision Control Ordinance that were in effect when the subdivider submitted the preliminary plat, or the final plat if no preliminary plat was submitted, have been met and that all fees, bonds and other financial responsibilities of the developer have been satisfied. If a plat is rejected, the reasons thereof shall be stated in the minutes of the meeting and a copy thereof or a written statement of the reasons supplied the subdivider and all objecting authorities.

- d. If the Town fails to act within 60 days of submittal and the time has not been extended by agreement and if no unsatisfied objections have been filed within that period, the final plat shall be deemed approved and, upon demand, a certificate to that effect shall be made on the face of the plat by the Town Clerk.
 - e. Any subdivider or his agent who offers or contracts to convey or conveys any subdivision, lot or parcel of land which lies in a subdivision, knowing that the final plat thereof has not been recorded with the Register of Deeds, may be subject to a forfeiture as provided in §18.25 of this chapter; except where the preliminary or final plat of subdivision has been filed for approval with the Town, an offer or contract to convey may be made if that offer or contract states on its face that it is contingent upon approval of the final plat and shall be void if such plat is not approved.
 - f. The subdivider or his agent shall pay to the Town all costs incurred for engineering, legal and administrative work necessary to process the plat or other provisions of this chapter. At the time of the preliminary plat, the developer shall pay the estimated cost of the engineering and legal fees in an amount as set from time to time by resolution of the Town Board. At the time of submitting the preliminary plat for approval, the developer shall pay a minimum deposit in an amount as set from time to time by resolution of the Town Board. The balance of the fee shall be paid at the time the final plat is submitted for approval, if not paid prior thereto. All fees shall be paid to the office of the Town Clerk.
 - g. The recommendation of any professional engineer, planner or other person that is requested by the Town to review the final plat for purposes of determining whether the final plat conforms substantially to the preliminary plat shall be included in the record of the meeting at which the final plat is considered.
- (2) APPROVALS REQUIRED PRIOR TO RECORDING. The Town Board shall approve the final plat prior to recording. The subdivider shall file a 22" x 30" reproducible linen tracing or acceptable substitute of the final plat with the Clerk before recording the final plat with the Register of Deeds. The Clerk shall certify to approval of the final plat only after this requirement has been met.
- (3) RECORDING OF FINAL PLAT. (repealed and recreated 2013-03) (Am. #91-286) The subdivider shall file the original of the final plat with the Town Clerk, and the Town Clerk shall file it with the Register of Deeds within 12 months of the date of the last required approval and 36 months of the date of the first approval. The subdivider's filing with the Town must be at least ten (10) business days prior to the recording deadline. The subdivider shall pay to the Town Clerk, in advance, all costs and fees associated with filing the plat with the Register of Deeds. Any subdivider recording or attempting to record his final plat, instead of presenting it to the Town Clerk for that purpose, shall be subject to a penalty as provided in §18.25 of this chapter.
- (4) PROCEDURE FOR LAND DIVISIONS OTHER THAN SUBDIVISIONS. (repealed and recreated 2013-03)
- (a) Filing. The subdivider shall submit a preliminary map to the Plan Commission in sufficient detail to determine whether the final map will meet layout requirements. A filing fee in an amount as set forth from time to time by resolution of the Town Board at the time of the filing of the preliminary map shall be paid.
 - (b) Approval or Rejection. The Town Board shall take action to approve, approve conditionally or

reject the certified survey or assessor's map within 90 days of submittal unless the time for approval is extended by agreement with the subdivider. The subdivider shall be notified in writing of any conditions of approval or the reasons for rejection. The certificate of approval of the Town shall be typed, lettered or reproduced legibly with nonfading black ink on the face of the final map and signed by the Town Chairman and Town Clerk.

- (c) Recording of Certified Survey Map. (Am. #91-286) The subdivider shall file the certified survey map with the Town Clerk, and the Town Clerk shall file it with the Register of Deeds in conformance with §236.34(2), Wis. Stats. within 6 months after the date of the last approval of the map and within 24 months after the first approval of the map. The subdivider's filing with the Town must be at least ten (10) business days prior to the recording deadline. The subdivider shall pay to the Town Clerk, in advance, all costs and fees associated with filing the certified survey map with the Register of Deeds. The subdivider shall also file 6 copies of the original certified survey map together with recording information in the Town Clerk's office within such time limits. Any subdivider causing his certified survey map to be recorded without submitting it as herein required within 30 days of Town approval shall be subject to a penalty as provided in §18.25 of this chapter.
- (d) Notice of Land Division. (Created #96-427) The subdivider, at the time of application, shall certify in writing, on a form to be supplied by the Town Clerk, that all property owners within 300 feet of any boundary of the proposed land division have been notified of said land division. The application for land division shall not be considered complete for purposes of official Town action until such certification has been filed with and accepted by the Office of the Town Clerk. The failure of such notice to reach any property owner within 300 feet of the proposed land division shall not invalidate any action on the land division by the Plan Commission or the Town Board, and shall not give rise to any cause of action against the Town of Delafield or any of its officials, boards or commissions.
- (5) RECORDING OF ASSESSOR'S MAP. Where it is not practicable to require that a final plat of a subdivision created by successive divisions be filed in accordance with the chapter, the Board may order an assessor's map to be made under §70.27, Wis. Stats., and may assess the cost thereof as provided in such section to the subdivider. The subdivider shall file a reproducible tracing with the Town after approval has been given.
- (6) CONDOMINIUM PLAT. (Created 2005-003) A condominium plat prepared under §703.11, Wis. Stats., shall be reviewed in the same manner as a preliminary plat and final plat in accordance with this code and Section 17.05. 5. AM of the Zoning Code.

18.05 REQUIREMENTS FOR PLAT, CERTIFIED SURVEY MAPS AND ASSESSOR'S MAPS.

- (1) PRELIMINARY PLAT. The preliminary plat shall clearly show the following features and information:
 - (a) Owner and Subdivider. The name and address of the owner and the subdivider.
 - (b) Surveyor. The name of the registered land surveyor preparing the preliminary plat.
 - (c) Title. The title under which the proposed subdivision is to be recorded.
 - (d) Scale. Not more than 100' to one inch.
 - (e) North Arrow. A north arrow shall be shown.
 - (f) Location. The location of the subdivision by government lot, recorded private claim, quarter section, section, township, range and county noted immediately under the title.

- (g) Vicinity Sketch. A small drawing oriented on the sheet in the same direction as the main drawing of the section of government subdivision of the section in which the subdivision lies with the location of the subdivision indicated thereon.
- (h) Zoning. The zoning on and adjacent to the proposed subdivision.
- (i) Adjoining Properties. The location and names of adjacent subdivisions and owners of the adjoining parcels of unsubdivided land.
- (j) Property Lines. The approximate bearings and distances of the exterior boundary lines of the tract to be subdivided. Approximate dimensions of all lots together with the proposed lot and block number, approximate radii of all curves.
- (k) Topography. Topographic data shall be referred to U.S.G.S. datum and shall be plotted at 2' intervals except where the ground slope exceeds 20% making 5' interval contours acceptable.
- (l) Existing Streets and Other Features. The location, widths, grades and names of all existing or platted streets, easements or other public ways within or adjacent to the tract, and other important features such as existing permanent building, corporation lines, township lines, location of all marshes, rock outcrops, wooded areas, water courses, drainage ditches, railroad right-of-way, parks, easements and other salient features within the tract to be divided or adjacent thereto.
- (m) Proposed Streets, Drainage, Etc. The layout, names, grades, and widths of proposed streets, alleys and drainage and utility easements; the location and approximate sizes of culverts, catch basins and other drainage structures. The street names shall not be duplicate or closely approximate any existing street names within or near the Town unless they constitute an extension or definite relationship to existing streets.
- (n) Street Profiles. The Town may require that proposed street profiles for center line and building line grades extending 300' beyond the boundaries of the subdivision be approved by the Town prior to approval of the preliminary plat.
- (o) Utility Location, Size and Elevation. Location, size and invert elevation of any existing sanitary or storm sewers, culverts, power and telephone poles or underground installation, location and size of any existing water and gas mains within the area of the plat or adjacent thereto. If no sewers, water mains or other utility facilities are located on or immediately adjacent to the tract, the nearest such facilities which might be extended to serve the tract shall be indicated by their direction and distance from the tract, their size and their invert elevation.
- (p) Water Elevations. The water elevations of adjoining lakes, streams, and ponds at the date of the survey and the approximate high- and low-water elevations of such lakes, streams, and ponds, floodland information including the contour line lying 2' above the elevation of the 100 yr. flood. If the subdivision borders any such body of water, a meander line shall be established not less than 20' back from the ordinary high-water mark of the body of water.
- (q) Soil Types. Soil types, slopes and boundaries as shown on the soil survey maps prepared by the Soil Conservation Service, U.S. Department of Agriculture. The accurate delineation of the 5' depth to water table contours and all areas where the bedrock is less than 5' below grade.
- (r) Department of Safety and Professional Services Information. (repealed and recreated 2013-03) Percolation test data, test boring information and any other information requested by the Department of Safety and Professional Services for those subdivisions not being served by sanitary sewer shall be attached to and submitted with the preliminary plat, certified survey map, or assessors plat for use by the State, County and Town.

- (s) Testing. The Town may require that additional borings and soundings be made in specified areas to ascertain subsurface soil, rock and water conditions, including depth to bedrock and ground water table.
- (t) Public Use. All parcels of land intended to be dedicated or temporarily reserved for public use or to be reserved in the deeds for the common use of property owners in the subdivision, with the purpose, conditions or limitations of such reservation indicated.
- (u) Deed Restrictions. The Town may require that any public and specified restrictions pertaining to the land included in the plat be submitted with the preliminary plat.
- (v) Additional Information. Any additional information requested by the Town to verify ownership, clarify questions raised during the approval procedure, and any other information the Town deems necessary to reach a decision on the preliminary plat.
- (w) Developer's Agreement: The developer shall execute a Developer's Agreement upon approval of the preliminary plat. Said agreement shall be executed prior to the commencement of any construction activity. If said agreement is not filed within 45 days of the preliminary approval, said approval shall be automatically withdrawn. (Cr. 95-388)
- (x) Detailed Site Analysis and Mitigation Plan: (created 2005-003) A Detailed Site Analysis shall be required in accordance with Section 18.14 of this Code, for all Preliminary Plats and Certified Survey Maps which contain:
 1. Permanently protected natural resource areas defined as required protected areas under State and Federal regulation.
 2. Any environmental corridor component identified by the Southeastern Wisconsin Regional Planning Commission, including primary corridors, secondary corridors, and isolated natural resource areas.
 3. Any other environmental feature designated in the Town Land Use Plan requiring a Detailed Site Analysis and Mitigation Plan in conjunction with development review.

A Mitigation Plan shall be required if land within the environmental areas described above will be disturbed.

(2) CONSTRUCTION PLANS.

- (a) Roads. The Town shall require that the subdivider provide street improvement plans and profiles showing existing ground surfaces, proposed and established street grades, including extensions for a reasonable distance beyond the limits of the proposed subdivision where requested, and any other pertinent engineering data as may be required by the Town or the Town Engineer. The plans and profiles shall be prepared in accordance with standards contained in this chapter or other Town construction standards and either approved or modified as necessary prior to the commencement of construction in the development. These plans may be required prior to preliminary approval.
- (b) Grading. Grading plans including a method of erosion control for the lots or other areas in the proposed development shall also be prepared and submitted for review and approval prior to commencement of grading and construction of roads.
- (c) Storm Drainage and Erosion Control. Storm water, drainage and erosion control plans shall be prepared and submitted along with other grading and road construction plans and shall indicate how surface water runoff is to be accommodated on the development and on any downstream properties along with the methods of erosion and sediment control. The developer will be

responsible for the storm water runoff to the subdivision limits or to a reasonable distance downstream as approved by the Town to assure that no downstream properties are damaged by the increased runoff. When submitting the storm drainage plan, the developer shall include a system plan showing the sizes of the intersection culverts and the proposed driveway culverts for all lots or parcels within the development.

- (d) Sanitary Sewers. (repealed and recreated 2013-03) When the proposed subdivision is to be served by sanitary sewers or a private sewer system serving multiple dwellings pursuant to SPS 383, Wis. Admin. Code, a system plan shall be provided indicating the general layout of the subdivision, location of existing and proposed sewers. A plan view and profile shall also be submitted.
 - (e) Water System. If the subdivision is to be served by a water system, a system plan and detail plans shall be provided as above. Plans should also be submitted indicating the source of water, well details, including reservoirs, pumps, etc.
- (3) FINAL PLAT. The final plat shall be drawn with waterproof, nonfading black line on muslin backed white paper, 22" wide by 30" long with a 1 1/2" binding margin on the left side of the 30" length and a 1" margin on all other sides. The following information shall be shown:
- (a) Boundary Lines. Boundary lines with lengths of courses to hundredths of a foot and bearings to seconds as determined by an accurate field survey performed by a registered land surveyor and balanced and closed with an error of closure not to exceed 1 to 3,000.
 - (b) Recorded Streets. The exact location and the width along the property lines of all existing recorded streets intersecting or abutting the boundary of the tract.
 - (c) Tie to Government Survey. True bearings and distances to nearest established survey lines, or other official monuments, which monument shall be located or accurately described on the plat. Any patent or established survey or corporation lines shall be accurately monumented and located on the plat.
 - (d) Monuments. The accurate location and material of all permanent reference monuments as specified in §236.15, Wis. Stats.
 - (e) Design. The exact design including:
 - 1. Names, bearings, angles of intersections, widths including widths along the line of any obliquely intersecting street, length of centerlines, etc.
 - 2. Lengths of arcs, bearings and lengths of main chords, radii, central angles and tangent bearings at either the point of curve or point of tangency shall be shown either in their proper place or in a separate table for all streets and alleys. Lot lines may be shown in the same manner or by bearings and distances.
 - 3. Easements and right-of-way shall be shown by centerline and width when lines are parallel to a boundary, otherwise boundary bearings and distances shall be shown.
 - 4. Blocks, if designated, shall be consecutively numbered or lettered in alphabetical order. The blocks in numbered additions to subdivisions bearing the same name shall be numbered or lettered consecutively through the several additions. The exact length and bearing of the boundary liens of all blocks shall be shown.
 - 5. All lots in each block shall be consecutively numbered. Outlots shall be lettered in alphabetical order within each block.

6. Distance and bearings for meander lines shall be shown with the distance between the point of intersection of such meander lines with lot lines and high water mark also shown.
 7. Additional requirements as required by §236.20, Wis. Stats.
- (f) Name of Subdivision. The name of the subdivision shall be shown and shall not duplicate the name of any other subdivision in Waukesha County.
 - (g) North Arrow, Scale, Date. The north arrow, graphic scale as drawn and dates involved.
 - (h) Deed Restrictions and Setback Lines. When it is in the best interest of the Town, the Town Board may require that private deed restrictions and setback lines be either shown on the plat or filed with the Register of Deeds.
 - (i) Affidavits and Certificates. The surveyor's certificate, the owner's certificate, the certificate of taxes paid, and other affidavits and certificates required by Ch. 236, Wis. Stats., shall be lettered in ink or typed legibly with black ribbon on the final plat.
 - (j) Division of Health Requirements. (Repealed and recreated 2013-03) The final plat of all subdivisions not served by sanitary sewers shall be marked to show preplanned soil absorption systems, if required, in accordance with SPS 385, Wis. Adm. Code.
 - (k) Reproducible Tracing. An acceptable reproducible tracing of the final plat shall be filed with the Town before the Town's approval is affixed to the final plat.
 - (l) Temporary Cul-De-Sac. (Cr. #200) On a final plat where a temporary cul-de-sac is created until adjacent land is divided and it is the intention to extend a street to these adjacent lands in the future, a notation shall be placed on all lots within the plat that this cul-de-sac is temporary and such street is intended to be extended.
 - (m) Additional Information. (Am. #200) All information required by Ch. 236, Wis. Stats., and any additional information requested by the Town.
- (4) CERTIFIED SURVEY MAP. A certified survey map for not more than 4 parcels of land may be recorded in the office of the Register of Deeds if such certified survey meets the following requirements:
- (a) Preliminary. A preliminary map be prepared in accordance with §236.15(1)(c) and (d), Wis. Stats.
 - (b) Registered Land Surveyor. The final survey shall be performed and the map prepared by a qualified registered land surveyor.
 - (c) Monuments. All corners shall be monumented in accordance with §236.15(1)(c) and (d), Wis. Stats.
 - (d) Map. The map shall be prepared in accordance with §236.20(2)(a), (b), (c), (e), (f), (g), (i), (j), and (k) on durable white paper 8 1/2" wide by 14" long. All lines shall be made with nonfading black ink on a scale of not more than 200' to an inch.
 - (e) Certificates and Description. The certified survey map shall include the certificate of the registered land surveyor who surveyed and mapped the parcel, including a clear and concise description of the land surveyed by bearings and distances, commencing with some corner marked and established in the government survey, and acceptable to the Town Engineer. The owner's certificate duly notarized, and the Town Board approval certificate shall also be shown.

- (f) Percolation and Boring Tests. At least one percolation test and one 6' boring per lot shall be submitted with the certified survey map. The Town may request other information for the parcels not served by sanitary sewer.
 - (g) Additional Information. The map also shall show all existing buildings, watercourses, drainage ditches, setbacks or building lines if required by the Town Board, and other information deemed pertinent by the Town.
- (5) ASSESSOR'S MAP. An assessor's map shall meet the following requirements:
- (a) Registered Land Surveyor. The survey shall be performed and the map prepared by a registered land surveyor.
 - (b) Monuments. All corners have been monumented in accordance with §236.20, Wis. Stats., insofar as they are applicable.
 - (c) Map. The map shall be prepared in accordance with §236.20 insofar as it is applicable with all lines made with nonfading black ink on a scale of not more than 100' to the inch.
 - (d) Certificates and Description. The Assessor's map shall include the Surveyor's certificate including the name of the government body by whose order the plat was made and the date of the order; a clear and concise description of the land surveyed and mapped, commencing with some corner marked and established in the government survey, and acceptable to the Town Engineer; a statement that the plat is a correct representation of all exterior boundaries of the land surveyed and each parcel thereof; and a statement that he has fully complied with the provisions of §70.27, Wis. Stats.
 - (e) Additional Information. The map shall also show any other information deemed pertinent by the Town relating to existing buildings, watercourses, drainage ditches, easements, setbacks and building lines, etc.

18.06 DESIGN STANDARDS.

(1) STREETS.

- (a) Design Criteria. The streets shall be designed and located in relation to existing and planned streets to topographical conditions and natural terrain features, such as streams and tree growth, to public convenience and safety, and in their appropriate relation to the proposed uses of the land to be served by such streets.
- (b) Construction Standards. Streets shall be constructed to conform to §§18.06 and 18.07 and to all applicable policies of the Town Board; in particular, Ch. 8 of this Code. The pavement shall be centered on the platted right-of-way.
- (c) Widths and Locations. The widths and locations of all streets shall conform to the Official Map of the Town and to applicable State and County ordinances. When the typical section cannot be constructed within the limits of the street right-of-way, the developer shall provide slope easements over those lots on which the road ditches encroach for the purpose of ditch maintenance. These easements shall be included on the final plat.
- (d) Arrangement.
 1. Major streets shall be properly integrated as principal arteries of through traffic.
 2. Collector streets shall be properly related to mass transit routes, to special traffic generating from facilities such as schools, churches, shopping centers, to population densities and to the major streets into which they feed traffic.

3. Minor streets shall be designed to conform to topography, to discourage use by through traffic, to permit efficient drainage, and to require the minimum length of street necessary to provide convenient, safe access to property. Cul-de-sacs shall not generally exceed 1000' in length. Frontage streets shall be designed in relation to the major street which it serves and to the existing topography to provide for safe traffic flow and property value preservation.
 4. Street names shall not duplicate the names of existing streets in the Town or any community adjacent to the Town unless they can be considered as continuations or definitely related to the existing streets to warrant the same name.
 5. Where a half-street exists adjacent to the subdivision, the other half-street shall be dedicated by the subdivider. Platting of the new half-streets shall be permitted only with specific approval of the Town Board.
 6. Reserve strips controlling access to streets shall be prohibited except where the access control has been placed under Town Board control and such control has been accepted by the Town Board.
 7. All developments serving 15 or more units shall be connected to the existing street network by a minimum of 2 roadways. (Cr. #88-200)
- (e) Controlled Access. Where a subdivision borders on or contains an existing or proposed major street, the Plan Commission may require that marginal access streets be provided, when in the judgment of the Plan Commission, such marginal access streets are required on account of traffic on such existing or proposed major street and in order to protect life and property. The Plan Commission may require that the backs of lots abut the proposed or existing major streets and be provided with screen planting contained in a non-access reservation along the real property line. The Plan Commission may further require that deep lots be provided with rear service alleys or that other provisions be made for the adequate protection for residential properties and the operation of through and local traffic.

(2) INTERSECTIONS.

- (a) Right Angle. Streets shall intersect as nearly as possible at right angles and not more than 2 streets shall intersect at one point unless approved by the Town Board.
- (b) Corners. Property lines at street intersections shall be rounded with a radius of 15' or of a greater radius where the Town Board considers it necessary. This may be accomplished either by dedication or by easement.
- (c) Jogs. Street jogs with centerline offsets of less than 125' shall be avoided. Where streets intersect major streets, their alignment shall be continuous.
- (d) Vision Corners. Vision corners shall be provided creating unobstructed views of the intersection. No building or obstruction to view is permitted in this triangular area and appropriate statements shall be provided on the plat.

(3) ALLEYS.

- (a) Residential Districts. Alleys shall not be provided in residential districts unless necessitated by topographic or other exceptional circumstances accepted by the Town Board.
- (b) Commercial and Industrial Districts. The Town Board may require alleys in commercial and industrial districts when necessary to assure service access for off street loading and parking.

- (c) Dead End Alleys. Dead end alleys and "T" or "L" shaped alleys shall be prohibited.
- (4) EASEMENTS. Easements shall be centered on rear or side lot lines whenever possible.
- (a) Utility. Easements at least 10' wide shall be provided for utilities where required by the Town Board.
 - (b) Drainage. Where a subdivision is traversed by a water course, drainage way, channel or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially with the lines of the water course, and such further width or construction, or both, as will be adequate for the purpose. Wherever possible, it is desirable that the drainage be maintained by an open channel with landscaped banks and adequate width for maximum potential volume of flow.
- (5) BLOCKS.
- (a) General. The width, length and shapes of blocks, shall be suited to the planned use of the land; zoning requirements; need for convenient access, control and safety of street traffic; and the limitations and opportunities of topography.
 - (b) Pedestrian Crosswalks. Pedestrian crosswalks not less than 15' wide may be required by the Town where deemed desirable to provide convenient pedestrian circulation or access to schools, playgrounds, shopping centers, transportation and other community facilities.
- (6) LOTS.
- (a) General. 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.
 - (b) Dimensions. (Repealed and recreated 2013-03)
 1. Lots shall be designed so that the depth to width ratio does not generally exceed 2.5 to 1.
 2. Lot area shall meet the minimum requirements of the Zoning Code. Residential lots to be served by private sewerage disposal facilities shall comply with the rules of the DSPS as to minimize area where it exceeds the minimum required by the Zoning Code.
 3. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off street service and parking facilities required by the type of use and development contemplated.
 4. Residential lots, fronting or backing into major streets should be platted with extra depth to permit generous distances between the building and such traffic ways even if the 2 1/2 to 1 ratio has to be exceeded.
 - (c) Corner Lots. Corner lots for residential use shall have extra width to permit full building setback from both streets.
 - (d) Access to Public Streets. Every lot shall front or abut on a public street. Lots with access only to private drives or streets shall be permitted only with Town Board approval and subject to the conditions of the approval.
 - (e) Right Angles. Lots at right angles, butt lots, shall be avoided.
 - (f) Lot Lines. Lot lines shall be substantially at right angles or radial to street lines.
 - (g) Town Boundaries. Lots shall follow Town boundary lines wherever practicable.

- (h) Double Frontage and Reversed Frontage. Double frontage and reversed frontage lots shall be avoided except where necessary to provide separate or residential development from traffic arteries or to overcome specific disadvantages of topography and orientation.
- (7) MINIMUM STREET RIGHT-OF-WAY WIDTHS. The minimum right-of-way dedication for newly created streets shall be as follows:
- (a) Major Streets. As shown on the Official Map but not less than 80'.
 - (b) Collector Streets. 80'.
 - (c) Minor Streets. 66' except as noted below.
 - 1. Cul-de-sacs shall have a minimum radius 75' with center island radius of 35'.
 - 2. Frontage streets shall be 50' in width.
 - 3. Alleys shall be 30' in width.
 - (d) Highway. Where a subdivision adjoins a State, federal or County highway, the width as established by the proper authority shall apply.
 - (e) Other. Where deemed to be in the best interest of the public, the Town Board may specify widths other than those listed below.
- (8) MINIMUM PAVEMENT WIDTHS.
- (a) Major Streets. Depends on the pavement cross section selected, but not less than 44'.
 - (b) Collector Streets. 44' or 24' with 10' outside shoulders.
 - (c) Minor Streets. 24' except as noted below. (amended 2005-003)
 - 1. Cul-de-sacs shall have 20' pavement width.
 - 2. Frontage streets shall have a 24' pavement width.
 - 3. Alleys shall have a 20' pavement width.
- (9) MINIMUM AND MAXIMUM STREET GRADES.
- (a) Minimum Grades. The minimum grade for all streets and alleys shall be 0.50%, and such minimum shall not be permitted for long sustained distances.
 - (b) Maximum Grades. Unless conditions warrant otherwise, the maximum grades for all streets and alleys shall be:
 - 1. 6% for major and collector streets.
 - 2. 10% for minor streets.
- (10) HORIZONTAL AND VERTICAL CURVES.
- (a) Horizontal Curves. Horizontal curves shall be designed so that a minimum sight distance with clear visibility along the center line is provided as follows:

1. 300' for major streets.
 2. 250' for collector streets.
 3. 100' for minor streets.
- (b) Vertical Curves. Vertical curves shall be designed so that all changes in grade in excess of one per cent shall be connected by vertical curves of a minimum length equal to 15 times the algebraic difference in the rate of grade.
- (c) Tangents. A tangent of at least 100' in length shall be provided between reverse curves on major and collector streets.
- (11) INTERSECTION GRADES. The change in grade across an intersection and within 50' of the property line limits of the intersection shall not exceed 4% unless exceptional topography would prohibit these grades.
- (12) DRIVEWAYS. (Cr. #88-200) Lots shall be designed so that access to the building site shall be by a paved driveway at least 16' wide with slopes no greater than 12%.

18.07 REQUIRED IMPROVEMENTS AND RESERVATIONS.

- (1) GENERAL. Before the final plat of a subdivision, certified survey map or assessor's map will be approved, the subdivider shall provide and dedicate the following facilities and improvements, all of which shall be installed or constructed prior to approval of the final plat.
- (a) Streets. Streets graded, surfaced with initial lift of asphalt, and improved, according to the Town Construction Standards outlined below and in Ch. 8 of this General Code.
 - (b) Fire Protection Reservoirs. See Section 18.13 for specific requirements. (Cr. 95-388)
 - (c) Utilities. (repealed and recreated 2013-03) (Am. #88-200) All utility infrastructure shall be installed underground and prior to paving. Underground electric wiring for street lighting shall be installed at the subdivider's expense when requested by the Town Board. The final responsibility for suitable restoration shall remain with the developer until final acceptance is given.
 - (d) Drainage Facilities. (amended 2005-003) Drainage channels, culverts, storm sewers and such other facilities necessary to provide adequate surface drainage according to the established standards of the Board and the Waukesha County Construction Site Erosion Control and Stormwater Management Ordinance may require the subdivider to pave, rip-rap or sod the ditches depending on the circumstances in each instance. When culverts are required, corrugated metal or reinforced concrete shall be used prior to acceptance of streets.
 - (e) Erosion Control. Factors which will be considered in reviewing land suitability, runoff, erosion control plans, shall relate to the specific site conditions. An erosion plan should be submitted keeping land grading and land disturbance to a minimum. Both surface runoff and storm water drainage systems should be integrated to accommodate the increased runoff incurred during land grading. Existing temporary and future protective vegetation should be emphasized. The plan shall coordinate grading operations and sedimentation control measures so as to minimize land exposure to erosion to the briefest possible time. Sediment basins below high sediment producing areas should be planned, installed and maintained as safety devices to catch and trap excessive sediment from the development site. The plan should utilize available technologies to keep soil erosions to a minimum level.

- (f) Approvals. (Repealed and Recreated 2014-08) The adequacy of such facilities and improvements and their proper installation shall be subject to approval of the Town Board and the Town Engineer with the acceptance of the facilities only following such approval. Upon written request of the developer, the Town Board may elect to allow the developer to file a letter of credit as a financial guarantee to assure completion of all uncompleted construction in order to permit filing of the final plat within the 36 months specified in Section 18.04 (3). All required improvements not installed at the time the final plat is recorded shall be guaranteed by an irrevocable letter of credit in an amount equal to double the cost of the improvements or the maximum allowed by law, whichever is lesser, as estimated by the Town Engineer. Although Developers may have a statutory ability to choose the form of a financial guarantee, if the Developer chooses any form other than a letter of credit, all of the improvements must be completed prior to the final plat being recorded. The form of the letter of credit shall be at the discretion of the Town Board after review and recommendation of the Town Attorney. If the improvements are not installed to the Town's satisfaction within the time required by the Town following approval of the final plat by the Town Board, the Board may cause all uncompleted work to be constructed and the parties executing the irrevocable letter of credit shall be firmly bound for the payment of all necessary costs thereof.
- (g) Maintenance. (Repealed and recreated 2014-08) The developer shall guarantee all material and workmanship for a period of one year after the acceptance by the Town by filing an irrevocable letter of credit or other satisfactory financial guarantee in an amount equal to 50% of the entire improvement costs, or the maximum allowed by law, whichever is lesser, as estimated by the Town Engineer. The type and form of the financial guarantee shall be at the discretion of the Town Board after the review and recommendation of the Town Attorney. If the Town determines that any repairs are required, the Town Clerk shall give the developer a 14-day written notice to perform such repairs. If the repairs are not begun within the 14-day period and completed within a reasonable time thereafter, as determined by the Town, the Town may complete the repairs. The costs thereof shall be billed to the developer and paid by the developer or drawn from the financial guarantee.
- (h) Maintenance Fee. The subdivider shall be assessed an amount as set forth from time to time by resolution of the Town Board for each lineal foot of new roadway in any subdivision or certified survey map before final approval is granted. This fee shall cover routine maintenance including snow plowing, provided the roads have received the initial lift of asphalt. Payment of this fee does not relieve the developer of his responsibilities as described above. The amount of this fee shall be determined by the Town Engineer. Payment shall be made at the time the final plat is submitted for approval by the Town Board.
- (i) Permits. Where the proposed road intersects with or abuts a County or State trunk highway, the plans and layout shall be submitted to the County Highway Department or State Division of Highways by the developer. At the same time, the developer shall apply to the appropriate agency for a construction permit. A copy of the issued permit and the construction conditions made a part thereof shall be given to the Town Clerk by the developer. Initial or final acceptance of the construction will not be given by the Town until the permit conditions are satisfied.
- (j) Road Extension. On temporary dead end roads, a tee-shaped turnaround shall be provided at the dead end. The tee shall be surfaced to the same width as the adjoining road and extend at least 40' each side of the centerline of the adjoining road. Accordingly, the roadway on the temporary dead end roads shall be constructed to the property line as platted. Where roads in a proposed development connect to existing roads which have terminated in temporary circular or tee-shaped turnarounds, it shall be the responsibility of the developer, at his expense, to connect to the existing road and obliterate the temporary turnaround as the Town Board and Engineer direct.
- (k) Stage Development. (repealed and recreated 2014-08) In all instances when it shall appear to the satisfaction of the Town Board that the whole of a platted subdivision cannot immediately be

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

- (l) Street Lights. (Cr. #88-200) The developer shall provide, arrange for and reimburse the electric company for street lights as required by the Town. Street lighting shall be required where each entrance road for a development intersects with a county or State highway or Town collector street.

(2) CONSTRUCTION STANDARDS.

(a) Streets.

1. Copies of the typical section are available from the Town Clerk. Other sections will be discussed at the time of platting for major and collector streets.
2. The Town Board shall require that profiles of streets to be constructed be prepared by a registered professional engineer or registered land surveyor and be submitted to the Town Board for approval of all grades and drainage easements prior to proceeding with any grading.
3. The length and size of all culverts for all road crossings and driveways shall be determined by the owner's engineer and approved by the Town Engineer. All culverts shall be arch culverts. The minimum size driveway culvert shall be a 15" arch pipe. The minimum size roadway culvert shall be an 18" arch pipe. Instead of installing individual culverts larger than the 30" arch pipe (35" x 24") multiple culverts of equal capacity shall be required unless unusual conditions warrant the installation of a larger pipe.
4. (Repealed and recreated 2014-08) All streets shall be graded and surfaced according to Ch. 8 of this code. The final asphalt surface shall be installed by the developer one year after the initial lift is installed, unless an extension is granted by the Town. To guarantee installation of the final asphalt surface, the developer shall file a financial guarantee in an amount determined by the Town Engineer. If the developer seeks approval of the final plat prior to installation of the final asphalt surface, the financial guarantee shall be in the form of a letter of credit approved by the Town Attorney. If the asphalt surface is not installed within one year from the installation of the initial lift of asphalt, the Town Board may cause the final asphalt surface to be installed and the parties executing the financial guarantee shall be firmly bound for the payment of all costs. Maintenance of the streets shall be the responsibility of the subdivider until acceptance by the Town.
5. Topsoil, mucky soil, peat and other deleterious material shall be removed below the subgrade of streets and replaced with suitable, sound fill material approved, placed and compacted as directed by the Town Engineer.

6. Street signs, culverts posts, guard rails, etc., as required by the Town Board, shall be obtained and placed by the Town with the expenses incurred paid by the subdivider.
 7. Side slopes shall be covered with topsoil, prepared, seeded, sodded or other acceptable ground cover, fertilized and maintained for a sufficient period to provide adequate grass cover prior to acceptance by the Town Board.
 8. An abutment of mortared stone or reinforced concrete or other approved material shall be constructed at each end of all culverts by the subdivider.
- (b) Drainage Easements. All drainage easements shall be graded so as to confine water flow to the easement area as shown on the plat and all such grading shall be approved by the Town Engineer.
 - (c) Specifications. Street specifications shall conform to Ch. 8 of this code. Any items not covered by these standards shall conform to the "Standard Specifications for Road and Bridge Construction", State of Wisconsin, most recent edition. Sewer and Water Specifications shall conform to the "Standard Specifications for Sewer and Water Construction in Wisconsin", most recent edition.
 - (d) Final Inspection and Acceptance. Prior to the request for final street inspection, the subdivider shall provide the Town Engineer with a written certification from the subdivider's engineer or surveyor to the effect that the streets conform to the grades as indicated on the profile maps previously approved. Final acceptance of the streets, drainage ditches, culverts, etc., will be made only between May 1st and November 1st of any year.
 - (e) Town Engineer Expenses. The expenses of the Town Engineer due to the subject subdivision, to the extent they exceed the fee paid at the time the final plat was submitted, shall be paid by the subdivider or owner as required by the Town Board.
- (3) PUBLIC SITES, OPEN SPACES AND CAPITAL IMPROVEMENT. (Am. #88-200) In order that adequate open spaces and sites for public uses may be properly located and preserved as the community develops; and in order that the cost of providing the public parks, recreation sites and other facilities necessary to serve the additional families brought into the community by new developments may be most equitably apportioned on the basis of the additional need created by the individual development, the following provisions are established:
- (a) Reservation of Potential Sites.
 1. In the design of the plat, division of land or planned unit development, consideration shall be given to the adequate provisions of and correlation with such public sites or open areas.
 2. Where it is determined by the Town Plan Commission that a portion of the plat, planned unit development or division of land is required for public sites or open spaces, the developer may be required to reserve such area for a period not to exceed 3 years, after which the Town shall either acquire the property or release the reservations.
 - (b) Dedication of Sites.
 1. Within the corporate limits of the Town where feasible and compatible with development of the community, the developer shall provide and dedicate to the public adequate land to provide for the needs of the development.
 2. The amount of land to be provided shall be determined on the basis of an amount of land equal in value to an amount as set forth from time to time by resolution of the Town Board per residential lot created by the division. In the case of a multi-family development the amount of land shall equal in value an amount as set forth from time to time by resolution of

the Town Board for each residential unit. The value of the land to be dedicated shall be determined by the Town Assessor on the basis of full and fair market value of the land prior to dividing. If the developer is not satisfied with such appraisal, he may appeal such determination, in which case an appraisal board consisting of one appraiser selected by the Town at its own expense, one selected by the developer at his own expense and a third selected by the other 2 appraisers at Town expense, shall determine the value.

(c) Proportionate Payment in Lieu of Dedication. (repealed in its entirety 2007-002)

18.08 REPLATS, VACATING AND ALTERING PLATS, CORRECTION INSTRUMENTS.

- (1) REPLATS. A replat of all or any part of a recorded subdivision may not be made or recorded except after proper court action has been taken to vacate the original plat or the specific part thereof when all the parties in interest in writing agree thereto. The subdivider shall follow the same procedure for processing a replat as he does for any preliminary or final plat. The Town will then apply the applicable provisions of this chapter to the replat.
- (2) VACATING AND ALTERING PLATS. The owner of the subdivision, the owner of any lot in the subdivision by tax deed, or the County Board, if the County has acquired an interest in the subdivision or in any lot in the subdivision by tax deed, may apply to the Circuit Court for Waukesha County for the vacation or alteration of all or part of the recorded plat of that subdivision. The provisions of §§236.40, 236.41, 236.42, 236.44 and 236.445, Wis. Stats., shall be followed.
- (3) CORRECTION INSTRUMENTS. Correction instruments approved by the Town Board shall be recorded with the Register of Deeds as provided by §236.293, Wis. Stats.

18.09 APPEALS.

Any person aggrieved by an objection to a plat or a failure to approve a plat may appeal therefrom as provided in §62.23(7)(e)10. to 15., Wis. Stats., within 30 days of notification of the rejection of the plat. For the purpose of such appeal the term "Board of Appeals" means an "approving authority". Where the failure to approve is based on an unsatisfied objection, the agency making the objection shall be made a party to the action. The court shall direct that the plat be approved if it finds that the action of the approving authority or objecting agency is arbitrary, unreasonable or discriminatory.

18.10 MODIFICATIONS AND EXCEPTIONS. (Am. #90-260)

In any particular case where the subdivider can show that strict compliance with any requirements of this chapter would cause practical difficulty or exceptional and undue hardship, the Town Board may relax such difficulty or hardship, provided such relief may be granted without detriment to the public good and without impairing the intent and purpose of this chapter of the desirable general development of the neighborhood and the Town. A 3/4 vote of the entire Town Board shall be required to grant modifications or exceptions to this chapter, and any modification or exception so granted shall be entered in the minutes of the Town Board setting forth the reasons justifying the action.

18.11 PRIOR REVIEW OF SALES OR EXCHANGES OF PARCELS BETWEEN ADJOINING LANDOWNERS. (Created 2014-08)

In every situation, regardless of circumstances, that a property owner seeks to convey land in a manner that would adjust a lot line or create or eliminate a lot line, and that conveyance does not require a certified survey map or subdivision plat pursuant to this ordinance, and where an adjacent property owner intends to acquire such interest in land, the proposed action shall be submitted to the Town of Delafield Plan Commission for prior review, before the conveyance documents are signed and before the conveyance is recorded in the office of the Waukesha County Register of Deeds. Such application must be filed with the Town Clerk along with a fee payment to offset all or part of the cost of this limited review, in an amount to be determined from time to time by separate resolution of the Town Board. The Town Plan Commission review shall be limited to considering whether the conveyance is in compliance with the Wisconsin Statutes Section 236.45(2)(am)(3)

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

18.12 SITE EROSION CONTROL.

- (1) APPLICABILITY. This section applies to land disturbing and land developing activities on lands within the boundaries and jurisdiction of the Town.
- (2) DEFINITIONS. (Repealed 2005-003 and recreated in Section 18.02)
- (3) DESIGN CRITERIA, STANDARDS AND SPECIFICATIONS FOR CONTROL MEASURES. All control measures required to comply with this section shall meet the design criteria, standards and specifications for the control measures based on accepted design criteria, standards and specifications identified by the Town administering authority. Unless designated to the contrary, the criteria shall conform to the latest edition of the "Wisconsin Construction Site Best management Practice Handbook," published by the Wisconsin Department of Natural Resources' Bureau of Water Resource Management Non Point Source and Land Management section or to other standards which may be adopted by the Town Plan Commission.
- (4) MAINTENANCE OF CONTROL MEASURES. All sedimentation basins and other control measures necessary to meet the requirements of this section shall be maintained by the applicant or subsequent landowner during the period of land disturbance and land development of the site in a manner satisfactory to the Town's administrating authority to ensure adequate performance and to prevent nuisance conditions.
- (5) CONTROL OF EROSION AND POLLUTANTS DURING LAND DISTURBANCE AND DEVELOPMENT.
 - (a) Applicability. This subsection applies to the following sites of land development or land disturbing activities:
 1. Those requiring a subdivision plat or certified survey map approval which requires the installation of road or utilities, houses or commercial, industrial or institutional buildings on lots of approved subdivision plats.
 2. Those requiring the construction of houses or commercial, industrial or institutional buildings.
 3. Those involving grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity affecting a surface area of 4,000 sq. ft. or more.
 4. Those involving excavation or filling or a combination of excavation and filling affecting 400 cu. yds. or more of dirt, sand or other excavation or fill material or as specified in Waukesha County Shoreland and Floodland Ordinance for lands within the jurisdiction of such ordinance.
 5. Those involving street, highway, road or bridge construction, enlargement, relocation or reconstruction.

6. Those involving the laying, repairing, replacing or enlarging of an underground pipe or facility for a distance of 300' or more.
- (b) Erosion and Other Pollutant Control Requirements. The following requirements shall be met on all sites described in par. (a):
1. Site Dewatering. Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, upflow chambers, hydro-cyclones, swirl concentrators or other appropriate controls designed and used to remove particles of 100 microns or greater for the highest dewatering pumping rate. If the water is demonstrated to have no particles greater than 100 microns during dewatering operations, then no control is needed before discharge. Water may not be discharged in a manner that causes erosion of the site or receiving channels.
 2. Waste and Material Disposal. All waste and unused building materials, including garbage, debris, cleaning wastes, wastewater, toxic materials or hazardous materials, shall be properly disposed and not allowed to be carried by runoff into a receiving channel or storm sewer system.
 3. Tracking. Each site shall have graveled roads, access drives and parking areas of sufficient width and length to prevent sediment from being tacked onto public or private roadways. Any sediment reaching a public or private road shall be removed by street cleaning, not flushing, before the end of each workday.
 4. Drain Inlet Protection. All storm drain inlets shall be protected with a straw bale, filter fabric or equivalent barrier meeting accepted design criteria, standards and specifications.
 5. Site Erosion Control. The following criteria (subpars. a. through d.) apply only to land development or land disturbing activities that result in runoff leaving the site:
 - a. Channelized runoff from adjacent areas passing through the site shall be diverted around disturbed areas, if practical. Otherwise, the channel shall be protected as described below in subpar. c.°. Sheetflow runoff from adjacent areas greater than 10,000 sq. ft. in area shall also be diverted around disturbed areas, unless shown to have resultant runoff velocities of less than 0.5'/sec. across the disturbed area. Diverted runoff shall be conveyed in a manner that will not erode the conveyance and receiving channels. Soil and conservation service guidelines for allowable velocities in different types of channels shall be followed.
 - b. All activities on the site shall be conducted in a logical sequence to minimize the area of bar soil exposed at any one time.
 - c. Runoff from the entire disturbed area on the site shall be controlled by meeting either subpars. i or ii or i and iii.
 - i. All disturbed ground left inactive for 14 or more days shall be stabilized by seeding or sodding (only available prior to September 15), by mulching or covering or other equivalent control measures.
 - ii. For sites with more than 10 acres disturbed at one time or if a channel originates in the disturbed area, one or more sedimentation basin shall be constructed. The basin discharge rate shall also be sufficiently low as to not cause erosion along the discharge channel or the receiving water.
 - iii. For sites with less than 10 acres disturbed at one time, filter fences, straw bales or equivalent control measures shall be placed along all sideslope and downslope sides

of the site. If a channel or area of concentrated runoff passes through the site, filter fences shall be placed along the channel edges to reduce sediment reaching the channel.

- d. Runoff from site on slopes of 12% or more may require additional or different controls than listed in subpar. c. above.
- e. Any soil or dirt storage piles containing more than 10 cu. yds. of material shall not be located within a downslope drainage length of less than 25' to a roadway or drainage channel. Straw bales or filter fabric barriers shall be placed immediately on the downslope side of piles. If remaining for more than 30 days, they shall be stabilized by mulching, vegetative cover, tarps or other means. In-street utility repair or construction soil or dirt storage piles located closer than 25' of a roadway or drainage channel must be covered with tarps or suitable alternative control if exposed for more than 7 days and the storm drain inlets must be protected with straw bale or other appropriate filtering barriers. If any soil or dirt storage pile described in this subparagraph is in existence for more than 6 months, the filter fabric or straw bales shall be replaced upon order of the administering authority.

(6) PERMIT APPLICATION, CONTROL PLAN AND PERMIT ISSUANCE. No landowner or land user may commence a land disturbance or land development activity subject to this section without receiving prior approval of a control plan for the site and a permit from the Town administering authority. At least one landowner or land user controlling or using the site and desiring to undertake a land disturbing or land developing activity subject to this section shall submit an application for a permit and a control plan and pay an application fee as set from time to time by the Town Board to the Town Clerk. By submitting an application, the applicant is authorizing the Town administering authority to enter the site to obtain information required for the review of the control plan.

(a) Content of the Control Plan for Land Disturbing Activities Covering One or More Acres.

- 1. Existing Site Map. A map of existing site conditions on a scale of at least 1" equals 100' showing the site and immediately adjacent areas:
 - a. Site boundaries and adjacent lands which accurately identify site location.
 - b. Lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site.
 - c. 100 year floodplains, flood fringes and floodways.
 - d. Location of the predominant soil types.
 - e. Vegetative cover.
 - f. Location and dimensions of storm water drainage systems and natural drainage patterns on and immediately adjacent to the site.
 - g. Locations and dimensions of utilities, structures, roads, highways and paving.
 - h. Site topography at a contour interval not to exceed 2'.
- 2. Plan of Final Site Conditions. A plan of final site conditions on the same scale as the existing site map showing the site changes.
- 3. Site Construction Plan. A site construction plan, including:

- a. Locations and dimensions of all proposed land disturbing activities.
 - b. Locations and dimensions of all temporary soil or dirt stockpiles.
 - c. Locations and dimensions of all construction site management control measures necessary to meet the requirements of this section.
 - d. Schedule of anticipated starting and completion date of each land disturbing or land developing activity, including the installation of construction site control measures needed to meet the requirements of this section.
 - e. Provisions for maintenance of the construction site control measures during construction.
- (b) Content of Control Plan Statement for Activities of Less than One Acre but Meeting Requirements Herein. An erosion control plan statement with simple map shall be submitted to briefly describe the site and erosion controls, including site development schedule that will be used to meet the requirements of this section.
- (c) Review of Control Plan. Within 45 days of receipt of the application, control plan or control plan statement and fee, the administering authority shall review the application and control plan to determine if the requirements of this section are met. The administering authority may request comments from other departments or agencies. If the requirements of this section are met, the administering authority shall approve the plan, inform the applicant and issue a permit. If the conditions are not met, the administering authority shall inform the applicant in writing and may either require needed information or disapprove the plan. Within 30 days of receipt of needed information, the administering authority shall again determine if the plan meets the requirements of this section. If the plan is disapproved, the administering authority shall inform the applicant in writing of the reasons for disapproval.
- (d) Permits.
- 1. Duration. Permits shall be valid for a period of 180 days or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The Town administering authority may extend the period one or more times for up to an additional 180 days. The administering authority may require additional control measures as a condition of the extension if they are necessary to meet the requirements of this section.
 - 2. Financial Guarantee. As a condition of approval and issuance of the permit, the Town shall require the applicant to deposit a surety bond, irrevocable letter of credit or other satisfactory financial guarantee to guarantee a good faith execution of the approved control plan and any permit conditions. The type and form of the financial guarantee shall be at the discretion of the Town Board after review and recommendation of the Town Attorney.
 - 3. Permit Conditions. All permits shall require the permittee to:
 - a. Notify the Town Clerk within 48 hours prior to commencing any land disturbing activity.
 - b. Notify the Town Clerk of completion of any control measures within 24 hours after their installation.
 - c. Obtain permission in writing from the Town administering authority prior to modifying the control plan.
 - d. Install all control measures as identified in the approved control plan.
 - e. Maintain all road drainage systems, storm water drainage systems, control measures

and other facilities identified in the control plan.

- f. Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land developing or disturbing activities.
- g. Allow the Town's designated agent to enter the site for the purpose of inspecting compliance with the control plan or for performing any work necessary to bring the site into compliance with the control plan.
- h. Keep a copy of the control plan on the site.

(7) INSPECTION.

- (a) The administering authority shall inspect construction sites at least once a month during the period starting March 1 and ending October 31 and at least 2 times during the period starting November 1 and ending February 28 to ensure compliance with the control plan.
- (b) If land disturbing or land development activities are being carried out without a permit, the Town's administering authority shall enter the land pursuant to the provisions of §§66.122 and 66.123, Wis. Stats.

(8) ENFORCEMENT.

- (a) The Town administering authority may post a stop work order if:
 - 1. Any land disturbing or land developing activity regulated under this section is being undertaken without a permit.
 - 2. The control plan is not being implemented in a good faith manner.
 - 3. The conditions of the permit are not being met.
- (b) If the permittee does not cease the activity or comply with the control plan or permit conditions within 10 days, the Town Board may revoke the permit.
- (c) If the landowner or land user where no permit has been issued does not cease the activity within 10 days, the Town Board may request the Town Attorney to obtain a cease and desist order.
- (d) Once a cease and desist order has been issued, only the Town Board or the Town Board of Appeals may retract the stop work order or the revocation.
- (e) Ten days after posting a stop work order, the Town administering authority may issue a notice of intent to the permittee, landowner or land user of the Town's intent to perform work necessary to comply with this section. The Town's designated agent may go on the land and commence the work after 14 days from issuing the notice of intent. The costs of the work performed by the administering authority, plus interest at the rate authorized by the administering authority, shall be billed to the permittee or the landowner. In the event a permittee or landowner fails to pay the amount due, the Town Clerk shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to §66.60(16), Wis. Stats.
- (f) Compliance with the provisions of this section may also be enforced by injunction.

(9) APPEALS.

- (a) Board of Appeals. The Board of Appeals created pursuant to §17.45 of this General Code:

1. Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Town's administering authority in administering this section.
 2. Upon appeal, may authorize variances from the provisions of this section which are not contrary to the public interest and, where owing to special conditions, a literal enforcement of the provisions of this section will result in unnecessary hardship.
 3. Shall use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.
- (b) Who May Appeal? Any applicant, permittee, landowner or land user may appeal any order, decision or determination made by the Town's administering authority in administering this section.

18.13 FIRE PROTECTION RESERVOIRS. (Cr. #95-388)

- (1) GENERAL REQUIREMENTS. To insure adequate water is available for the purposes of fire suppression, any developer or owner who subdivides lands into five (5) or more residential or commercial lots shall provide a system of Fire Protection Reservoirs within the platted area for fire suppression purposes. The full and total cost of all engineering and legal fees, reservoirs, installation, plumbing, fire fittings, painting, access lanes/roads, initial filling with water, land restoration, and other cost of compliance with this ordinance shall be the responsibility of the developer or owner.
 - (a) The system of reservoirs or accepted alternatives shall be in place, approved and functional before any new building construction begins with the platted areas.
 - (b) A Fire Protection Reservoir surety in a form and in an amount determined by the Town Board, shall be required to insure the system is installed and fully functional prior to any building construction. The required surety amount shall be in an amount as set forth from time to time by resolution of the Town Board. Application for release of the surety shall not be considered until final approval of the system is obtained from the Fire and Highway Departments and all materials defined herein are provided.
 - (c) The requirements for Fire Protection Reservoirs shall apply equally to new and existing developments if, after the date of enactment, in excess of four (4) lots are created.
 - (d) All specifications and installations shall follow established engineering practices, the Fire Department's "Tank Installation Guidelines" and NFPA 1231, "Standard on Water supplies for Suburban and Rural Fire Fighting" as they may be amended from time to time. All proposed installation plans and specifications shall be approved by the Town Engineer before work is begun.
 - (e) Within 30 days of completion and final approval of the system, a complete set of record drawings, specifications, warranties and other requested information shall be provided to the Town Fire and Highway Departments.
 - (f) The complete installation and all associated items shall have a 24 month warranty, beginning at the final acceptance date, to be free from defects in materials and/or workmanship. If during this period the Town, at its sole discretion, determines corrective actions are necessary, the developer shall make the corrections at his expense in a period determined by Town but not to exceed 60 days from notification of defect.
- (2) RESERVOIRS REQUIRED. The developer of new or expanded plats shall provide "EMERGENCY WATER RESERVOIRS" as hereby defined:

5 - 39 lots - minimum of one (1) 10,000 gallon storage tank 40 or more lots - 250 gallon storage capacity minimum for each lot

- (a) The Town, upon recommendation of the Fire Chief, may require greater or less capacity if it is determined, after reviewing the proximity of other water sources, that such capacity is appropriate.
 - (b) Natural sources or man-made ponds may also be used as water reservoirs provided they comply with the same general requirements as tanks for location and number. These types of sources shall be of the dry hydrant type and installed as defined and specified by the State of Wisconsin Department of Natural Resources and Fire Department.
 - (c) All fire fittings used or installation shall be as specified by the fire Department and the cost of these fittings shall be included as part of the overall installation.
- (3) **TANK LOCATION.** Tank location shall be determined by the Town after receiving a recommendation from the Fire Chief, Highway Superintendent and Town Engineer. The locations selected shall be noted on a map to be kept on file with the Fire Chief and Highway Superintendent for future reference.
- (4) **INSPECTION AND ACCEPTANCE.** When all work has been completed and the tanks are functional, the developer may request an inspection. This inspection will be made by the Fire Chief and Highway Superintendent using the Fire Department Water Tank Inspection report form. In addition, a test pumping may be performed to insure that adequate water flow can be obtained.
- (a) If a second inspection is required as a result of problems noted during the initial inspection, a fee in an amount as set forth from time to time by resolution of the Town Board shall be assessed for each additional inspection.
 - (b) When all requirements contained herein have been satisfied the Town Board shall provide final acceptance of the water source.

18.14 DETAILED SITE ANALYSIS AND MITIGATION PLANS (created 2005-003)

- (1) Purpose: The Detailed Site Analysis required by this Section is designed to provide the clear identification of permanently protected green space and open space areas on a site which is proposed for development. The detailed survey work required to identify these areas accurately on a map is not required prior to the initiation of development concept plans for an area.
- (2) Site Disruption Limited: Where a preliminary plat, certified survey map, or site plan approval requires a Detailed Site Analysis and Mitigation Plan, the property owner and / or Developer shall not remove trees in anticipation of a land division or site development prior to preliminary plat or site plan approval.
 - a) (repealed and recreated 2013-03) Prior to approval of a Detailed Site Analysis and Mitigation Plan, site disruption shall be limited to percolation testing in accordance with SPS 385 and clearing and grubbing reasonably necessary to perform preliminary property surveys.
 - b) Following the approval of a Detailed Site Analysis and Mitigation Plan, site disruption activities shall comply with the following:
 - i. Activities shall not compact soil covering tree roots, or otherwise damage trees beyond the area from which trees are to be removed.
 - ii. The use of snow fences and other barriers to outline development pads during disruption activity is required in order to limit the extent of inadvertent compaction or other disturbance of earth, and collision damage to vegetation intended for protection. Such

barriers should be placed no closer to protected trees than a point on the ground directly under their outer canopy edge. The use of on-site temporary construction signage is also highly recommended.

- (3) Plan Requirements: The Detailed Site Analysis shall be shown on a map of the subject property which depicts the location of all protected natural resource areas and environmental corridor components, as defined by the provisions of this Section, and as located by an on-site property survey. The detailed site analysis shall meet the following requirements:
- a. Scale: A minimum scale of one-inch equals 200 feet shall be used unless otherwise approved by the Plan Commission;
 - b. Topography: Topographic information is not required for any property that does not contain steep slopes. For such properties, topographic information with a minimum contour interval of two feet is required.
 - c. Development Envelopes: All site disruption (including selective cutting) proposed to occur within permanently protected natural resource areas shall be limited to Development Envelopes except as required to remove non-native or undesirable species as identified in an approved Management Plan for the site. Development pads shall be depicted on the Detailed Site Analysis map, Preliminary Plat of Subdivision, and/or site plan. Where Development Envelopes encroach into environmental corridors or their components as identified by the Southeastern Wisconsin Regional Planning Commission, such encroachments shall be mitigated on site in accordance with Section 4 of this Code.
 - d. A tree inventory on all lands that may be disturbed.
- (4) Mitigation Areas: All mitigation areas, and the areas they offset, related to the provisions of this Ordinance shall be depicted on the detailed site analysis map with notations provided which describe the mitigation techniques employed. Acceptable mitigation techniques include but are not limited to stream bank stabilization, prairie restoration, invasive species control, tree replacement and reforestation efforts, rehabilitation of rustic structures. The Plan Commission shall review and approve all proposed mitigation techniques proposed prior to or concurrent with the Preliminary Plat of Subdivision or site plan. If necessary, as determined by Plan Commission, revised Detailed Site Analysis maps shall be prepared and submitted for review until a version is deemed acceptable.
- (5) Procedure for Submittal: Required Procedure for Submission and Review of Detailed Site Analysis and Mitigation Plan:
- a. Required Timing of Submission: The detailed site analysis map shall be submitted to the Plan Commission for review concurrent with the submission of the Preliminary Plat of Subdivision or site plan. A concept plan of the proposed development may be submitted prior to the submission of the detailed site analysis map, however, in no way does the acceptance and/or general approval of the concept plan indicate the approval of natural resource feature locations.
 - b. Review: The Plan Commission shall review the submitted Detailed Site Analysis map for general compliance with this Ordinance. Such review may include data sources including but not limited to the following examples:
 - 1. The Official Zoning Map;
 - 2. Applicable USGS 7.5 minute topographic maps or other USGS Quads and sources of topographic information;
 - 3. Air photos of the subject property;
 - 4. Applicable FEMA and related floodplain maps;
 - 5. Applicable Federal and State Wetland Inventory Maps;

6. The Land Use Plan; and
 7. Official Street System Map;
 8. Site visits.
- (6) Integration Into Plan Documents and Deed Restrictions: Information contained on the Detailed Site Analysis map relating to the boundaries of permanently protected green space areas (including natural resource protection areas, other permanently protected green space areas, and required mitigation areas) shall be recorded as a deed restriction which permanently runs with the land. Said areas shall be clearly depicted on any and all site plans required as a precondition for application for any development permit which occurs subsequent to any proposed Final Plat of Subdivision.
- (7) Surety Required: A Surety in a form approved by the Town Attorney shall be provided. Said surety shall secure the replacement of all trees with calipers exceeding six (6) inches, whose canopies are located adjacent to disturbed areas, which die within a period of five (5) years following site disruption, and to secure the restoration of all disturbed land areas and mitigation areas identified on the Detailed Site Analysis.

18.15 ENFORCEMENT AND PENALTIES.

- (1) ENFORCEMENT. The Town may institute an injunction or other appropriate action or proceeding to enjoin a violation of this chapter or any provision of Ch. 236. Wis. Stats., adopted by reference.
- (2) PENALTIES. Except as otherwise expressly provided, any subdivider who fails to comply with the provisions of this chapter shall be subject to a penalty as provided in §25.04 of this code. In addition, the remedies provided by §236.30 and 236.31, Wis. Stats., shall apply.
- (3) OTHER PENALTIES OR REMEDIES. (Cr. #91-308) In addition to any other penalties imposed by this chapter, any costs incurred by the Town to gain compliance with plat approval, subdivision approval or site erosion or pollution control requirements or any other provision of this chapter including, but not limited to, the Town's installation of the required improvements and the Town's cost of enforcement thereof, shall be collected as a debt from the developer and/or owner of the property involved. If after notice of the debt is given to the developer and/or owner it remains unpaid for more than 30 days, such cost shall, at the option of the Town Board, be assessed as a special charge against any real estate located in the Town owned by the developer and/or owner.

18.01 PURPOSE AND GENERAL PROVISIONS.

(1) **PURPOSE.** The purpose of this chapter, prepared under the authority granted by §236.45, Wis. Stats., is to promote the public health, safety, morals, property, aesthetics and general welfare of the Town and the regulations are designed 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 adequate provision for transportation, water supply, waste water disposal, schools, parks, playgrounds and other public requirements; prevent scattered development beyond the service areas of community facilities and utilities; conserve the existing and potential value of land, water, air and improvements; provide the best possible environment for human habitation and meet the public demand for aquatic recreation with the least disturbance to shoreland owners; preserve shoreland growth and cover, prevent erosion and sedimentation, and protect surface and subsurface water quality. The regulations of this ordinance are made with reasonable consideration of the character of the Town with a view of conserving the value of the buildings placed upon the lands, providing the best possible environment for human habitation and for encouraging the most appropriate division and use of land throughout the Town.

(2) **GENERAL PROVISIONS.**

(a) **Jurisdiction.** The provisions of this chapter shall apply within the corporate limits of the Town. Included in this jurisdiction shall be:

1. Any division of land within the Town which results in a subdivision as defined herein shall be surveyed and a plat thereof made, approved and recorded as required by this chapter and by Ch. 236, Wis. Stats.
2. Any division of land other than a subdivision resulting in the creation of 2 parcels or building sites shall be surveyed and a certified survey map or assessor's map shall be prepared and be approved by the Town and recorded with the Register of Deeds as required by this chapter. This shall not pertain to those transfers or divisions of land specifically excluded herein, namely: (Am. #260)
 - a. Transfers of interests in land by will or pursuant to court order.
 - b. Leases for a term not to exceed 10 years, mortgages or easements.
 - c. Cemetery plats made under §157.07 and assessor's plats, unless specifically required by the Town, made under §70.27, Wis. Stats., but such assessor's plats shall comply with §§236.15(a) to (g) and 236.20(1) and (2)(a) to (e), Wis. Stats.
 - d. (Repealed and recreated 2014-08) The sale or exchange of parcels or land between owners of adjoining property if additional lots are not thereby created and the lots resulting are not reduced below the minimum sizes and meet all specifications required by these regulations, the zoning ordinances, and other applicable laws and ordinances, subject to the review procedures described in Section 18.11.

(b) **Basis of Approval** (Repealed and recreated 2013-03)

1. Compliance with Chapter 236 of the Wisconsin Statutes.
2. Compliance with any Town or County ordinance that is in effect when the subdivider submits a preliminary plat or a final plat if no preliminary plat is submitted.
3. Compliance with duly approved comprehensive plans, regional plans, County plans or comprehensive plan component including the Zoning Code and official map adopted by the Town.

4. Compliance with the rules of the Department of Safety and Professional Services, relating to lot size, lot elevation, percolation tests, test borings, etc.
 5. Compliance with the rules of the Division of Highways, Department of Transportation Facilities, relating to traffic safety and preservation of public interest and investment in State trunk highways or connecting streets.
 6. Compliance with rules of the State Department of Natural Resources setting water quality standards, preventing and abating pollution and regulating septic systems.
 7. Compliance with the most restrictive requirements when requirements of approving authorities conflict.
 8. Consideration of the Development Review Checklist as adopted by separate resolution of the Town Board which is attached hereto and incorporated herein as an exhibit, including any amendments that may be made thereto from time to time by the Town Board by separate resolution.
- (c) Land Unsuited for Subdividing. No land shall be subdivided for residential use which the Town Board determines to be unsuitable for such use by reason of flooding, bad drainage, adverse earth or rock conditions, topography or any other feature likely to create a subdivision contrary to the purpose of this chapter.

18.02 DEFINITIONS.

(1) GENERAL INTERPRETATION. All words used in the present tense include the future tense; the singular includes the plural and the plural the singular; the word "person" includes associations, co-partnerships or corporations; and the term "shall" is mandatory while the word "may" is permissive. All terms used which are defined in Ch. 236, Wis. Stats., shall have the same meaning as ascribed in the chapter, and as the chapter may hereafter be amended, unless otherwise defined in this chapter or unless the context and subject matter clearly indicates otherwise. In their interpretation and application, the provisions of this chapter shall be held to the 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 Statutes.

(2) SPECIFIC WORDS AND PHRASES. (Amended 2005-003)

Administering Authority: The designee of the Town Board to administer this section. Generally the administrative authority will be the Town Building Inspector. However, in certain instances the Town Board will designate the Town Engineer or some other qualified person to administer this section.

Agricultural Land Use: Use of land for planting, growing, cultivating and harvesting of crops for human or livestock consumption and pasturing or yarding of livestock.

Commercial Land Use: Use of land for the retail or wholesale sale of goods or services.

Common Open Space: Land within a subdivision or other development that has been designated, dedicated, reserved, or restricted in perpetuity from further development and is set aside for the use and enjoyment by residents of the community. Common Open Space may have varied forms of ownership including but not limited to fractional share of the owners of property with a subdivision or development, public ownership, and fee simple or easement interest by a third party land trust. Common open space is typically free of structures, but may contain historic or rustic structures, shared recreational structures including but not limited to pool houses or stables, as may be indicated on the approved development plan.

Condominium (or condominium plat): A community association combining individual unit ownership with shared use or ownership of common property or facilities, established in accordance with the Condominium Ownership Act and §703 Wisconsin Statutes.

Construction Site Control Measure: A control measure used to meet these requirements.

Control Measure: A practice or combination of practices to control erosion and attendant pollution.

Control Plan: A written description of the number, locations, sizes and other pertinent information of control measures designed to meet the requirements of this section submitted by the applicant for review and approval by the Town's designated administrative authority.

Development Envelope: That portion of a parcel of land which is intended to be cleared, graded, and built upon including areas for accessory uses and structures.

Development: The combination of parcels; division of a parcel of land into two or more parcels; the erection, construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or structure; any use or change in use of any buildings, structures, or land; any extension of any use of land; or any clearing, grading, or other movement of land, for which permission may be required pursuant to this Chapter. Also, the result of said acts.

Erosion: The detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity.

Land Developing Activity: The construction of buildings, roads, parking lots, paved storage areas and similar facilities.

Land Disturbing Construction Activity: Any man-made change of the land surface, including removing vegetative cover, excavating, filling and grading, but not including agricultural land uses, such as planting, growing, cultivating and harvesting of crops, growing and tending of gardens, harvesting of trees and landscaping modifications.

Landowner: Any person holding title to or having an interest in land.

Land User: Any person operating, leasing, renting or having made other arrangements with the landowner by which the landowner authorizes use of his land.

Plan Commission: The Plan Commission of the Town of Delafield.

Planned Unit Development (PUD): A self-contained development in which subdivision and zoning controls are applied to the project as a whole rather than to individual lots, and in which specific benefits are provided to the community as well as the developer and the future citizens who will reside within the development. Within PUDs, densities are calculated for the entire development, usually permitting a trade-off between clustering of houses and provision of common open space.

Plat, Final: A map or plan of a parcel of land showing such data as the location, boundaries, dimensions, bearings, lot or unit location and designation, and ownership of individual properties in accordance with Chapters 236 and 703 of Wisconsin Statutes.

Plat, Preliminary: A map showing the salient features of a proposed subdivision submitted to all approving authorities for the purpose of preliminary consideration.

Runoff. The rainfall, snow melt or irrigation water flowing over the ground surface.

Site. The entire area included in the legal description of the land on which the land disturbing or land development activity is proposed in the permit application.

Street, Arterial. A street used or intended to be used, primarily for fast or heavy through traffic. Arterial street shall include freeways and expressways as well as standard arterial streets, highway and parkways.

Street Collector. A street used or intended to be used, to carry traffic from minor streets to the major system of arterial streets including the principal entrance streets to residential developments.

Street, Cul-De-Sac. A minor street with only one outlet and having an appropriate turnaround for the safe and convenient reversal or traffic movement.

Street, Frontage. A minor street auxiliary to and located on the side of an arterial street for control of access and for service to the abutting development.

Street, Minor (Local). A street used, or intended to be used, primarily for access to abutting properties.

Subdivider. Any person, group, corporation or other entity acting as a unity, or any agent thereof, dividing or proposing to divide land so as to constitute a subdivision or certified survey map as defined herein.

Subdivision. (Repealed and recreated 2019-05) The division of a lot, parcel or tract of land by the owner or his agent for the purpose of sale or building development where: the act of division creates 2 or more parcels or building sites of 5 acres each or less in area; or 2 or more parcels or building sites of 5 acres each or less in area are created by successive divisions of any part of the original property by any person within a period of 5 years; or where the division creates more than three (3) residential parcels or building sites of any size within 5 years. The following shall not constitute a subdivision: cemetery plats, assessor's plats, or the sale or exchange of parcels of land between owners of adjoining property, if additional lots are not thereby created and the lots resulting are not reduced below the minimum size required by applicable ordinances (but see Section 18.11).

Town. The Town of Delafield.

18.03 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM. (Rep. & rec. #90-260)

(1) PURPOSE. The purpose of the Residential Development Control System is to establish a system to control the rate of growth of the Town and to encourage the location and development of residential dwellings consistent with protection and wise use of the natural resources of the Town, including its soils, lakes and streams, wetlands, woodlands, wildlife and other environmentally sensitive area; preservation of land areas for agricultural uses in order to maintain the agricultural economy and insure the preservation of those unique rural areas which provide wildlife habitat; preservation of the rural atmosphere of the Town; and development properly related to available and proposed support facilities, including sewage disposal, police, ambulance, fire protection, roads and highways and schools, without imposing an unreasonable tax burden on the taxpayers and residents of the Town and the school district involved.

(2) RESIDENTIAL DEVELOPMENT PERMIT REQUIRED. (Repealed and recreated 2013-03) No development involving proposed residential uses shall be accepted for consideration pursuant to Section 18.04(1) (b) of this chapter or Section 17.05. 5.A.M. of this General Code, unless residential development permits shall have been issued to the development by the Plan Commission.

(3) PROCEDURE.

(a) Annual Allotment. During each calendar year, the Plan Commission shall allot up to the following number of residential development permits to qualifying developments (each residential development permit representing a residential dwelling unit). Lots created by certified survey map between October 1 and September 30 of the preceding year shall be deducted from the annual allotment for the following year:

1. For the year beginning October 1, 1990, through September 30, 1991, there shall be an allotment of 108 residential development permits. Thereafter, the allotment shall remain at 108 residential development permits for each succeeding year.
2. Any residential development permits within the allotment not issued in a given year shall be

carried forward one year only and may be issued only if qualifying development in the succeeding year exceed the residential development permit allotment for that year. If no residential development permits were carried forward into a given year, the Plan Commission may exceed the maximum number of allotted residential development permits in that year by not more than 10%, provided that the total number of residential development permits allotted for any 5 year period does not exceed the total permits for the 5 year period.

(b) Application Procedure.

1. Application for residential development permits shall be made by the developer to the Plan Commission. The application shall be accompanied by the following documents:
 - a. Preliminary layout in general accordance with §18.05(1) showing also the nature and extent of open space and land that will be preserved in agricultural use. Submission of a preliminary layout for purposes of this subsection shall not be considered a filing of a preliminary plat pursuant to §18.04 of this chapter.
 - b. Method of sanitary sewerage disposal. Percolation tests for all developments not served by public sewer.
 - c. Grading plans indicating the existing and proposed grades, the degree of site alterations to the property caused by the proposed development. Such plans shall indicate building sites and driveways to serve these sites.
 - d. Drainage plans indicating the impact of the storm sewer runoff and the methods to control and retain the runoff. Such plans shall include an erosion control plan.
 - e. Preliminary landscape plans, including the existing location of trees over 6" in diameter measured at 6' above the ground and showing the outline of wooded areas and location of trees which are to remain, and including proposed pathways, plantings, lighting and other landscape features.
 - f. Preliminary architectural plans, where applicable, consisting of typical architectural elevations and proposed dwelling unit sizes and numbers.
 - g. Development schedule setting forth a proposed timetable for development and sale.
 - h. Deed restrictions and/or statements as to special amenities proposed for the development.
 - i. Such other information as required by the Plan Commission.
2. All applications for residential development permits to be issued for a calendar year should be submitted by October 1 of the preceding year. Applications submitted after October 1 will be considered only to the extent allotted residential development permits have not been allocated to applications submitted prior to October 1. Upon allocation of all residential development permits allotted for a given year, applications will be held for consideration for the following years' allotment after October 1, unless the application is withdrawn by the developer.

(4) EVALUATION.

- (a) Plan Commission Review. The Plan Commission shall review applications for residential development permits with respect to each of the criteria set forth in par. (b). The Plan Commission may request reports from appropriate Town, county, school district or other governmental agencies, boards or staff as may be required.

- (b) Criteria. The Plan Commission shall have the latitude to interpolate between the maximum and minimum score in every category. Such interpolation shall be rounded to the whole number.

1. Sanitary Disposal.

- a. A municipal sewer system consisting of a network of sanitary sewers contributory to a regional sewerage treatment plant approved by the State Department of Natural Resources. (2 points)
- b. A conventional septic tank system or mound system in soils which have been tested and certified by a certified soil tester, which tests indicate that each lot in the proposed subdivision has sufficient area for a septic system and a replacement system. (1 point)
- c. Alternate on-site systems include such nonconventional systems as holding tanks or other means of treating sanitary waste other than sanitary sewer, conventional or mound septic systems. (0 points)

2. Compatibility with Adjacent Development. A proposed development will be considered compatible based on a combination of the surrounding land uses, including existing subdivisions, municipal boundary lines, major highways, parks and permanently preserved open spaces, such as wetlands and the Town's land use plan.

- a. Compatible to surrounding area. (3 points maximum)
- b. Not compatible. (-3 points minimum)

3. Removal of Significant Agricultural Land. The proposed subdivision will be considered as removing substantial agricultural land if either 40 acres or more of land otherwise available for agricultural use will be consumed by the subdivision or 50% or more of the proposed development consists of land otherwise available for agricultural use that will be consumed by the development. (-1 point)

4. Site Alterations. This shall include alterations necessary to create roads, easements for utilities, building sites, driveways and parking areas for each building site.

- a. Minimum site alterations where the only site alterations will be in those areas within proposed street rights-of-way. (1 point)
- b. Average site alterations where not more than 20% of the area outside of the street right-of-way will be graded and not more than 10% of any wooded area outside of the street right-of-way will be disturbed. (0 points)
- c. Substantial site alterations where more than 20% of the area outside of the street right-of-way will be graded or more than 20% of any wooded area outside of the street right-of-way will be disturbed. (-2 points)

5. Surface Drainage.

- a. Good surface drainage where all roadside ditches and other drainage ditches shall have a gradient greater than 0.50% and less than 2% and greater than 50% of the storm water runoff can be retained within the site, and remaining storm water runoff is confined within road rights-of-way or recorded drainage easements with no significant adverse effect upon downstream drainage. (2 points)
- b. Average surface drainage where all roadside ditches and other drainage ditches shall have a gradient less than 8% and at least 25% of the storm water runoff can be retained

within the site and remaining storm water runoff is confined with road rights-of-way or recorded drainage easements. (0 points)

- c. Poor surface drainage where some roadside ditches and drainage ditches are steeper than 8% or there is retention of less than 25% of the storm water runoff within the site. (-3 points)

6. Density Less than Zoning Requirements.

- a. Density substantially less than zoning requirements requires that the proposed development have a density (i.e., number of dwelling units per acre) of 1/2 or less of the maximum density permitted by the zoning ordinance for the district in which the property is located. Up to a maximum of 20% of the area of lands zoned Wetlands-Floodplain within the subdivision may be used to determine the density. However, in no case shall the total area of Wetland-Floodplain zoned lands used in the computation exceed 25% of the net area of the development which is zoned other than Wetland-Floodplain. (3 points)
- b. Density moderately less than zoning requirements requires a density of one dwelling unit per 3 acres, provided that no development shall receive more than 2 points with respect to density. Up to a maximum of 20% of the area of lands zoned Wetland-Floodplain within the subdivision may be used to determine the density. However, in no case shall the total area of Wetland-Floodplain zoned lands used in the computation exceed 25% of the net area of the subdivision which is zoned other than Wetland-Floodplain. (1 point)

7. Substantial Open Space Preserved.

- a. Substantial open space will be deemed to have been preserved for agricultural use if the proposed subdivision contains deed restrictions or other evidence satisfactory to the Plan Commission that either 40 acres or more of the total open space in the development will be used as productive agricultural land or at least 50% of the total area of the development will be used as productive agricultural land. (2 points)
- b. Substantial open space for other uses that equal at least 25% of the total area of the development. (1 point)

8. Traffic Circulation and Capacity of Major Street Serving the Development and/or Through the Development. The collector streets and major streets and highways into which traffic from the proposed subdivision shall flow shall be evaluated as to their existing capacity. Failure of any collector street, major street or highway to satisfy the relevant criteria shall constitute an inadequate major street linkage. Entrance roads serving the development shall also be considered. Developments of 15 or more units will be considered inadequate if only served by one entrance road. Developments which connect to existing dead-end streets and improve circulation to and through the Town shall be considered an improvement.

- a. Improvement. (1 point)
- b. Adequate. (0 points)
- c. Inadequate. (-2 points)

9. Outstanding Site Planning and Architectural Standards. This evaluation is to be made by the Plan Commission upon full review of the proposed layout of the development in relation to its environmental surroundings and with regard to proposed architectural standards to be enforced by private deed restrictions or other techniques satisfactory to the Plan Commission. (2 points)

10. Lands Formerly Used for Sludge Application. Lands upon which sewage sludge has been applied shall be assessed -3 points if development is proposed for the year following sludge application, -2 points if development is proposed 2 years following sludge application and -1 point if development is proposed 3 years following sludge application.
11. Fire Protection. If the proposed development includes a water system complete with fire hydrants or if a pond is created with a holding tank installed equipped with a stand pipe capable of producing an adequate water supply for fire protection, the development will be awarded one point.

(5) ALLOCATION.

- (a) Timing. After the first meeting of December of each year with respect to applications submitted by October 1 or within 60 days of application for applications submitted after October 1, the Plan Commission shall notify the developer of its allocation decision in writing.
- (b) Threshold. No residential development permits shall be issued for a subdivision receiving fewer than 6 points in the Plan Commission evaluation.
- (c) Allocation of Residential Development Permits.
 1. If the total number of dwelling units in the proposed subdivisions receiving 6 or more points does not exceed the allotment for the year under consideration, residential development permits may be issued for all dwelling units in all developments so qualifying. However, the Plan Commission reserves the right to prorate the allotment over a 3 year period. The balance residential development permits allotted for the year shall be allocated to qualifying subdivisions (those receiving 6 or more points) submitted after October 1 of the preceding year on a time of submission priority basis.
 2. If the total number of dwelling units in the proposed subdivisions receiving 6 or more points exceed the allotment for the year under consideration, the qualifying subdivisions shall be prioritized by point totals. The Plan Commission shall allocate the annual residential development permit allotment among some or all of the qualifying developments, provided that the following principles are recognized:
 - a. The priority must be respected; that is, the development receiving the highest point total must receive some residential development permits and so on down the priority list, to the extent of allotted residential development permits.
 - b. Residential development permits must be allocated for at least 20% of the proposed dwelling units in a development receiving residential development permits. However no development may receive more than 40% of the residential development permits allotted for that year.
- (d) Reversion of Unused Residential Development Permits. If a development which has been allocated residential development permits does not receive final approval within 24 months from the date of allocation, the residential development permits shall be automatically withdrawn from the property in question.

- (6) COMPLIANCE. The development shall be carried out substantially in compliance with the representations in the application. To assure compliance with the criteria upon which the Plan Commission evaluation of the development was based and the terms of the allocation, the Plan Commission, the Town Board or both may require plat restrictions, deed restrictions or other agreements necessary to assure such compliance.

- (7) APPEAL TO TOWN BOARD. A developer may appeal the decision of the Plan Commission with respect to the allocation of residential development permits to the Town Board. A written appeal shall be filed with the Town Clerk within 20 days after written notice to the developer of the Plan Commission decision respecting allocation of residential development permits to the developer's property. The Town Clerk shall place the matter on the next agenda of the regular town Board meeting or, upon agreement with the developer, on the agenda for a special Town Board meeting. The Town Board shall consider the appeal of such regular or special meeting, at which time the Town Board will hear the developer or his representative and such other person or persons as may be able to assist the Town Board in the determination of the matter on appeal. The Town Board shall not modify the allocation made by the Plan Commission, except by the affirmative vote of $\frac{3}{4}$ of the members of the Town Board present and voting and its decision shall be final and conclusive. The Town Board's decision shall be rendered within 60 days of receipt of the notice of appeal.
- (8) EXCEPTIONS. Exceptions to the residential development permit requirement may be granted by the Town Board in accordance with the provisions of §18.10 of this chapter.
- (9) FEES. The developer of his agent shall pay to the Town all costs incurred for engineering, legal and administrative work necessary to process the application for residential development permits. At the time of application, the developer shall apply an initial fee in an amount as set forth from time to time by resolution of the Town Board. This sum shall be credited against amounts due for engineering, legal and administrative work under §18.04(1)(g)2.f.

18.04 PLAT APPROVAL PROCEDURES. (Repealed and recreated 2013-03)

(1) GENERAL PROCEDURE.

- (a) Preapplication. It is recommended that prior to the filing of an application for the approval of a development, the subdivider shall consult with the Plan Commission and/or its staff to obtain their advice and assistance. This consultation is neither mandatory nor binding but is intended to inform the subdivider of the purpose and objectives of these regulations, the comprehensive plan, comprehensive plan components and plan implementation devices of the Town and to otherwise assist the subdivider in planning his development. In so doing, both the subdivider and planning agency may reach mutual conclusions regarding the general program and objectives of the proposed development and its possible effects on the neighborhood and community and the subdivider will gain a better understanding of the subsequently required procedures.
- (b) Filing. If the Town is used as a forwarding agency, the subdivider shall file an appropriate number of legible copies of the preliminary or final plat with the Town Clerk who shall note the date of filing on each print.
- (c) Forwarding of Plats. Within 2 days after a preliminary or final plat has been submitted for approval, the Clerk shall forward the specified number of copies to the State Department of Development along with a list of all agencies authorized to object or approve the plat and the following:
 1. Four copies to the Waukesha County Park and Planning Commission.
 2. Two copies to the Town Engineer for his report on the technical aspects of the plat, and for his estimates of the costs involved to install the improvements required by this ordinance.
 3. Two copies to the Town Planning Consultant for his comments on the general design of the plat.
 4. Two copies to any municipality exercising extraterritorial plat jurisdiction pursuant to §§236.02(2), 236.10(1)(B) and 236.10(2), Wis. Stats.
- (d) Alternate Forwarding Agency. The County Park and Planning Commission shall also serve as

forwarding agents for plats lying within the Town. Within 2 days after filing of either the preliminary plat or final plat, the Commission shall forward the necessary copies to State agencies required to review the plat and having the right to object, to the Town, to the County Park and Planning Commission, and to any municipality having extraterritorial jurisdiction within the area being platted.

- (e) Alternative Procedures. In lieu of the above procedure, the subdivider or his agent may submit the original plat or legible copies, if acceptable, to each of the agencies authorized to object.
- (f) Objections to Plat. Within 20 days of the date of receiving the copies of the plat, any agency having the authority to object shall notify the subdivider and all approving or objecting authorities of any objection or, if there is no objection, it shall so certify on the face of a copy of the plat and return that copy to the approving authority from which it was received. In the event any agency having the authority to object, objects to the plat, the plat shall be refiled as described above. The Town Engineer and Town Planning Consultant shall make their report to the Town within the same 20 day period.
- (g) Approvals to Plat.
 - 1. Preliminary plat. The subdivider shall submit a preliminary plat in sufficient detail to determine whether the final plat will meet layout requirements. The subdivider shall also submit data required by the DILHR regarding percolation test and soil borings.
 - a. Within 90 days of the date of submittal, the Town Plan Commission shall take action to approve, approve conditionally, or reject such plat and reasons for rejection.
 - b. Failure of the approving authority to act within such 90 days shall constitute an approval of the preliminary plat unless the time is extended by agreement with the subdivider.
 - c. No subdivider shall proceed with any construction work, including grading, until the preliminary plat has been approved.
 - d. The design principles of this chapter shall apply to subdivisions and certified survey maps within the Town.
 - e. To defray the administrative costs resulting from the act of subdividing land within the Town, the subdivider shall pay a fee to the Clerk at the time of plat submittal in an amount to be set from time to time by resolution of the Town Board.
 - 2. Final plat. (repealed and recreated 2013-03) If the final plat conforms substantially to the layout shown in the preliminary plat as approved, including any conditions of that approval, it shall be entitled to approval with respect to such layout.
 - a. If the final plat is submitted within 36 months of the last required approval of the preliminary plat, the Town shall take action to approve or reject the plat. If the final plat is not submitted within 36 months, the Town may refuse to approve the final plat and may require resubmittal of the preliminary plat unless the Town Board has granted an extension for the time for submission of the final plat.
 - b. The final plat may, if permitted by the Town, constitute only that portion of the approved preliminary plat which the subdivider proposes to record at that time. The Town encourages sequential filing of only that portion of the preliminary plat which will immediately be fully improved with respect to the installation of the required improvements.
 - c. The Town Board shall take action to approve or reject the final plat within 60 days of its submission, unless the time is extended by agreement with the subdivider. Prior to

approval of the final plat, the Plan Commission shall certify to the Town Board that all conditions of the Subdivision Control Ordinance that were in effect when the subdivider submitted the preliminary plat, or the final plat if no preliminary plat was submitted, have been met and that all fees, bonds and other financial responsibilities of the developer have been satisfied. If a plat is rejected, the reasons thereof shall be stated in the minutes of the meeting and a copy thereof or a written statement of the reasons supplied the subdivider and all objecting authorities.

- d. If the Town fails to act within 60 days of submittal and the time has not been extended by agreement and if no unsatisfied objections have been filed within that period, the final plat shall be deemed approved and, upon demand, a certificate to that effect shall be made on the face of the plat by the Town Clerk.
 - e. Any subdivider or his agent who offers or contracts to convey or conveys any subdivision, lot or parcel of land which lies in a subdivision, knowing that the final plat thereof has not been recorded with the Register of Deeds, may be subject to a forfeiture as provided in §18.25 of this chapter; except where the preliminary or final plat of subdivision has been filed for approval with the Town, an offer or contract to convey may be made if that offer or contract states on its face that it is contingent upon approval of the final plat and shall be void if such plat is not approved.
 - f. The subdivider or his agent shall pay to the Town all costs incurred for engineering, legal and administrative work necessary to process the plat or other provisions of this chapter. At the time of the preliminary plat, the developer shall pay the estimated cost of the engineering and legal fees in an amount as set from time to time by resolution of the Town Board. At the time of submitting the preliminary plat for approval, the developer shall pay a minimum deposit in an amount as set from time to time by resolution of the Town Board. The balance of the fee shall be paid at the time the final plat is submitted for approval, if not paid prior thereto. All fees shall be paid to the office of the Town Clerk.
 - g. The recommendation of any professional engineer, planner or other person that is requested by the Town to review the final plat for purposes of determining whether the final plat conforms substantially to the preliminary plat shall be included in the record of the meeting at which the final plat is considered.
- (2) APPROVALS REQUIRED PRIOR TO RECORDING. The Town Board shall approve the final plat prior to recording. The subdivider shall file a 22" x 30" reproducible linen tracing or acceptable substitute of the final plat with the Clerk before recording the final plat with the Register of Deeds. The Clerk shall certify to approval of the final plat only after this requirement has been met.
- (3) RECORDING OF FINAL PLAT. (repealed and recreated 2013-03) (Am. #91-286) The subdivider shall file the original of the final plat with the Town Clerk, and the Town Clerk shall file it with the Register of Deeds within 12 months of the date of the last required approval and 36 months of the date of the first approval. The subdivider's filing with the Town must be at least ten (10) business days prior to the recording deadline. The subdivider shall pay to the Town Clerk, in advance, all costs and fees associated with filing the plat with the Register of Deeds. Any subdivider recording or attempting to record his final plat, instead of presenting it to the Town Clerk for that purpose, shall be subject to a penalty as provided in §18.25 of this chapter.
- (4) PROCEDURE FOR LAND DIVISIONS OTHER THAN SUBDIVISIONS. (repealed and recreated 2013-03)
- (a) Filing. The subdivider shall submit a preliminary map to the Plan Commission in sufficient detail to determine whether the final map will meet layout requirements. A filing fee in an amount as set forth from time to time by resolution of the Town Board at the time of the filing of the preliminary map shall be paid.
 - (b) Approval or Rejection. The Town Board shall take action to approve, approve conditionally or

reject the certified survey or assessor's map within 90 days of submittal unless the time for approval is extended by agreement with the subdivider. The subdivider shall be notified in writing of any conditions of approval or the reasons for rejection. The certificate of approval of the Town shall be typed, lettered or reproduced legibly with nonfading black ink on the face of the final map and signed by the Town Chairman and Town Clerk.

- (c) Recording of Certified Survey Map. (Am. #91-286) The subdivider shall file the certified survey map with the Town Clerk, and the Town Clerk shall file it with the Register of Deeds in conformance with §236.34(2), Wis. Stats. within 6 months after the date of the last approval of the map and within 24 months after the first approval of the map. The subdivider's filing with the Town must be at least ten (10) business days prior to the recording deadline. The subdivider shall pay to the Town Clerk, in advance, all costs and fees associated with filing the certified survey map with the Register of Deeds. The subdivider shall also file 6 copies of the original certified survey map together with recording information in the Town Clerk's office within such time limits. Any subdivider causing his certified survey map to be recorded without submitting it as herein required within 30 days of Town approval shall be subject to a penalty as provided in §18.25 of this chapter.
- (d) Notice of Land Division. (Created #96-427) The subdivider, at the time of application, shall certify in writing, on a form to be supplied by the Town Clerk, that all property owners within 300 feet of any boundary of the proposed land division have been notified of said land division. The application for land division shall not be considered complete for purposes of official Town action until such certification has been filed with and accepted by the Office of the Town Clerk. The failure of such notice to reach any property owner within 300 feet of the proposed land division shall not invalidate any action on the land division by the Plan Commission or the Town Board, and shall not give rise to any cause of action against the Town of Delafield or any of its officials, boards or commissions.
- (5) RECORDING OF ASSESSOR'S MAP. Where it is not practicable to require that a final plat of a subdivision created by successive divisions be filed in accordance with the chapter, the Board may order an assessor's map to be made under §70.27, Wis. Stats., and may assess the cost thereof as provided in such section to the subdivider. The subdivider shall file a reproducible tracing with the Town after approval has been given.
- (6) CONDOMINIUM PLAT. (Created 2005-003) A condominium plat prepared under §703.11, Wis. Stats., shall be reviewed in the same manner as a preliminary plat and final plat in accordance with this code and Section 17.05. 5. AM of the Zoning Code.

18.05 REQUIREMENTS FOR PLAT, CERTIFIED SURVEY MAPS AND ASSESSOR'S MAPS.

- (1) PRELIMINARY PLAT. The preliminary plat shall clearly show the following features and information:
 - (a) Owner and Subdivider. The name and address of the owner and the subdivider.
 - (b) Surveyor. The name of the registered land surveyor preparing the preliminary plat.
 - (c) Title. The title under which the proposed subdivision is to be recorded.
 - (d) Scale. Not more than 100' to one inch.
 - (e) North Arrow. A north arrow shall be shown.
 - (f) Location. The location of the subdivision by government lot, recorded private claim, quarter section, section, township, range and county noted immediately under the title.

- (g) Vicinity Sketch. A small drawing oriented on the sheet in the same direction as the main drawing of the section of government subdivision of the section in which the subdivision lies with the location of the subdivision indicated thereon.
- (h) Zoning. The zoning on and adjacent to the proposed subdivision.
- (i) Adjoining Properties. The location and names of adjacent subdivisions and owners of the adjoining parcels of unsubdivided land.
- (j) Property Lines. The approximate bearings and distances of the exterior boundary lines of the tract to be subdivided. Approximate dimensions of all lots together with the proposed lot and block number, approximate radii of all curves.
- (k) Topography. Topographic data shall be referred to U.S.G.S. datum and shall be plotted at 2' intervals except where the ground slope exceeds 20% making 5' interval contours acceptable.
- (l) Existing Streets and Other Features. The location, widths, grades and names of all existing or platted streets, easements or other public ways within or adjacent to the tract, and other important features such as existing permanent building, corporation lines, township lines, location of all marshes, rock outcrops, wooded areas, water courses, drainage ditches, railroad right-of-way, parks, easements and other salient features within the tract to be divided or adjacent thereto.
- (m) Proposed Streets, Drainage, Etc. The layout, names, grades, and widths of proposed streets, alleys and drainage and utility easements; the location and approximate sizes of culverts, catch basins and other drainage structures. The street names shall not be duplicate or closely approximate any existing street names within or near the Town unless they constitute an extension or definite relationship to existing streets.
- (n) Street Profiles. The Town may require that proposed street profiles for center line and building line grades extending 300' beyond the boundaries of the subdivision be approved by the Town prior to approval of the preliminary plat.
- (o) Utility Location, Size and Elevation. Location, size and invert elevation of any existing sanitary or storm sewers, culverts, power and telephone poles or underground installation, location and size of any existing water and gas mains within the area of the plat or adjacent thereto. If no sewers, water mains or other utility facilities are located on or immediately adjacent to the tract, the nearest such facilities which might be extended to serve the tract shall be indicated by their direction and distance from the tract, their size and their invert elevation.
- (p) Water Elevations. The water elevations of adjoining lakes, streams, and ponds at the date of the survey and the approximate high- and low-water elevations of such lakes, streams, and ponds, floodland information including the contour line lying 2' above the elevation of the 100 yr. flood. If the subdivision borders any such body of water, a meander line shall be established not less than 20' back from the ordinary high-water mark of the body of water.
- (q) Soil Types. Soil types, slopes and boundaries as shown on the soil survey maps prepared by the Soil Conservation Service, U.S. Department of Agriculture. The accurate delineation of the 5' depth to water table contours and all areas where the bedrock is less than 5' below grade.
- (r) Department of Safety and Professional Services Information. (repealed and recreated 2013-03) Percolation test data, test boring information and any other information requested by the Department of Safety and Professional Services for those subdivisions not being served by sanitary sewer shall be attached to and submitted with the preliminary plat, certified survey map, or assessors plat for use by the State, County and Town.

- (s) Testing. The Town may require that additional borings and soundings be made in specified areas to ascertain subsurface soil, rock and water conditions, including depth to bedrock and ground water table.
- (t) Public Use. All parcels of land intended to be dedicated or temporarily reserved for public use or to be reserved in the deeds for the common use of property owners in the subdivision, with the purpose, conditions or limitations of such reservation indicated.
- (u) Deed Restrictions. The Town may require that any public and specified restrictions pertaining to the land included in the plat be submitted with the preliminary plat.
- (v) Additional Information. Any additional information requested by the Town to verify ownership, clarify questions raised during the approval procedure, and any other information the Town deems necessary to reach a decision on the preliminary plat.
- (w) Developer's Agreement: The developer shall execute a Developer's Agreement upon approval of the preliminary plat. Said agreement shall be executed prior to the commencement of any construction activity. If said agreement is not filed within 45 days of the preliminary approval, said approval shall be automatically withdrawn. (Cr. 95-388)
- (x) Detailed Site Analysis and Mitigation Plan: (created 2005-003) A Detailed Site Analysis shall be required in accordance with Section 18.14 of this Code, for all Preliminary Plats and Certified Survey Maps which contain:
 1. Permanently protected natural resource areas defined as required protected areas under State and Federal regulation.
 2. Any environmental corridor component identified by the Southeastern Wisconsin Regional Planning Commission, including primary corridors, secondary corridors, and isolated natural resource areas.
 3. Any other environmental feature designated in the Town Land Use Plan requiring a Detailed Site Analysis and Mitigation Plan in conjunction with development review.

A Mitigation Plan shall be required if land within the environmental areas described above will be disturbed.

(2) CONSTRUCTION PLANS.

- (a) Roads. The Town shall require that the subdivider provide street improvement plans and profiles showing existing ground surfaces, proposed and established street grades, including extensions for a reasonable distance beyond the limits of the proposed subdivision where requested, and any other pertinent engineering data as may be required by the Town or the Town Engineer. The plans and profiles shall be prepared in accordance with standards contained in this chapter or other Town construction standards and either approved or modified as necessary prior to the commencement of construction in the development. These plans may be required prior to preliminary approval.
- (b) Grading. Grading plans including a method of erosion control for the lots or other areas in the proposed development shall also be prepared and submitted for review and approval prior to commencement of grading and construction of roads.
- (c) Storm Drainage and Erosion Control. Storm water, drainage and erosion control plans shall be prepared and submitted along with other grading and road construction plans and shall indicate how surface water runoff is to be accommodated on the development and on any downstream properties along with the methods of erosion and sediment control. The developer will be

responsible for the storm water runoff to the subdivision limits or to a reasonable distance downstream as approved by the Town to assure that no downstream properties are damaged by the increased runoff. When submitting the storm drainage plan, the developer shall include a system plan showing the sizes of the intersection culverts and the proposed driveway culverts for all lots or parcels within the development.

- (d) Sanitary Sewers. (repealed and recreated 2013-03) When the proposed subdivision is to be served by sanitary sewers or a private sewer system serving multiple dwellings pursuant to SPS 383, Wis. Admin. Code, a system plan shall be provided indicating the general layout of the subdivision, location of existing and proposed sewers. A plan view and profile shall also be submitted.
 - (e) Water System. If the subdivision is to be served by a water system, a system plan and detail plans shall be provided as above. Plans should also be submitted indicating the source of water, well details, including reservoirs, pumps, etc.
- (3) FINAL PLAT. The final plat shall be drawn with waterproof, nonfading black line on muslin backed white paper, 22" wide by 30" long with a 1 1/2" binding margin on the left side of the 30" length and a 1" margin on all other sides. The following information shall be shown:
- (a) Boundary Lines. Boundary lines with lengths of courses to hundredths of a foot and bearings to seconds as determined by an accurate field survey performed by a registered land surveyor and balanced and closed with an error of closure not to exceed 1 to 3,000.
 - (b) Recorded Streets. The exact location and the width along the property lines of all existing recorded streets intersecting or abutting the boundary of the tract.
 - (c) Tie to Government Survey. True bearings and distances to nearest established survey lines, or other official monuments, which monument shall be located or accurately described on the plat. Any patent or established survey or corporation lines shall be accurately monumented and located on the plat.
 - (d) Monuments. The accurate location and material of all permanent reference monuments as specified in §236.15, Wis. Stats.
 - (e) Design. The exact design including:
 - 1. Names, bearings, angles of intersections, widths including widths along the line of any obliquely intersecting street, length of centerlines, etc.
 - 2. Lengths of arcs, bearings and lengths of main chords, radii, central angles and tangent bearings at either the point of curve or point of tangency shall be shown either in their proper place or in a separate table for all streets and alleys. Lot lines may be shown in the same manner or by bearings and distances.
 - 3. Easements and right-of-way shall be shown by centerline and width when lines are parallel to a boundary, otherwise boundary bearings and distances shall be shown.
 - 4. Blocks, if designated, shall be consecutively numbered or lettered in alphabetical order. The blocks in numbered additions to subdivisions bearing the same name shall be numbered or lettered consecutively through the several additions. The exact length and bearing of the boundary liens of all blocks shall be shown.
 - 5. All lots in each block shall be consecutively numbered. Outlots shall be lettered in alphabetical order within each block.

6. Distance and bearings for meander lines shall be shown with the distance between the point of intersection of such meander lines with lot lines and high water mark also shown.
 7. Additional requirements as required by §236.20, Wis. Stats.
- (f) Name of Subdivision. The name of the subdivision shall be shown and shall not duplicate the name of any other subdivision in Waukesha County.
 - (g) North Arrow, Scale, Date. The north arrow, graphic scale as drawn and dates involved.
 - (h) Deed Restrictions and Setback Lines. When it is in the best interest of the Town, the Town Board may require that private deed restrictions and setback lines be either shown on the plat or filed with the Register of Deeds.
 - (i) Affidavits and Certificates. The surveyor's certificate, the owner's certificate, the certificate of taxes paid, and other affidavits and certificates required by Ch. 236, Wis. Stats., shall be lettered in ink or typed legibly with black ribbon on the final plat.
 - (j) Division of Health Requirements. (Repealed and recreated 2013-03) The final plat of all subdivisions not served by sanitary sewers shall be marked to show preplanned soil absorption systems, if required, in accordance with SPS 385, Wis. Adm. Code.
 - (k) Reproducible Tracing. An acceptable reproducible tracing of the final plat shall be filed with the Town before the Town's approval is affixed to the final plat.
 - (l) Temporary Cul-De-Sac. (Cr. #200) On a final plat where a temporary cul-de-sac is created until adjacent land is divided and it is the intention to extend a street to these adjacent lands in the future, a notation shall be placed on all lots within the plat that this cul-de-sac is temporary and such street is intended to be extended.
 - (m) Additional Information. (Am. #200) All information required by Ch. 236, Wis. Stats., and any additional information requested by the Town.
- (4) CERTIFIED SURVEY MAP. A certified survey map for not more than 4 parcels of land may be recorded in the office of the Register of Deeds if such certified survey meets the following requirements:
- (a) Preliminary. A preliminary map be prepared in accordance with §236.15(1)(c) and (d), Wis. Stats.
 - (b) Registered Land Surveyor. The final survey shall be performed and the map prepared by a qualified registered land surveyor.
 - (c) Monuments. All corners shall be monumented in accordance with §236.15(1)(c) and (d), Wis. Stats.
 - (d) Map. The map shall be prepared in accordance with §236.20(2)(a), (b), (c), (e), (f), (g), (i), (j), and (k) on durable white paper 8 1/2" wide by 14" long. All lines shall be made with nonfading black ink on a scale of not more than 200' to an inch.
 - (e) Certificates and Description. The certified survey map shall include the certificate of the registered land surveyor who surveyed and mapped the parcel, including a clear and concise description of the land surveyed by bearings and distances, commencing with some corner marked and established in the government survey, and acceptable to the Town Engineer. The owner's certificate duly notarized, and the Town Board approval certificate shall also be shown.

- (f) Percolation and Boring Tests. At least one percolation test and one 6' boring per lot shall be submitted with the certified survey map. The Town may request other information for the parcels not served by sanitary sewer.
 - (g) Additional Information. The map also shall show all existing buildings, watercourses, drainage ditches, setbacks or building lines if required by the Town Board, and other information deemed pertinent by the Town.
- (5) ASSESSOR'S MAP. An assessor's map shall meet the following requirements:
- (a) Registered Land Surveyor. The survey shall be performed and the map prepared by a registered land surveyor.
 - (b) Monuments. All corners have been monumented in accordance with §236.20, Wis. Stats., insofar as they are applicable.
 - (c) Map. The map shall be prepared in accordance with §236.20 insofar as it is applicable with all lines made with nonfading black ink on a scale of not more than 100' to the inch.
 - (d) Certificates and Description. The Assessor's map shall include the Surveyor's certificate including the name of the government body by whose order the plat was made and the date of the order; a clear and concise description of the land surveyed and mapped, commencing with some corner marked and established in the government survey, and acceptable to the Town Engineer; a statement that the plat is a correct representation of all exterior boundaries of the land surveyed and each parcel thereof; and a statement that he has fully complied with the provisions of §70.27, Wis. Stats.
 - (e) Additional Information. The map shall also show any other information deemed pertinent by the Town relating to existing buildings, watercourses, drainage ditches, easements, setbacks and building lines, etc.

18.06 DESIGN STANDARDS.

- (1) STREETS.
- (a) Design Criteria. The streets shall be designed and located in relation to existing and planned streets to topographical conditions and natural terrain features, such as streams and tree growth, to public convenience and safety, and in their appropriate relation to the proposed uses of the land to be served by such streets.
 - (b) Construction Standards. Streets shall be constructed to conform to §§18.06 and 18.07 and to all applicable policies of the Town Board; in particular, Ch. 8 of this Code. The pavement shall be centered on the platted right-of-way.
 - (c) Widths and Locations. The widths and locations of all streets shall conform to the Official Map of the Town and to applicable State and County ordinances. When the typical section cannot be constructed within the limits of the street right-of-way, the developer shall provide slope easements over those lots on which the road ditches encroach for the purpose of ditch maintenance. These easements shall be included on the final plat.
 - (d) Arrangement.
 1. Major streets shall be properly integrated as principal arteries of through traffic.
 2. Collector streets shall be properly related to mass transit routes, to special traffic generating from facilities such as schools, churches, shopping centers, to population densities and to the major streets into which they feed traffic.

3. Minor streets shall be designed to conform to topography, to discourage use by through traffic, to permit efficient drainage, and to require the minimum length of street necessary to provide convenient, safe access to property. Cul-de-sacs shall not generally exceed 1000' in length. Frontage streets shall be designed in relation to the major street which it serves and to the existing topography to provide for safe traffic flow and property value preservation.
 4. Street names shall not duplicate the names of existing streets in the Town or any community adjacent to the Town unless they can be considered as continuations or definitely related to the existing streets to warrant the same name.
 5. Where a half-street exists adjacent to the subdivision, the other half-street shall be dedicated by the subdivider. Platting of the new half-streets shall be permitted only with specific approval of the Town Board.
 6. Reserve strips controlling access to streets shall be prohibited except where the access control has been placed under Town Board control and such control has been accepted by the Town Board.
 7. All developments serving 15 or more units shall be connected to the existing street network by a minimum of 2 roadways. (Cr. #88-200)
- (e) Controlled Access. Where a subdivision borders on or contains an existing or proposed major street, the Plan Commission may require that marginal access streets be provided, when in the judgment of the Plan Commission, such marginal access streets are required on account of traffic on such existing or proposed major street and in order to protect life and property. The Plan Commission may require that the backs of lots abut the proposed or existing major streets and be provided with screen planting contained in a non-access reservation along the real property line. The Plan Commission may further require that deep lots be provided with rear service alleys or that other provisions be made for the adequate protection for residential properties and the operation of through and local traffic.

(2) INTERSECTIONS.

- (a) Right Angle. Streets shall intersect as nearly as possible at right angles and not more than 2 streets shall intersect at one point unless approved by the Town Board.
- (b) Corners. Property lines at street intersections shall be rounded with a radius of 15' or of a greater radius where the Town Board considers it necessary. This may be accomplished either by dedication or by easement.
- (c) Jogs. Street jogs with centerline offsets of less than 125' shall be avoided. Where streets intersect major streets, their alignment shall be continuous.
- (d) Vision Corners. Vision corners shall be provided creating unobstructed views of the intersection. No building or obstruction to view is permitted in this triangular area and appropriate statements shall be provided on the plat.

(3) ALLEYS.

- (a) Residential Districts. Alleys shall not be provided in residential districts unless necessitated by topographic or other exceptional circumstances accepted by the Town Board.
- (b) Commercial and Industrial Districts. The Town Board may require alleys in commercial and industrial districts when necessary to assure service access for off street loading and parking.

- (c) Dead End Alleys. Dead end alleys and "T" or "L" shaped alleys shall be prohibited.
- (4) EASEMENTS. Easements shall be centered on rear or side lot lines whenever possible.
- (a) Utility. Easements at least 10' wide shall be provided for utilities where required by the Town Board.
 - (b) Drainage. Where a subdivision is traversed by a water course, drainage way, channel or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially with the lines of the water course, and such further width or construction, or both, as will be adequate for the purpose. Wherever possible, it is desirable that the drainage be maintained by an open channel with landscaped banks and adequate width for maximum potential volume of flow.
- (5) BLOCKS.
- (a) General. The width, length and shapes of blocks, shall be suited to the planned use of the land; zoning requirements; need for convenient access, control and safety of street traffic; and the limitations and opportunities of topography.
 - (b) Pedestrian Crosswalks. Pedestrian crosswalks not less than 15' wide may be required by the Town where deemed desirable to provide convenient pedestrian circulation or access to schools, playgrounds, shopping centers, transportation and other community facilities.
- (6) LOTS.
- (a) General. 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.
 - (b) Dimensions. (Repealed and recreated 2013-03)
 1. Lots shall be designed so that the depth to width ratio does not generally exceed 2.5 to 1.
 2. Lot area shall meet the minimum requirements of the Zoning Code. Residential lots to be served by private sewerage disposal facilities shall comply with the rules of the DSPS as to minimize area where it exceeds the minimum required by the Zoning Code.
 3. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off street service and parking facilities required by the type of use and development contemplated.
 4. Residential lots, fronting or backing into major streets should be platted with extra depth to permit generous distances between the building and such traffic ways even if the 2 1/2 to 1 ratio has to be exceeded.
 - (c) Corner Lots. Corner lots for residential use shall have extra width to permit full building setback from both streets.
 - (d) Access to Public Streets. Every lot shall front or abut on a public street. Lots with access only to private drives or streets shall be permitted only with Town Board approval and subject to the conditions of the approval.
 - (e) Right Angles. Lots at right angles, butt lots, shall be avoided.
 - (f) Lot Lines. Lot lines shall be substantially at right angles or radial to street lines.
 - (g) Town Boundaries. Lots shall follow Town boundary lines wherever practicable.

- (h) Double Frontage and Reversed Frontage. Double frontage and reversed frontage lots shall be avoided except where necessary to provide separate or residential development from traffic arteries or to overcome specific disadvantages of topography and orientation.
- (7) MINIMUM STREET RIGHT-OF-WAY WIDTHS. The minimum right-of-way dedication for newly created streets shall be as follows:
- (a) Major Streets. As shown on the Official Map but not less than 80'.
 - (b) Collector Streets. 80'.
 - (c) Minor Streets. 66' except as noted below.
 1. Cul-de-sacs shall have a minimum radius 75' with center island radius of 35'.
 2. Frontage streets shall be 50' in width.
 3. Alleys shall be 30' in width.
 - (d) Highway. Where a subdivision adjoins a State, federal or County highway, the width as established by the proper authority shall apply.
 - (e) Other. Where deemed to be in the best interest of the public, the Town Board may specify widths other than those listed below.
- (8) MINIMUM PAVEMENT WIDTHS.
- (a) Major Streets. Depends on the pavement cross section selected, but not less than 44'.
 - (b) Collector Streets. 44' or 24' with 10' outside shoulders.
 - (c) Minor Streets. 24' except as noted below. (amended 2005-003)
 1. Cul-de-sacs shall have 20' pavement width.
 2. Frontage streets shall have a 24' pavement width.
 3. Alleys shall have a 20' pavement width.
- (9) MINIMUM AND MAXIMUM STREET GRADES.
- (a) Minimum Grades. The minimum grade for all streets and alleys shall be 0.50%, and such minimum shall not be permitted for long sustained distances.
 - (b) Maximum Grades. Unless conditions warrant otherwise, the maximum grades for all streets and alleys shall be:
 1. 6% for major and collector streets.
 2. 10% for minor streets.
- (10) HORIZONTAL AND VERTICAL CURVES.
- (a) Horizontal Curves. Horizontal curves shall be designed so that a minimum sight distance with clear visibility along the center line is provided as follows:

1. 300' for major streets.
 2. 250' for collector streets.
 3. 100' for minor streets.
- (b) Vertical Curves. Vertical curves shall be designed so that all changes in grade in excess of one per cent shall be connected by vertical curves of a minimum length equal to 15 times the algebraic difference in the rate of grade.
- (c) Tangents. A tangent of at least 100' in length shall be provided between reverse curves on major and collector streets.
- (11) INTERSECTION GRADES. The change in grade across an intersection and within 50' of the property line limits of the intersection shall not exceed 4% unless exceptional topography would prohibit these grades.
- (12) DRIVEWAYS. (Cr. #88-200) Lots shall be designed so that access to the building site shall be by a paved driveway at least 16' wide with slopes no greater than 12%.

18.07 REQUIRED IMPROVEMENTS AND RESERVATIONS.

- (1) GENERAL. Before the final plat of a subdivision, certified survey map or assessor's map will be approved, the subdivider shall provide and dedicate the following facilities and improvements, all of which shall be installed or constructed prior to approval of the final plat.
- (a) Streets. Streets graded, surfaced with initial lift of asphalt, and improved, according to the Town Construction Standards outlined below and in Ch. 8 of this General Code.
 - (b) Fire Protection Reservoirs. See Section 18.13 for specific requirements. (Cr. 95-388)
 - (c) Utilities. (repealed and recreated 2013-03) (Am. #88-200) All utility infrastructure shall be installed underground and prior to paving. Underground electric wiring for street lighting shall be installed at the subdivider's expense when requested by the Town Board. The final responsibility for suitable restoration shall remain with the developer until final acceptance is given.
 - (d) Drainage Facilities. (amended 2005-003) Drainage channels, culverts, storm sewers and such other facilities necessary to provide adequate surface drainage according to the established standards of the Board and the Waukesha County Construction Site Erosion Control and Stormwater Management Ordinance may require the subdivider to pave, rip-rap or sod the ditches depending on the circumstances in each instance. When culverts are required, corrugated metal or reinforced concrete shall be used prior to acceptance of streets.
 - (e) Erosion Control. Factors which will be considered in reviewing land suitability, runoff, erosion control plans, shall relate to the specific site conditions. An erosion plan should be submitted keeping land grading and land disturbance to a minimum. Both surface runoff and storm water drainage systems should be integrated to accommodate the increased runoff incurred during land grading. Existing temporary and future protective vegetation should be emphasized. The plan shall coordinate grading operations and sedimentation control measures so as to minimize land exposure to erosion to the briefest possible time. Sediment basins below high sediment producing areas should be planned, installed and maintained as safety devices to catch and trap excessive sediment from the development site. The plan should utilize available technologies to keep soil erosions to a minimum level.

- (f) Approvals. (Repealed and Recreated 2014-08) The adequacy of such facilities and improvements and their proper installation shall be subject to approval of the Town Board and the Town Engineer with the acceptance of the facilities only following such approval. Upon written request of the developer, the Town Board may elect to allow the developer to file a letter of credit as a financial guarantee to assure completion of all uncompleted construction in order to permit filing of the final plat within the 36 months specified in Section 18.04 (3). All required improvements not installed at the time the final plat is recorded shall be guaranteed by an irrevocable letter of credit in an amount equal to double the cost of the improvements or the maximum allowed by law, whichever is lesser, as estimated by the Town Engineer. Although Developers may have a statutory ability to choose the form of a financial guarantee, if the Developer chooses any form other than a letter of credit, all of the improvements must be completed prior to the final plat being recorded. The form of the letter of credit shall be at the discretion of the Town Board after review and recommendation of the Town Attorney. If the improvements are not installed to the Town's satisfaction within the time required by the Town following approval of the final plat by the Town Board, the Board may cause all uncompleted work to be constructed and the parties executing the irrevocable letter of credit shall be firmly bound for the payment of all necessary costs thereof.
- (g) Maintenance. (Repealed and recreated 2014-08) The developer shall guarantee all material and workmanship for a period of one year after the acceptance by the Town by filing an irrevocable letter of credit or other satisfactory financial guarantee in an amount equal to 50% of the entire improvement costs, or the maximum allowed by law, whichever is lesser, as estimated by the Town Engineer. The type and form of the financial guarantee shall be at the discretion of the Town Board after the review and recommendation of the Town Attorney. If the Town determines that any repairs are required, the Town Clerk shall give the developer a 14-day written notice to perform such repairs. If the repairs are not begun within the 14-day period and completed within a reasonable time thereafter, as determined by the Town, the Town may complete the repairs. The costs thereof shall be billed to the developer and paid by the developer or drawn from the financial guarantee.
- (h) Maintenance Fee. The subdivider shall be assessed an amount as set forth from time to time by resolution of the Town Board for each lineal foot of new roadway in any subdivision or certified survey map before final approval is granted. This fee shall cover routine maintenance including snow plowing, provided the roads have received the initial lift of asphalt. Payment of this fee does not relieve the developer of his responsibilities as described above. The amount of this fee shall be determined by the Town Engineer. Payment shall be made at the time the final plat is submitted for approval by the Town Board.
- (i) Permits. Where the proposed road intersects with or abuts a County or State trunk highway, the plans and layout shall be submitted to the County Highway Department or State Division of Highways by the developer. At the same time, the developer shall apply to the appropriate agency for a construction permit. A copy of the issued permit and the construction conditions made a part thereof shall be given to the Town Clerk by the developer. Initial or final acceptance of the construction will not be given by the Town until the permit conditions are satisfied.
- (j) Road Extension. On temporary dead end roads, a tee-shaped turnaround shall be provided at the dead end. The tee shall be surfaced to the same width as the adjoining road and extend at least 40' each side of the centerline of the adjoining road. Accordingly, the roadway on the temporary dead end roads shall be constructed to the property line as platted. Where roads in a proposed development connect to existing roads which have terminated in temporary circular or tee-shaped turnarounds, it shall be the responsibility of the developer, at his expense, to connect to the existing road and obliterate the temporary turnaround as the Town Board and Engineer direct.
- (k) Stage Development. (repealed and recreated 2014-08) In all instances when it shall appear to the satisfaction of the Town Board that the whole of a platted subdivision cannot immediately be

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

- (l) Street Lights. (Cr. #88-200) The developer shall provide, arrange for and reimburse the electric company for street lights as required by the Town. Street lighting shall be required where each entrance road for a development intersects with a county or State highway or Town collector street.

(2) CONSTRUCTION STANDARDS.

(a) Streets.

1. Copies of the typical section are available from the Town Clerk. Other sections will be discussed at the time of platting for major and collector streets.
2. The Town Board shall require that profiles of streets to be constructed be prepared by a registered professional engineer or registered land surveyor and be submitted to the Town Board for approval of all grades and drainage easements prior to proceeding with any grading.
3. The length and size of all culverts for all road crossings and driveways shall be determined by the owner's engineer and approved by the Town Engineer. All culverts shall be arch culverts. The minimum size driveway culvert shall be a 15" arch pipe. The minimum size roadway culvert shall be an 18" arch pipe. Instead of installing individual culverts larger than the 30" arch pipe (35" x 24") multiple culverts of equal capacity shall be required unless unusual conditions warrant the installation of a larger pipe.
4. (Repealed and recreated 2014-08) All streets shall be graded and surfaced according to Ch. 8 of this code. The final asphalt surface shall be installed by the developer one year after the initial lift is installed, unless an extension is granted by the Town. To guarantee installation of the final asphalt surface, the developer shall file a financial guarantee in an amount determined by the Town Engineer. If the developer seeks approval of the final plat prior to installation of the final asphalt surface, the financial guarantee shall be in the form of a letter of credit approved by the Town Attorney. If the asphalt surface is not installed within one year from the installation of the initial lift of asphalt, the Town Board may cause the final asphalt surface to be installed and the parties executing the financial guarantee shall be firmly bound for the payment of all costs. Maintenance of the streets shall be the responsibility of the subdivider until acceptance by the Town.
5. Topsoil, mucky soil, peat and other deleterious material shall be removed below the subgrade of streets and replaced with suitable, sound fill material approved, placed and compacted as directed by the Town Engineer.

6. Street signs, culverts posts, guard rails, etc., as required by the Town Board, shall be obtained and placed by the Town with the expenses incurred paid by the subdivider.
 7. Side slopes shall be covered with topsoil, prepared, seeded, sodded or other acceptable ground cover, fertilized and maintained for a sufficient period to provide adequate grass cover prior to acceptance by the Town Board.
 8. An abutment of mortared stone or reinforced concrete or other approved material shall be constructed at each end of all culverts by the subdivider.
- (b) Drainage Easements. All drainage easements shall be graded so as to confine water flow to the easement area as shown on the plat and all such grading shall be approved by the Town Engineer.
 - (c) Specifications. Street specifications shall conform to Ch. 8 of this code. Any items not covered by these standards shall conform to the "Standard Specifications for Road and Bridge Construction", State of Wisconsin, most recent edition. Sewer and Water Specifications shall conform to the "Standard Specifications for Sewer and Water Construction in Wisconsin", most recent edition.
 - (d) Final Inspection and Acceptance. Prior to the request for final street inspection, the subdivider shall provide the Town Engineer with a written certification from the subdivider's engineer or surveyor to the effect that the streets conform to the grades as indicated on the profile maps previously approved. Final acceptance of the streets, drainage ditches, culverts, etc., will be made only between May 1st and November 1st of any year.
 - (e) Town Engineer Expenses. The expenses of the Town Engineer due to the subject subdivision, to the extent they exceed the fee paid at the time the final plat was submitted, shall be paid by the subdivider or owner as required by the Town Board.
- (3) PUBLIC SITES, OPEN SPACES AND CAPITAL IMPROVEMENT. (Am. #88-200) In order that adequate open spaces and sites for public uses may be properly located and preserved as the community develops; and in order that the cost of providing the public parks, recreation sites and other facilities necessary to serve the additional families brought into the community by new developments may be most equitably apportioned on the basis of the additional need created by the individual development, the following provisions are established:
- (a) Reservation of Potential Sites.
 1. In the design of the plat, division of land or planned unit development, consideration shall be given to the adequate provisions of and correlation with such public sites or open areas.
 2. Where it is determined by the Town Plan Commission that a portion of the plat, planned unit development or division of land is required for public sites or open spaces, the developer may be required to reserve such area for a period not to exceed 3 years, after which the Town shall either acquire the property or release the reservations.
 - (b) Dedication of Sites.
 1. Within the corporate limits of the Town where feasible and compatible with development of the community, the developer shall provide and dedicate to the public adequate land to provide for the needs of the development.
 2. The amount of land to be provided shall be determined on the basis of an amount of land equal in value to an amount as set forth from time to time by resolution of the Town Board per residential lot created by the division. In the case of a multi-family development the amount of land shall equal in value an amount as set forth from time to time by resolution of

the Town Board for each residential unit. The value of the land to be dedicated shall be determined by the Town Assessor on the basis of full and fair market value of the land prior to dividing. If the developer is not satisfied with such appraisal, he may appeal such determination, in which case an appraisal board consisting of one appraiser selected by the Town at its own expense, one selected by the developer at his own expense and a third selected by the other 2 appraisers at Town expense, shall determine the value.

(c) Proportionate Payment in Lieu of Dedication. (repealed in its entirety 2007-002)

18.08 REPLATS, VACATING AND ALTERING PLATS, CORRECTION INSTRUMENTS.

- (1) REPLATS. A replat of all or any part of a recorded subdivision may not be made or recorded except after proper court action has been taken to vacate the original plat or the specific part thereof when all the parties in interest in writing agree thereto. The subdivider shall follow the same procedure for processing a replat as he does for any preliminary or final plat. The Town will then apply the applicable provisions of this chapter to the replat.
- (2) VACATING AND ALTERING PLATS. The owner of the subdivision, the owner of any lot in the subdivision by tax deed, or the County Board, if the County has acquired an interest in the subdivision or in any lot in the subdivision by tax deed, may apply to the Circuit Court for Waukesha County for the vacation or alteration of all or part of the recorded plat of that subdivision. The provisions of §§236.40, 236.41, 236.42, 236.44 and 236.445, Wis. Stats., shall be followed.
- (3) CORRECTION INSTRUMENTS. Correction instruments approved by the Town Board shall be recorded with the Register of Deeds as provided by §236.293, Wis. Stats.

18.09 APPEALS.

Any person aggrieved by an objection to a plat or a failure to approve a plat may appeal therefrom as provided in §62.23(7)(e)10. to 15., Wis. Stats., within 30 days of notification of the rejection of the plat. For the purpose of such appeal the term "Board of Appeals" means an "approving authority". Where the failure to approve is based on an unsatisfied objection, the agency making the objection shall be made a party to the action. The court shall direct that the plat be approved if it finds that the action of the approving authority or objecting agency is arbitrary, unreasonable or discriminatory.

18.10 MODIFICATIONS AND EXCEPTIONS. (Am. #90-260)

In any particular case where the subdivider can show that strict compliance with any requirements of this chapter would cause practical difficulty or exceptional and undue hardship, the Town Board may relax such difficulty or hardship, provided such relief may be granted without detriment to the public good and without impairing the intent and purpose of this chapter of the desirable general development of the neighborhood and the Town. A 3/4 vote of the entire Town Board shall be required to grant modifications or exceptions to this chapter, and any modification or exception so granted shall be entered in the minutes of the Town Board setting forth the reasons justifying the action.

18.11 PRIOR REVIEW OF SALES OR EXCHANGES OF PARCELS BETWEEN ADJOINING LANDOWNERS. (Created 2014-08)

In every situation, regardless of circumstances, that a property owner seeks to convey land in a manner that would adjust a lot line or create or eliminate a lot line, and that conveyance does not require a certified survey map or subdivision plat pursuant to this ordinance, and where an adjacent property owner intends to acquire such interest in land, the proposed action shall be submitted to the Town of Delafield Plan Commission for prior review, before the conveyance documents are signed and before the conveyance is recorded in the office of the Waukesha County Register of Deeds. Such application must be filed with the Town Clerk along with a fee payment to offset all or part of the cost of this limited review, in an amount to be determined from time to time by separate resolution of the Town Board. The Town Plan Commission review shall be limited to considering whether the conveyance is in compliance with the Wisconsin Statutes Section 236.45(2)(am)(3)

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

18.12 SITE EROSION CONTROL.

- (1) APPLICABILITY. This section applies to land disturbing and land developing activities on lands within the boundaries and jurisdiction of the Town.
- (2) DEFINITIONS. (Repealed 2005-003 and recreated in Section 18.02)
- (3) DESIGN CRITERIA, STANDARDS AND SPECIFICATIONS FOR CONTROL MEASURES. All control measures required to comply with this section shall meet the design criteria, standards and specifications for the control measures based on accepted design criteria, standards and specifications identified by the Town administering authority. Unless designated to the contrary, the criteria shall conform to the latest edition of the "Wisconsin Construction Site Best management Practice Handbook," published by the Wisconsin Department of Natural Resources' Bureau of Water Resource Management Non Point Source and Land Management section or to other standards which may be adopted by the Town Plan Commission.
- (4) MAINTENANCE OF CONTROL MEASURES. All sedimentation basins and other control measures necessary to meet the requirements of this section shall be maintained by the applicant or subsequent landowner during the period of land disturbance and land development of the site in a manner satisfactory to the Town's administrating authority to ensure adequate performance and to prevent nuisance conditions.
- (5) CONTROL OF EROSION AND POLLUTANTS DURING LAND DISTURBANCE AND DEVELOPMENT.
 - (a) Applicability. This subsection applies to the following sites of land development or land disturbing activities:
 1. Those requiring a subdivision plat or certified survey map approval which requires the installation of road or utilities, houses or commercial, industrial or institutional buildings on lots of approved subdivision plats.
 2. Those requiring the construction of houses or commercial, industrial or institutional buildings.
 3. Those involving grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity affecting a surface area of 4,000 sq. ft. or more.
 4. Those involving excavation or filling or a combination of excavation and filling affecting 400 cu. yds. or more of dirt, sand or other excavation or fill material or as specified in Waukesha County Shoreland and Floodland Ordinance for lands within the jurisdiction of such ordinance.
 5. Those involving street, highway, road or bridge construction, enlargement, relocation or reconstruction.

6. Those involving the laying, repairing, replacing or enlarging of an underground pipe or facility for a distance of 300' or more.
- (b) Erosion and Other Pollutant Control Requirements. The following requirements shall be met on all sites described in par. (a):
1. Site Dewatering. Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, upflow chambers, hydro-cyclones, swirl concentrators or other appropriate controls designed and used to remove particles of 100 microns or greater for the highest dewatering pumping rate. If the water is demonstrated to have no particles greater than 100 microns during dewatering operations, then no control is needed before discharge. Water may not be discharged in a manner that causes erosion of the site or receiving channels.
 2. Waste and Material Disposal. All waste and unused building materials, including garbage, debris, cleaning wastes, wastewater, toxic materials or hazardous materials, shall be properly disposed and not allowed to be carried by runoff into a receiving channel or storm sewer system.
 3. Tracking. Each site shall have graveled roads, access drives and parking areas of sufficient width and length to prevent sediment from being tacked onto public or private roadways. Any sediment reaching a public or private road shall be removed by street cleaning, not flushing, before the end of each workday.
 4. Drain Inlet Protection. All storm drain inlets shall be protected with a straw bale, filter fabric or equivalent barrier meeting accepted design criteria, standards and specifications.
 5. Site Erosion Control. The following criteria (subpars. a. through d.) apply only to land development or land disturbing activities that result in runoff leaving the site:
 - a. Channelized runoff from adjacent areas passing through the site shall be diverted around disturbed areas, if practical. Otherwise, the channel shall be protected as described below in subpar. c.°. Sheetflow runoff from adjacent areas greater than 10,000 sq. ft. in area shall also be diverted around disturbed areas, unless shown to have resultant runoff velocities of less than 0.5'/sec. across the disturbed area. Diverted runoff shall be conveyed in a manner that will not erode the conveyance and receiving channels. Soil and conservation service guidelines for allowable velocities in different types of channels shall be followed.
 - b. All activities on the site shall be conducted in a logical sequence to minimize the area of bar soil exposed at any one time.
 - c. Runoff from the entire disturbed area on the site shall be controlled by meeting either subpars. i or ii or i and iii.
 - i. All disturbed ground left inactive for 14 or more days shall be stabilized by seeding or sodding (only available prior to September 15), by mulching or covering or other equivalent control measures.
 - ii. For sites with more than 10 acres disturbed at one time or if a channel originates in the disturbed area, one or more sedimentation basin shall be constructed. The basin discharge rate shall also be sufficiently low as to not cause erosion along the discharge channel or the receiving water.
 - iii. For sites with less than 10 acres disturbed at one time, filter fences, straw bales or equivalent control measures shall be placed along all sideslope and downslope sides

of the site. If a channel or area of concentrated runoff passes through the site, filter fences shall be placed along the channel edges to reduce sediment reaching the channel.

- d. Runoff from site on slopes of 12% or more may require additional or different controls than listed in subpar. c. above.
- e. Any soil or dirt storage piles containing more than 10 cu. yds. of material shall not be located within a downslope drainage length of less than 25' to a roadway or drainage channel. Straw bales or filter fabric barriers shall be placed immediately on the downslope side of piles. If remaining for more than 30 days, they shall be stabilized by mulching, vegetative cover, tarps or other means. In-street utility repair or construction soil or dirt storage piles located closer than 25' of a roadway or drainage channel must be covered with tarps or suitable alternative control if exposed for more than 7 days and the storm drain inlets must be protected with straw bale or other appropriate filtering barriers. If any soil or dirt storage pile described in this subparagraph is in existence for more than 6 months, the filter fabric or straw bales shall be replaced upon order of the administering authority.

(6) PERMIT APPLICATION, CONTROL PLAN AND PERMIT ISSUANCE. No landowner or land user may commence a land disturbance or land development activity subject to this section without receiving prior approval of a control plan for the site and a permit from the Town administering authority. At least one landowner or land user controlling or using the site and desiring to undertake a land disturbing or land developing activity subject to this section shall submit an application for a permit and a control plan and pay an application fee as set from time to time by the Town Board to the Town Clerk. By submitting an application, the applicant is authorizing the Town administering authority to enter the site to obtain information required for the review of the control plan.

(a) Content of the Control Plan for Land Disturbing Activities Covering One or More Acres.

- 1. Existing Site Map. A map of existing site conditions on a scale of at least 1" equals 100' showing the site and immediately adjacent areas:
 - a. Site boundaries and adjacent lands which accurately identify site location.
 - b. Lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site.
 - c. 100 year floodplains, flood fringes and floodways.
 - d. Location of the predominant soil types.
 - e. Vegetative cover.
 - f. Location and dimensions of storm water drainage systems and natural drainage patterns on and immediately adjacent to the site.
 - g. Locations and dimensions of utilities, structures, roads, highways and paving.
 - h. Site topography at a contour interval not to exceed 2'.
- 2. Plan of Final Site Conditions. A plan of final site conditions on the same scale as the existing site map showing the site changes.
- 3. Site Construction Plan. A site construction plan, including:

- a. Locations and dimensions of all proposed land disturbing activities.
 - b. Locations and dimensions of all temporary soil or dirt stockpiles.
 - c. Locations and dimensions of all construction site management control measures necessary to meet the requirements of this section.
 - d. Schedule of anticipated starting and completion date of each land disturbing or land developing activity, including the installation of construction site control measures needed to meet the requirements of this section.
 - e. Provisions for maintenance of the construction site control measures during construction.
- (b) Content of Control Plan Statement for Activities of Less than One Acre but Meeting Requirements Herein. An erosion control plan statement with simple map shall be submitted to briefly describe the site and erosion controls, including site development schedule that will be used to meet the requirements of this section.
- (c) Review of Control Plan. Within 45 days of receipt of the application, control plan or control plan statement and fee, the administering authority shall review the application and control plan to determine if the requirements of this section are met. The administering authority may request comments from other departments or agencies. If the requirements of this section are met, the administering authority shall approve the plan, inform the applicant and issue a permit. If the conditions are not met, the administering authority shall inform the applicant in writing and may either require needed information or disapprove the plan. Within 30 days of receipt of needed information, the administering authority shall again determine if the plan meets the requirements of this section. If the plan is disapproved, the administering authority shall inform the applicant in writing of the reasons for disapproval.
- (d) Permits.
- 1. Duration. Permits shall be valid for a period of 180 days or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The Town administering authority may extend the period one or more times for up to an additional 180 days. The administering authority may require additional control measures as a condition of the extension if they are necessary to meet the requirements of this section.
 - 2. Financial Guarantee. As a condition of approval and issuance of the permit, the Town shall require the applicant to deposit a surety bond, irrevocable letter of credit or other satisfactory financial guarantee to guarantee a good faith execution of the approved control plan and any permit conditions. The type and form of the financial guarantee shall be at the discretion of the Town Board after review and recommendation of the Town Attorney.
 - 3. Permit Conditions. All permits shall require the permittee to:
 - a. Notify the Town Clerk within 48 hours prior to commencing any land disturbing activity.
 - b. Notify the Town Clerk of completion of any control measures within 24 hours after their installation.
 - c. Obtain permission in writing from the Town administering authority prior to modifying the control plan.
 - d. Install all control measures as identified in the approved control plan.
 - e. Maintain all road drainage systems, storm water drainage systems, control measures

and other facilities identified in the control plan.

- f. Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land developing or disturbing activities.
- g. Allow the Town's designated agent to enter the site for the purpose of inspecting compliance with the control plan or for performing any work necessary to bring the site into compliance with the control plan.
- h. Keep a copy of the control plan on the site.

(7) INSPECTION.

- (a) The administering authority shall inspect construction sites at least once a month during the period starting March 1 and ending October 31 and at least 2 times during the period starting November 1 and ending February 28 to ensure compliance with the control plan.
- (b) If land disturbing or land development activities are being carried out without a permit, the Town's administering authority shall enter the land pursuant to the provisions of §§66.122 and 66.123, Wis. Stats.

(8) ENFORCEMENT.

- (a) The Town administering authority may post a stop work order if:
 - 1. Any land disturbing or land developing activity regulated under this section is being undertaken without a permit.
 - 2. The control plan is not being implemented in a good faith manner.
 - 3. The conditions of the permit are not being met.
- (b) If the permittee does not cease the activity or comply with the control plan or permit conditions within 10 days, the Town Board may revoke the permit.
- (c) If the landowner or land user where no permit has been issued does not cease the activity within 10 days, the Town Board may request the Town Attorney to obtain a cease and desist order.
- (d) Once a cease and desist order has been issued, only the Town Board or the Town Board of Appeals may retract the stop work order or the revocation.
- (e) Ten days after posting a stop work order, the Town administering authority may issue a notice of intent to the permittee, landowner or land user of the Town's intent to perform work necessary to comply with this section. The Town's designated agent may go on the land and commence the work after 14 days from issuing the notice of intent. The costs of the work performed by the administering authority, plus interest at the rate authorized by the administering authority, shall be billed to the permittee or the landowner. In the event a permittee or landowner fails to pay the amount due, the Town Clerk shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to §66.60(16), Wis. Stats.
- (f) Compliance with the provisions of this section may also be enforced by injunction.

(9) APPEALS.

- (a) Board of Appeals. The Board of Appeals created pursuant to §17.45 of this General Code:

1. Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Town's administering authority in administering this section.
 2. Upon appeal, may authorize variances from the provisions of this section which are not contrary to the public interest and, where owing to special conditions, a literal enforcement of the provisions of this section will result in unnecessary hardship.
 3. Shall use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.
- (b) Who May Appeal? Any applicant, permittee, landowner or land user may appeal any order, decision or determination made by the Town's administering authority in administering this section.

18.13 FIRE PROTECTION RESERVOIRS. (Cr. #95-388)

- (1) GENERAL REQUIREMENTS. To insure adequate water is available for the purposes of fire suppression, any developer or owner who subdivides lands into five (5) or more residential or commercial lots shall provide a system of Fire Protection Reservoirs within the platted area for fire suppression purposes. The full and total cost of all engineering and legal fees, reservoirs, installation, plumbing, fire fittings, painting, access lanes/roads, initial filling with water, land restoration, and other cost of compliance with this ordinance shall be the responsibility of the developer or owner.
 - (a) The system of reservoirs or accepted alternatives shall be in place, approved and functional before any new building construction begins with the platted areas.
 - (b) A Fire Protection Reservoir surety in a form and in an amount determined by the Town Board, shall be required to insure the system is installed and fully functional prior to any building construction. The required surety amount shall be in an amount as set forth from time to time by resolution of the Town Board. Application for release of the surety shall not be considered until final approval of the system is obtained from the Fire and Highway Departments and all materials defined herein are provided.
 - (c) The requirements for Fire Protection Reservoirs shall apply equally to new and existing developments if, after the date of enactment, in excess of four (4) lots are created.
 - (d) All specifications and installations shall follow established engineering practices, the Fire Department's "Tank Installation Guidelines" and NFPA 1231, "Standard on Water supplies for Suburban and Rural Fire Fighting" as they may be amended from time to time. All proposed installation plans and specifications shall be approved by the Town Engineer before work is begun.
 - (e) Within 30 days of completion and final approval of the system, a complete set of record drawings, specifications, warranties and other requested information shall be provided to the Town Fire and Highway Departments.
 - (f) The complete installation and all associated items shall have a 24 month warranty, beginning at the final acceptance date, to be free from defects in materials and/or workmanship. If during this period the Town, at its sole discretion, determines corrective actions are necessary, the developer shall make the corrections at his expense in a period determined by Town but not to exceed 60 days from notification of defect.
- (2) RESERVOIRS REQUIRED. The developer of new or expanded plats shall provide "EMERGENCY WATER RESERVOIRS" as hereby defined:

5 - 39 lots - minimum of one (1) 10,000 gallon storage tank 40 or more lots - 250 gallon storage capacity minimum for each lot

- (a) The Town, upon recommendation of the Fire Chief, may require greater or less capacity if it is determined, after reviewing the proximity of other water sources, that such capacity is appropriate.
 - (b) Natural sources or man-made ponds may also be used as water reservoirs provided they comply with the same general requirements as tanks for location and number. These types of sources shall be of the dry hydrant type and installed as defined and specified by the State of Wisconsin Department of Natural Resources and Fire Department.
 - (c) All fire fittings used or installation shall be as specified by the fire Department and the cost of these fittings shall be included as part of the overall installation.
- (3) **TANK LOCATION.** Tank location shall be determined by the Town after receiving a recommendation from the Fire Chief, Highway Superintendent and Town Engineer. The locations selected shall be noted on a map to be kept on file with the Fire Chief and Highway Superintendent for future reference.
- (4) **INSPECTION AND ACCEPTANCE.** When all work has been completed and the tanks are functional, the developer may request an inspection. This inspection will be made by the Fire Chief and Highway Superintendent using the Fire Department Water Tank Inspection report form. In addition, a test pumping may be performed to insure that adequate water flow can be obtained.
- (a) If a second inspection is required as a result of problems noted during the initial inspection, a fee in an amount as set forth from time to time by resolution of the Town Board shall be assessed for each additional inspection.
 - (b) When all requirements contained herein have been satisfied the Town Board shall provide final acceptance of the water source.

18.14 DETAILED SITE ANALYSIS AND MITIGATION PLANS (created 2005-003)

- (1) Purpose: The Detailed Site Analysis required by this Section is designed to provide the clear identification of permanently protected green space and open space areas on a site which is proposed for development. The detailed survey work required to identify these areas accurately on a map is not required prior to the initiation of development concept plans for an area.
- (2) Site Disruption Limited: Where a preliminary plat, certified survey map, or site plan approval requires a Detailed Site Analysis and Mitigation Plan, the property owner and / or Developer shall not remove trees in anticipation of a land division or site development prior to preliminary plat or site plan approval.
 - a) (repealed and recreated 2013-03) Prior to approval of a Detailed Site Analysis and Mitigation Plan, site disruption shall be limited to percolation testing in accordance with SPS 385 and clearing and grubbing reasonably necessary to perform preliminary property surveys.
 - b) Following the approval of a Detailed Site Analysis and Mitigation Plan, site disruption activities shall comply with the following:
 - i. Activities shall not compact soil covering tree roots, or otherwise damage trees beyond the area from which trees are to be removed.
 - ii. The use of snow fences and other barriers to outline development pads during disruption activity is required in order to limit the extent of inadvertent compaction or other disturbance of earth, and collision damage to vegetation intended for protection. Such

barriers should be placed no closer to protected trees than a point on the ground directly under their outer canopy edge. The use of on-site temporary construction signage is also highly recommended.

- (3) Plan Requirements: The Detailed Site Analysis shall be shown on a map of the subject property which depicts the location of all protected natural resource areas and environmental corridor components, as defined by the provisions of this Section, and as located by an on-site property survey. The detailed site analysis shall meet the following requirements:
- a. Scale: A minimum scale of one-inch equals 200 feet shall be used unless otherwise approved by the Plan Commission;
 - b. Topography: Topographic information is not required for any property that does not contain steep slopes. For such properties, topographic information with a minimum contour interval of two feet is required.
 - c. Development Envelopes: All site disruption (including selective cutting) proposed to occur within permanently protected natural resource areas shall be limited to Development Envelopes except as required to remove non-native or undesirable species as identified in an approved Management Plan for the site. Development pads shall be depicted on the Detailed Site Analysis map, Preliminary Plat of Subdivision, and/or site plan. Where Development Envelopes encroach into environmental corridors or their components as identified by the Southeastern Wisconsin Regional Planning Commission, such encroachments shall be mitigated on site in accordance with Section 4 of this Code.
 - d. A tree inventory on all lands that may be disturbed.
- (4) Mitigation Areas: All mitigation areas, and the areas they offset, related to the provisions of this Ordinance shall be depicted on the detailed site analysis map with notations provided which describe the mitigation techniques employed. Acceptable mitigation techniques include but are not limited to stream bank stabilization, prairie restoration, invasive species control, tree replacement and reforestation efforts, rehabilitation of rustic structures. The Plan Commission shall review and approve all proposed mitigation techniques proposed prior to or concurrent with the Preliminary Plat of Subdivision or site plan. If necessary, as determined by Plan Commission, revised Detailed Site Analysis maps shall be prepared and submitted for review until a version is deemed acceptable.
- (5) Procedure for Submittal: Required Procedure for Submission and Review of Detailed Site Analysis and Mitigation Plan:
- a. Required Timing of Submission: The detailed site analysis map shall be submitted to the Plan Commission for review concurrent with the submission of the Preliminary Plat of Subdivision or site plan. A concept plan of the proposed development may be submitted prior to the submission of the detailed site analysis map, however, in no way does the acceptance and/or general approval of the concept plan indicate the approval of natural resource feature locations.
 - b. Review: The Plan Commission shall review the submitted Detailed Site Analysis map for general compliance with this Ordinance. Such review may include data sources including but not limited to the following examples:
 - 1. The Official Zoning Map;
 - 2. Applicable USGS 7.5 minute topographic maps or other USGS Quads and sources of topographic information;
 - 3. Air photos of the subject property;
 - 4. Applicable FEMA and related floodplain maps;
 - 5. Applicable Federal and State Wetland Inventory Maps;

6. The Land Use Plan; and
7. Official Street System Map;
8. Site visits.

- (6) Integration Into Plan Documents and Deed Restrictions: Information contained on the Detailed Site Analysis map relating to the boundaries of permanently protected green space areas (including natural resource protection areas, other permanently protected green space areas, and required mitigation areas) shall be recorded as a deed restriction which permanently runs with the land. Said areas shall be clearly depicted on any and all site plans required as a precondition for application for any development permit which occurs subsequent to any proposed Final Plat of Subdivision.
- (7) Surety Required: A Surety in a form approved by the Town Attorney shall be provided. Said surety shall secure the replacement of all trees with calipers exceeding six (6) inches, whose canopies are located adjacent to disturbed areas, which die within a period of five (5) years following site disruption, and to secure the restoration of all disturbed land areas and mitigation areas identified on the Detailed Site Analysis.

18.15 ENFORCEMENT AND PENALTIES.

- (1) ENFORCEMENT. The Town may institute an injunction or other appropriate action or proceeding to enjoin a violation of this chapter or any provision of Ch. 236. Wis. Stats., adopted by reference.
- (2) PENALTIES. Except as otherwise expressly provided, any subdivider who fails to comply with the provisions of this chapter shall be subject to a penalty as provided in §25.04 of this code. In addition, the remedies provided by §236.30 and 236.31, Wis. Stats., shall apply.
 - (2) OTHER PENALTIES OR REMEDIES. (Cr. #91-308) In addition to any other penalties imposed by this chapter, any costs incurred by the Town to gain compliance with plat approval, subdivision approval or site erosion or pollution control requirements or any other provision of this chapter including, but not limited to, the Town's installation of the required improvements and the Town's cost of enforcement thereof, shall be collected as a debt from the developer and/or owner of the property involved. If after notice of the debt is given to the developer and/or owner it remains unpaid for more than 30 days, such cost shall, at the option of the Town Board, be assessed as a special charge against any real estate located in the Town owned by the developer and/or owner.

18.16 RESIDENTIAL PLANNED UNIT DEVELOPMENT. (created 2019-05)

1. **STATEMENT OF INTENT**

A subdivision can be developed as a Residential Planned Unit Development pursuant to this Section. Residential Planned Unit Development is intended to provide for open space/cluster/conservation type residential developments. Such developments incorporate the preservation or enhancement of environmental areas into the development; provide a safe and efficient system for pedestrian and vehicular traffic; provide attractive permanent open spaces as integral part of the development; allow flexibility of overall development design, and ensure adequate standards of planning and construction are met. Residential Planned Unit Development application and review is conducted through the plat approval procedures of this Chapter, in conjunction with the plat, subject to the additional requirements of this Section.

2. MINIMUM ACREAGE

Areas designated as Residential Planned Unit Overlay District shall be under single corporate ownership or control and shall contain a minimum development area of 20 acres.

3. BUILDING LOCATION

- (a) **Setback** 50 feet minimum.
- (b) **Offset** 20 feet minimum.

4. BASE HEIGHT REGULATIONS

- (a) **Principal Residence** 30 feet maximum.
- (b) **Accessory Structures** 12 feet maximum.

5. LOT AREA REGULATIONS

- (a) Lot size and open space: in accordance with table 18-2 herein
- (b) Lot width: in accordance with table 18-3
- (c) Floor Area:

(1) Single Floor:	1,500 square feet.
(2) All Other:	See Zoning Code §17.03 5. A.

6. STANDARDS UNDER WHICH PERMITTED

Residential Planned Unit Development approval shall not be granted to a development unless all of the following standards are met:

- a. Residential Planned Unit Development is permitted in any zoning district that permits residential uses, except the A-1 Agricultural District.
- b. The land must be divided by subdivision plat certified survey map, or condominium plat, pursuant to the land division approval procedures of this Chapter.
- c. No structures or sewage disposal systems shall be allowed in the Wetland-Floodplain District or within 75' of the district.
- d. A minimum of 40% of the total PUD area shall be set aside as permanent common open space; except the 40% permanent common open space is not required if all lots in the PUD are single-family residential lots, and they each meet a minimum lot size of 5 acres or greater. The overall density shall not exceed the maximum density allowed by applicable laws and ordinances.
- e. The unified and planned development of a site, in single or corporate ownership at the time of development, may be permitted in a planned development without the customary division into individual lots and without requiring strict compliance with the specific district regulations, subject to

the requirements of this section.

f. Lot size, offset, setback and open space and floor area requirements may be modified according to the following conditions:

- (1) All sanitary provisions must conform to the requirements of the State Department of Industry, Labor and Human Relations, the County Health Department, the local sanitary district and the Town;
- (2) The proposed development must be in conformity with any local comprehensive plan, must not be contrary to the general welfare or economic balance of the community and the benefits and amenities of the resultant development must justify the variation from the normal requirements of the district in which it is located;
- (3) All other requirements of the Planned Development must be met as set forth in this subparagraph;
- (4) The provisions of sections 18.06 and 18.07 of this General Code shall govern the design and construction of all roads and public improvements. Any modification of these standards must be consistent with good engineering practices and be approved in writing by the Town Board;
- (5) The provisions of section 18.07 shall govern with respect to dedication of public sites or payment in lieu of dedication; and
- (6) Except as specifically provided in subsection (7)(a) or (7)(b), below, the application of these regulations shall be limited to parcels of not less than 20 acres in area.
- (7) In areas designated as "Pewaukee Lake Non-Shoreline Redevelopment Overlay District" the following conditions, in addition to those conditions above that are not in conflict, shall apply:
 - (a) The parcel shall be at least 5 acres in area, and shall be identified in the Land Use Plan as being within the Pewaukee Lake Non-Shoreline Redevelopment Overlay District.
 - (b) The Plan Commission in making its recommendation and the Town Board in making its decision shall take into consideration the following: that although a planned unit development is permitted in this district, it is the intent that such development be designed to preserve to the greatest extent reasonably possible, lake views and vistas, woodlands, steep slopes, and other natural features.

g. Table 18-1 shall be utilized to compute the maximum dwelling unit density that may be allowed for the development and shall be referred to as the residential density factor.

TABLE 18-1

A-1	Agricultural Districts	[PUD not permitted]
A-2	Rural Home District	3.5 acres/dw. unit
A-3	Suburban Home District	2.75 acres/dw. unit
C-1	Upland Environmental Corridor Overlay	217,800 s.f./dw. unit
R-1	Residential District	60,000 s.f./dw. unit

R-(A)	Residential District	41,000 s.f./dw. unit
R-2	Residential District	30,000 s.f./dw. unit
R-3	Residential District	20,000 s.f./dw. unit
R-L	Residential Lake District	20,000 s.f./dw. unit

- h. The specific allowable maximum number of dwelling units shall be computed by dividing the total area allowable for density by the appropriate Residential Density Factor; existing public right-of-way, open space easements and 80% of lands designated as floodplain, wetlands Environmental Corridor or Isolated Natural Resource Area may not be included in the area for density computation.
- i. Table 18-2 shall be utilized to determine the absolute minimum lot size and open space per family per lot which may be utilized for the platting of lots in the planned unit development:

TABLE 18-2

District		Minimum Lot Size	Minimum Open Space Per Lot
A-1	Agricultural District	[PUD not permitted]	[PUD not permitted]
A-2	Rural Home District	60,000 s.f.	80%
A-3	Suburban Home District	1 acre	75%
C-1	Upland Environmental Corridor Overlay	Per Underlying Zoning District	Per Underlying Zoning District
R-1	Residential District	30,000 s.f.	75%
R-1(A)	Residential District	30,000 s.f.	75%
R-2	Residential District	25,000 s.f.	75%
R-3	Residential District	20,000 s.f.	75%
R-L	Residential Lake District	20,000 s.f.	75%

TABLE 18-3

j. Table 18-3 shall be utilized to determine the absolute minimum average lot width, setback and offsets which may be utilized for the individual lots.

District		Min. Lot Width	Setback	Offset
A-1	Agricultural District	[PUD not permitted]	[PUD not permitted]	[PUD not permitted]
A-2	Rural Home District	175'	50'	20'
A-3	Suburban Home District	150'	50'	20'
C-1	Upland Environmental Corridor Overlay	Per Underlying Zoning District	Per Underlying Zoning District	Per Underlying Zoning District
R-1	Residential District	130'	50'	20'
R-1(A)	Residential District	130'	50'	20'
R-2	Residential District	120'	50'	20'
R-3	Residential District	120'	50'	20'

R-L	Residential Lake District	100'	50'	20'
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Up to a maximum of 20% of the area of lands which are zoned Wetland-Floodplain within the project may be used to determine planned development project densities. However, in no case, shall the total area of Wetland-Floodplain zoned lands used in the computation exceed 25% of the net area of the project which is zoned other than Wetland-Floodplain.

- k. Adequate guarantee shall be provided for permanent retention of open area resulting from these regulations, either by private reservation for use of the residents within the development or by public dedication. The parcels created as open space in all zoning districts other than the A-1 District shall be owned in common by the residents of the development or by a home owners association and shall not be further divided nor shall they be used for residential purposes. Buildings or structures for noncommercial, recreational or accessory facilities may be permitted in such open space area subject to specific grant in the conditional use permit. Perpetual care and maintenance of such open space areas shall be provided for and an operational plan shall be submitted for specific approval and inclusion in the terms of the permit. Ownership and tax liability of the open space areas shall be established in a manner acceptable to the Town and shall be made a part of the conditions of approval.
- l. This section shall be construed to permit any type of housing unit within the development boundaries (i.e., multiple family, single family, garden apartments, condominiums, duplexes, senior housing) subject to specific approval and conditions of this conditional use permit.
- m. Where the use is not proposed to be served by public sanitary sewers, the use of private treatment systems pursuant to SPS 83 Wisconsin Administrative Code shall apply, subject to the following:
 - (1) Private systems serving one dwelling unit shall be privately owned and maintained.
 - (2) Private systems serving more than one dwelling unit shall be the responsibility of an incorporated Owners Association subject to a maintenance and management agreement. Such agreements shall give the Town the right to inspect all facilities and make repairs at the expense of the Owners Association. In the event that the incorporated Owners Association fails to maintain or make repairs to the private system to the satisfaction of the Town, the maintenance and management agreement shall grant the Town the authority to conduct said maintenance or repairs at the expense of the Owners Association. In the event of nonpayment, all costs incurred shall be placed on the tax bills of all Owners Association properties on a prorata basis as a special assessment or special charge.
- n. The total number of dwelling units allowed for the project shall be determined by utilizing the density computation above.
- o. The floor area of attached or detached single family dwellings and duplexes shall not be less than what is required in the applicable zoning district.

- p. The architectural style of the buildings may be subject to approval by the Plan Commission.
- q. Subject to specific approval by the Town Board, floor area for multiple dwelling units may be modified in accordance with table 18-4.

TABLE 18-4

Efficiency or one bedroom apartment	900 s.f.
Two bedroom unit	1050 s.f.
Three bedroom unit	1250 s.f.

- r. The developer shall enter into an appropriate contract with the Town to guarantee the implementation of the development according to the terms and conditions established as part of the development plan approval.

7. BASIS FOR APPROVAL

The Plan Commission in making its recommendation and the Town Board in making its determination as to the approval or denial of the land division for planned development shall give consideration to the purposes and standards in this section and be satisfied as to the following:

- a. That the proposed development is consistent with the spirit and intent of the chapter, is in conformity with the general character of the Town and would not be contrary to the general welfare and economic prosperity of the Town or of the immediate neighborhood, but rather that the benefits from the anticipated improved design of the resultant development justifies the variation from the normal requirements of this chapter through the application of this planned development section.
- b. That the size, quality and architectural design of all buildings in the project will not have an adverse effect upon the general character of the Town and surrounding neighborhood.
- c. That the provisions and facilities of the open space areas being provided is of such quality, size and aesthetic value to justify the approval of the project.
- d. That the setbacks shall be maintained along any boundary street of the project area as required by the existing underlying basic district.
- e. That no building shall be permitted closer to a side or rear boundary street of the project area as required by the existing underlying basic district.
- f. That there shall be no further division of any lot within the development.
- g. That deed restrictions or an appropriate contract with the Town assuring implementation of the development according to the above requirements is filed with the Waukesha County

Register of Deeds.

- h. The proposed site shall be provided with adequate drainage facilities for surface and storm waters.
- i. No undue constraint or burden will be imposed on public services such and police and fire protection street maintenance and maintenance of public areas by the proposed development.
- j. The proposed site shall be accessible form public roads that are adequate to carry the traffic expected to be generated by the proposed development.
- k. The approval of a petition for approval of a Residential Planned Unit Development shall be based on the building, site and operational plans for the development, all other commitments offered as required in regard to project value, character or other factors pertinent to an assurance that the proposed development will be carried out basically as presented for the project.
- l. If approved, the setback, offset, height, minimum floor area, minimum lot size, density and open space requirements of the Planned Unit Development, in addition to all conditions imposed in the grant of the approval, if any, shall be recorded as a deed restriction on the development lands in a form approved by the Town Board or its designee.
- m. Any subsequent change or addition to an approved plan shall first be submitted for approval to the Plan Commission and, if in the Commission's opinion such change or addition is not substantial, it may recommend approval to the Town Board without public hearing. If the Plan Commission deems that any proposed change is not acceptable, it shall recommend accordingly to the Town Board. Without limitation to the Plan Commission's right to determine any other change substantial, a change in any of the following respects shall be automatically construed as substantial:
 - (1) An increase in the number of dwelling units from that shown in the approved comprehensive project plan.
 - (2) A significant change in the size, value or type of structure from that indicated in the approved comprehensive project plan.
 - (3) The addition of any principal uses not included in the approved comprehensive project plan.
 - (4) A change in the basic concept of site development which would significantly alter the relationship of uses or open space to adjoining properties.

PARKS

19.01 PARK RULES ADOPTED.

- (1) DEFINITIONS.
 - (a) Town means the Town of Delafield.
 - (b) Town Board means the Town of Delafield Board of Supervisors.
 - (c) Town staff means the Administrator, Highway Superintendent or Baseball Coordinator

- (2) PURPOSE. This ordinance relates to Town parks and recreational areas where the Town of Delafield has jurisdiction. This does not pertain to County or State parks. The purpose of this article is:
 - (a) To protect the town's parks and appurtenances thereto from fire, abuse and desecration;
 - (b) To provide for the recreational use of these areas;
 - (c) To control and regulate traffic and maintain general order therein; and
 - (d) To further the safety, health, comfort, morals and welfare of all persons while within the limits of the parks.

- (3) Rules, Regulations, Fees and Policies.

The Town Board may adopt additional rules and regulations for the proper conduct and administration of the parks in the town that are not inconsistent with the provisions of this ordinance, and may perform such other acts in managing the parks as are lawful and as it may deem expedient to promote the beauty and usefulness of said parks and to increase the comfort, safety, convenience and public welfare of the citizens of the town and of visitors to the parks in their use of same. All fees and policies for the administration of the park shall be adopted by the Town Board by separate resolution and kept on file in the Office of the Town Clerk.

- (4) Permits.

All permits required by this article shall be issued by Town Staff in writing and shall be subject to park rules and regulations. The persons to whom such permits have been granted shall be bound by the rules and regulations as fully as though the same were inserted in the permits, and any person to whom a permit has been issued shall be liable for any loss, damage, or injury sustained by the town or by any person by reason of the negligence of the person to whom the permit has been issued, their servants or agents, and shall save and keep the town harmless from any and all liability whatsoever arising out of such negligence.

- (5) Leasing of Equipment.

The Town Board is authorized to lease equipment suitable for recreational purposes to private organizations upon such terms as it may determine provided that any such lease shall contain the provisions binding the lessee to save and keep the town harmless from any and all liability whatsoever arising out of the leasing and use of such equipment, and provided further that the Administrator may, in its discretion, in each case require lessee to provide public liability insurance covering the use of such equipment.

- (6) Operating Hours.
 - (a) Except for vehicular traffic moving upon through streets or roadways, and except when the Town Board publishes general permission to use all or certain parks or parkways upon summer nights, the parks and parkways shall be closed at 9:00 p.m. each night until 6:00 a.m. the following morning, and no person shall remain therein during those hours, provided that, the Town Board may from time-to-time, in all or any of the parks, publish or post closing hours different from the above or discontinue closing hours as in the exercise of the judgement of the Town Board may appear reasonable and necessary.
 - (b) In case of emergency, or when in the judgement of the Town Board the public interest demands it, any portion of the parks or buildings and/or shelters therein may be closed to the public, or to designated persons until permission is given to return.

- (7) Interference With Park Employees.
No person shall interfere with or in any manner hinder any employee of the town, nor any employee of a contractor while engaged in constructing, repairing or caring for any portion of the parks, or while in the discharge of the duties conferred by this article.
- (8) Alcoholic Beverages.
The use of alcoholic beverages in the parks shall be governed pursuant to the provisions of Section 9.09 of the Town ordinance.
- (9) Disorderly Conduct.
(a) No person shall use threatening, abusive, insulting, profane or indecent language, nor be guilty of conduct that is abusive, insulting, obscene, indecent or constitutes a breach of the peace.
(b) No person violating any of the prohibitions enumerated in subsection (1) shall be allowed to remain in any park.
(c) All radios, television sets and any other amplified electrical equipment must be operated in compliance with Section 9.04 of the Town Code, so as not to disturb the use and enjoyment of the park and its facilities by others.
- (10) Smoking and Disposal of Smoking Materials.
(a) No person shall be permitted to smoke, or to hold a lighted cigarette, cigar, or pipe in any building, or section of a building or shelter, or where officially posted notices so prohibit.
(b) No person shall throw or drop a lighted cigar or cigarette stub or empty a lighted pipe from a motor vehicle moving along a park drive.
- (11) Sale of Soda.
The Town Staff may sell soda water beverages at Town parks.
- (12) Littering.
(a) No person shall scatter, drop or leave any piece of paper, rag, tin can, bottle, glass, peanut shells, melon rinds, banana peels or other garbage, dead flowers, or other rubbish in any portion of the parks, except in the receptacles provided for that purpose.
(b) Any person who breaks a bottle or other glassware in any park shall immediately pick up the broken pieces and remove same to a park waste container.
(c) No person shall deposit, dump, throw, or place any earth, rubbish, dust, manure, paper garbage, or any other refuse matter or any sand, stone, lumber, or building material, or any substance of any kind, in or upon any part of the waters, grounds, or roadways of any park without written permission of the Town Board.
- (13) Public Meetings, Parades and Funeral Processions.
No public meeting or assemblies, military or other parade or procession, or funeral shall take place in or pass through the limits of any park except upon written permit from the Town Staff and pursuant to Section 4 above, and then only in areas designated in the permit.
- (14) Advertising and Sales.
(a) No person shall sell, keep, or offer for sale any tangible or intangible article, merchandise, or thing; nor solicit for any trade, occupation, business or profession, or for alms, within any park without the written permit from the Town Board.
(b) No person, except upon written permit from the authorized representative of the Town Board, pursuant to Section 4 above, shall distribute, post, affix or display any card, handbill, sign, placard, target, banner, flag (except that of the United States and the State of Wisconsin), or advertisement of any kind. The word "distribute" includes the scattering of printed matter from aircraft.
- (15) Permit for Picnic Areas.
(a) No person shall in any manner disturb, harass or interfere with any person or party holding a written permit from the Town or with any such person's or party's equipment or

property.

- (b) Permits for the exclusive use of any picnic or play area for any specific date or time may be granted at the discretion of Town Staff, and no person shall in any manner disturb or interfere with any person or party occupying the ground under such a permit, or with any of such person's or party's equipment or property.

(16) Weapons.

- (a) No person shall carry, fire or discharge any gun, pistol, or firearm, nor any rocket, torpedo or any other fireworks of any description, nor shall any person engage in trapping; nor shall any person hunt with bow and arrow within any park. The word "gun" includes air gun.
- (b) No person shall throw stones or missiles in or into any park.

(17) Fires.

- (a) Persons shall be permitted the use of private cooking grills subject to regulations as may be prescribed. Use of charcoal shall be permitted provided lawns and other vegetation are not damaged and provided further that all unburned coals or ash are disposed of in such manner as to prevent fire or damage to any park property.
- (b) Any and all other fires within the park are strictly prohibited and governed under the provisions of Section 5.01 of the Town Code.

(18) Animals.

- (a) No animal, except those placed in the park by the authority of the town board, except dogs on leash as regulated by subsection (b) hereof, shall be conducted into or driven within the parks or be allowed to remain therein.
- (b) No person having the control or care of a dog on a leash shall permit a dog to enter or remain in a public park unless it is led by a leash of suitable strength not more than six (6) feet in length and then only within such areas in parks as have been designated by order of the town. The Town Board shall cause signs to be posted in areas wherein dogs are not permitted, including baseball, softball and soccer fields at the Sports Commons. All waste must be collected and removed in compliance with Town Ordinance of 8-8-95. All persons having control or care of a dog in a public park require proof of the ability to collect dog waste.

(19) Injury to Vegetation, Structures, and Equipment.

- (a) No person shall climb any tree, or pluck any flowers or fruit, wild or cultivated, or break flowers or fruit, wild or cultivated, or break, cut down, trample upon, remove, or in any manner injure or deface, write upon, defile or ill use any tree, shrub, flower, flower bed, turf, fountain, ornament, statue, building, fence, apparatus, bench, table, official notice, sign, bridge, structure, or other property within any park.
- (b) No person in any park shall remove any device for the protection of trees or shrubs, nor shall any person fasten an animal next to any tree, shrub, or grass plot which may become damaged by the action of the animal.

(20) Aircraft Landing Prohibited.

- (a) No person shall ascend or land with any aircraft including gliders and parachutes, nor engage in stunt flying or parachute landing in any park without the written permit of the Town Board.

(21) Flying objects

- (a) No person shall throw, strike, propel or otherwise operate flying or propelled objects of a potentially dangerous nature, including by way of example, without limitations, such things as model airplanes, drones, rockets, horseshoes, or rocks, except in areas designated for such use or part of an authorized sport or recreational activity.

(21) Sleeping or camping.

- (a) No person shall camp or lodge in any park.

(22) Public Utilities and Private Construction.

- (a) The location of all sewers and receivers, gas pipes, water pipes, stopcock boxes, hydrants, lamp posts, telegraph, telephone, and electric power posts and lines, manholes, conduit and pumps within any park shall be subject to the jurisdiction and control of the town. Their construction, erection, repair or relocation shall be undertaken only after written permission is received from the Town Board.
- (b) No curb, weather stone, concrete or grass shall be cut for the purpose of constructing a private driveway across any park border nor for any other purpose, without written permission from the Town Board. The location, width, grade, and construction of all paths, driveways and roadways across any sidewalk border along any parkway shall be subject to the approval of, and constructed only after written permission thereof is obtained from the Town Board. Every person who shall receive a permit to open a trench, to cut a curb, or to deposit materials in or upon any park shall at all times after such work has been commenced or materials deposited, and until the same has been completed, and until all accumulations of materials resulting from such work have been removed, so guard and protect the same that persons driving or passing along the roadway sidewalk or in the vicinity of the place where the work is being done, shall not be likely to meet with any accident therefrom. Such a person shall also during the time from sunset to sunrise, each night while said work is in progress, cause the same to be securely fenced and guarded by a red light or lights placed in a conspicuous position and secured that the same shall not be extinguished.

(23) Traffic Regulations.

In addition to all other state and local traffic regulations, the following specific regulations shall apply within the parks:

- (a) No person shall drive any automobile, motorcycle, or other vehicle traffic or burden, including "off road vehicles" upon any part of the parks except the proper drives and parking areas or permit the same to stand upon the drives or any part thereof so as to congest traffic or obstruct the drive. This subsection shall not apply to vehicles engaged in the construction, maintenance, or operation of the park or to vehicles making deliveries to the parks under permit of the Town Staff.
- (b) No person shall cause any taxicab, bus limousine or other vehicle for hire to stand upon any part of the parks for the purpose of soliciting or taking in passengers or persons other than those carried to the parks by the vehicle, unless licensed by the Town Board.
- (c) No person shall cause any bus, cart, dray, wagon, truck or trailer or other vehicle carrying goods, merchandise, manure, soil, or any other articles, or solely in use for the carriage of goods, merchandise, manure, or other article to enter or be driven in any part of the parks. This subsection shall not apply to vehicles engaged in the construction, maintenance or operation of the park or to vehicles making deliveries to the parks under permit of the Town Staff.
- (d) It shall be the duty of every person operating an automobile, motorcycle or other vehicle or traffic or burden within the parks to comply with the state, county and municipal traffic laws and with all orders, directions, and regulations of traffic officers, or officially displayed on any post, standard sign or device installed for the regulation of traffic.
- (e) The Town Board shall cause signs to be erected indicating speed limits on roads and drives. Where no such signs are posted the speed shall in no case be greater than ten (10) miles per hour.
- (f) The Town Board shall cause to be erected such other traffic control signs as are necessary or which might become necessary for the proper regulations and safe movement of vehicles and pedestrians.
- (g) Vehicles normally shall be parked in designated parking areas.

(24) Bicycles.

- (a) Riders of bicycles shall comply with the section on Traffic Regulations.
- (b) No person shall ride a bicycle upon the lawns, walks, or foot trails in the parks.
- (c) Bicycle riders shall proceed in the extreme right hand lane of the drives at all times, in a single file only.
- (d) A bicycle shall not be towed by a rope or otherwise, nor shall any rider hold on to any moving vehicle for purpose of being drawn along.

- (e) Children riding bicycles that have wheels less than twenty (20) inches in diameter may use the footpaths.
- (f) Wherever possible, bicycles, shall be parked in places provided for such purpose.

(25) Horseback Riding.

No person shall ride horseback in any park.

19.02 SKATEBOARD AREA RULES ADOPTED (created 2003-007)

- (1) The Skateboard Area shall be open in accordance with the general park rules found at §19.01(6).
- (2) The following items and activities are prohibited within the Skateboard Area, notwithstanding any general park rules which govern the Sports Commons:
 - (a) Smoking
 - (b) Alcohol
 - (c) Glass containers
 - (d) Graffiti
 - (e) Homemade ramps
 - (f) Littering
 - (g) Bicycles
- (3) The provisions of section §19.01 apply to the Skateboard Area at the Town Sports Commons, except for those sections that contradict the specific provisions set forth herein.
- (4) The Park and Recreation Department may enact any other rules or regulations deemed necessary for the safety and well being of the people using the Skateboard Area and to preserve the amenities located there.

PUBLIC WATERS

19.05 APPLICABILITY AND ENFORCEMENT. The provisions of this chapter shall apply to the waters of Pewaukee Lake, within the jurisdiction of the Town of Delafield. The provisions of this chapter shall be enforced by the officers of the Water Safety Patrol Unit under jurisdiction of the Town of Delafield.

19.06 STATE BOATING AND WATER SAFETY LAWS ADOPTED. The statutory provisions describing and defining regulations with respect to water traffic, boats, boating and related water activities in the following enumerated sections of the Wisconsin Statutes, exclusive of any provisions therein relating to the penalties to be imposed or the punishment for violation of such statutes, are hereby adopted and by reference made a part of this chapter as if fully set forth herein. Any act required to be performed or prohibited by the provisions of any statute incorporated by reference herein is required or prohibited by this chapter.

§30.50	Definitions
§30.501	Capacity Plates on Boats
§30.51	Operation of Unnumbered Boats Prohibited
§30.52	Certificate of Number
§30.53	Identification Number to be Displayed on Boat; Certificate to be Carried
§30.54	Transfer of Ownership of Numbered Boat
§30.55	Notice of Abandonment or Destruction of Boat or Change of Address
§30.60	Classification of Motorboats
§30.61	Lighting Equipment
§30.62	Other Equipment
§30.64	Patrol Boats Exempt from Certain Traffic Regulations
§30.65	Traffic Rules
§30.66(1)	Speed Regulations
§30.67	Accidents and Accident Reports
§30.675	Distress Signal Flag

§30.68	Prohibited Operation
§30.69	Water Skiing
§30.70	Skin Diving
§30.71	Boats Equipped with Toilets
§30.79	Municipal Water Safety Patrols

19.07 DEFINITIONS.

- (1) SHORE ZONE. The water area within 200' of any shore.
- (2) SWIMMING ZONE. An authorized area marked by official buoys to designate a swimming area.
- (3) ANCHORAGE, MOORAGE. An area where continuous anchoring or mooring of boats for more than 24 hours is permitted.
- (4) HOUSEBOAT. A boat on which a toilet or food preparation facilities exist and on which persons are living, sleeping or camping.
- (5) PUBLIC LANDING. A marina or landing facility and the adjoining public shoreline under the jurisdiction of the State, county or municipality.
- (6) SEALED OR INOPERATIVE TOILETS OR HEADS. Toilets or heads plugged from the outside of the hull in such a manner that the plug cannot be removed from the inside of the boat.

19.08 SPEED RESTRICTIONS.

- (1) GENERAL LIMITS. No person shall operate a motorboat at a speed in excess of 10 mph between one-half hour after sunset and one-half hour before sunrise on all waters, and no person shall operate a boat at a speed in excess of 50 mph at any time. This provision shall not apply to boats participating in authorized races over a course laid out and plainly marked and adequately patrolled.
- (2) SPECIAL LIMITS. No person shall at any time operate a motorboat in excess of 5 mph within
200' of any shore, swimmer not in a designated swimming area, marked public swimming area, diving flag, canoe, rowboat, sailboat, non-operating motorboat, bridge or public landing or anchorage.

19.09 OPERATION BY MINORS. No person under 12 years of age shall operate or be permitted to operate a motorboat of more than 10 horsepower unless there is present in the boat a person 16 years of age or older. The owner of the boat shall be held to have violated this section if he knowingly permits or suffers any such operation.

19.10 CAPACITY RESTRICTIONS. No person shall operate or loan, rent or permit a boat to leave the place where it is customarily kept for operation on the waters covered by this chapter with more passengers or cargo than a safe load.

19.11 ADDITIONAL TRAFFIC RULES. In addition to the traffic rules in §30.65, Wis. Stats., adopted in §19.06 of this chapter, the following rules shall apply to boats using the waters covered by this chapter.

- (1) RIGHT-OF-WAY AT DOCKS, PIERS AND WHARVES. Boats leaving or departing from a pier, dock or wharf shall have the right-of-way over all other watercraft approaching such dock, pier or wharf.
- (2) RIGHT-OF-WAY OF SAILBOATS. Boats propelled entirely by muscular power shall yield the right-of-way to sailboats, when necessary to avoid risk of collision.
- (3) HOUSEBOATS. Anchoring, drifting or mooring of houseboats is prohibited from midnight to sunrise. However, unoccupied houseboats may be anchored in designated anchorages or moored to shore during this period with written permission of the property owner and where suitable shore sanitary facilities are available for use.

19.12 INTOXICATION AND INTOXICATING LIQUORS. No person shall permit any person who is so intoxicated as to be unable to provide for his own safety or the safety of others, to ride as a passenger in any boat operated by him.

19.13 ANCHORAGES AND STATIONARY OBJECTS.

- (1) RAFTS AND BUOYS. No person shall erect or maintain any raft, ski jump, stationary platform or any other obstacle to navigation more than 200' from the shore at any time unless a permit is obtained from the Chief of the Water Safety Patrol. All rafts and other obstacles described in this section shall be so constructed or anchored as to provide at least 6" of freeboard above the waterline, painted white, and have attached not less than 12" from each corner or projection, a red reflector not less than 3" in diameter. All rafts shall be inscribed with the name and address of the owner.
- (2) DESIGNATION OF ANCHORAGES. The shore zone is designated an anchorage or moorage except in areas of heavy traffic where anchoring or mooring may be prohibited by order of the Chief of the Water Safety Patrol. Anchoring or mooring of a boat other than an emergency craft is prohibited in swimming zones. Anchoring or mooring for more than 24 hours is prohibited elsewhere on the lake.
- (3) PUBLIC LANDINGS. Mooring or anchoring of boats at public landings other than at piers as designated by the controlling governmental agency is prohibited.
- (4) MOORING LIGHTS REQUIRED. No person shall moor or anchor any unoccupied boat, raft, buoy or other floating object more than 200' from the shoreline between sunset and sunrise unless a permit has been obtained from the Chief of the Water Safety Patrol and there is prominently displayed thereon a white light of sufficient size and brightness to be visible from any direction for a distance of 1500' on a dark night with clear atmosphere except as provided in par. (e). This provision shall not apply to the shore zone or objects moored or anchored in designated anchorages.
- (5) BUOYS MARKING RACE COURSES. Such buoys may be set without lighting provided that a permit has been obtained from the Chief of Water Safety Patrol and that they are a bright color and that they are made of materials which will not damage a boat if struck.
- (6) MOORING BUOYS. All mooring buoys placed on the water of the lake must comply with regulations of the Department of Natural Resources. Special permits shall be issued by the Chief of Water Safety Patrol for temporary nonconforming buoys necessary during regattas and sporting events.

19.14 SAFE OPERATION REQUIRED. No person shall operate, direct or handle a boat in such manner as to unreasonably annoy, unnecessarily frighten or endanger the occupants of his or other boats.

19.15 SWIMMING REGULATIONS.

- (1) SWIMMING FROM BOAT. No person shall swim from any unmanned boat unless such boat is anchored.
- (2) DISTANCE FROM SHORE. No person shall swim more than 200' from the shore unless in a designated swimming zone or when accompanied by a competent person in a boat.
- (3) HOURS LIMITED. No person shall swim more than 200' from the shoreline between sunset and sunrise.

19.16 WATER SKIING.

- (1) PERSONS IN A BOAT. No person shall operate a boat for the purpose of towing a person on water skis, aquaplane or similar device or permit himself to be towed for such purpose unless there are 2 or more competent persons 12 years of age or over in such a boat.
- (2) HOURS. No person shall operate a boat for the purpose of towing a water skier, aquaplane or similar device or engage in water skiing between sunset and 10 a.m.
- (3) DISTANCE FROM SHORE, LANDINGS AND BEACHES. No person shall operate a boat for the purpose of towing a water skier, and no water skier shall ski within 200' of the shoreline (except that take-offs of skiers perpendicular to the shoreline from piers are permitted, provided boats adhere to the speed limits for shore zones), or the outside limits of any swimming zone, any other watercraft, any swimmer not in a designated swimming area, any diving flag, or within 200' of any public boat landing.
- (4) LIFE PRESERVER OR BELT. No person shall engage in water skiing, aquaplaning or similar activity unless he is wearing a life belt or preserver.
- (5) LENGTH OF TOW. The maximum length of any tow rope for towing a person water skiing, aquaplaning or similar activity shall be 75'.

- (6) EXCEPTIONS. The limitations of this section shall not apply to participants in ski meets or exhibitions authorized and conducted as provided in §19.18.

19.17 LITTERING WATERS PROHIBITED. No person shall deposit, place or throw from any boat, raft, pier, platform or similar structure any cans, paper, debris, refuse, garbage, solid or liquid waste into the water or onto the ice.

19.18 RACES, REGATTAS, SPORTING EVENTS AND EXHIBITIONS.

- (1) PERMITS REQUIRED. No person shall direct or participate in any boat race, regatta, water ski meet or other water sporting event or exhibition unless such event has been authorized and a permit issued therefor by the Chief of the Water Safety Patrol.
- (2) PERMIT. A permit issued under this section shall specify the course or area of water to be used by participants in such event and the permittee shall be required to place markers, flags or buoys approved by the Chief of Water Safety Patrol designating the specified area. Permits shall be issued only if, in the opinion of the Chief, the proposed use of the water can be carried out safely and without danger to or substantial obstruction of other watercraft or persons using the lake. Permits shall be valid only for the hours and areas specified thereon.
- (3) RIGHT-OF-WAY OF PARTICIPANTS. Boats and participants in any such permitted event shall have the right-of-way on the marked area and no other person shall obstruct such area during the race of event or interfere therewith.

19.19 MARKER AND NAVIGATION AIDS, POSTING OF.

- (1) DUTY OF CHIEF. The Chief of the Water Safety Patrol unit shall place authorized markers, navigation aids and signs in such water areas as shall be appropriate to advise the public of the provisions of this chapter and post and maintain a copy of this chapter at all public access points within the jurisdiction of the Village of Pewaukee, the Town of Delafield and Pewaukee and the County of Waukesha.
- (2) STANDARD MARKERS. All markers placed by the Chief of the Water Safety Patrol or any other person upon the waters of the lake shall comply with the regulations of the Department of Natural Resources.
- (3) INTERFERENCE WITH MARKERS PROHIBITED. No person shall, without authority, remove, damage, destroy, moor or attach any watercraft to any buoy, beacon or marker placed in the waters of the lake by the authority of the United States, State, County, Town, village or by any private person pursuant to the provisions of this chapter.

19.20 DRIVING AUTOMOBILES OR OTHER MOTOR DRIVEN VEHICLES ON THE ICE.

- (1) SAFE OPERATION. No person shall use or operate any automobile or other motor driven vehicle in any manner so as to endanger persons engaged in skating or in any other winter sport or recreational activity being engaged in upon the ice and no person shall, while using or operating any automobile or motor driven vehicle, tow, pull or push any person or persons on skates, sleds, skis, toboggan or device, or thing of any kind, designated or utilized to carry or support one or more persons.
- (2) SPEED. No person shall use or operate any automobile or other motor driven vehicle at a speed in excess of 10 mph.
- (3) PROPELLER DRIVEN SURFACE CRAFT PROHIBITED. No person shall operate any propeller driven surface vehicle, device or thing, whether or not designated for the transporting of a person or persons.
- (4) HOURS. No person shall use or operate any automobile or motor driven vehicle on the ice after 8:30 p.m.
- (5) DEFINITIONS.
- (a) AUTOMOBILE. All motor vehicles permitted to be operated on the highways in Wisconsin.
- (b) MOTOR DRIVEN VEHICLE. Any kind of device or thing designated or utilized for propulsion or movement upon the ice using a motor, whether of internal combustion

design or not.

- (6) RISK AND LIABILITY. All traffic on the icebound water of Pewaukee Lake shall be at the risk of the traveler as set forth in §30.81(3), Wis. Stats., and nothing in this chapter shall be construed as rendering the enacting authority liable for any accident to those engaged in permitted traffic while this chapter is in effect.

19.21 PIERHEAD LINE. Pursuant to §30.11, Wis. Stats., a pierhead line is established within 100' of the shoreline of Pewaukee Lake. The line applies to all lands regardless of zoning classification and is shown on an official map on file in the office of the Town Clerk. For purposes of this section, "shoreline" is defined as the intersection of the land surfaces abutting the lake with the average annual high water elevation. Exceptions to the line shall require the approval of the Town Board and the Department of Natural Resources.

PENALTIES

19.25 PENALTIES AND DEPOSITS.

- (1) STATE STATUTES. Any person violating the provisions of any statute adopted by reference in §19.05 of this chapter shall be subject to a forfeiture not to exceed the maximum forfeiture allowed under the comparable State offense, including any variations or increases for second and subsequent offenses, plus costs and assessments where applicable.
- (2) LOCAL PROVISIONS. Any person violating any other provision of this chapter shall be subject to a penalty as provided in §25.04 of this General Code of Ordinances.
- (3) MONEY DEPOSITS. Any officer arresting a person for violation of a provision of this chapter who is unable to bring the person arrested before the court without unnecessary delay shall permit such person to make a money deposit as provided in §30.76, Wis. Stats. Such deposit shall be made to the Law Enforcement Officer or other person designated for collections.

21.01 SUMMER REGULATIONS.

1. INTENT.

The intent of this Ordinance is to provide safe and healthful conditions for the enjoyment of aquatic recreation consistent with public rights and interest and the capability of the water resource.

2. APPLICABILITY AND ENFORCEMENT. (rep. & rec. 2010-002)

The provisions of this Ordinance shall apply to the water of Pewaukee Lake within the jurisdiction of the Town of Delafield, the Village of Pewaukee, and the City of Pewaukee. The provisions of this Ordinance and Wisconsin statutes, when applicable, shall be enforced by the officers of the Water Safety Patrol Unit of the joint jurisdiction of the Town of Delafield, the Village of Pewaukee and the City of Pewaukee, under the direction of the Village of Pewaukee Police Chief as the Chief of the Pewaukee Lake Water Safety Patrol, the Waukesha County Sheriff's Department and the Wisconsin Department of Natural Resources.

3. STATE OFFENSES ADOPTED. (Cr. #05-23, rep. & rec. 2006-009 T, 06-26 City & 2006-28 V, rep. & rec. 2010-002)

a. Whenever an incident within the provisions of current or future Chapters 939 to 948, §§ 86.06, 86.192, 134.66, 254.92, 961.472, and 961.571-961.577, Stats., occurs upon the water or ice of Pewaukee Lake, below the ordinary high water mark as that is defined by NR§322.03(8), Wis. Adm. Code, the Village of Pewaukee Police Department shall investigate and provide police services regardless of the jurisdiction of the Town or City over that portion of the Lake where the incident occurred.

b. All municipal citation tickets shall be returnable to the Village of Pewaukee Municipal Court, regardless of the jurisdiction of the municipality where the incident occurs on Pewaukee Lake.

4. STATE WATERCRAFTING AND WATER SAFETY LAWS ADOPTED.

The statutory provisions describing and defining regulations with respect to water traffic, boats, boating and related water activities in Wisconsin Statutes 30.50 through 30.71 inclusive and as amended from time to time, exclusive of any provisions therein relating to the penalties to be imposed or the punishment for violation of said statutes, are hereby adopted and by reference made a part of this ordinance as if fully set forth herein. Any act required to be performed or prohibited by the provisions of any statute incorporated herein by reference is required or prohibited by this ordinance.

5. DEFINITIONS.

a. "Designated Mooring Area": An area of water established and marked as a mooring area by lawful authority or with authorization from such authority pursuant to Section 30.773, Wis. Stats.

b. "Navigation Lane": An area designated by authorized aids to navigation

c. "Personal Flotation Devices":

- (1) Type I - life preserver (jacket type).
 - (2) Type II - buoyant vest (horse collar type).
 - (3) Type III - special purpose type (ski-vests, fisherman's vests, or float coats).
 - (4) Type IV - buoyant cushions and ring buoys (throwable devices not designed to be worn).
 - (5) Type V – Coast Guard-approved suits when worn
- d. "Sensitive Environmental Areas: Waters of Pewaukee Lake or flowing into Pewaukee Lake designated and posted as sensitive environmental areas by the three authorizing communities based upon recommendations of the Wisconsin Department of Natural Resources with use restrictions posted by the communities based upon recommendations of the DNR
 - e. "Public Access": Any access to the water by means of authorized public property.
 - f. "Shore Zone": All surface water within two hundred (200) feet of any shore
 - g. "Slow-No-Wake": The slowest possible speed so as to maintain steerage
 - h. "Swimming Zone": An authorized area marked by regulatory markers to designate a swimming area.
6. SPEED RESTRICTIONS.
- a. Speed Limit.
Unless limited otherwise herein, no person shall operate a watercraft at a speed in excess of 50 mph
 - b. General Limits.
No person shall operate a motor watercraft at a speed in excess of 10 mph between the published time of sunset and one hour after sunrise on all waters of Pewaukee Lake, provided that this provision shall not apply to watercraft participating in permitted races over a course laid out plainly marked and adequately patrolled.
 - c. Special Limits.
No person shall at any time operate a watercraft at a speed in excess of slow-no-wake within two hundred (200) feet of any shore, swimmer not in a designated swimming area, marked public swimming area, diving flag, canoe, rowboat, sailboat, non-operating motor watercraft, bridge, public access, or designated anchorage or mooring area or sensitive environmental area.
 - d. Weekend Limits.
No person shall operate a watercraft at a speed in excess of 40 mph from twelve o'clock noon to the published time of sunset on Saturdays, Sundays

and the following holidays: Labor Day, Memorial Day, 4th of July and any intervening day celebrated as part of the holiday.

7. CAPACITY RESTRICTIONS.

No person shall operate or loan, rent or permit a watercraft to leave the place where it is customarily kept for operation on the waters with more passengers or cargo than a safe load.

8. ADDITIONAL TRAFFIC RULES.

In addition to the traffic rules adopted herein, the following rules shall apply to watercraft using the waters of Pewaukee Lake:

a. Houseboats.

Unless specifically permitted by the Water Safety Patrol, watercraft with sanitary facilities, living or camping facilities are prohibited.

b. Tie Ups of Watercraft.

Unless specifically permitted by the Water Safety Patrol, prolonged anchoring, mooring or drifting of nested watercrafts for more than 2 hours is hereby declared to be in conflict with the intent and purpose of the ordinance and is hereby prohibited.

9. MOORINGS AND STATIONARY OBJECTS.

a. Moored and anchored objects.

No person shall erect or maintain any raft, ski jump, stationary platform, or any other obstacles to navigation more than two hundred (200) feet from the shore at any time unless a permit is obtained from the Chief of the Water Safety Patrol. All rafts and/or obstacles herein described shall be so constructed or anchored so that it has at least six (6) inches of free board above the water line, to the extent possible painted white, and has attached thereto not less than twelve (12) inches from each side of each corner or projection a red reflector not less than three (3) inches in diameter. All such objects shall be inscribed with the name and address of the owner and marked pursuant to Sections 30.12 and 30.13, Wis. Stats.

b. Designated Moorings.

The shore zone is designated a mooring zone except in areas of heavy traffic where mooring may be prohibited by order of the Chief of the Water Safety Patrol. Unless permitted by the chief of the Water Safety Patrol, mooring for more than twenty-four (24) hours is prohibited other than by riparian owners or persons exercising riparian rights and as provided by the local community. Mooring of a watercraft other than an emergency craft is prohibited in swimming zones. Mooring for more than twenty-four (24) hours is prohibited elsewhere on the lake.

c. Public Accesses.

Mooring or anchoring of watercraft at public accesses other than at piers, as designated by the controlling governmental agency, is prohibited.

- d. **Mooring Lights Required.**
No person shall moor or anchor any unoccupied watercraft, raft, buoy, or other floating object more than two hundred (200) feet from the shoreline between sunset and sunrise unless a permit has been obtained from the Chief of the Water Safety Patrol and there is prominently displayed thereon a white light of sufficient size and brightness to be visible from any direction for a distance of two (2) miles on a dark night with a clear atmosphere. This provision shall not apply to the shore zone, objects moored in designated mooring areas or buoys marking race courses as provided herein.
- e. **Buoys Marking Race Courses.**
Such buoys may be set without lighting provided that a permit has been obtained from the Chief of the Water Safety Patrol and that they are a bright color and are made of materials which will not damage a watercraft if struck.
- f. **Mooring Buoys.**
All mooring buoys placed on the waters of the lake must comply with regulations of the Department of Natural Resources. Special permits shall be issued by the Chief of the Water Safety Patrol for temporary non-conforming buoys necessary during regattas and sporting events.

10. SAFE OPERATION REQUIRED.

- a. No person shall operate, direct, or handle a watercraft in such a careless manner as to endanger the occupants of their or other watercrafts.
- b. No watercraft shall be operated in a repetitive circular, figure eight or other similar pattern in an area less than 300' in diameter and in a manner that creates a wake.
- c. In addition to the provisions of Section 30.62, Wis. Stats., no person shall modify, tamper or alter any watercraft or the original equipment of any watercraft which increases the standard operating decibel level of said watercraft in Violation of Section 30.62, Wis. Stats.
- d. Unless specifically permitted by the Lake Patrol, no person shall operate, direct, or handle a motorized watercraft in a racing manner.

11. SWIMMING REGULATIONS.

- a. **Unmanned Watercraft.**
No person shall swim from any unmanned watercraft unless such watercraft is anchored.
- b. **Distance from shore.**
No person shall swim more than two hundred (200) feet from the shore unless in a designated swimming zone or when accompanied by a competent person in a watercraft.
- c. **Hour Limitations.**

No person shall swim more than two hundred (200) feet from the shoreline between sunset and one hour after sunrise.

12. WATER SKIING. (rep. and rec. 2010-002)

- a. Distance From Shore, Public Accesses, And Beaches.
No person shall operate a watercraft for the purpose of towing a person on water skis, aquaplane, glider, kite, parachute, or similar device or permit himself to be towed for such purpose within two hundred (200) feet of the shoreline, outside limits of any swimming zone, other water craft, any swimmer not in designated swimming area, diving flag, of any public access, of any designated anchorage or mooring area of any buoyed/marked race course.
- b. Personal Flotation Device.
No person shall operate a watercraft for the purpose of towing a person on water skis, aquaplane, glider, kite, parachute, or similar device or permit himself to be towed for such purpose unless the person being towed is wearing a type I, II, III or V personal flotation device.
- c. Length of Tow.
The maximum length of any tow rope for towing a person water skiing, aquaplaning, gliding, kite flying, parachuting, or similar device shall be seventy-five (75) feet.
- d. Exceptions.
The limitations of this Section shall not apply to participants in ski meets or exhibitions authorized and conducted as provided in subsection (13).

13. RACES, REGATTAS, SPORTING EVENTS AND EXHIBITIONS.

- a. Permit Required.
No person shall direct or participate in any watercraft race, regatta, water ski meet, or other water sporting event or exhibition unless such event has been authorized and a permit issued therefore by the Chief of the Water Safety Patrol.
- b. Permit.
A permit issued under this Section shall specify the course or area of water to be used by participants in such events and the permittee shall be required to place markers, flags, or buoys approved by the Chief of the Water Safety Patrol designating the specific area or the general race course. Permits shall be issued only if in the opinion of the Chief the proposed use of the water can be carried out safely and without danger to or substantial obstruction of other watercrafts or persons using the lake. Permits shall be valid only for the hours and areas specified thereon.
- c. Right-Of-Way Of Participants.
Watercrafts and participants in any such permitted event shall have the right-of-way on the marked area and no other person shall obstruct such area during the race or event or interfere therewith.

14. MARKER AND NAVIGATION AIDS, POSTING ORDINANCE.

a. Duty of Chief.

The Chief of the Water Safety Patrol unit is authorized and directed to place authorized markers, navigation aids, and signs in such water areas as shall be appropriate to advise the public of the provisions of this Ordinance and to post and maintain a copy of this Ordinance at all public access points within the jurisdiction of the Village of Pewaukee, the Town of Delafield, City of Pewaukee, and the County of Waukesha

b. Standard Markers.

All markers placed by the Chief of the Water Safety Patrol or any other person upon the waters of the lake shall comply with the regulations of the Department of Natural Resources.

c. Interference With Markers Prohibited.

No person shall without authority remove, damage, or destroy or moor or attach any raft/watercraft to any buoy, beacon, or marker placed in the waters of the lake by the authority of the United States, state, county, town, village, city or by any private person pursuant to the provisions of this Ordinance.

15. EMERGENCIES. (rep. and rec. 2008-005, rep. and rec. 2010-002)

a. When the elevation of the lake is in excess of 853.4 above sea level as measured at the Village of Pewaukee dam, no person shall operate a watercraft in excess of slow-no-wake in any area of the lake.

b. The Chief of the Water Safety Patrol is authorized to impose additional speed limit or other additional special emergency restrictions regarding the use of Pewaukee Lake when the water exceeds the established water level in subsection (a). Any order for additional special emergency restrictions shall be in effect for no longer than 48 hours, unless extended in conformity with the procedure stated herein. In the event the Chief believes that additional special emergency restrictions should be in effect for a period longer than 48 hours, the Mayor, Village President and Town Chairman or their designees may approve such additional time after consultation with and recommendations of the Chief of the Water Safety Patrol, Village Director of Public Works, the City's Director of Public Works, and the Lake Pewaukee Sanitary District Superintendent. Upon written approval of a majority of the parties, the additional special emergency restrictions shall be implemented upon the terms approved by the parties.

16. PENALTIES AND DEPOSITS. (rep. and rec. 2010-002)

Any officer of the Pewaukee Lake Water Safety Patrol has authority to issue citations and when warranted to arrest a person for violation of this Ordinance or applicable Wisconsin statutes and shall either permit such person to make a money deposit as provided in the approved bail/deposit schedule pursuant to Section 30.80, Wis. Stats., or bring the person arrested before the Municipal Court for the Village of Pewaukee or Waukesha County Circuit Court as the case

may be without unnecessary delay. Deposits may be made by mail or delivery to locations designed by the Chief of the Water Safety Patrol.

17. PERMITS.

Permits referred to in this ordinance shall be issued by the Pewaukee Lake Water Safety Patrol. There shall be no permit fee for single activities. There shall be one \$20.00 permit fee for recurrent and like activities including supporting activities, conducted throughout the boating season by a person or entity.

18. POSTING.

As provided in Section 30.77 of Wisconsin Statutes posting of this Ordinance at public access point is required.

21.02 WINTER REGULATIONS.

1. INTENT.

It is the intent of this subsection to provide the basic guidelines and parameters for the safe and healthful use of and conduct of activities on Pewaukee Lake during periods when the lake is frozen or partially frozen, subject to the grant of authority under §30.81, Wis. Stats.

2. APPLICABILITY AND ENFORCEMENT. (cr. #05-23, rep. and rec. 06-004, rep. and rec. 2010-002)

The provisions of the Pewaukee Lake Winter Regulations and previously enacted Winter Regulations, not inconsistent with this ordinance, shall apply to the icebound water of Pewaukee Lake, within the jurisdiction of the Town of Delafield, City of Pewaukee or Village of Pewaukee. The provisions of this ordinance and Wisconsin Statutes, when applicable, shall be enforced by the officers of the Water Safety Patrol Unit of the joint jurisdiction of the Town of Delafield, City of Pewaukee and Village of Pewaukee, under the direction of the Village of Pewaukee Police Chief as the Chief of the Pewaukee Lake Water Safety Patrol; the Waukesha County Sheriff's Department and the Wisconsin Department of Natural Resources.

3. STATE OFFENSES ADOPTED. (Cr. #05-23, rep. and rec. 06-004, rep. and rec. 2010-002)

(a) Whenever an incident within the provisions of current or future Chapters 939 to 948, §§ 86.06, 86.192, 134.66, 254.92, 961.472, and 961.571-961.577, Stats., occurs upon the water or ice of Pewaukee Lake, below the ordinary high water mark as that is defined by NR§322.03(8), Wis. Adm. Code, the Village of Pewaukee Police Department shall investigate and provide police services regardless of the jurisdiction of the Town, City or Village over that portion of the lake where the incident occurred.

(b) All municipal citation tickets shall be returnable to the Village of Pewaukee Municipal Court, regardless of the jurisdiction of the municipality where the incident occurs on Pewaukee Lake.

4. DEFINITIONS OF SELECTED WORDS AND TERMS

Activities and Events. Shall include, but not be limited to, sporting events, fisheries, ice boat races, exhibitions and vehicle races.

ATV; All-Terrain Vehicle. Any engine driven device as defined in §340.01(2g), Wis. Stats., and any other multi-axle, 2, 3 and 4 wheeled vehicles, or combination wheel and track (runner) vehicles not otherwise defined herein, powered by a small motor(s) or fan and designed to be operated on snow, ice, grass, dirt, gravel, sand and wetland whether required to be licensed by State law.

Automobile. Any motor vehicle as defined by §340.01(4), Wis. Stats., and including mini-vans.

Ice Boat. A sailboat-like structure with runners or wheels intended to be wind powered on a solid surface.

Ice Shanties. Those structures parked or erected on the ice for use as warming buildings and ice fishing shelters and not including RVs, trucks and automobiles.

Motor Truck. Any motor vehicle as defined by §340.01 (34) and including pickup trucks, regular size vans and combination automobile/trucks.

Motorcycle. Any motorized vehicles as defined by §340.01 (32) and including motorized bicycles and scooters.

RV; Recreational Vehicle. Means any Recreational Vehicle as defined by §340.01(29), (6m) and (33m), Wis. Stats., designed or constructed to operate either under their own power or towed and designed to be used for temporary habitation.

Snowmobile. Means any engine drive vehicle as defined in §340.01(58a), Wis. Stats.

Vehicles. Includes all the above vehicles plus any other vehicle powered by motor or wind.

5. DRIVING AUTOMOBILES OR OTHER MOTOR DRIVEN VEHICLES ON THE ICE. (created 06-004)

Except as otherwise specifically provided in the Pewaukee Lake Winter Regulations, the current and future statutory provisions of Chapters 110, 340 to 348 and 350, Stats., and Wis. Adm. Code Trans. 305 describing and defining regulations with respect to vehicles and traffic, exclusive of any provisions relating to penalties to be imposed and exclusive of any regulation for which the statutory penalty is a term of imprisonment, and exclusive of rules pertaining to federal motor carrier safety standards, are adopted and by reference made part of the Pewaukee Lake Winter Regulations as if fully set forth herein. Any act required to be performed or prohibited by any current or future statute

incorporated herein by reference is required or prohibited by this Ordinance, unless conflicting with this Winter Regulation.

6. DESIGNATION OF PEWAUKEE LAKE ZONES.

There shall be designated 2 zones on Pewaukee Lake as follows:

(a) Shore Zone . All area of the lake between the lakeshore and a point 500' distance from the lakeshore.

(b) Lake Zone . All area of the lake more than 500' from each and all shores of Pewaukee Lake.

(c) Regulation Within the Shore Zone .

1. Maximum Speed. Maximum speed limit within the shore zone shall be 10 mph for all vehicles.

2. Activities and Events. Activities and events within the shore zone are limited to those requiring no motor or wind powered vehicle.

3. Parking. All vehicles, except ice boats, are prohibited from parking within the shore zone between 1:30 a.m. and dawn. Ice boats shall be securely tethered at a dock or at the shore and outside of traveled lanes.

(d) Regulation Within the Lake Zone.

1. Speed Limit . Maximum speed limit within the lake zone shall be as follows:

a. Ice boats. No ice boat shall be operated at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing.

b. Snowmobiles. 50 mph in daylight and 25 mph at night.

c. ATVs. 35 mph in daylight and 25 mph at night.

d. Other vehicles. All other vehicles including, but not limited to, automobiles, motor trucks, RVs and motorcycles, other than ice boats, snowmobiles or ATVs - 20 mph.

e. Maximum. No vehicle may be operated anywhere on Pewaukee Lake over the speed of 10 mph within 200' of an ice shanty, parked vehicle or person.

2. Activities and Events. Activities and events within the lake zone featuring motorized vehicles of any type are prohibited.

3. Parking. Parking of all vehicles is prohibited within the lake zone between the hours of 1:30 a.m. and dawn. In addition, no vehicle may be parked unattended within the lake zone.

7. General Regulations of Vehicle Operation in Both Shore and Lake Zones. (rep. and rec. 2010-002)

- (a) No vehicle may be operated anywhere on Pewaukee Lake between the hours of 1:30 a.m. and dawn.
 - (b) All vehicles shall avoid and may not operate on cleared skating areas and in areas where prohibited and/or events are being held.
 - (c) No person shall use or operate any vehicle in any manner so as to endanger persons on the ice.
 - (d) No person while operating a vehicle shall push, pull or tow any person on skates or skis.
 - (e) No person while operating a vehicle shall push, pull or tow any device whether occupied or unoccupied unless such device is attached by a rigid tow bar to the frame of the towing vehicle. Such devices shall include, but not be limited to, sleds, toboggans and inner tubes.
 - (f) No person shall operate any motorized vehicle in an erratic, free wheeling manner, all maneuvers including, but not limited to, "wheelies," "donuts," "skating" the vehicle, "spinning out" and wheel spinning are specifically prohibited on Pewaukee Lake.
 - (g) Excluding municipal and emergency personnel, no person shall operate any propeller or fan driven surface vehicle on Pewaukee Lake.
 - (h) No person shall operate any internal combustion powered vehicle which is not properly equipped with a muffler and shall, generally, operate in a manner so as not to create excessive noise.
 - (i) No person shall operate any motorized vehicle during the period beginning 1/2 hour after sunset and ending at dawn, unless equipped with and using adequate operating headlights and taillights.
 - (j) No person shall throw, place or permit to remain on or below the surface of Pewaukee Lake any glass, earth, stones, grass, brush, leaves, petroleum product, garbage, excrement, refuse, waste, filth or other litter.
8. Ice Shanties. (rep. and rec. 2010-002)
- (a) No ice shanty may be placed or left on the ice after March 5 or before December 1, unless a shorter period is ordered by the Chief of the Water Safety Patrol. Any ice shanty placed or left in violation of this regulation shall be impounded and the owner fined as stipulated herein.
 - (b) Ice shanties shall at all times display a red light reflective material of at least 9 sq. in. in size on all sides approximately 3 1/2 feet from the bottom of the shanty and visible from 100' away.
 - (c) Ice shanties or shelters left on the lake overnight shall display the name, address and phone number of the owner on or near the door or entryway on the exterior of the shanty.

- (d) Ice shanties shall be constructed of materials which will not be destroyed or quickly deteriorated by wind and rain.
9. Ice Cutting. (rep. and rec. 2010-002)
- (a) Holes cut, augured or chiseled in the ice for purposes of fishing shall be no larger than 12" in the largest dimension.
 - (b) Holes cut, augured or chiseled in the ice for purposes of diving may be larger than 12" in the largest dimension, but such holes must be clearly marked with light reflective markers and when not in use, the ice replaced in the hole and markers placed until the hole freezes solid and is not a hazard.
10. Winter Lake Patrol Designated. (rep. and rec. 06-004, rep. and rec. 2010-002)

Any officer of the Pewaukee Lake Water Safety Patrol has authority to issue citations and, when warranted, to arrest a person for violation of the Pewaukee Lake Winter Regulations or applicable Wisconsin Statutes and shall either permit such person to make a money deposit as provided in an approved bail/deposit schedule per §30.80, Stats., or bring the person arrested before the Village of Pewaukee Municipal Court or Waukesha County Circuit Court, as the case may be, without unnecessary delay. Deposits may be made by mail or delivery to locations designated by the Chief of the Water Safety Patrol. All municipal citation tickets shall be returnable to the Village of Pewaukee Municipal Court, regardless of the jurisdiction of the municipality where the incident occurs on Pewaukee Lake.

11. Special Events, Risks and Liabilities. (rep. and rec. 06-004)

No specific sporting event, fisheree, iceboat race or exhibition shall be conducted on Pewaukee Lake unless such event has been authorized and a permit issued in writing by the Chief of the Water Safety Patrol for such activity or event. There is no cost for a permit for a one-time only event, but for any activity or event reoccurring through the ice season, there shall be a one-time \$20.00 permit fee. The permit application shall specify the course or area of the lake to be used by participants in such events and the permittee shall be required to place markers, flags or other similar devices approved by the Chief of the Water Safety Patrol to designate the specific event area or course. Permits shall only be issued if, in the opinion of the Chief, the proposed use of the ice can be carried out safely and without danger to or substantial obstruction of other persons and craft using the ice. Permits shall be valid only for the hours and areas specified therein.

PENALTIES

21.03 PENALTIES AND DEPOSITS.

- (1) STATE STATUTES. Any person violating the provisions of any statute adopted by reference in this chapter shall be subject to a forfeiture not to exceed the maximum forfeiture allowed under the comparable State offense, including any variations or increases for second and subsequent offenses, plus costs and assessments where applicable.

- (2) LOCAL PROVISIONS. Any person violating any other provision of this chapter shall be subject to a penalty as provided in §25.04 of this General Code of Ordinances.
- (3) MONEY DEPOSITS. Any officer arresting a person for violation of a provision of this chapter who is unable to bring the person arrested before the court without unnecessary delay shall permit such person to make a money deposit as provided in §30.76, Wis. Stats. Such deposit shall be made to the Law Enforcement Officer or other person designated for collections.

23.01 **TITLE.** This chapter shall be known, and may be cited, as the "Town of Delafield, Wisconsin, Cable TV Franchise Ordinance".

23.02 **PURPOSE.** It is the purpose of this chapter to grant Ingersoll Cable Corp., a nonexclusive franchise to construct, maintain and operate a CATV system in the Town and to set forth the rights and obligations of the Town and the Grantee accompanying such grant.

23.03 **DEFINITIONS.** For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the text, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

CABLE COMMUNICATIONS SYSTEM. See CABLE SYSTEM.

CABLE SYSTEM. A system located within the Town only, of antennas, coaxial cables, wires, wave guides or other conductors, electronic equipment or facilities designed, constructed or used for the production of television signals, interception and reception of television or radio signals directly or indirectly off the air, and the distribution or transmission of such signals and other communications services by means of cable or similar devices to subscribers. (See also GRANTEE'S SYSTEM.)

CATV SYSTEM. (See CABLE SYSTEM and GRANTEE'S SYSTEM.)

CHANNELS. A group of frequencies in the electromagnetic spectrum capable of carrying an audiodate or an audiovisual television signal. Each channel is a block of frequencies containing 6 Milz bandwidth.

CONVERTER. An electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber to view all signals delivered at designated dial locations.

FCC. The Federal Communications Commission.

FRANCHISE. The nonexclusive right, privilege and authority granted by the chapter to construct, maintain and operate through the use of public streets of the Town.

GRANTEE. Ingersoll Cable Corp., a wholly owned subsidiary of Ingersoll Industries, Inc.

GRANTEE'S SYSTEM. The CATV system constructed or operated by a Grantee pursuant to franchise granted hereunder.

MONITOR. To observe a one-way or 2-way communications signal without the expressed prior consent of the subscriber receiving or sending such communication signal, whether such signal is observed by visual or electronic means, for any purpose whatsoever.

PERSON. Any person, firm, partnership, association, corporation, company or organization of any kind.

SERVICE, ADDITIONAL. Service provided by the Grantee other than a basic service.

SERVICE, BASIC. The simultaneous delivery by the Grantee to television receivers of those broadcast and nonbroadcast television channels.

STREET. Any street, alley or other public right-of-way in the Town.

SUBSCRIBER. Any person or entity receiving, for any purpose, the cable service of the Grantee.

SYSTEM. See GRANTEE'S SYSTEM.

TOWN. The Town of Delafield, Wisconsin, or any duly appointed designee thereof, including, but not limited to, the Town Board.

TOWN BOARD. The present governing body of the Town or any successors to the legislative powers of such body, or any duly appointed designee thereof.

23.04 USE OF TOWN STREETS. (1) GRANT OF AUTHORITY. (a) There is hereby granted by the Town the nonexclusive right, privilege and franchise to construct, operate and maintain a CATV system in the streets of the Town for a period of 25 yrs., subject to the rights, obligations, conditions and restrictions as hereinafter provided.

(b) The right to use and occupy such streets for the purpose herein set forth shall not be exclusive and the Town reserves the right to grant a similar use of such streets to any person at any time during the period of this franchise.

(2) EXPIRATION OF THE GRANT. (a) Two years prior to the expiration of the franchise granted hereunder, the Town and Grantee shall meet to review the development and operation of the Grantee. Within 60 days thereof, the Town shall extend to the Grantee an option to renew this franchise upon the same conditions as stated herein.

(b) If the Town agrees that the Grantee has substantially complied with the conditions of this chapter, the Grantee shall extend the franchise for an additional period of 25 yrs.

(c) If the Town determines that the Grantee has not substantially complied, the Grantee may submit such decision to arbitration within 60 days pursuant to rules and conditions of the Wisconsin Arbitration Act, Ch. 788, Wis. Stats. Such decision shall be binding upon both parties.

(3) CONDITIONS REGARDING STREET USE. (a) All transmission and distribution structures, lines and equipment erected by the Grantee within the Town shall be located so as not to interfere with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of such streets, alleys or public ways and places, and not to interfere with existing public utility installations. All installations shall be underground in those areas of the Town where either of the public utilities providing telephone or electric service are underground at the time of installation. The Grantee shall install its cable to conform with the National Electric Safety Code. In areas where both telephone and electric distribution facilities are above ground at the time of installation, the Grantee may install its facilities above ground, but in such case the Grantee, to the maximum extent possible and subject to approval by the affected public utility, shall place its facilities on the poles of such public utilities. If, subsequently, such telephone or electric utility facilities go underground, the facilities of the Grantee shall go underground simultaneously. The use by the Grantee of any facilities and the conditions of such uses shall be determined by negotiations between the Grantee and such utility. Installation of cable shall be subject to the approval of the Town Engineer.

(b) In case of any disturbance of pavement, sidewalk, driveway, sod or other surfacing, the Grantee shall, at its own expense, and in the manner provided by the Town, replace and restore all paving, sidewalk, driveway or other surface of any street, alley, parkway or private property disturbed.

(c) The Grantee shall wire the entire Town and provide service to all residents who desire service.

(d) If at any time during the period of the franchise the Town shall lawfully elect to alter or change the grade or location of any street, alley or other public way, the Grantee shall, upon reasonable notice by the Town, remove, relay and relocate its poles, wires, cables and underground fixtures at its own expense, and in each instance comply with the requirements of the Town.

(e) The Grantee shall be prohibited from placing its facilities where they would interfere with any gas, electric or telephone facilities, water hydrant or other utility in place at the time of Grantee's installation, or in violation of any applicable safety statutes, ordinances or administrative regulation.

(f) The Grantee shall, on request of any person holding a moving permit issued by the Town, temporarily move its wires or fixtures to permit the moving of buildings, the expense of such temporary removal to be paid by the persons requesting the same, and the Grantee shall be given not less than 48 hour's advance notice to arrange such temporary changes.

(g) The Grantee shall have the authority to trim any trees upon and overhanging the streets, alleys, sidewalks and public places of the Town so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the Town, such trimming may be done by it or under its supervision and direction, at the expense and liability of the Grantee.

(h) Following the Grantee's commencement of service through and over its CATV system, the Grantee, upon request of the Town Board, shall, following a public hearing, promptly remove from the Town streets where its properties are located, all or any of the facilities so located when one or more of the following enumerated conditions occur:

1. The Grantee ceases to provide a substantial amount of the service required in this chapter for a continuous period of 6 mos.
2. The Grantee fails to construct such system as provided herein.
3. The franchise expires, or is revoked pursuant to notice, as provided herein.

(i) Provided that the Grantee shall be entitled to receive notices in writing from the Town delivered to the local office of the Grantee setting forth one or more of the occurrences hereinabove enumerated.

(j) The Grantee may be required by the Town to permit joint use of its property and appurtenances located in the streets, alleys or other public ways of the Town, by other utilities insofar as such joint use may be reasonably practicable and upon payment of reasonable rental; therefore, provided that in the absence of agreement regarding such joint use, the Town Board shall provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefrom, which award shall be final.

(k) The Town shall have the right, during the term of this franchise, to install and maintain rent free upon the property of the Grantee its own equipment, including, but not limited to, a police alarm system, on the condition that such equipment does not unreasonably interfere with the CATV operations of the Grantee. The cost for insurance

and installation of such equipment shall be the sole responsibility of the Town.

23.05 INITIAL SYSTEM INSTALLATION SCHEDULE. (1) Grantee shall, within 90 days from the granting of a franchise, make application to the Federal Communications Commission for a certificate of compliance for the establishment of a cable television system in the Town and shall prosecute such application diligently and faithfully in order that necessary approvals can be obtained in the shortest time possible. The Town reserves the right to intervene in such application for a certificate of compliance, and the Grantee shall pay all expense incurred by the Town in connection with the submission and defense of an application for a certificate of compliance filed with the FCC by the Grantee.

(2) Prior to the commencement of construction and receipt of final approvals from the FCC for establishment of the system, the Grantee shall conduct the necessary engineering studies so that the construction can commence immediately upon final approval of the FCC.

(3) The Grantee shall, within 180 days from the granting of a franchise, begin preliminary engineering of the pole line route and electrical layouts and initiate engineering surveys for the receiving site and building locations of the Grantee's cable TV system.

(4) The Grantee shall commence construction of the cable television system no later than 180 days after the franchise has been granted.

(5) The Grantee shall furnish the Town Board with progress reports indicating in detail the area of construction of the cable television system. Such periodic reports shall be furnished at 6 mo. intervals, with the first report to be made 3 mos. after the construction commencement date.

(6) The Grantee shall have the system 100% completed within 15 mos. from the effective date of this chapter.

(7) If the cable system is not completed in the 15 mos., a \$200 a day penalty will be charged to the Grantee until service is available to every resident.

(8) The requirements established in subs. (1) through (5) above are maximums and the Grantee may, at any time, proceed at a rate speedier than required by such subsections.

23.06 FINANCIAL CONSIDERATIONS. (1) **FRANCHISE PAYMENTS.** (a) The Grantee shall pay to the Town for the use of the streets and other facilities of the Town in the operation of the CATV system and for the municipal supervision thereof a fee in the amount of 3% of the basic service receipts of the Grantee.

(b) The Town Board shall have the right to inspect the Grantee's annual income statement from which its franchise payments are computed. The right of audit and recomputation of any and all amounts paid under this franchise shall be always accorded to the Town Board. No acceptance of any payment by the Town shall be construed as a release of or an accord or satisfaction of any claim the Town might have for further or additional sums payable under the terms of this chapter or for an other performance or obligation of the Grantee hereunder.

(2) **INSURANCE AND INDEMNITY.** (a) At all times during the term of the franchise, the Grantee shall obtain, pay all premiums for and file with the Cable Review Committee at least 10 days before construction of the system commences a certificate of insurance or other proof evidencing payment of premiums for the following:

1. A general comprehensive public liability insurance policy indemnifying, defending and saving harmless the Town, its officers, boards, committees,

commissions, agents or employees from any and all claims by any person whatsoever on account of injury to or death of a person or persons occasioned by the operations of the Grantee under the franchise herein granted or alleged to have been so caused or occurred with a minimum liability of \$1,000,000 for bodily injury or death of any one or more persons in any one occurrence. Such policies are to include personal injury coverage.

2. Property damage insurance indemnifying, defending and saving harmless the Town, its officers, boards, committees, commissions, agents and employees from and against all claims by any person whatsoever for property damage occasioned by the operation of the Grantee under the franchise herein granted or alleged to have been so caused or occurred with a minimum liability of \$50,000 for property damage in any one occurrence.

(b) All of the foregoing insurance contracts shall be in form satisfactory to the Town Attorney, shall be accepted by companies authorized to do business in the State acceptable to the Town Attorney. Such insurance contracts shall require 30 days' written notice of any cancellation to both the Town and the Grantee.

(c) The Grantee shall also, at its sole cost and expense, fully indemnify, defend and hold harmless the Town, its officers, boards, committees, commissions and employees against any and all claims, suits, actions, liability and judgments for damages (including, but not limited to, expense for reasonable legal fees and disbursements and liabilities assumed by the Town in connection therewith):

1. Arising out of any claim for invasions of the right of privacy, for defamation of any person, firm or corporation, or for violation or infringement of any copyright, trademark, trade service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to Town programming).

2. Arising out of the Grantee's failure to comply with the provisions of any federal, State or local statute, ordinance or regulation application to the Grantee in its business hereunder.

3. Arising out of a claim for violation of antitrust laws.

(d) The foregoing indemnity is conditioned upon the following: The Town shall give the Grantee prompt notice of the making of any claim or the commencement of any action, suit or other proceedings 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 its own counsel at its sole cost and expense.

(3) ACCEPTANCE OF THIS CHAPTER. This chapter and its terms and provisions shall be accepted by the Grantee by written instrument executed and acknowledged by it as a deed is required to be, and filed with the Town Clerk within 20 days after the award of a franchise. Such written instrument shall state and express the acceptance of this chapter and its terms, conditions and provisions, and the Grantee shall agree in such instrument to abide by, observe and perform same, and declare that statements and recitals herein are correct and that it has made and does make this agreement, statements and admissions in this chapter recited to have been or to be made.

23.07 SERVICES TO BE PROVIDED. (1) GENERAL REQUIREMENTS. (a) The Grantee shall install, maintain and operate its system in accordance with the highest standards of the art of cable communications and in accordance with any Code of Conduct which has been adopted or shall be

adopted by the National Cable Television Association.

(b) The Grantee shall render efficient service in accordance with such rules and regulations as have been promulgated and will be promulgated by the FCC and other federal and State regulatory agencies.

(c) The Grantee shall provide a uniform, strong signal free from distortion and interference (as determined by the Cable Review Committee), and shall not interrupt services unless absolutely necessary.

(d) it shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. If the Grantee elects to overbuild, rebuild, modify or sell the system, or the Town revokes or fails to renew this permit, the Grantee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances. In the event of a change of Grantee, the current Grantee shall cooperate with the Town, or with a representative appointed by the Town to operate the system for a temporary period, in maintaining continuity of service to all subscribers.

(e) If the Grantee is constructing on a private roadway, Grantee is not required to construct if easements cannot be obtained.

(2) CHANNEL ALLOCATIONS; OFF THE AIR PROGRAMMING. (a) The Grantee shall carry the signals of the channels described in its proposal.

(b) The Grantee shall carry the signals of other TV stations pursuant to the present and future regulations of the FCC.

(c) The Grantee shall provide radio channels which may be received on conventional FM receivers, connected to the Grantee's cable system.

(d) Such additional channels, signals, programs and production equipment as the Grantee may include in its proposal for obtaining the franchise.

(3) CUSTOMER SERVICE. (a) The Grantee shall maintain an office within the Greater Milwaukee Area with a listed telephone number on the local exchange which shall be open during all usual business hours, and so be operated that complaints and request for repairs or adjustments may be received at any time. Such office shall be open and fully operational within one year of the execution of the cable franchise agreement.

(b) The Grantee shall respond to all service calls and complaints, and shall correct malfunctions in its equipment as promptly as possible.

23.08 TECHNICAL CONFIGURATION AND CAPACITY. (1) The Grantee shall, at all times, meet the technical standards established by the FCC, including specifications for frequency boundaries, visual carriers, frequency levels, aural carrier frequency levels, channel frequency response, terminal isolation and system radiation and other standards which the FCC may set.

(2) At the option of any individual subscriber, the Grantee shall install a switching device upon such subscriber's television receiver whereby such subscriber may disconnect its television receiver from the Grantee's cable system in order to receive over-the-air television signals. The price of this device to such subscriber shall be the cost of such device to the Grantee, or less at the option of the Grantee, and the Grantee shall not charge the subscriber any fee for the installation of such device. The Grantee shall make all reasonable efforts to obtain such devices

at the lowest possible cost to it.

(3) At the option of any individual subscriber, the Grantee shall provide a device which allows such individual subscriber to utilize a key to disconnect those channels providing additional services to the subscriber, such as pay TV channels. The price of such device shall be the cost of such device to the Grantee, or less at the option of the Grantee, and the Grantee shall not charge the subscriber any fee for the installation of such device. The Grantee shall make all reasonable efforts to obtain such devices at the lowest possible cost to it.

(4) The cable system shall be engineered and equipped so as to possess an initial capacity of 36 channels. The system shall also be capable of providing, if need and market demand so require, 54 channels without having to lay additional cable.

23.09 RATES. The Grantee shall charge rates as set forth in its proposal to the Town dated January 22, 1985, and incorporated herein.

(1) The Grantee shall provide, without charge, one outlet to each municipally owned building, fire station, police station, library, public and parochial school and institution of higher learning that is passed by its cable. If more than one outlet is required of any such location, the Grantee shall install same at the cost of time and materials only, and in no event will there be a monthly service charge at such location for basic service.

(2) There will be a 9 mo. rate freeze for the rates charged from the date that service is available to every resident.

(3) A discount of 14% of the basic service charge will be afforded to senior citizens of the Town.

23.10 PROTECTION OF INDIVIDUAL RIGHTS. (1) DISCRIMINATORY PRACTICES PROHIBITED. The Grantee shall not deny service, access or otherwise discriminate against subscribers, programmers or general citizens on the basis of race, color, religion, national origin, creed or sex. Nothing in this provision shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting subscribers, nor shall this provision be interpreted to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any subscriber or programmer included within a particular classification shall be entitled.

(2) EMPLOYMENT PRACTICES OF THE GRANTEE. In carrying out the construction, maintenance and operation of its cable television system, the Grantee will not discriminate against any employee or applicant because of race, creed, color, religion, sex or national origin. The Grantee shall strictly adhere to the equal employment opportunity requirements of the FCC, as expressed in §§76.13(2)(8) and 76.311 of Ch. 1 of Title 47 of the Code of Federal Regulations. The Grantee shall comply at all times with all other applicable federal, State, Town and County laws, and all executive and administrative orders relating to nondiscrimination in employment. The Grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, religion or national origin. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Grantee shall post in conspicuous places, available to employee and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Grantee shall, in all solicitations or advertisements for employees placed by or on behalf of the Grantee, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, religion or national origin. The Grantee will incorporate the foregoing requirements of this paragraph in all of its contracts for work relative to construction, maintenance and operation of the CATV system, other than contracts for standard commercial supplies or raw materials and will

require all of its contractors for such work to incorporate such requirements in all subcontracts for such work.

(3) CABLE MONITORING. Neither the Grantee nor any governmental bureau, department, unit, agency or entity at the federal, State, County or local level, nor any other person or entity, shall monitor or arrange for the monitoring of any cable, line, signal input device or subscriber outlet receiver for any purpose whatsoever.

(4) RIGHT OF PRIVACY. (a) The Grantee shall not transmit any signal to or from any dwelling or any other building without the express authorization of the owner of such dwelling or other buildings, provided that where such owner has leased such dwelling or other buildings, or a portion thereof, such express authorization shall be obtained from the lessee and not from the owner.

(b) Nothing in this section shall diminish any rights of residents of dwellings or other buildings protected by sub. (5) below.

(5) RIGHTS OF RESIDENTS. (a) An owner or operator of an apartment building, condominium, nursing home or any other rental facility may not interfere with or charge a fee for the installation of cable facilities for the use of a lessee of such property or premises, except that such owner or operator may require:

1. Installation to conform to reasonable conditions necessary to protect the safety, appearance and functioning of the premises.
2. The Grantee, occupant or tenant to pay for the installation, operation or removal of such facilities.
3. The Grantee, occupant or tenant to agree to indemnify the owner or operator for any damages caused by the installation, operation or removal of such facilities.

(b) The Grantee shall not reimburse or offer to reimburse any person, and no person shall demand or receive reimbursement from the Grantee, for placement upon the premises of such person of Grantee's facilities necessary to connect such person's premises for the distribution lines of Grantee to provide CATV service to such premises.

(c) A landlord may not discriminate in the amount of rent charged to tenants or occupants who receive cable services and to those who do not.

(d) The Grantee may not take actions which would diminish or interfere with the privilege of any tenant or owner occupant of any such building to use or avail himself/herself of master or individual antenna equipment.

(6) SALE OF SUBSCRIBER LISTS PROHIBITED. The Grantee shall not sell, or otherwise make available, lists of the names and addresses of its subscribers, or any list which identify, by name, subscriber viewing habits to any person, agency or entity for any purpose whatsoever.

23.11 PROTECTIONS AFFORDED THE GRANTEE. A person who willfully or maliciously damages, or causes to be damaged, any wire, cable, conduit, apparatus or equipment of the Grantee, or commits any act with intent to cause damage to any wire, cable, conduit, apparatus or equipment of the Grantee, or who taps, tapers with or connects any wire or device to a wire, cable, conduit or equipment of the Grantee with intent to obtain a signal or impulse therefrom without authorization from the Grantee, shall be subject to a forfeiture of not more than \$500 as determined by the court and shall be liable in a

civil action for 3 times the actual amount of damages sustained thereby, but this section shall not prevent a public utility from removing, disconnecting or otherwise rendering inoperable any of the Grantee's apparatus or equipment attached or in any way connected to such public utility's facilities, if done for reasonable cause and provided the Grantee has been given proper notice by such utility.

23.12 SUPERVISION OF THE GRANTEE. (1) The Grantee shall file with the Town Engineer and the Town Clerk accurate copies of maps and/or plats of the location and character of all existing and proposed installation over, upon or under the streets. These maps and plats shall conform to the requirements of the Town Board, shall be kept continuously up-to-date and shall be filed at least quarterly.

(2) The Grantee shall continuously keep on file with the Town Board a current list of its stockholders, holding 5% or more of the outstanding stock and officers, with their current addresses.

(3) This franchise shall not be assigned or transferred either in whole or in part, or leased, sublet or mortgaged, 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 either by the act of the Grantee or by operation of law without the express consent of the Town Board. The granting, giving or waiving of any one or more of such consents shall not render unnecessary any subsequent consents or consent.

(4) The Grantee shall keep and maintain all records required by the FCC. Copies of such records and all other rules, regulations, terms and conditions established by the Grantee for the conduct of its business shall be filed annually with the Town Board and at the office of the Grantee.

(5) Copies of all petitions, applications and communications submitted by the Grantee to the FCC, Securities and Exchange Commission or any federal or State regulatory commission or agency having jurisdiction in respect to any matter affecting cable operation shall also be submitted simultaneously to the Town by filing same with the Clerk.

(6) The Grantee shall maintain records of those subscriber complaints and request for service which it has received, the time of such reception and the time at which it responded to such subscriber complaints and requests for service. The Grantee shall keep a copy of such records at its local office.

(7) The Grantee shall keep and maintain a complete record of all persons or groups requesting time on its access channels. Such records shall be made available for public inspection.

(8) In addition to all other rights and powers pertaining to the Town by virtue of this chapter or otherwise, the Town reserves the right to revoke, terminate and cancel the franchise and all rights and privileges of the Grantee hereunder if:

(a) The Grantee violates any material provision of this chapter, the Grantee's proposal or any rule, order or determination of the Town made pursuant to this chapter, except where such violation, other than par. (b) below, is without fault or through excusable neglect; or

(b) The Grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged as bankrupt; or

(c) At least 120 days beforehand a receiver or trustee has been appointed to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy or other action or proceedings unless such receivership or trusteeship shall have been vacated prior to the expiration of such 120 days, or unless:

1. Within 120 days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this chapter and remedied all defaults thereunder.
2. Such receiver or trustees, within such 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 chapter; or

(d) There has been a change in the control of the Grantee requiring the consent of the Town Board and such consent has been denied or not given; or

(e) The Grantee attempts to evade any of the material provisions of this chapter or practice any fraud or deceit upon the Town; or

(f) The Grantee fails to have service available to 90% of the residential structures in all areas of the Town within 4 yrs. after receipt of authorization from all required governmental agencies and acceptable pole attachment agreements have been obtained by the Grantee; provided that this period may be extended by the Town Board if the Grantee is diligently pursuing such authorization and pole attachment agreements and the delay is not caused by any fault of the Grantee or results from strikes, natural disasters or other occurrences over which the Grantee would have no control.

(9) Such revocation, termination and cancellation shall occur only after a public hearing has been conducted by the Town Board. If, as a result of such public hearing, the Town Board approves and recommends revocation, termination and cancellation, the Town Board may put such revocation, termination and cancellation into effect by ordinance duly adopted after 30 day's notice to the Grantee. Such revocation, termination and cancellation shall in no way affect any of the rights under this chapter or any provisions of law. If such revocation, termination and cancellation depends upon a finding of fact, such finding of fact, as made by the Town Board, shall be conclusive; provided however, that before the franchise may be revoked, terminated or cancelled under this section, the Grantee shall be provided with an opportunity to be heard before the Town Board.

23.13 INTENDED SCOPE OF THIS CHAPTER. (1) COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAW. (a) The Grantee shall construct, operate and maintain the CATV system subject to the supervision of all of the authority of the Town who have jurisdiction in such matters and in strict compliance with all laws, ordinances and department rules and regulations.

(b) if at any time the powers of the Town are transferred by law to any other board, authority, agency or official, this board, authority, agency or official shall have the power, rights and duties previously vested under this chapter or by law in the Town Board or any agency or official of the Town.

(c) Notwithstanding any other provisions of this franchise, the Grantee shall, at all times, comply with all laws and regulations of the State and federal government, or any administrative agency thereof provided, however, if any such State or federal law or regulation shall require the Grantee to perform any service or permit the Grantee to perform any service in conflict with the terms of this chapter or of any law or regulation of the Town, then as soon as possible following knowledge thereof, the Grantee shall notify the Town Board of conflict believed to exist between such regulations or law and the laws or regulations of the Town or this chapter. If the Town Board determines that a material provision of this chapter is affected by such subsequent action, the Town Board shall have the right 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 chapter.

(2) CAPTIONS. The captions to sections throughout this chapter are intended solely to facilitate reading and reference to the sections and provisions of this chapter. Such captions shall not affect the meaning or interpretation of this chapter.

23.14 LIMITATIONS OF THE GRANTEE'S RECOURSE. The Grantee expressly acknowledges that, upon accepting this franchise, it did so relying upon its own investigation and understanding of the power and authority of the Town to grant this franchise. By the acceptance of this franchise, the Grantee agrees that it will not at any time set up against the Town in any claim or proceeding any condition or term of this chapter.

25.01 RULES OF CONSTRUCTION.

In construction of this Code, the following rules shall be observed unless inconsistent with the manifest intent of the ordinance:

- (1) WISCONSIN STATUTES. (Am. MCC `94) References to "Wisconsin Statutes", or "Wis. Stats.," shall mean the current Wisconsin Statutes.
- (2) GENDER, SINGULAR AND PLURAL. Every word in this Code and in any ordinance imparting the masculine gender may extend and be applied to females as well as males, and every word imparting the singular number only may extend and be applied to several persons or things as well as to one person or thing; provided these rules of construction shall not be applied to any provision which contains any express language excluding such construction or when the subject matter or context of such provision may be repugnant thereto.
- (3) PERSON. The word "person" extends and applies to natural persons, firms, corporations, associations, partnerships or other bodies politic and to all entities capable of being sued, unless plainly inapplicable.
- (4) ACTS OF AGENTS. When a provision requires an act to be done which may by law as well be done by an agent as by the principal, such requirement shall be construed to include all such acts when done by an authorized agent.

25.02 CONFLICT AND SEPARABILITY.

- (1) CONFLICT OF PROVISIONS. If the provisions of the different chapters of this Code conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions arising out of the subject matter of such chapter.
- (2) SEPARABILITY OF CODE PROVISIONS. If any section, subsection, sentence, clause or phrase of the Code is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or portion thereof. The Board hereby declares that it would have passed this Code and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more section, subsection, sentence, clause, phrase or portion may be declared invalid or unconstitutional.

25.03 CLERK TO FILE DOCUMENTS INCORPORATED BY REFERENCE.

Whenever in this Code any standard, code, rule, regulation or other written or printed matter is adopted by reference, it shall be deemed incorporated in this Code as if fully set forth herein and the Clerk shall file, deposit and keep in his office a copy of the code, standard, rule, regulation or other written or printed matter as adopted. Materials so filed, deposited and kept shall be public records open for examination with proper care by any person during the Clerk's office hours, subject to such orders or regulations which the Clerk may prescribe for their preservation.

25.04 PENALTY PROVISIONS.

- (1) GENERAL PENALTY. (Am. #90-256) Except as otherwise provided, any person who shall violate any of the provisions of this Code shall, upon conviction of such violation, be subject to a penalty which shall be as follows:
 - (a) First Offense. (repealed and recreated 2010-004) Any person who shall violate any provision of this Code shall, upon conviction thereof, forfeit not less than \$100 nor more than \$2,000, together with the costs of prosecution, and in default of payment of such forfeiture and costs of prosecution shall be imprisoned in the County jail until such forfeiture and costs are paid, but not exceeding 90 days.

- (b) Second Offense. (repealed and recreated 2010-004) Any person found guilty of violating any ordinance or part of an ordinance of this Code who has previously been convicted of a violation of the same ordinance within one year shall, upon conviction thereof, forfeit not less than \$200 nor more than \$2,000 for each such offense, together with the costs of prosecution, and in default of payment of such forfeiture and costs shall be imprisoned in the County jail until such forfeiture and costs are paid, but not exceeding 6 mos.
- (2) CONTINUED VIOLATIONS. Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Code shall preclude the Town from maintaining any appropriate action to prevent or remove a violation of any provision of this Code.
- (3) EXECUTION AGAINST DEFENDANT'S PROPERTY. Whenever any person fails to pay any forfeiture and costs of prosecution upon the order of any court for violation of any ordinance of the Town, the court may, in lieu of ordering imprisonment of the defendant or after the defendant has been released from custody, issue an execution against the property of the defendant for such forfeiture and costs.
- (4) CITATION METHOD OF ENFORCEMENT. (Cr. #88-205)
- (a) Statutory Authorization. Pursuant to §66.0113, Wis. Stats., the Town elects to use the citation method of enforcement of ordinances, including those for which a statutory counterpart exists, and §66.0113 is hereby incorporated and made a part of this section.
- (b) Contents of Citation. The citation shall contain the following:
1. Name and address of the alleged violator.
 2. Factual allegations describing the alleged violation.
 3. Time and place of the offense.
 4. Number and section of the ordinance violated.
 5. A designation of the offense in such a manner as can readily be understood by a person making a reasonable effort to do so.
 6. Time and date in which the violator may appear in court.
 7. A statement which informs the violator:
 - a. That a cash deposit based on the established schedule may be delivered or mailed to the Clerk of Circuit Court prior to the time of the scheduled court appearance.
 - b. That if a deposit is made no appearance in court is necessary unless he is subsequently summoned.
 - c. That if a cash deposit is made and the alleged violator does not appear in court at the specified time, an action may be commenced to collect the forfeiture.
 - d. A direction that if the alleged violator elects to make a cash deposit, the statement which accompanies the citation shall be signed to indicate that the required statement has been read. Such statement shall be sent or brought with the cash deposit.
 8. Deposits shall be made in cash, money order or certified check to the clerk of court who shall provide a receipt therefor.

- (c) Issuance of Citations. The Town Attorney may issue citations authorized under this section.

25.05 REPEAL OF GENERAL ORDINANCES.

All ordinances heretofore adopted by the Town Board are hereby repealed, except all ordinances or parts of ordinances relating to the following subjects and not conflicting with any of the provisions of this Code:

- (1) The issuance of corporate bonds and notes of the Town of whatever name or description.
- (2) The establishment of grades, curb lines and widths of sidewalks in the public streets and alleys.
- (3) The fixing of salaries of public officials and employees.
- (4) Rights, licenses or franchises, or the creation of any contract with the Town.
- (5) The lighting of streets and alleys.
- (6) The naming and changing of names of streets, alleys, public grounds and parks.
- (7) The letting of contracts without bids.
- (8) Tax and special assessment levies.
- (9) Releases of persons, firms or corporations from liability.
- (10) Construction of public works.
- (11) Water, sewer and electric rates, rules and regulations and sewer and water main construction.
- (12) Budget ordinances, resolutions and actions.

25.06 EFFECT OF REPEALS.

The repeal or amendment of any section or provision of this Code or of any other ordinance or resolution of the Board shall not:

- (1) By implication be deemed to revive any ordinance not in force or existing at the time such repeal or amendment takes effect.
- (2) Affect any vested right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed or amended, unless the privilege of repealing such obligation or privilege has been reserved by the Town.
- (3) Affect any offense committed, or penalty or forfeiture incurred, previous to the time when any ordinance is repealed or amended; except when any forfeiture or penalty has been mitigated by the provisions of any ordinance, such provisions shall apply to and control any judgment to be pronounced after such ordinance takes effect for any offense committed before that time.
- (4) Affect any prosecution for any offense, or the levy of any penalty or forfeiture pending at the time when any ordinance aforesaid is repealed or amended; but the right of action shall continue and the offender shall be subject to the penalty as provided in such ordinance, and such prosecution shall proceed, in all respects, as if such ordinance had not been repealed; except all such proceedings had after the time this Code takes effect shall be conducted according to the provisions of this Code.

25.07 TITLE; EFFECTIVE DATE; CITATION.

These ordinances shall be known as the "General Code of the Town of Delafield" and shall take effect from and after passage and publication as provided in §66.0103(1), Wis. Stats. All references thereto shall be cited by section number (example: §13.06, General Code of the Town of Delafield).

25.08 KEEPING CODE CURRENT; REVISOR'S AMENDMENTS.

(1) The Town Clerk shall certify one copy of the Code as the original General Code of the Town and shall file the same as part of the Town Ordinance Book. Such copy shall be retained in its original form. In addition, the Clerk shall retain in his office at least one copy of the General Code in current form in which shall be inserted all supplemental sheets as provided in sub. (2).

(2) Whenever any ordinance amending, repealing, revising or creating any section of this Code is adopted by the Town Board, the Clerk, after recording such ordinance in the ordinance book, shall forward such ordinance or resolution to the Revisor, who shall incorporate them into the General Code. The Revisor shall make no substantive changes to such ordinances and resolutions but may renumber, rearrange and edit them without first submitting them to the Town Board, and such renumbering, rearranging and editing shall not affect the validity of such ordinances and resolutions or the provisions of this General Code affected thereby.

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STATE OF WISCONSIN

TOWN OF DELAFIELD

WAUKESHA COUNTY

ORDINANCE NO. 2011-003

**AN ORDINANCE TO CREATE CHAPTER 13
OF THE TOWN OF DELAFIELD TOWN CODE
REGARDING WIND ENERGY SYSTEMS LICENSE AND REGULATIONS**

**THE TOWN BOARD OF THE TOWN OF DELAFIELD, WAUKESHA COUNTY,
WISCONSIN, DOES ORDAIN AS FOLLOWS:**

SECTION 1: WIND ENERGY SYSTEMS LICENSE AND REGULATIONS

Chapter 13 of the Town of Delafield Town Code is created as follows:

CHAPTER 13. WIND ENERGY SYSTEMS LICENSE AND REGULATIONS.

I. PURPOSE AND INTENT.

It is the intended purpose of the Town to regulate Wind Energy Systems to promote the health, safety, and general welfare of the citizens of the Town and to establish reasonable and uniform regulations for the operation thereof so as to minimize potentially dangerous effects of these Systems on the community, pursuant to the authority granted by Wisconsin Statutes Sections 66.0401, 66.0403 and other applicable laws.

II. DEFINITIONS.

The following terms have the meanings indicated:

"Applicant" means the individual or business entity that seeks to secure a license under this Chapter 43 of the Town Code.

"Board" means the Town Board for the Town of Delafield, Waukesha County, Wisconsin.

"Employee" means any and all Persons, including but not limited to "Operators", who work in or at, or render any services directly related to operation of Wind Energy Systems.

"Good Utility Practice" means any of the practices, methods and acts with respect to the safe operation of the Wind Energy System Facility engaged in or approved by a significant portion of the electric utility industry and, in particular, those portions of the industry with experience in the construction, operation and maintenance of wind turbines during the relevant time period; or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to

be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region.

“Non-Participating Resident” means all residences which are not subject to an agreement, authorization or lease with the Wind Energy System Facility developer.

"Operator" means the Person who is designated on the license application to be the Person in charge of the daily operation of the premises and who is to be the Wind Energy Systems contact Person for the municipality.

"Person" means an individual, proprietorship, corporation, association, partnership, limited liability entity, or other legal entity.

“Small Wind Energy System” means a Wind Energy System that has a nameplate capacity of 100 kilowatts or less, and a total height of 170 feet or less.

“Stray Voltage” means neutral-to-earth voltage measured from the electrical system neutral and/or any structure bonded to this neutral to earth that adversely affects humans or animals.

“Wind Energy Systems” means equipment that converts and then stores or transfers energy from the wind into usable forms of energy.

“Wind Energy Systems Facility” or “Facility” means all of the land and equipment used by the wind energy system and its support facilities including the wind turbine, tower, access roads, control facilities, meteorological towers, maintenance and all power collection and transmission systems.

“Wind Energy System Tower” means any structure that is designed and constructed primarily for the purpose of supporting the Wind Turbine.

“Wind Energy System Tower Site” means the land area encompassing a tower and all related equipment, structures paved or graveled areas, safe clearance areas, fencing and other items used in connection with said tower.

“Wind Turbine” means a mechanical device which captures the kinetic energy of the wind and converts it into electricity. The primary components of a wind turbine are the blade assembly, electrical generator and tower.

III. LICENSING.

A. Licenses Required.

From and after the effective date of this ordinance, no Wind Energy System shall be operated or maintained in the Town without first obtaining a license to operate issued by the Town.

B. Effect of Other Licenses.

The fact that a Person possesses any other valid license or permit required by law, does not exempt that Person from the requirement of obtaining a Wind Energy Systems license under this Section.

C. Non-transferability of Licenses.

The license is not assignable or transferable to any other Person, without the express prior written consent of the Town, such consent not to be unreasonably withheld, provided, however, the Licensee may assign the License once to a new entity, upon notice to the Town, if the Licensee submits an affidavit demonstrating the following:

- (1) The new entity is wholly owned by the Licensee;
- (2) The new entity is properly formed and authorized to do business in Wisconsin; and
- (3) The written assignment requires the new entity to assume all of the Licensee's rights, duties and obligations under the License including but not limited to the letter of credit requirements and the certificate of insurance requirements.

IV. LICENSE APPLICATION PROCEDURE FOR WIND ENERGY SYSTEMS.

A. Any Person desiring to secure a Wind Energy Systems license shall file an application together with two additional copies of the application with the Town Clerk.

B. The application shall be on a form provided by the Town Clerk.

C. The following information shall be required of each Applicant, and must be provided under oath or affirmation:

- (1) Name, address, and phone number.
- (2) If the Applicant is a corporation, partnership, limited liability company or limited liability partnership, the application shall include the name of the business entity; the date of incorporation, registration or organization; the state in which the entity was incorporated, registered or organized; the name and address and phone numbers of the registered agent where applicable; the names and addresses of all officers and directors; operating or managing partners or general partners; managing members or managers, whichever is applicable for the particular form of business entity.
- (3) Name and address of any other current or past Wind Energy Systems operated by the Applicant whether in this State or any other State or District within the United States.

- (4) Name, address and phone number of an individual who is responsible for the day-to-day operation of the facility, who will be deemed the Operator for purposes of this section, and who will be the contact Person for the municipality.
- (5) A statement that the Applicant is familiar and in compliance with the provisions of this section of the Town's municipal code, including the responsibility to reimburse all reasonable costs and professional fees associated with the processing, examination and analysis of the proposed facility.

D. Each application shall be accompanied by:

- (1) A site plan which meets all the requirements of this Section, as well as any additional site specific requirements of the Town Board and/or the Town engineers in accordance with the technical requirements in this ordinance. Each application shall be accompanied by a site plan of the Wind Energy System Tower Site(s), including total acreage occupied by the facility.
- (2) Each application shall be signed by the Applicant.
- (3) Each application shall be accompanied by payment of nonrefundable application fee to be determined from time to time by separate resolution of the Town Board. Filing of the application does not occur until this fee has been paid.
- (4) The Town Clerk shall date the filing of the application on the face of the application.
- (5) Upon receipt of the application, the Town Clerk shall distribute a copy of the application to the Town Board and Building Inspector, with copy to the Town Zoning Administrator and Town Engineer.
- (6) The Town Board may refer the application to the Town engineer or a qualified consulting engineer for further review. The reasonably necessary costs associated with the engineering review shall be the responsibility of the applicant, in accord with the terms of this ordinance.
- (7) The application shall be referred to the Plan Commission for review and recommendation.
- (8) The Town Board shall conduct a public hearing for purposes of receiving public comment regarding the application, upon Class 2 notice per Chapter 985, Wis. Stats.
- (9) Following review, the Town Board shall grant the license, grant the license subject to specified conditions, or deny the application after reviewing the application for compliance with the licensing standards found in this ordinance and under State law.

- (10) If the license is granted by the Town Board, then the Town Clerk shall issue the license as soon as practicable. If the license is granted subject to specified conditions, the conditions shall be described in writing and provided to the Applicant.
- (11) If the Town Board decides to deny the application for a license, the Board shall notify the Applicant in writing of the reasons for denial.
- (12) Any Applicant aggrieved by such a decision of the Town Board, shall be entitled to immediately appeal the Board's decision in circuit court. Such an appeal must be made within 30 days of the date of the written decision by the Board. The Town explicitly elects not to be governed by Chapter 68, Wisconsin Statutes, in this regard and instead review shall be as described in this section.
- (13) Each license issued for a Wind Energy System shall state on its face the name of the licensee, the name of the establishment, the street address of the establishment, the date of issue of the license and its expiration date.

V. TECHNICAL REQUIREMENTS FOR LICENSING.

Design, construction and operation of Wind Energy Systems shall be subject to the requirements of this Chapter. It is recognized that the restrictions herein are neither exclusive, nor exhaustive. In instances where a health or safety concern is identified with regard to any application for a Wind Energy System, additional and/or more restrictive conditions may be included in the license to address such concerns.

A. Aircraft Protection.

The wind turbine generator tower shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the outside of the tower other than what is required by the FAA or other applicable authority or as otherwise agreed in connection with the issuance of the License. Notwithstanding the foregoing, this restriction shall not apply to infrared heating devices used to protect the monitoring equipment. The tower shall be connected to an uninterruptible back-up power source to ensure continuous compliance with FAA regulations. To the extent consistent with FAA regulations, shrouding for the lights shall direct reflection of light up.

B. Blasting.

Licensee shall not undertake any blasting in connection with the construction of the Facility unless Applicant shall have notified the Town and submitted a blasting plan consistent with applicable laws and regulations.

C. Color.

Except as may be required by the FAA, the coloration of the exterior components and each wind turbine tower shall be off white, light gray or other neutral color, including the blades. The finish shall be flat or matte. Licensee throughout the Term of this License shall maintain the required coloration and finish.

D. Electromagnetic Interference.

Licensee shall not operate the Facility so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission regulations or other law.

E. Emergency Shutdown.

Licensee shall be required to immediately cease operations for the duration of any Emergency. Emergency shall mean a proven condition or situation caused by the Facility that presents an imminent physical threat of danger to life or significant threat to property.

F. Groundwater Protection

Licensee shall operate the Facility so as not to cause groundwater contamination in violation of applicable law.

G. Noise

The noise design limit for each Wind Turbine shall not exceed 50 dBA as measured as the average dBA at the neighboring property lines, or outside of boundary lines of any noise attenuation easement obtained and recorded by Licensee, whichever distance is greatest.

H. Public Roads

At Licensee's expense, Licensee shall provide the Town Director of Public Works a videotape documenting the condition of all haul roads in the Town prior to beginning and after completing construction of the Facility. At Licensee's expense, the Licensee shall contract with qualified contractors to repair any damage to the haul roads due to transportation of equipment and Facility components ("Road Repair Obligations"). In the event a hazardous road condition exists that is not promptly corrected by Licensee, the Town Director of Public Works may order emergency road repairs be performed by qualified contractors, and Licensee shall promptly reimburse the Town for reasonable emergency road repair costs. Licensee shall assure funding of the Road Repair Obligations by a letter of credit or guaranty from a contractor of Applicant. Weather permitting, the final Road Repair Obligations shall be completed to the reasonable satisfaction of the Town Director of Public Works within six (6) months after completion

of construction of the Facility, or as soon thereafter as weather conditions permit. The Town Director of Public Works may waive the requirements of this Section for a Small Wind Energy System, upon the Applicant demonstrating to the satisfaction of the Director of Public Works that there will be no adverse impact upon Town Roads in the transport or construction of the Small Wind Energy System.

I. Screening

Licensee shall design the Facility so as to minimize visual impacts such as glare, reflection or shadow flicker. Complaint of such visual impacts occurring inside any residence exceeding 5 hours per year shall be dealt with in accordance with the Reporting and Complaint Resolution procedures herein.

J. Set Back.

- (1) Wind Turbines shall be setback a distance of 1.1 times their height from the nearest property line, unless appropriate waivers or easements in a recordable form are secured from adjacent property owners or other acceptable mitigation is approved by the Town Board.
- (2) Wind Turbines shall be setback a distance of no less than three times their total height from the nearest residence, school, hospital or church unless waived in a recordable form by the affected property owner or owners. In no event shall the setback distance be less than 1.1 times the total height of the Wind Turbine.
- (3) Wind Turbines shall be setback a distance of no less than a distance of 1.1 times their total height from the nearest above-ground public electric power line or telephone line, unless waived in a recordable form by the affected property owner and utility company.

K. Signage and Fencing.

Except for Small Wind Energy Systems, Licensee shall provide reasonable signage at the Facility, identifying the Premises as being part of the Facility and providing appropriate safety notices and warnings against trespassing. The no trespassing signs shall be posted around the entire premises at an appropriate distance for posting but no less than 2 conspicuous places for every 40 acres within the Facility.

No advertising material or signage other than warning, equipment information or indicia of ownership shall be allowed on the Wind Energy System Tower or Turbine. This prohibition shall include the attachment of any flag, decorative sign, streamers, pennants, ribbons, spinners or waiving, fluttering or revolving devices, but not including weather devices.

L. Stray Voltage

Licensee shall utilize Good Utility Practice to minimize, to the extent practicable, the impact, if any, of stray voltage caused by the Facility.

M. Reporting and Complaint Resolution Procedure.

Licensee shall report to the Town as follows:

- (1) **Extraordinary Events.** Within 24 hours of any extraordinary event, Licensee shall notify the Town. "Extraordinary events" shall include tower collapse, catastrophic turbine failure, unauthorized entry to the tower base, thrown blade or hub, any injury to a Facility worker or other person that requires emergency medical treatment, or other event that in Licensee's opinion reasonably impacts the public health and safety of the Town.
- (2) **Complaints.** The Licensee of the Wind Energy System Facility shall, at the Licensee's expense and in coordination with the Town develop a system for logging and investigating all complaints related to the operational standards set forth in Sections V B, D, E, F, G, I, L and VII B. If the Town determines that it is reasonably necessary, it may undertake an investigation of the alleged operational violation by a qualified individual mutually acceptable to the Town and the owner of the Wind Energy System Facility. The reasonable cost and fees incurred by the Town in retaining said qualified individual shall be reimbursed by the owner of the Wind Energy System Facility. After the investigation, if the Town Board reasonably concludes that operational violations are shown to be caused by the Wind Energy System Facility, the Licensee shall use reasonable efforts to mitigate such problems on a case by case basis including measures such as planting trees and installing awnings.

VI. INSURANCE AND INDEMNIFICATION.

A. Insurance.

All licensees shall maintain the following insurance coverages commencing upon construction of the facility, unless reduced or waived in writing by the Town Board.

- (1) Licensee shall, at its expense, maintain a broad form comprehensive coverage policy of public liability insurance insuring Applicant and Participating Landowners against loss or liability caused by Applicant's occupation and use of the Property, in an amount not less than Five Million Dollars (\$5,000,000) of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. The Town shall be named as an additional insured on the policy.

- (2) Worker's compensation coverage in an amount required by Wisconsin law. Applicant shall require subcontractors and others not protected under its insurance to obtain and maintain worker's compensation and employers' liability insurance.
- (3) Certificates of insurance evidencing compliance with these requirements shall be provided upon request of the Town. The insurer will provide notice to the Town in the event there is a lapse in coverage exceeding thirty (30) days. All policies other than worker's compensation shall be written on an occurrence and not on a claim made basis.

B. Defense of Land Use Decision and Indemnity.

- (1) Defense of Land Use Decision.

In addition to the indemnification described below, Licensee shall reimburse the Town its reasonable attorney's fees incurred in defending any legal actions brought by third parties challenging the legality or enforceability of this Ordinance or any portion thereof, or the issuance of a License by the Town pursuant to this Ordinance. If the Town seeks reimbursement, it shall notify Licensee in writing promptly upon discovering any claim entitling it to a land use defense reimbursement, but in no event later than 120 days after receiving written notice of any action, lawsuit, proceeding, investigation or other claim against it which may give rise to a claim for a land use defense reimbursement. Licensee shall not be obligated to reimburse the Town with respect to any such liability, action or claim if the Town fails to notify Licensee thereof in accordance with the provisions of this section in sufficient time including, without limitation, any responsive motion or answer to a complaint, petition, notice, or other legal, equitable action or claim, but only insofar as such knowing failure to notify Licensee has actually resulted in prejudice or damage to Licensee. With respect to any third party action, lawsuit, proceeding, investigation or other claim which is subject to reimbursement under this section, Licensee shall be entitled to assume and control (with counsel of its choice) the defense of such action, lawsuit, proceeding, investigation or other claim at Licensee's expense; provided, however, that the Town shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose (the fees and expenses of such separate counsel to be borne by the Town) and to assert against any third party any and all cross claims and counterclaims the Town may have, subject to Licensee's consent, which consent shall not be unreasonably withheld. If Licensee elects to assume the defense of any such claim, it may settle such claim in its sole discretion so long as either (i) such settlement provides an unconditional release of the Town, or (ii) Licensee shall obtain the prior written consent of the Town (which consent shall not be unreasonably withheld). If Licensee elects to assume the defense of any claim, the Town shall fully cooperate with Licensee and its counsel in such defense.

(2) Indemnification.

Licensee shall defend, indemnify and hold harmless the Town and its officials, employees and agents from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorney's fees (such liabilities together known as "Liability") arising out of Licensee's selection, construction, operation and removal of the Wind Turbines and affiliated equipment including, without limitation, Liability for property or personal injury (including death), whether said Liability is premised on contract or on tort (including without limitation strict liability or negligence). This general indemnification shall not be construed as limiting or qualifying the Town's other indemnification rights available under law.

VII. STANDARDS.

A. Construction Standards.

Wind Turbines shall be constructed in compliance with Good Utility Practice for Wind Turbines. In the event after inspection by a qualified expert in Good Utility Practice, the Town concludes that a Wind Turbine is not constructed in compliance with Good Utility Practice or constitutes a danger to persons or property, then upon notice being provided, Licensee shall have 90 days to bring the non-compliant Wind Turbine(s) into compliance with such standards or if 90 days is insufficient time to cure the non-compliance, Licensee shall present a plan to the Town describing the reason for the delay and the time frame for the cure to be put in place. Failure to bring such non-compliant Wind Turbine(s) into compliance or failure to provide a plan for compliance within 90 days shall constitute grounds for the Town to demand removal of said Wind Turbine(s) at Licensee's expense.

B. Performance Standards.

Any Wind Energy System or Wind Energy System Facility shall be operated and maintained consistent with Good Utility Practice for comparable facilities.

C. State and Federal Standards.

Construction of Wind Turbines shall meet or exceed current standards and regulations, if any, of any other agency of the State or federal government with the authority to regulate wind powered generators. If such standards and regulations are changed and retroactive application is required for the change, then Licensee shall bring the Wind Turbine(s) into compliance with such applicable revised standards and regulations within 6 months of the effective date of such standards and regulations, unless a different compliance schedule is permitted by the controlling State or federal agency or approved by the Town. A Determination of No Hazard for each Wind Turbine must be obtained from the FAA as a condition precedent for the installation of each turbine, when required.

D. Wind Turbine Safety Standards.

Licensee shall comply with the following safety standards:

- (1) All wiring between the Wind Energy System Tower, the Turbine, and the substation shall be underground;
- (2) The outside of Wind Energy System Towers shall not be climbable;
- (3) All access doors to the towers and electrical equipment shall be locked; and
- (4) Appropriate warning signage shall be placed on each tower, all electrical equipment, and all entrances.

VIII. REPAIR AND REPLACEMENT.

Licensee shall be authorized to repair and replace the wind turbine generator and associated equipment consistent with Good Utility Practice during the Term of the License as needed to keep the Facility in good repair and operating condition. However, no such repair or replacement shall entitle Licensee to any extension of the Term of the License, even if it extends the useful life of the Facility. If Licensee desires to extend the term of the License in the future, Licensee shall be required to apply for such extension or amendment of the License in accordance with the terms of this Ordinance.

IX. WIND TURBINE GENERATOR REMOVAL.

A. Cessation of Operation.

Upon expiration of the License or should removal of all or part of the Wind Energy Systems Facility otherwise be required under this Ordinance, Licensee shall effectuate the removal of the Wind Energy System affected. Further, if Licensee ceases operation of the Facility for a continuous period of one year, Licensee shall take all measures necessary to accomplish such removal. Unless otherwise agreed to with landowners in a recordable form, said removal shall be to a depth of 48 inches beneath the soil surface and Licensee shall restore the Premises to substantially the same physical condition which existed immediately before the construction of the Facility (the "Removal Obligations"). Any agreement for removal of a foundation to a lesser depth or for no removal of the foundation shall be recorded with the Waukesha County Register of Deeds and shall show the locations of all such foundations.

B. Financial Assurance.

Licensee shall assure funding of the Removal Obligations by a letter of credit, cash or the equivalent held in trust in favor of the Town, in a form to be approved by the Town Attorney in an amount to be determined by the Town Board using the following procedure. Licensee shall submit an estimate of the Removal Obligations by a qualified

engineer, approval of which shall not be unreasonably withheld. The Town Board may waive this requirement for a financial guarantee in the case of a Small Wind Energy System.

The amount of the required financial guarantee may be adjusted by the Town Board on an annual basis in accord with the Consumer Price Index as published by the United States Department of Labor Bureau of Labor Statistics, in which circumstance Licensee shall be required to submit new surety in the adjusted amount. Further, and notwithstanding the surety, in the event that Licensee has failed, refused or neglected to comply with the removal requirements herein within twelve (12) months of the Town's written notice, the Town and/or its agents shall be allowed to enter onto the premises for purposes of razing and removing the subject structures. All costs associated with the Town's efforts in this regard shall be placed upon the real estate tax bill of the site as a special charge.

X. PROCEDURES FOR ALTERATION OR REVOCATION OF LICENSED PREMISES.

A. Amendment.

Following the granting of a license any Licensee who wishes to materially alter any aspect of the licensed premises which was required to be described in the building plan or site plan required under this Chapter shall apply to the Town Board for an amendment to the license. The application shall explain the nature of the alteration and the reasons therefore and include a non-refundable application fee. The Applicant shall pay the reasonably necessary engineering expenses, if any, associated with the review. The Town Board shall act on the amendment application consistent with the terms of this ordinance.

B. Revocation of License.

Each of the following occurrences shall constitute a violation of the terms and conditions of this License (a "Violation") and any such Violation shall be grounds for revocation of the License (whatever the reason for such an event of default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, order or regulation) after the expiration of the notice and cure period and revocation hearing as set forth below:

- (1) if Licensee abandons the wind turbine generators located on the Premises for a period of one year or more; or
- (2) if Licensee fails to observe or perform any material condition or provision of the License or this Chapter for a period of 30 days after it has received written notice of such failure from the Town; provided, however, that a Violation shall not occur if Licensee commences performance of such obligation within such 30 day period and is diligently proceeding to complete such performance; or

- (3) if there is a material failure by Licensee to comply with any statute, regulation, rule, or license administered by any federal, state or county department, agency, or commission directly related to the operation of the wind turbine generator, and if Licensee fails to cure the material failure to comply for a period of 30 days after the date Licensee receives written notice of such failure from the Town or the federal, state or local governmental body or agency with jurisdiction; provided, however, that a Violation shall not occur if Licensee commences performance of such obligation within such 30 day period and is diligently proceeding to complete such performance.

C. Hearing.

The Town shall not revoke any License without first providing Licensee a hearing and the right to respond, including the right to present evidence regarding any defenses or extenuating circumstances (such as Applicant's prompt commencement of remedial measures that cannot reasonably be concluded within 30 days) regarding the alleged Violations.

D. Judicial Review.

Licensee shall have the right to appeal any revocation to Circuit Court within 30 days of the date of the revocation.

XI. LICENSE EXPIRATION.

Unless the Town Board authorizes a different term based upon analysis of the useful life of the Wind Energy Systems Facility, every license issued pursuant to this Chapter will terminate upon the expiration of thirty years from the date of issuance.

XII. FEES AND EXPENSES.

Licensee shall reimburse the Town as required by Section 3.08 of the Town Code, for all costs and expenses incurred by the Town in relation to the Application and the Facility, both at the time of the Application at throughout the term of the license.

XIII. SEVERABILITY.

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

SECTION 2: EFFECTIVE DATE.

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

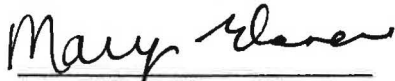
This ordinance was passed and adopted by the Town Board this 12th day of April, 2011.

TOWN OF DELAFIELD



Paul Kanter
Town Chairman

ATTEST:



Mary Elsner, Town Clerk

Published and/or posted this 3rd day of May, 2011.

STATE OF WISCONSIN

TOWN OF DELAFIELD

WAUKESHA COUNTY

ORDINANCE NO. 2012-07

**AN ORDINANCE TO REPEAL AND RECREATE CHAPTER 13
OF THE TOWN OF DELAFIELD TOWN CODE
REGARDING WIND ENERGY SYSTEMS LICENSE AND REGULATIONS**

**THE TOWN BOARD OF THE TOWN OF DELAFIELD, WAUKESHA COUNTY,
WISCONSIN, DOES ORDAIN AS FOLLOWS:**

SECTION 1: WIND ENERGY SYSTEMS LICENSE AND REGULATIONS

Chapter 13 of the Town of Delafield Town Code is hereby repealed and recreated as follows:

CHAPTER 13. WIND ENERGY SYSTEMS LICENSE AND REGULATIONS.

PART 1: GENERAL PROVISIONS

I. PURPOSE AND INTENT.

It is the intended purpose of the Town to regulate Wind Energy Systems to promote the health, safety, and general welfare of the citizens of the Town and to establish reasonable and uniform regulations for the operation thereof so as to minimize potentially dangerous effects of these Systems on the community, pursuant to the authority granted applicable laws.

II. AMENDMENTS TO APPLICABLE LAWS AND ADMINISTRATIVE RULES INCORPORATED HEREIN.

This ordinance is adopted pursuant to Wisconsin Statutes Sections 66.0401 and 66.0403, the rules of the State of Wisconsin Public Service Commission Chapter PSC 128, and other applicable laws as they exist on the date of adoption of this ordinance. Nothing herein shall be interpreted to be more restrictive than the rules promulgated by the State of Wisconsin Public Service Commission pursuant to Section 196.378(4g)(b), Wisconsin Statutes. In the event said statutes or said PSC Rules are amended from time to time, to the extent that this ordinance adopts identical provisions, this ordinance shall be interpreted to incorporate such amendments as are made to the applicable statutes and PSC Rules from time to time in the future.

PART 2: WIND ENERGY SYSTEM REGULATION

I. SYSTEM REGULATION; EXCLUDING SMALL SYSTEMS.

13.01 Definitions. In this chapter:

(1) "Commercial communications" includes communications used by government and military

entities for emergency purposes, licensed amateur radio service, and non-emergency communications used by agricultural, business, government, and military entities including aviation radar, commercial mobile radio service, fixed wireless service, global positioning, line-of-sight, microwave, personal communications service, weather radar, and wireless internet service.

(2) "Commission" means the public service commission.

(4) "Decommissioning" means removal of all of the following:

(a) The above ground portion of a wind energy system, including wind turbines and related facilities, except for access roads if removal has been waived by the property owner.

(b) All below ground facilities, except the following:

1. Underground collector circuit facilities.
2. Those portions of concrete structures 4 feet or more below grade.

(5) "DNR" means the Wisconsin department of natural resources.

(6) "Maximum blade tip height" means the nominal hub height plus the nominal blade length of a wind turbine, as listed in the wind turbine specifications provided by the wind turbine manufacturer. If not listed in the wind turbine specifications, "maximum blade tip height" means the actual hub height plus the blade length.

(7) "Nameplate capacity" means the nominal generating capacity of a wind energy system, as listed in the wind turbine specifications provided by the wind turbine manufacturer.

(8) "Nonparticipating property" means real property that is not a participating property.

(9) "Nonparticipating residence" means a residence located on nonparticipating property.

(10) "Occupied community building" means a school, church or similar place of worship, daycare facility or public library.

(12) "Owner" means:

(a) A person with a direct ownership interest in a wind energy system, regardless of whether the person was involved in acquiring the necessary rights, permits and approvals or otherwise planning for the construction and operation of a wind energy system.

(b) At the time a wind energy system is being developed, a person who is acting as a wind energy system developer by acquiring the necessary rights, permits and approvals for or by planning for the construction and operation of a wind energy system, regardless of whether the person will own or operate the wind energy system.

(13) "Participating property" means any of the following:

(a) A turbine host property.

(b) Real property that is the subject of an agreement that does all of the following:

1. Provides for the payment of monetary compensation to the landowner from an owner regardless of whether any part of a wind energy system is constructed on the property.

2. Specifies in writing any waiver of a requirement or right under this chapter and that the landowner's acceptance of payment establishes the landowner's property as a participating property.

(14) "Participating residence" means a residence located on participating property.

(15) "Personal communications" includes wireless telecommunications, personal communications service, radio, television, wireless internet service, and other systems used for personal use purposes.

(16) "Political subdivision" has the meaning given in s. 66.0401 (1e) (c), Stats.

(17) "Residence" means an occupied primary or secondary personal residence including a manufactured home as defined in s. 101.91 (2), Stats., a hospital, community-based residential facility, residential care apartment complex or similar facility, or a nursing home. "Residence" includes a temporarily unoccupied primary or secondary personal residence. "Residence" does not include any of the following:

(a) A recreational vehicle as defined in s. 340.01 (48r), Stats., notwithstanding the length of the vehicle.

(b) A camping trailer as defined in s. 340.01 (6m), Stats.

(c) A permanently abandoned personal residence.

(19) "Shadow flicker" means a pattern of moving shadows cast on a residence or an occupied community building caused by sunlight shining through moving wind turbine blades resulting in alternating changes in light intensity.

(20) "Small wind energy system" means a wind energy system that has a total installed nameplate capacity of 300 kilowatts or less and that consists of individual wind turbines that have an installed nameplate capacity of not more than 100 kilowatts.

(20.5) "Town" means the Town of Delafield, and when referring to the governing body means the Town Board of the Town of Delafield.

(21) "Turbine host property" means real property on which at least one wind turbine is located.

(22) "Wind access easement" means a written document that creates a legal interest in real property that restricts the use of the property to avoid interference with the wind resource on another property.

(23) "Wind energy system" has the meaning given in s. 66.0403 (1) (m), Stats., and is used to convert wind energy to electrical energy.

(24) "Wind energy system easement" means a written document that creates a legal interest in real property that permits an owner to place, construct or operate a wind turbine or other wind energy system facility on the property.

(25) "Wind energy system emergency" means a condition or situation at a wind energy system that presents a significant threat of physical danger to human life or a significant threat to property or a natural event that causes damage to wind energy system facilities.

(26) "Wind energy system facility" means any component of a wind energy system, such as a wind turbine, collector circuit, access road, electric system interconnection facility or operation and maintenance facility.

(27) "Wind energy system lease" means a written agreement between a landowner and an owner that establishes the terms and conditions associated with the placement, construction or operation of a wind turbine or other wind energy system facility on a landowner's property.

13.105 Development of a wind energy system; notice requirements.

(1) PRE-APPLICATION NOTICE. At least 90 days before an owner files an application to construct a wind energy system, an owner shall use commercially reasonable methods to provide written notice of the planned wind energy system to all of the following:

- (a) Landowners within one mile of a planned wind turbine host property.
- (b) Political subdivisions within which the wind energy system may be located.
- (c) Emergency first responders and air ambulance service providers serving a political subdivision within which the wind energy system may be located.
- (d) The Wisconsin department of transportation.
- (e) The commission.
- (f) The DNR.
- (g) The Wisconsin department of agriculture, trade and consumer protection.

(h) The office of the deputy undersecretary of the U.S. department of defense.

(1m) **ADDITIONAL PRE-APPLICATION NOTICE TO COMMISSION.** At least 180 days before filing an application to construct a wind turbine with a maximum blade tip height exceeding 600 feet, or a wind energy system in those portions of Lake Michigan or Lake Superior that are within the jurisdiction of the state, the owner shall provide written notice of the planned wind energy system to the commission.

(2) **PRE-APPLICATION NOTICE REQUIREMENTS.** The owner shall include all of the following in a notice under sub. (1) or (1m):

- (a) A complete description of the wind energy system, including the number and size of the planned wind turbines.
- (b) A map showing the planned location of all wind energy system facilities.
- (c) Contact information for the owner.
- (d) A list of all potential permits or approvals the owner anticipates may be necessary for construction of the wind energy system.
- (e) Whether the owner is requesting a joint application review process under s. 13.30 (7) and the name of each political subdivision that may participate in the joint review process.

13.11 Real property provisions. (1) **EASEMENT RECORDING REQUIRED.** A wind energy system easement or wind access easement shall be recorded under ch. 706, Stats. A wind energy system easement or wind access easement shall include the term of the easement and a full legal description of the property subject to the easement.

(2) **WIND LEASE AND WAIVER PROVISIONS.** A wind energy system lease and any waiver under s. 13.14 (5) or 13.15 (4) shall hold harmless and indemnify the real property owner for all of the following:

- (a) Any violation of federal, state or local law by the owner of the wind energy system.
- (b) Any damages or bodily injury caused by the construction, operation or decommissioning of the wind energy system.

13.12 Existing property uses. (1) **LAND USE AND COMMERCIAL ENTERPRISES.** An owner shall make reasonable efforts to ascertain and accommodate any land use or commercial enterprise located on a nonparticipating property within 0.5 mile of a proposed wind turbine site if the land use or commercial enterprise exists when the owner gives notice under s. 13.105 (1), or if complete publicly-available plans for construction are on file with the Town within 30 days of the date the owner gives notice under s. 13.105 (1).

(2) AGRICULTURAL USE. An owner shall design a wind energy system to reasonably minimize the conversion of land from agricultural use.

13.13 Siting criteria. (1) SETBACK DISTANCE AND HEIGHT REQUIREMENTS. (a) An owner shall design and construct a wind energy system using the wind turbine setback distances shown in Table 1.

Table 1

Setback Description	Setback Distance
Occupied Community Buildings	<i>The lesser of 1,250 feet or 3.1 times the maximum blade tip height</i>
Participating Residences	<i>1.1 times the maximum blade tip height</i>
Nonparticipating Residences	<i>The lesser of 1,250 feet or 3.1 times the maximum blade tip height</i>
Participating Property Lines	<i>None</i>
Nonparticipating Property Lines	<i>1.1 times the maximum blade tip height</i>
Public Road Right-of-Way	<i>1.1 times the maximum blade tip height</i>
Overhead Communication and Electric Transmission or Distribution Lines - Not including utility service lines to individual houses or outbuildings	<i>1.1 times the maximum blade tip height</i>
Overhead Utility Service Lines - Lines to individual houses or outbuildings	<i>None</i>

(b) An owner shall measure wind turbine setback distances as a straight line from the vertical centerline of the wind turbine tower to the nearest point on the permanent foundation of a building or residence or to the nearest point on the property line or feature, as applicable.

(c) An owner shall work with the Town and owners of participating and nonparticipating properties to site wind turbines to minimize individual hardships.

(d) The owner of a nonparticipating residence or occupied community building may

waive the applicable wind turbine setback distances in Table 1 for those structures to a minimum setback distance of 1.1 times the maximum blade tip height. The owner of a nonparticipating property may waive the applicable wind turbine setback distance in Table 1 from a nonparticipating property line.

13.14 Noise criteria. (1) DEFINITIONS. In this section, nighttime hours are the hours beginning at 10:00 p.m. and ending at 6:00 a.m. daily and daytime hours are the hours beginning at 6:00 a.m. and ending at 10:00 p.m. daily.

(2) PLANNING, (a) The noise limits in this section apply at the outside wall of a nonparticipating residence or occupied community building that exists when the owner gives notice under s. 13.105 (1) or for which complete publicly-available plans for construction are on file with the Town within 30 days of the date on which the owner gives notice under s. 13.105 (1).

(b) An owner shall design the proposed wind energy system to minimize noise at a residence or occupied community building to the extent reasonably practicable.

(c) An owner shall design a wind energy system to comply with the noise standards in this section under planned operating conditions.

(3) NOISE LIMITS, (a) Except as provided in par. (b), sub. (4) (c) and sub. (5), an owner shall operate the wind energy system so that the noise attributable to the wind energy system does not exceed 50 dBA during daytime hours and 45 dBA during nighttime hours.

(b) In the event audible noise due to wind energy system operations contains a steady pure tone, such as a whine, whistle, screech, or hum, the owner shall promptly take corrective action to permanently eliminate the noise. This paragraph does not apply to sound the wind energy system produces under normal operating conditions.

(4) COMPLIANCE, (a) If an owner uses sound level measurements to evaluate compliance with this section at a nonparticipating residence or occupied community building, those measurements shall be made as near as possible to the outside wall nearest to the closest wind turbine, or at an alternate wall as specified by the owner of the nonparticipating residence or occupied community building. The owner may take additional measurements to evaluate compliance in addition to those specified by this section.

(b) Upon receipt of a complaint regarding a violation of the noise standards in sub. (3) (a), an owner shall test for compliance with the noise limits in sub. (3) (a). A political subdivision or monitoring committee established under s. 13.41 may not require additional testing to show compliance with sub. (3) (a) if the owner has provided the results of an accurate test conducted within 2 years of the date of the complaint showing that the wind energy system is in compliance with sub. (3) (a) at the location relating to the complaint.

(c) Methods available for the owner to comply with sub. (3) shall include operational curtailment of one or more wind turbines. Upon receipt of a complaint about a noise

under sub. (3) (b), the owner shall use operational curtailment to eliminate the noise until the owner permanently corrects the problem.

(d) An owner shall evaluate compliance with sub. (3) (a) as part of pre- and post-construction noise studies. An owner shall conduct pre- and post-construction noise studies under the most current version of the noise measurement protocol as described in s. 13.50 (2).

(5) WAIVER. Upon request by an owner of a wind energy system, an owner of an affected nonparticipating residence or occupied community building may relieve the owner of the wind energy system of the requirement to meet any of the noise limits in this section at the affected residence or occupied community building by written contract with the wind energy system owner. Unless otherwise provided in a contract signed by an owner of an affected nonparticipating residence or occupied community building, a waiver by an owner of an affected nonparticipating residence or occupied community building is an encumbrance on the real property, runs with the land until the wind energy system is decommissioned, and shall be recorded under ch. 706, Stats.

(6) NOTIFICATION, (a) Before entering into a contract under sub. (5), an owner of a wind energy system shall provide written notice of the requirements of this section to the owner of an affected nonparticipating residence or occupied community building.

(b) Before the initial operation of the wind energy system, an owner of a wind energy system shall provide notice of the requirements of this section to an owner of a nonparticipating residence or occupied community building within 0.5 mile of a constructed wind turbine that has not entered into a contract under sub. (5).

13.15 Shadow flicker. (1) PLANNING, (a) The shadow flicker requirements in this section apply to a nonparticipating residence or occupied community building that exists when the owner gives notice under s. 13.105 (1) or for which complete publicly-available plans for construction are on file with the Town within 30 days of the date on which the owner gives notice under s. 13.105 (1).

(b) An owner shall design the proposed wind energy system to minimize shadow flicker at a residence or occupied community building to the extent reasonably practicable.

(c) An owner shall use shadow flicker computer modeling to estimate the amount of shadow flicker anticipated to be caused by a wind energy system and shall design the wind energy system so that computer modeling indicates that no nonparticipating residence or occupied community building will experience more than 30 hours per year of shadow flicker under planned operating conditions.

(2) SHADOW FLICKER LIMITS. An owner shall operate the wind energy system in a manner that does not cause more than 30 hours per year of shadow flicker at a nonparticipating residence or occupied community building. If a nonparticipating residence or occupied community building experiences more than 30 hours per year of shadow flicker under the wind energy

system's normal operating conditions, the owner shall use operational curtailment to comply with this subsection.

(3) SHADOW FLICKER MITIGATION, (a) An owner of a wind energy system shall work with an owner of a nonparticipating residence or occupied community building to mitigate the effects of shadow flicker to the extent reasonably practicable.

(b) An owner shall provide reasonable shadow flicker mitigation at the owner's expense for a nonparticipating residence or occupied community building experiencing 20 hours or more per year of shadow flicker.

(c) An owner shall model shadow flicker and a nonparticipating residence or occupied community building is eligible for mitigation if computer modeling shows that shadow flicker at the nonparticipating residence or occupied community building will be 20 hours or more per year. An owner of a nonparticipating residence or occupied community building is not required to document the actual hours per year of shadow flicker if modeling indicates the nonparticipating residence or occupied community building is eligible for mitigation. A nonparticipating residence or occupied community building that experiences 20 hours or more per year of shadow flicker based on records kept by the resident of a nonparticipating residence or the occupant of an occupied community building shall also be eligible for mitigation.

(d) An owner may provide shadow flicker mitigation for any residence or occupied community building in addition to the mitigation required under par. (b).

(e) The requirement under par. (b) to mitigate shadow flicker applies when the owner receives a complaint or request for mitigation regarding shadow flicker for an eligible nonparticipating residence or occupied community building. If shadow flicker mitigation is required, the owner of the wind energy system shall allow the owner of the nonparticipating residence or occupied community building to choose a preferred reasonable mitigation technique, including installation of blinds or plantings at the wind energy system owner's expense.

(4) WAIVER. Upon request by an owner of a wind energy system, an owner of an affected nonparticipating residence or occupied community building may relieve the wind energy system owner of a requirement under sub. (2) or (3) (b) at the affected nonparticipating residence or occupied community building by written contract with the wind energy system owner. Unless otherwise provided in a contract signed by an owner of an affected nonparticipating residence or occupied community building, a waiver by an owner of an affected nonparticipating residence or occupied community building is an encumbrance on the real property and runs with the land until the wind energy system is decommissioned, and shall be recorded under ch. 706, Stats.

(5) NOTIFICATION, (a) Before entering into a contract under sub. (4), a wind energy system owner shall provide notice of the requirements of this section to individual owners of an affected nonparticipating residence or occupied community building.

(b) Before the initial operation of the wind energy system, a wind energy system owner shall provide notice of the requirements of this section to an owner of a nonparticipating residence or occupied community building within 0.5 mile of a constructed wind turbine that has not entered into a contract under sub. (4).

13.16 Signal interference. (1) PLANNING, (a) Except as provided in sub. (4) (b), the signal interference requirements in this section apply to commercial communications and personal communications in use when the wind energy system begins operation.

(b) A owner shall use reasonable efforts to avoid causing interference with commercial communications and personal communications to the extent practicable.

(c) An owner may not construct wind energy system facilities within existing line-of-sight communication paths that are used by government or military entities to provide services essential to protect public safety. The owner shall provide information showing that wind turbines and other wind energy system facilities will be in compliance with this paragraph.

(2) COMMERCIAL COMMUNICATIONS INTERFERENCE MITIGATION. An owner shall use reasonable and commercially available technology to mitigate interference caused by a wind energy system with commercial communications in use when a wind energy system begins operation. Before implementing mitigation measures, the owner shall consult with affected parties regarding the preferred mitigation solution for commercial communications interference problems. Except as provided in sub. (4), an owner shall mitigate commercial communications interference caused by the wind energy system by making the affected party's preferred reasonable mitigation solution effective until either the wind energy system is decommissioned or the communication is no longer in use, whichever is earlier.

(3) PERSONAL COMMUNICATIONS INTERFERENCE MITIGATION, (a) An owner shall use reasonable and commercially available technology to mitigate interference with personal communications in use when a wind energy system begins operation caused by a wind energy system. The owner shall use reasonable and commercially available technology to mitigate interference with personal communications that were not in use when the wind energy system began commercial operation, if a wind energy system is causing the interference and the interference occurs at a location at least 0.5 mile from a wind turbine.

(b) Before implementing mitigation measures, the owner shall consult with affected parties regarding the preferred mitigation solution for personal communications interference problems. Except as provided in sub. (4), an owner shall mitigate personal communications interference caused by the wind energy system by making the affected party's preferred reasonable mitigation solution effective until either the wind energy system is decommissioned or the communication is no longer in use, whichever is earlier.

(4) MITIGATION PROTOCOL. Under the protocol established under s. 13.50 (2), owners are required to implement a new mitigation solution that becomes commercially available before the wind energy system is decommissioned to address interference for which mitigation is required

under sub. (2) or (3) and for which the original mitigation solution implemented is only partially effective.

13.17 Stray voltage. (1) TESTING REQUIRED. (a) An owner shall work with the local electric distribution company to test for stray voltage at all dairy and confined animal operations within 0.5 mile of a wind energy system facility pursuant to the stray voltage protocol established by the commission before any wind energy system construction activity that may interfere with testing commences and again after construction of the wind energy system is completed, except as otherwise specified by commission staff under par. (b).

(b) Before any testing under par. (a) begins, an owner shall work with commission staff to determine the manner in which stray voltage testing will be conducted and on which properties. The electric distribution company serving a dairy or confined animal operation where testing is required under par. (a) shall conduct or arrange to conduct all required testing at the expense of the owner.

(2) RESULTS OF TESTING. An owner and the electric distribution company shall provide to commission staff the results of all stray voltage testing in writing.

(3) REQUIREMENT TO RECTIFY PROBLEMS. An owner shall work with the electric distribution company and farm owner to rectify any stray voltage problems attributable to the construction and operation of the wind energy system, in compliance with the commission's stray voltage protocol.

13.18 Construction and operation. (1) PHYSICAL CHARACTERISTICS. (a) An owner may not display advertising material or signage other than warnings, equipment information, or indicia of ownership on a wind turbine. An owner may not attach any flag, decorative sign, streamers, pennants, ribbons, spinners, fluttering, or revolving devices to a wind turbine. An owner may attach a safety feature or wind monitoring device to a wind turbine.

(b) An owner shall ensure that a wind turbine has a conventional or unobtrusive finish.

(c) An owner shall install lighting at a wind energy system that complies with standards established by the federal aviation administration. The Town may not establish lighting requirements for a wind energy system that conflict with standards established by the federal aviation administration. The Town may require use of shielding or control systems approved by the federal aviation administration to reduce visibility of lighting to individuals on the ground.

(d) An owner shall take appropriate measures to ensure that a wind turbine is not readily climbable except by authorized personnel.

(e) An owner shall ensure that all wind turbine access doors and electrical equipment are locked when authorized personnel are not present.

(f) An owner shall place appropriate warning signage on or at the base of each wind turbine.

(g) An owner shall post and maintain up-to-date signs containing a 24-hour emergency contact telephone number, information identifying the owner, and sufficient information to identify the location of the sign within the wind energy system. An owner shall post these signs at every intersection of a wind energy system access road with a public road and at each wind turbine location.

(h) An owner shall clearly mark guy wires and supports for a wind energy system, meteorological tower or other device for measuring wind speeds so that the wires and supports are visible to low flying aircraft under fair weather conditions.

(2) ELECTRICAL STANDARDS, (a) An owner shall construct, maintain, and operate collector circuit facilities in a manner that complies with the national electrical safety code and ch. PSC 114 and shall construct, maintain, and operate all wind energy system facilities in a manner that complies with the national electrical code.

(b) An owner shall construct collector circuit facilities for a wind energy system underground to the extent practicable.

(c) An owner shall establish an inspection schedule for all overhead collector circuits to ensure that third-party facilities, including cable television and telecommunications cables, are not attached or bonded to overhead collector circuit grounding. If third-party facilities are found attached to the overhead collector facilities, the owner shall ensure that the third-party facilities are promptly removed.

(3) CONSTRUCTION, OPERATION, AND MAINTENANCE STANDARDS, (a) An owner shall construct, operate, repair, maintain and replace wind energy system facilities as needed to keep the wind energy system in good repair and operating condition and in a manner that protects individuals from injury.

(am) An owner shall minimize soil compaction, topsoil mixing and damage to drainage systems on agricultural land during the construction or decommissioning of the wind energy system. The Town may establish reasonable requirements designed to minimize soil compaction, topsoil mixing and damage to drainage systems on agricultural land.

(b) Except for the area physically occupied by the wind energy system facilities, an owner shall restore the topography, soils and vegetation of the project area to original condition after construction is complete, unless otherwise provided in a contract signed by an affected landowner, considering any modifications needed to comply with DNR requirements.

(c) An owner shall carry general liability insurance relating to claims for property damage or bodily injury arising from the construction, operation or decommissioning of

the wind energy system and shall include turbine host property owners as additional insured persons on the policy.

(4) EMERGENCY PROCEDURES, (a) An owner shall notify the Town of the occurrence and nature of a wind energy system emergency within 24 hours of the wind energy system emergency.

(b) An owner shall establish and maintain liaison with the Town and with fire, police, and other appropriate first responders serving the wind energy system to create effective emergency plans that include all of the following:

1. A list of the types of wind energy system emergencies that require notification under par. (a).
2. Current emergency contact information for first responders and for the wind energy system owner, including names and phone numbers.
3. Procedures for handling different types of wind energy system emergencies, including written procedures that provide for shutting down the wind energy system or a portion of the system as appropriate.
4. Duties and responsibilities of the owner and of first responders in the event of a wind energy system emergency.
5. An emergency evacuation plan for the area within 0.5 mile of any wind energy system facility, including the location of alternate landing zones for emergency services aircraft.

(c) The owner shall review the emergency plan at least annually in collaboration with fire, police and other appropriate first responders to update and improve the emergency plan as needed.

(d) The owner shall distribute current copies of the emergency plan to the Town and fire, police and other appropriate first responders as identified by the Town.

(e) The Town may require the owner to provide annual training for fire, police and other appropriate first responders regarding responding to a wind energy system emergency until the wind energy system has been decommissioned.

(f) An owner of a wind energy system shall do all of the following:

1. Furnish its operator, supervisors and employees who are responsible for emergency action a copy of the current edition of the emergency procedures established under this subsection to ensure compliance with those procedures.

2. Train the appropriate operating personnel to ensure they have knowledge of the emergency procedures and verify that the training is effective.

3. As soon as possible after the end of a wind energy system emergency, review employee activities to determine whether the procedures were effectively followed.

13.19 Decommissioning. (1) REQUIREMENT TO DECOMMISSION. (a) An owner of a wind energy system shall decommission and remove the wind energy system when the system is at the end of its useful life.

(b) A wind energy system is presumed to be at the end of its useful life if the wind energy system generates no electricity for a continuous 360-day period. This presumption may be rebutted under par. (c).

(c) Upon application by the owner, and except as provided in par. (d), the Town shall grant an extension of the time period for returning the wind energy system to service by one or more additional 180 day periods if the owner demonstrates it is likely the wind energy system will operate again in the future and any of the following occur:

1. The owner submits a plan to the Town that demonstrates an ongoing good faith effort to return the wind energy system to service and outlines the steps and schedule for returning the wind energy system to service in a reasonable period of time, including by repairing, replacing or repowering the wind energy system facilities as necessary to generate electricity.

2. The owner demonstrates that the wind energy system is part of a prototype or other demonstration project being used for ongoing research or development purposes.

3. The owner demonstrates that the wind energy system is being used for educational purposes.

(d) The Town may deny a request for an extension under par. (c) if the wind energy system has not generated any electricity for a continuous period of 540 days or more and the Town finds that the owner is not capable of returning the wind energy system to service within a reasonable period of time.

(e) A wind energy system is irrebuttably presumed to be at the end of its useful life if the wind energy system generates no electricity for a period of 540 days and any of the following occur:

1. The owner does not request an extension of the time period for returning the wind energy system to service under par. (c).

2. The Town denies a request for an extension under par. (d) and any appeal rights have expired.

(f) When decommissioning is required, the owner shall begin decommissioning within 360 days after the wind energy system has reached the end of its useful life. The owner shall complete decommissioning and removal of the wind energy system within 540 days after the wind energy system has reached the end of its useful life.

(2) DECOMMISSIONING REVIEW. The Town may establish a decommissioning review process to determine when a wind energy system has reached the end of its useful life.

(3) FINANCIAL RESPONSIBILITY. (a) The owner of a wind energy system with a nameplate capacity of one megawatt or larger shall maintain proof of the owner's ability to fund the actual and necessary cost to decommission the wind energy system and shall ensure the availability of funds necessary for decommissioning throughout the expected life of the wind energy system and through to completion of the decommissioning activities.

(b) An owner of a wind energy system with a nameplate capacity of one megawatt or larger shall provide financial assurance of the owner's ability to pay for the actual and necessary cost to decommission the wind energy system before commencing major civil construction activities such as blasting or foundation construction at the wind energy system site. An owner may comply with this paragraph by choosing to provide a bond, deposit, escrow account, irrevocable letter of credit, or some combination of these financial assurances, that will ensure the availability of funds necessary for decommissioning throughout the expected life of the wind energy system and through to completion of the decommissioning activities.

(c) An owner shall provide the financial assurance under par. (b) in an amount up to the estimated actual and necessary cost to decommission the wind energy system. The owner shall provide the Town with up to 3 cost estimates of the actual and necessary cost to decommission the wind energy system that are prepared by third parties agreeable to the owner and the Town. The owner shall establish financial assurance that places the Town in a secured position, and any secured funds may only be used for decommissioning the wind energy system until either the Town determines that the wind energy system has been decommissioned under sub. (5) (b), or until the Town has otherwise approved the release of the secured funds, whichever is earlier. The owner shall establish financial assurance that allows the Town to access funds for the purpose of decommissioning the wind energy system if the owner does not decommission the wind energy system when decommissioning is required.

(d) The amount of the financial assurance is not required to exceed the average of the cost estimates provided.

(e) Any approval by the Town of a wind energy system is subject to the owner's compliance with pars. (b) and (c).

(f) During the useful life of a wind energy system, the Town may periodically request information from the owner regarding the industry costs for decommissioning the wind energy system. If the Town finds that the future anticipated cost to decommission the wind energy system is at least 10 percent more or less than the amount of financial assurance previously provided under par. (b), the Town may correspondingly increase or decrease the amount of financial assurance required for the wind energy system. The Town may not adjust the financial assurance under this paragraph more often than once in a 5-year period.

(g) The Town may require an owner to submit to the Town a substitute financial assurance of the owner's choosing under par. (b) if an event occurs that raises material concerns regarding the viability of the existing financial assurance.

(4) SITE RESTORATION, (a) Except as provided in par. (b), if a wind energy system was constructed on land owned by a person other than the owner of the wind energy system, the owner of the wind energy system shall ensure that the property is restored to preconstruction condition, unless otherwise provided in a contract signed by an affected landowner, considering any modifications needed to comply with DNR requirements.

(b) If a wind energy system was constructed on a brownfield, as defined in s. 560.13 (1) (a), Stats., the owner shall restore the property to eliminate effects caused by the wind energy system, except for the effects of environmental remediation activities, as defined in s. 560.13(1) (d), Stats.

(5) DECOMMISSIONING COMPLETION. (a) An owner shall file a notice of decommissioning completion with the Town and the commission when a wind energy system approved by the Town has been decommissioned and removed.

(b) Within 360 days of receiving a notice of decommissioning, the Town shall determine whether the owner has satisfied the requirements of subs. (1) (a) and (4).

13.30 Application and notice requirements. (1) APPLICATION REQUIRED. An owner shall file an application to construct a wind energy system with all political subdivisions with jurisdiction over the wind energy system, including the Town Clerk.

(2) CONTENTS OF AN APPLICATION. An owner shall complete and file with the Town Clerk an application that includes all of the following:

(a) Wind energy system description and maps showing the locations of all proposed wind energy facilities.

(b) Technical description of wind turbines and wind turbine sites.

(c) Timeline and process for constructing the wind energy system.

- (d) Information regarding anticipated impact of the wind energy system on local infrastructure.
- (e) Information regarding noise anticipated to be attributable to the wind energy system.
- (f) Information regarding shadow flicker anticipated to be attributable to the wind energy system.
- (g) Information regarding the anticipated effects of the wind energy system on existing land uses within 0.5 mile of the wind energy system.
- (h) Information regarding the anticipated effects of the wind energy system on airports and airspace.
- (i) Information regarding the anticipated effects of the wind energy system on line-of-sight communications.
- (j) A list of all state and federal permits required to construct and operate the wind energy system.
- (k) Information regarding the planned use and modification of roads within the Town during the construction, operation, and decommissioning of the wind energy system, including a process for assessing road damage caused by wind energy system activities and for conducting road repairs at the owner's expense.
- (L) A copy of all emergency plans developed in collaboration with appropriate first responders under s. 13.18 (4) (b). An owner may file plans using confidential filing procedures as necessary.
- (m) A decommissioning and site restoration plan providing reasonable assurances that the owner will be able to comply with s. 13.19.
- (n) A representative copy of all notices issued under sub. (5) and ss. 13.105 (1) (a) and 13.42 (1).
- (p) Any other information necessary to understand the construction, operation or decommissioning of the proposed wind energy system.

(3) ACCURACY OF INFORMATION. The owner shall ensure that information contained in an application is accurate.

(4) DUPLICATE COPIES. The Town may specify a reasonable number of copies to be filed. Each copy shall include all worksheets, maps, and other attachments included in the application. Upon prior written approval of the Town, the Town may permit an owner to file an application electronically.

(5) NOTICE TO PROPERTY OWNERS AND RESIDENTS. (a) On the same day an owner files an application for a wind energy system, the owner shall, under s. 66.0401 (4) (a) 3., Stats., use commercially reasonable methods to provide written notice of the filing of the application to property owners and residents located within one mile of the proposed location of any wind energy system facility. The notification shall include all of the following:

1. A complete description of the wind energy system, including the number and size of the wind turbines.
2. A map showing the locations of all proposed wind energy system facilities.
3. The proposed timeline for construction and operation of the wind energy system.
4. Locations where the application is available for public review.
5. Owner contact information.

(b) After the Town receives an application for a wind energy system, the notice required to be published by the Town under s. 66.0401 (4) (a) 1., Stats., shall include a brief description of the proposed wind energy system and its proposed location, the locations where the application is available for public review, the method and time period for the submission of public comments to the Town, and the approximate schedule for review of the application by the Town.

(6) PUBLIC PARTICIPATION. (a) The Town shall make an application for a wind energy system available for public review at a local library and at the Town Hall. The Town may also provide public access to the application electronically.

(b) The Town shall establish a process for accepting and considering written public comments on an application for a wind energy system.

(c) The Town shall hold at least one public meeting to obtain comments on and to inform the public about a proposed wind energy system.

(7) JOINT APPLICATION REVIEW PROCESS. (a) If the wind energy system is proposed to be located in more than one political subdivision with jurisdiction over the wind energy system, the political subdivisions involved may conduct a joint application review process on their own motion or upon request. If an owner requests a joint application review, the owner shall include the request in its notice of intent to file an application with the Town under s. 13.105 (1). If the owner requests a joint application review process, the political subdivisions involved shall approve or deny this request within 60 days of receipt of the owner's notice of intent to file an application.

(b) Except as provided in s. 66.0401 (4) (a) 2., Stats., if political subdivisions elect to conduct a joint application review process, the process shall be consistent with this

chapter and the political subdivisions shall establish the process within 90 days of the date the political subdivisions receive the owner's notice of intent to file an application. The Town may follow the review process of another political subdivision for purposes of conducting a joint application review process concurrently with the other political subdivision. If a joint application review process is adopted, the owner shall file the joint-review process application with all of the political subdivisions participating in the joint review process.

13.31 Application completeness. (1) COMPLETE APPLICATIONS, (a) An application is complete if it meets the filing requirements under ss. 13.30 (2) and 13.50 (1).

(b) The Town shall determine the completeness of an application, and shall notify the owner in writing of the completeness determination, no later than 45 days after the day the application is filed. An application is considered filed the day the owner notifies the Town in writing that all the application materials have been filed. If the Town determines that the application is incomplete, the notice provided to the owner shall state the reasons for the determination.

(c) An owner may file a supplement to an application that the Town has determined to be incomplete. There is no limit to the number of times that an owner may re-file an application. For incomplete applications, the owner shall provide additional information as specified in the notice under par. (b).

(d) An additional 45-day completeness review period shall begin the day after the Town receives responses to all items identified in the notice under par. (b).

(e) If the Town does not make a completeness determination within the applicable review period, the application is considered to be complete.

(2) REQUESTS FOR ADDITIONAL INFORMATION. The Town may request additional information necessary to understand the wind energy system after determining that an application is complete. An owner shall provide additional information in response to all reasonable requests. An owner shall respond to all inquiries made subsequent to a determination of completeness in a timely, complete, and accurate manner.

13.32 Town review of a wind energy system. (1) APPROVAL BY TOWN. Except as provided in s. 13.02 (1), the Town may require an owner to obtain approval from the Town before constructing any of the following:

(a) A wind energy system.

(b) An expansion of an existing or previously-approved wind energy system.

(2) STANDARD FOR APPROVAL. (a) The Town may not unreasonably deny an application for a wind energy system or impose unreasonable conditions.

(3) WRITTEN DECISION, (a) The Town shall issue a written decision to grant or deny an application for a wind energy system. The written decision shall include findings of fact supported by evidence in the record. If an application is denied, the decision shall specify the reason for the denial. The Town may make its approval subject to the conditions in s. 13.33.

(b)1. The Town shall provide its written decision to the owner and to the commission. If the Town approves an application for a wind energy system, the Town shall provide the owner with a duplicate original of the decision.

2. The owner shall record the duplicate original of a decision approving an application with the register of deeds for the county in which the wind energy system is located.

(4) EFFECT OF OWNERSHIP CHANGE ON APPROVAL. Approval by the Town of a wind energy system remains in effect if there is a change in the owner of the wind energy system. The Town may require an owner to provide timely notice of any change in the owner of the wind energy system.

(5) FEES. (a) The Town may charge an owner a reasonable application fee or require an owner to reimburse the Town for reasonable expenses relating to the review and processing of an application for a wind energy system.

(b) The Town's fee or reimbursement requirement under par. (a) shall be based on the actual and necessary cost of the review of the wind energy system application, and may include the cost of services necessary to review an application that are provided by outside engineers, attorneys, planners, environmental specialists, and other consultants or experts. The Town may by ordinance set standardized application fees based on the size and complexity of a proposed wind energy system.

(c) The Town may require an owner of a wind energy system to submit up to 50 percent of the total estimated amount of the fee or reimbursement for the wind energy system application under par. (a) before issuing a written decision under sub. (3) (a), if the Town gives written notice to the owner of its intent to do so within 10 days of the date the application is deemed complete and the notice contains an estimate of the amount of the fee and the relevant reimbursement requirements.

(d) The Town may not charge an owner an annual fee or other recurring fees to operate or maintain a wind energy system.

Note: See also s. 66.0628(2), Stats., which requires any fee imposed by the Town to bear a reasonable relationship to the service for which the fee is imposed.

13.33 Additional provisions. The following conditions apply to any Town approval of an application to construct a wind energy system:

(1) INFORMATION. The owner shall provide information about whether the owner has consulted with and received any non-binding recommendations for constructing, operating or decommissioning the wind energy system from a state or federal agency, and whether the owner has incorporated such non-binding recommendations into the design of the wind energy system.

(2) STUDIES. The owner shall cooperate with any study of the effects of wind energy systems coordinated by a state agency.

(3) MONETARY COMPENSATION. The owner of a wind energy system shall offer an agreement that includes annual monetary compensation to the owner of a nonparticipating residence, if the residence is located within 0.5 mile of a constructed wind turbine. For one turbine located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed \$600. For two turbines located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed \$800. For three or more turbines located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed \$1,000. The initial annual monetary compensation under this subsection shall apply to agreements entered into in 2011. For agreements entered into in 2012 and thereafter, the initial annual amounts shall increase each year by the greater of two percent or the increase in the Consumer Price Index, as described in s. 196.374 (5) (bm) 2. b., Stats., from the previous year. An agreement offered under this subsection shall specify in writing any waiver of a requirement or right under this chapter and whether the landowner's acceptance of payment establishes the landowner's property as a participating property under this chapter.

(3m) AERIAL SPRAYING. The owner of a wind energy system shall offer an agreement that includes monetary compensation to a farm operator farming on a nonparticipating property located within 0.5 mile of a constructed wind turbine if the farm operator demonstrates all of the following:

(a) Substantial evidence of a history, before the wind energy system owner gives notice under s. 13.105 (1), of using aerial spraying for pest control or disease prevention for growing potatoes, peas, snap beans or sweet corn on all or part of a farm field located within 0.5 mile of a constructed wind turbine.

(b) A material reduction in potato, pea, snap bean or sweet corn production or a material increase in application costs on all or part of a farm field located within 0.5 mile of a constructed wind turbine as a result of the wind energy system's effect on aerial spraying practices.

(4) PERMITS. The owner shall submit to the Town copies of all necessary state and federal permits and approvals.

(5) ANNUAL REPORTS. The owner shall file an annual report with the Town documenting the operation and maintenance of the wind energy system during the previous calendar year.

13.34 Record of decision. (1) RECORDKEEPING, (a) The Town shall keep a complete written record of its decision-making relating to an application for a wind energy system.

(b) If the Town denies an application, the Town shall keep the record for at least 7 years following the year in which it issues the decision.

(c) If the Town approves an application, the Town shall keep the record for at least 7 years after the year in which the wind energy system is decommissioned.

(2) RECORD CONTENTS. The record of a decision shall include all of the following:

(a) The approved application and all additions or amendments to the application.

(b) A representative copy of all notices issued under ss. 13.105 (1) (a), 13.30 (5) and 13.42 (1).

(c) A copy of any notice or correspondence that the Town issues related to the application.

(d) A record of any public meeting under s. 13.30 (6) (c) and any hearing related to the application. The record may be an electronic recording, a transcript prepared from an electronic recording, or a transcript prepared by a court reporter or stenographer. The record shall include any documents or evidence submitted by meeting or hearing participants.

(e) Copies of any correspondence or evidentiary material that the Town considered in relation to the application, including copies of all written public comments filed under s. 13.30 (6) (b).

(f) Minutes of any Town, board, council or committee meetings held to consider or act on the application.

(g) A copy of the written decision under s. 13.32 (3) (a).

(h) Other materials that the Town prepared to document its decision-making process.

(i) A copy of any Town ordinance cited in or applicable to the decision.

(3) POST-CONSTRUCTION FILING REQUIREMENT. Within 90 days of the date a wind energy system commences operation, the owner shall file with the Town and the commission an as-built description of the wind energy system, an accurate map of the wind energy system showing the location of all wind energy system facilities, geographic information system information showing the location of all wind energy system facilities and current information identifying the owner of the wind energy system. An owner shall in the filings under this subsection label each wind turbine location with a unique identifier consistent with the information posted at the wind turbine location under s. 13.18 (1) (g).

13.35 Modifications to an approved wind energy system. (1) MATERIAL CHANGE.

(a) An owner may not make a material change in the approved design, location or construction of a wind energy system without the prior written approval of the Town that authorized the wind energy system, unless the Town automatically approves the material change by taking either of the steps specified in s. 13.32 (2) (b) 1. or 2.

(b) An owner shall submit an application for a material change to an approved wind energy system to the Town that authorized the wind energy system.

(2) REVIEW LIMITED, (a) On receipt of an application for a material change to a wind energy system under sub. (1) (b) may not reopen the merits of the earlier approval but shall consider only those issues relevant to the proposed change.

(b) An application for a material change is subject to ss. 13.30 (1), (3) to (5), (6) (a) and (b) and (7) and 13.31 to 13.34.

(c) An application for a material change shall contain information necessary to understand the material change.

(d) The Town may hold at least one public meeting to obtain comments on and to inform the public about a proposed material change to an approved wind energy system.

13.36 Monitoring compliance. (1) MONITORING PROCEDURE. The Town may establish a procedure to monitor compliance by the owner with any condition on an approved wind energy system or to assess when wind energy system facilities are not maintained in good repair and operating condition. The procedure may include timelines, provide for payment of reasonable fees for conducting an assessment, and provide for notification to the public.

(2) THIRD-PARTY INSPECTOR DURING CONSTRUCTION. The Town may require an owner to pay a reasonable fee for a third-party inspector to monitor and report to the Town regarding the owner's compliance with permit requirements during construction. An inspector monitoring compliance under this subsection shall also report to a state permitting authority upon the state permitting authority's request.

13.40 Complaint process. (1) MAKING A COMPLAINT, (a) An aggrieved person may make a complaint regarding failure by an owner to comply with an obligation under this chapter.

(b) A complaint under par. (a) shall be made first to the owner of the wind energy system pursuant to a complaint resolution process developed by the owner.

(c) A complainant may petition the Town for review of a complaint that is not resolved within 45 days of the day the owner receives the original complaint.

(d) The Town's decision under par. (c) is subject to review under s. 66.0401 (5), Stats.

(2) COMPLAINT RESOLUTION, (a) An owner shall use reasonable efforts to resolve complaints regarding a wind energy system and shall investigate complaints regarding a wind energy system at the owner's expense.

(b) Upon receipt of a complaint, an owner shall provide the complainant with a copy of the notice described in s. 13.42 (1). Within 30 days of receiving a complaint, an owner shall provide an initial response to the complainant.

(c) An owner shall make a good faith effort to resolve complaints within 45 days of receiving a complaint. An owner shall notify the Town of complaints that have not been resolved within 45 days of the date the owner received the original complaint.

(d) An owner shall maintain a log of all complaints received regarding the wind energy system. The owner shall include in the log the name and address of each complainant, the nature of each complaint, and the steps taken to resolve each complaint. An owner shall provide a copy of a complaint log monthly, at no cost, either to a monitoring committee established under s. 13.41 or, if a monitoring committee has not been established, to the Town. An owner shall make any complaint log available to the commission upon request.

(e) An owner shall develop a complaint resolution process that is consistent with this subsection.

13.41 Monitoring committee. (1) COMMITTEE. Except as provided in sub. (3), the Town may establish a monitoring committee to oversee resolution of complaints regarding a wind energy system. A monitoring committee shall include on the committee a member who is a local employee of an owner of a wind energy system and, if in existence, at least one nonparticipating landowner residing in the Town within 0.5 mile of a wind turbine that is located in the Town.

(2) DUTIES. A monitoring committee established under sub. (1) may do any of the following:

(a) Maintain a record of all complaints brought to it.

(b) Require the owner to provide the committee with information regarding the owner's response to any complaint forwarded to the owner by the committee.

(c) Recommend to the Town a reasonable resolution to a complaint based upon the information gathered by the committee.

(3) MULTIPLE JURISDICTIONS. If a wind energy system is located in more than one political subdivision with jurisdiction over the wind energy system and multiple political subdivisions decide to establish a monitoring committee, the political subdivisions shall jointly establish a single monitoring committee to oversee resolution of complaints regarding the wind energy system.

13.42 Notice to property owners and residents. (1) NOTICE OF PROCESS FOR MAKING COMPLAINTS. Before construction of a wind energy system begins, an owner shall provide written notice of the process for making complaints and obtaining mitigation measures to all residents and landowners within 0.5 mile of any wind energy system facility. An owner shall include in the notice the requirements under s. 13.40 (1) for submitting a complaint to the owner, a petition for review to the Town, and an appeal to the commission, and shall include a contact person and telephone number for the owner for receipt of complaints or concerns during construction, operation, maintenance and decommissioning.

(2) NOTICE TO TOWN. An owner shall provide a copy of the notice under sub. (1) to any Town with jurisdiction over the wind energy system, and the owner shall keep the contact person and telephone number current and on file with the Town.

II. SMALL WIND ENERGY SYSTEM REGULATION.

13.60 Exemptions from this chapter. All of the provisions in this chapter apply to a small wind energy system except ss. 13.14 (4) (d) and (6) (b), 13.15 (1) (c), (3) (b) to (e) and (5), 13.16 (2) to (4), 13.18 (1) (g), (2) (b) and (c), (3) (am), (b) and (c), and (4) (b) to (f), 13.19 (1) (c) to (e), (3) and (4), 13.30 (2) (L) and (m), 13.33 (1) to (3m) and (5), 13.34 (3), 13.36, 13.40 (2) (b) to (e), 13.41 and 13.42.

13.61 Modifications to this chapter. The following provisions in this chapter are modified to apply to a small wind energy system as follows:

(1) NOTICE. Under s. 13.105 (1), the notice shall be filed at least 60 days before an owner files an application to construct a small wind energy system and the notice shall be provided only to adjacent landowners and the political subdivisions with jurisdiction over the small wind energy system.

(2) LAND USE. Section 13.12 (1) applies only to existing land uses and enterprises that are located on adjacent nonparticipating properties.

(3) SETBACK DISTANCES. In s. 13.13 (1):

(a) Table 1 is replaced with Table 2.

(b) The owner of an adjacent nonparticipating residence or adjacent occupied community building may waive the applicable turbine setback distances in Table 2.

Table 2

Setback Description

Setback Distance

Occupied Community Buildings

1.0 times the maximum blade tip height

Participating Residences

None

Nonparticipating Residences

1.0 times the maximum blade tip height

Participating Property Lines

None

Nonparticipating Property Lines

1.0 times the maximum blade tip height

Public Road Right-of-Way

None

Overhead Communication and Electric Transmission or Distribution Lines - Not including utility service lines to individual houses or outbuildings

1.0 times the maximum blade tip height

Overhead Utility Service Lines - Lines to individual houses or outbuildings

None

(4) NOISE. Under s. 13.14 (6) (b), an owner shall provide notice of the requirements of s. 13.14 only to each adjacent nonparticipating residence or occupied community building before the initial operation of the small wind energy system.

(5) USEFUL LIFE. Under s. 13.19 (1), a small wind energy system is presumed to be at the end of its useful life if it generates no electricity for a continuous 540-day period.

(6) EFFECTS ON LAND USES. Under s. 13.30 (2) (g), the information regarding the anticipated effects of the small wind energy system on existing land uses shall only be for parcels adjacent to the wind energy system.

(7) APPLICATION NOTICE. Under s. 13.30 (5) (a), written notice of the filing of the application shall be provided only to property owners and residents located adjacent to the small wind energy system.

(8) MEETINGS. Under s. 13.30 (6) (c), the Town may hold at least one public meeting to obtain comments on and to inform the public about a proposed small wind energy system.

SECTION 2: SEVERABILITY.

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

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

SECTION 3: EFFECTIVE DATE.

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

This ordinance was passed and adopted by the Town Board this 10th day of April, 2012

TOWN OF DELAFIELD



Paul Kanter
Town Chairman

ATTEST:


Mary Elsner, Town Clerk

Published and/or posted this 19th day of April, 2012

ORDINANCE NO. 2014-02

**AN ORDINANCE TO CREATE SECTION 17.05 5. AQ.
AND TO REPEAL SECTION 17.06 4. H. 3. a.
OF THE TOWN OF DELAFIELD ZONING ORDINANCE,
TO REGULATE SOLAR ENERGY SYSTEMS AS A CONDITIONAL USE
IN THE TOWN OF DELAFIELD**

WHEREAS, the Town Attorney for the Town of Delafield has recommended that the Town of Delafield Town Board consider adopting regulations to address solar energy systems in a manner that is consistent with State law; and

WHEREAS, the Town of Delafield Town Board has initiated this zoning amendment pursuant to Section 17.10 5. A. and B. of the Town of Delafield Zoning Ordinance, and has referred the matter to the Town Plan Commission pursuant to Section 17.10 5. E. of the Town of Delafield Zoning Code; and

WHEREAS, the Town of Delafield Town Board held a public hearing regarding the proposed amendment on or about March 11, 2014, upon due notice as required by Section 17.10 5. F. and Section 17.10 6. of the Town of Delafield Zoning Code; and

WHEREAS, solar energy systems are subject to particular limitations on municipal review authority, pursuant to Section 66.0401(1m), Wisconsin Statutes, and these limitations require the municipality to consider the facts of an individual situation to make case-by-case restrictions for individual applications, as described for example in the case of *Ecker Brothers v. Calumet County*, 321 Wis. 2d 51 (Ct. App. 2009); and

WHEREAS, by this ordinance the Town of Delafield Town Board intends to allow for individualized consideration of solar energy systems to the extent permitted by State law; and

WHEREAS, the Town Board of the Town of Delafield, having carefully reviewed the recommendation of the Plan Commission, having determined that all procedural requirements and notice requirements have been satisfied, and having given the matter due consideration, and having based its determination on the effect of the zoning amendment on the health, safety and welfare of the community, and having given due consideration to the municipal problems involved as well as the impact on surrounding properties as to noise, dust, smoke and odor, hereby determines that the zoning amendment will not violate the spirit or intent of the Zoning Code for the Town of Delafield, will not be contrary to the public health, safety or general welfare of the Town

of Delafield, will not be hazardous, harmful, noxious, offensive or a nuisance by reason of noise, dust, smoke, odor or other similar factors and will not for any other reason cause a substantial adverse effect on the property values and general desirability of properties affected by these zoning amendments, and further finds that these amendments will be consistent with the Town of Delafield Comprehensive Plan.

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

SECTION 1: Chapter 17 of the Town of Delafield Zoning Code entitled, "Zoning Ordinance," Section 17.05, entitled "Conditional Uses," subsection 5., entitled "Conditional Uses Permitted," subsection AQ., is hereby created as follows:

AQ. Solar Energy Systems

1. **Where Permitted**. Subject to the provisions of this subsection AQ., solar energy systems as defined in Wisconsin Statutes Section 13.48(2)(h) 1. g. are a conditional use which may be permitted in any district in the Town of Delafield.
2. **Conditions Under Which Permitted**.
 - a. District Regulations. The location, height, area, yard, parking, loading, traffic and highway access and other regulations of the district in which the use is located shall not apply to the solar energy system, unless the Town Board finds that the restriction satisfies one of the following conditions:
 - i. Serves to preserve or protect the public health or safety.
 - ii. It does not significantly increase the cost of the system or significantly decrease its efficiency.
 - iii. It allows for an alternative system of comparable cost and efficiency.

If one or more of the foregoing conditions is found to apply with regard to any such restriction of this Code, then such restriction shall apply to the solar energy system.

- b. Other Conditions. The Town Plan Commission may recommend, and the Town Board may require compliance with such other conditions as may be deemed necessary in the specific situation, provided that any such restriction imposed must be found to meet one of the following conditions:
 - i. Serves to preserve or protect the public health or safety.
 - ii. It does not significantly increase the cost of the system or significantly decrease its efficiency.
 - iii. It allows for an alternative system of comparable cost and efficiency.

SECTION 2: Chapter 17 of the Town of Delafield Zoning Code entitled, "Zoning Ordinance," Section 17.06, entitled "Accessory Uses, Accessory Buildings and Other Structures," subsection 4., entitled "Structures Other Than Buildings," subsection H., entitled "Special Use Structures," subsection 3., entitled "Types of Special Uses," subsection a., entitled "Solar Energy Conversion System," is hereby repealed.

~~a. Solar Energy Conversion System. Such as "active" or "passive" solar collection and heating systems.~~

SECTION 3: SEVERABILITY.

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

SECTION 4: EFFECTIVE DATE.

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

Dated this 25th day of March, 2014.

TOWN OF DELAFIELD



Paul L. Kanter, Town Chair

ATTEST:



Mary Elsner, Town Clerk

Published, and/or posted this 2nd day of October, 2014.

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