

## CHAPTER 7 - LAND DIVISIONS

Proposed Revisions - Approved by Plan Commission 10/24/11

**7.1 AUTHORITY, PURPOSE AND INTERPRETATION.** The Town Board of the Town of Vermont hereby declares that the regulations set forth in this chapter 7 are adopted in accordance with the authority granted by Wis. Stat. ss 60.10 and 236.45 for the purposes listed in Wis. Stat. ss 236.01 and 236.45. The provisions of this Chapter shall be held to be minimum requirements adopted to promote the health, safety, and general welfare of the Town. Except when this chapter imposes stricter restrictions on land development, this chapter shall not repeal, impair or modify private covenants or public laws or ordinances. The requirements of this chapter 7 shall apply to condominium plats.

**7.2 DEFINITIONS.** As used in this chapter 7, the following terms shall have the following meanings:

**(1) Certified survey or certified survey map** - a map of land division, not a subdivision, prepared in accordance with ss 236.34, Wis. Stat.

**(2) Contiguous** – a parcel of land is contiguous if all parts under the same ownership are adjacent along a boundary, or at a point ("corner-to-corner"). Land under common ownership that is divided by a stream, public right-of-way, zoning district boundary, or survey line is considered contiguous.

**(3) Density** - the amount of residential development allowed, in relation to the total area owned. The density policy of the town is expressed as one "potential development right" per 35 acres owned.

**(4) Land Divider** - a person who divides or desires to divide a parcel of land for purpose of sale or building development.

**(5) Land division** - a division of a lot, parcel or tract of land by the owner or owner's agent for the purpose of sale or building development where the act of division creates two or more parcels of land, any one of which is less than thirty-five (35) acres in area.

**(6) Land Development Plan** - The Town Land Use Plan and its implementing documents, which serve as a guide for decision-making concerning changes in the use of land in the Town of Vermont.

**(7) Lot** - a piece, parcel or plot of land or a unit of a condominium plat, which is intended to be occupied by a building and its accessory buildings and uses or for transfer of ownership. A lot may be a parcel designated in a plat, condominium plat, or certified survey map, or described in a conveyance recorded in the office of the Dane County Register of Deeds.

**(8) Ownership Parcel** - a contiguous and discrete tract of land, all under the same ownership and on public record. An ownership parcel is distinct from a zoning parcel, and is not affected by zoning district boundaries.

**(9) Parcel or tract** - contiguous lands under the control of the land divider or subdivider. Parcel may be used interchangeably with lot, but is most often applied to larger tracts of land, while lot is used for smaller tracts.

**(10) Plat** - the map, drawing or chart on which a subdivider's plan of subdivision is presented to the Town Board for approval. Plat includes a condominium plat.

**(11) Plan Commission** - The official body charged with making reports and recommendations to the Town Board related to land use planning and development. See Chapter 1, Section 1.05 of this Code.

**(12) Potential Development Right** - an allowance for possible construction of a home on a parcel of land based on density requirements. Note: The use of the word "potential" indicates that residential development on the parcel will not be approved unless the site meets all other requirements of the ordinances and the Land Development Plan.

**(13) Ridgetop Protection Area** - any location that is located above the shoulder of a ridge. The shoulder is the point at which the local slope changes from greater than 20% to less than 20%.

**(14) Road/Highway/Street** - a public way for vehicular and pedestrian traffic.

**(15) Subdivision** - a land division which creates five or more lots intended for residential building development, or a condominium plat which creates five or more units intended for residential/non-farm use. Land divisions that create five or more lots, cumulatively, during a five-year period are also considered subdivisions.

**(16) Town** - The Town of Vermont.

**7.3 EXCEPTIONS.** The provisions of this chapter shall not apply to:

**(1)** Transfers of interests in land by will or pursuant to court order;

**(2)** Leases for a term not to exceed ten (10) years;

**(3)** Mortgages or easements;

**(4)** The sale or exchange of parcels of land between owners of adjoining properties if the lots resulting are not reduced below the minimum sizes required by this ordinance or other applicable laws or ordinances;

**(5)** Cemetery plats; or

**(6)** Assessor's plats, except as provided in chapter 236, Wis. Stats.

## **7.4 GENERAL PROVISIONS**

**(1) When Approval Required.** Except as provided in section 7.3, no person shall sell, transfer or lease for more than ten (10) years any parcel of land which results in a land division unless a certified survey map of the division is submitted and approved in accordance with this chapter and other applicable laws, including but not limited to those set forth in chapters 2, 3, and 4 of this code, relating to buildings, manufactured housing and roads and driveways; Dane County zoning and land division ordinances; and ch. 236 of the Wisconsin Statutes.

**(2) Preservation of Lands for Agricultural Use, Wetlands and Woodlands.** In reviewing a land division, due consideration shall be given to the preservation of lands for continued viable farming operations and preserving wetlands and woodlands to prevent erosion and flooding in order to provide the best possible environment for human habitation and encourage the most appropriate use of land throughout the Town.

**(3) Other Applicable Provisions.** In addition to the provisions of this chapter and ch. 236, Wis. Stats., all subdivisions and land divisions shall conform to the Town Land Development Plan and other Town ordinances.

**(4) Plan Commission to Administer.** The Town Planning Commission shall recommend to the Town Board any revisions to this chapter and approval or disapproval of any land divisions and certified survey maps, variances or exceptions.

## **7.5 PROCEDURE FOR SUBMITTING PROPOSALS FOR BUILDING SITES, LAND DIVISIONS, AND REZONING.**

**(1) Pre-Application.** It is recommended that, prior to the filing of an application for the approval of a building site, land division, or rezoning, the applicant consult with the Town Plan Commission to obtain their advice and assistance. This consultation is neither formal nor mandatory but is intended to inform the applicant of the purpose and objectives of these regulations, the Town Land Development Plan, and duly adopted plan implementing documents and to otherwise assist the applicant in planning the proposal.

**(2) Application.** In filing an application for the approval of a building site, land division, or rezoning, the applicant shall submit supporting information and data as detailed in the most current editions of the Town Land Use Plan, Land Use Intent Form, and other supporting documents as approved and published by the Plan Commission.

**(3) Additional Information.** The Plan Commission may require the applicant, at the applicant's expense, to submit additional supporting information from a registered engineer or other qualified consultant, if such supporting information is necessary to demonstrate compliance with the ordinances and the Land Development Plan.

**7.6 DESIGN STANDARDS.** Generally, design standards shall assure that the layout of the land division harmonizes with existing plans affecting the development and its surrounding area and

shall be in conformity with the Town Land Development Plan for the entire area.

**(1) Roads.**

(a) All lots or parcels created by the land division or plat, including residual lots shall front on an existing public road with a driveway entering directly from that public road.

(b) When access is to be provided to an existing single user Town road, the land divider shall dedicate or cause to be dedicated to the Town sufficient right of way to allow for adequate snow plowing, fire service and school bus turn around and cause the grading, surfacing, seeding or sodding and ditching of the existing and any additional right of way to be constructed to then current Town standards prior to the approval and recording of the plat or survey map. In lieu of such construction, the Town Board may provide for construction at Town expense and assess the cost thereof to the abutting lands pursuant to Wis. Stats. ss 66.60 (16) if the owner or owners of the abutting lands execute and record in the office of the Register of Deeds for Dane County, a waiver of notice and hearing and right to contest such assessments.

(c) *Private roads.* A shared driveway may be preferable to multiple individual driveways for environmental or safety reasons. One driveway shall serve no more than four residences. Shared driveways must meet the requirements of the Town Driveway Ordinance for turnout lanes, access easements, and maintenance agreements.

(d) *Access to arterial roads and highways.* Where a proposed plat or land division is adjacent to an existing road, spacings between access points to such road of less than six hundred and sixty (660) feet shall be avoided except where impractical or impossible due to existing property divisions, safety hazards such as blind curves or topography.

(e) *Hardship to owners of adjoining property.* The road access arrangements shall not cause hardship to owners of adjoining property in working or dividing their own land and providing convenient access to it.

(f) *Drainage ditches and shoulders.* The land divider shall cause all grading, excavations, open cuts, side slopes and other land surface disturbances to be mulched, seeded, sodded or otherwise protected so that erosion, siltation, sedimentation and washing are prevented.

**(2) Lots.**

(a) *Natural features.* Due regard shall be shown for all natural features which, if preserved, will add attractiveness and stability to the proposed development.

(b) *Size and dimensions.* In order to prevent overcrowding of land and undue concentrations of population and to lessen congestion on roads and highways in the Town, lots in the Town shall be in conformance with the following requirements:

1. All applicable State and County requirements.

2. Lots created for non-farm residential development shall be a minimum of two acres. Lots less than two acres created before January 1, 1985 may be rezoned to an appropriate zoning category.

(c) Subdivisions shall not be permitted under this ordinance.

(d) Except when a variance is granted in accordance with ss 7.08, lots and parcels served by holding tanks will not be approved. Each lot or parcel must have suitable area, as required by applicable State and County regulations, for a private sewage system that incorporates soil disposal.

**(3) Density.** The Town of Vermont has adopted a 1:35 acre density policy, which allows one potential development right per 35 acres owned as of January 1, 1985. The number of potential development rights associated with a property runs with the land; potential development rights are neither created nor destroyed when land is divided or transferred.

The number of potential development rights is calculated as follows:

(a) Determine the total number of contiguous acres under the control of an owner on January 1, 1985. Divide the total number of contiguous acres by 35. If the result is a whole number plus a fraction, the owner is allowed a number of potential development rights equal to the whole number, plus an additional potential development right if the remaining fraction equals or exceeds 18/35. If the result is a whole number plus a fraction less than 18/35, the owner is allowed potential development rights equal to the whole number.

(b) Acreage calculations are based on the 1985 assessor's tax roll, on file with the town clerk, unless other precise evidence acceptable to the Plan Commission and the Town Board modifies the tax roll figures. For the purposes of this calculation, the total number of contiguous acres includes lands located within a public road right-of-way. Note that Dane County Planning staff currently do not include road right-of-way in their density studies. In some cases this discrepancy may lead to errors in the county calculation of potential development rights.

(c) One house per ownership parcel, legally habitable and with a fire number assigned as of January 1, 1985, will not be counted as reducing the number of potential development rights.

(d) Ownership parcels existing as of January 1, 1985, with at least 20 acres but less than 53 acres, will be allowed one "potential development right." Such parcels with

an existing house legally habitable and with a fire number assigned as of January 1, 1985 will be allowed one "potential development right" in addition to the existing house, subject to the other policies of this plan.

(e) Ownership parcels of less than 20 acres on January 1, 1985 with no residence are considered "grandfathered" and shall be allowed only one potential development right.

(f) The policy does not require a minimum 35-acre lot size for each residence.

(g) The density policy applies regardless of the zoning district of the property.

(h) Parcels that were rezoned to RH-1 or A-2, or that were created by certified survey, prior to January 1, 1985 are considered separately from contiguous acreage under the same ownership for the purpose of determining the number of potential development rights. The number of potential development rights for such parcels is determined by the density policy, as if they were separate ownership parcels. This provision recognizes the historical precedent set at the adoption of exclusive agricultural zoning in October 1979, which allows one house per substandard zoning parcel.

(i) In situations where there has been no formal recording of the allocation of "potential development rights" when land has been divided, it is up to the past and current owners of the land to reach agreement in writing before bringing a proposal before the Town Board. In the absence of a written agreement, the Town Board and Plan Commission will allocate "potential development rights" in proportion to the number of acres in each parcel. In no case shall the total number of potential development rights exceed that determined based on the January 1, 1985 acreage as described above.

(j) No multiple-family, multi-unit dwellings will be allowed. Duplexes will be allowed if all other site criteria are met. A duplex requires two potential development rights. Dependency living arrangements ("mother-in-law quarters") are allowed as provided by Dane County ordinances.

(k) The Town Plan Commission and the Town Board will have the final authority to determine the number of potential development rights associated with a parcel.

#### **(4) Siting.**

(a) Any proposed building site must meet the requirements of the Land Development Plan.

(b) Proposed building sites are subject to approval of the Town Board.

(c) Lots should not include land of agricultural significance and should not limit farming operations. In some cases, the town may allow new residential construction on agriculturally significant land where the loss of agricultural opportunities is kept to a

minimum. However, no more than three acres total for driveway, septic, dwelling, and any outbuildings shall be removed from availability for agricultural use.

**(5) Ridgetop Protection Area.** The Ridgetop Protection Area (RPA) is established not to prohibit building on ridgetops, but to minimize the impact of ridgetop building on the natural beauty and rural character of the town. Residences and residential accessory buildings within the RPA are subject to special conditions designed to limit their scale and their visibility from neighbors, from roads, and from other ridgetops.

To facilitate protection of this area, all new residences, residential accessory buildings and all other non-farm buildings located within the RPA are subject to the following constraints:

(a) The maximum height is limited to 24 feet. The maximum height is measured from the high point of the building to the average ground level around the building. The average ground level is the average of the ground level measured at each corner of the building. The ground level at each point is the original natural ground level or finished ground level, whichever is lower.

(b) External attachments such as chimneys, lightning rods, and antennas are not included in the height measurement.

(c) Buildings existing prior to April 13, 2009 are not subject to the height limit. Additions to existing buildings must comply with the height limit.

(d) Farm accessory buildings are not subject to the height limit.

**7.7 BASIS FOR APPROVAL.** Pursuant to ss 236.13, the Town Board shall not approve a land division in the Town for any person unless approval is conditioned on at least the following:

(1) Compliance with ch. 236, Wis. Stats. relating to certified surveys;

(2) Compliance with this chapter;

(3) Compliance with the applicable provisions of the Dane County zoning and subdivision ordinances and rules adopted by the Wisconsin Department of Natural Resources relating to shorelands and wetlands;

(4) Compliance with rules of the Wisconsin Department of Commerce relating to private sewer and water systems for lots not served by public sewer or water facilities;

(5) Compliance with rules of the Wisconsin Department of Transportation and ordinances of Dane County relating to provisions for the safety of entrance upon and departure from any abutting state or county trunk highways or connecting highways and for the preservation of the public interest and investment in such highways; and

(6) Where a provision of this chapter conflicts with a provision of other applicable laws

or regulations, including but not limited to other ordinances of the Town and the zoning and subdivision ordinances of Dane County, and cannot be harmonized therewith, the more restrictive provisions shall apply.

**7.8 VARIANCES AND EXCEPTIONS.** Where the Plan Commission finds that undue hardships may result from strict compliance with these regulations, it may recommend to the Town Board variances or exceptions to the regulations so that substantial justice may be done and the public interest secured, provided that such variance or exception shall not have the effect of nullifying the intent and purpose of this chapter; and further provided the Plan Commission shall not recommend variances or exceptions to the regulations of this chapter unless it shall make findings based upon evidence presented to it in each specific case that:

(1) **Safety.** The granting of the variance will not be detrimental to the public safety, health or welfare or injurious to other property or improvements in the neighborhood in which the property is located;

(2) **Uniqueness.** The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable, generally to other property;

(3) **Hardship.** Because of the particular physical surroundings, the shape or topographical conditions of the specific property involved, an undue hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out; and

(4) **Measures of Protection Provided.** The variance or exception includes measures to provide an equivalent level of health and safety protection as the ordinance provision being varied or excepted.

(5) **Holding Tank Variances.** The Clerk shall inform the Wisconsin Department of Commerce, P.O. Box 7969, Madison, WI 53707, in writing of any holding tank variance granted.

**7.9 FEE.** The Town Board shall from time to time establish or modify by ordinance or resolution which shall be posted in the office of the Town Clerk, a fee for processing applications for approval of condominium plats or certified survey maps. The fee is nonrefundable.

## **7.10 ENFORCEMENT, PENALTIES AND REMEDIES.**

(1) **Building Inspector to Enforce.** The Building Inspector shall have primary responsibility for enforcing this chapter. No building permit shall be issued for construction on any lot until the final certified survey map or plat has been approved and duly recorded.

(2) **Penalties and Remedies for Violations.** Any person who fails to comply with the provisions of this chapter shall, upon conviction thereof, forfeit no less than One Hundred (\$100) Dollars nor more than One Thousand (\$1,000) Dollars plus the costs of prosecution and applicable fees or surcharges for each violation, and in default of payment of such forfeiture

costs shall be imprisoned in the County jail until payment thereof, but not exceeding thirty (30) days. Each day a violation exists or continues shall constitute a separate offense. In addition, the remedies provided by ss 236.30 and 236.31 of the Wisconsin Statutes shall be available to the Town.