

## CHAPTER 12 SUBDIVISION ORDINANCE

Subdivisions

### 12.1 GENERAL PROVISIONS

**12.11** Title. This chapter shall officially be known, cited, and referred to as the Land Division Ordinance or Land Division Code of the Town of Lyndon, Sheboygan County, Wisconsin (hereinafter “Ordinance”).

**12.12** Purposes. This Ordinance is adopted to regulate and control the division of land within the Town of Lyndon (hereinafter the “Town”) for the following purposes:

1. To promote the public health, safety and general welfare of the Town.
2. To guide the future growth and development of the Town consistent with its adopted comprehensive plan, or if none, its master plan.
3. To guide the detailed analysis of the development parcel so as to locate and coordinate appropriate areas for development and conservation.
4. To preserve the Town’s rural character through the permanent preservation of meaningful open space and sensitive natural resources.
5. To preserve scenic views by minimizing views of new development from existing roads.
6. To preserve prime agricultural land by concentrating housing on lands that have low agricultural potential.
7. To provide commonly-owned open space areas for passive and/or active recreational use by residents of the development and, where specified, the larger community.
8. To provide for a diversity of lot sizes, housing choices and building densities to accommodate a variety of age and income groups.
9. To provide buffering between residential development and non-residential uses.
10. To protect and restore environmentally sensitive areas and biological diversity, minimize disturbance to existing vegetation, and maintain environmental corridors.
11. To preserve significant archaeological sites, historic buildings and their setting
12. To regulate the development of condominium projects.
13. To provide for the – most efficient provision and use of transportation, water, sewage and other infrastructure and related public facilities, and to avoid the inefficient and economical extension of governmental services.
14. To provide for the most efficient use of lands deemed suitable for development.
15. To ensure that the layout and design of streets and roads will not have a negative long-term effect on neighborhood quality, traffic flow, and safety.

**12.13** Statutory Authorization. This Ordinance is adopted pursuant to the Town’s Village Powers under §§ 60.10(2)(c), 60.22(3), 61.34(1), and 61.35, Wis. Stats., and the authority in §§ 236.03 and 236.45, Wis. Stats. This Ordinance was enacted by the Town Board after its receipt of a recommendation of approval from the Town Plan and Zoning Commission pursuant to §§ 61.35, 62.23 and 236.45(2), Wis. Stats.

**12.14** Jurisdiction. Jurisdiction of these regulations shall include all lands within the corporate limits of the Town of Lyndon, Sheboygan County, Wisconsin. The Town is only one of a number of governmental bodies that may have jurisdiction over proposed land divisions or development. The Town cannot make any representations on behalf of any other governmental body. No land division may be made unless all required approvals have been given.

This Ordinance does not apply to:

1. Transfers of interest in land by will or pursuant to court order.
2. Cemetery plats under § 157.07, Wis. Stats.
3. 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 sizes required by this Ordinance or other applicable laws or ordinances.
4. Assessors’ plats made under § 70.27, Wis. Stats., but such assessors’ plats shall comply with §§ 236.15(1)(a)—(g) and 236.20(1), (2)(a)—(c), Wis. Stats.
5. Leases for a term of not more than ten (10) years, mortgages, or easements.

- 12.15** Abrogation and Greater Restrictions.
1. Public Provisions. These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law, except as provided herein. Where any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations or any other ordinance, rule, or regulation, or other provision of law, the provision that is more restrictive or imposes higher standards shall control.
  2. Private Provisions. These regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction, provided that where the provisions of these regulations are more restrictive than such easement, covenant, or other private agreement or restriction, the requirements of these regulations shall govern. Where the provisions of the easement, covenant, or private agreement impose duties and obligations more restrictive than these regulations, and the private provisions are not inconsistent with these regulations, then the private provisions shall be operative and supplemental to these regulations and the determinations made under the regulations.
- 12.16** Interpretation. In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. These regulations shall be construed broadly in favor of the Town to promote the purposes for which they are adopted.
- 12.17** Fees. The Town Board may, by resolution, establish reasonable fees for the administration of this Ordinance. No application or request made pursuant to this Ordinance shall be deemed complete unless the proper fees have been paid.
- 12.18** Town Costs. Reasonable costs incurred by the Town or its agents to review each land division or similar request made pursuant to this Ordinance shall be the responsibility of the land divider who shall timely pay or reimburse the Town for all reasonable actual or projected engineering, inspection, legal, and administrative costs incurred by the Town in reviewing the proposal. The Town Board may require that all or a portion of the known costs be paid in advance.

## **12.2 DEFINITIONS**

The following definitions shall be observed and applied, except when the context clearly indicates otherwise. Words used in the present tense shall include the future tense. Words used in the singular form shall include the plural form. Words used in the plural form shall include the singular. The work “shall” is mandatory and the word “may” is permissive.

- 12.21** Advisory Agencies. Those agencies who, for the purpose of this Ordinance, include the Wisconsin Department of Natural Resources, the Town Plan Commission, any Town Storm Water Drainage Districts, Town Sanitary District or Park Commission created by the Town and the [North East] Wisconsin Regional Planning Commission, affected water, electric, gas, telecommunication utilities or any other agencies are able to advise the land divider or the approving and objecting authorities.
- 12.22** Approving Authorities.
1. The Town Board of the Town of Lyndon.
  2. The County of Sheboygan, as long as it has a planning department.
  3. If within the extraterritorial plat approval jurisdiction of a municipality, the governing body of that municipality.
- 12.23** Certified Survey Map (C.S.M.). A map showing division of land prepared in accordance with Wis. Stats. § 236.34 and this Ordinance.
- 12.24** Comprehensive plan. A plan for the future growth and change of the Town of Lyndon adopted under § 66.1001, Wis. Stats.
- 12.25** Condominium. A community association combining individual unit ownership with shared use or ownership of common property or facilities, established in accordance with the requirements of the Condominium Ownership Act, Chapter 703, Wis. Stats. A condominium is a legal form of ownership of real estate and not a specific building type or style.
- 12.26** Land Division. A generic term that includes both subdivisions and minor land divisions, as defined herein.
- 12.27** **Minor Land Division.** A minor land division is any division of land that:
1. Creates more than one, but less than five, parcels or building sites, inclusive of the original remnant parcel, any one of which is twenty (20) acres or less in area, by a division or by successive divisions of any part of the original parcel within a period of five years; or

2. Divides a block, lot, or outlot within a recorded subdivision plat into more than one, but less than five, parcels or building sites, inclusive of the original remnant parcel, without changing the exterior boundaries of said plat or the exterior boundaries of blocks within the plat, and the division does not result in a subdivision.

**12.28** Objecting Authorities. Those authorities defined in Chapter 236, Wis. Stats., which have limited powers to object to a subdivision plat, including the Department of Administration, the Department of Transportation (for plats that abut or adjoin a state trunk highway or streets that form a connecting link between segments of state trunk highway) and the Department of Commerce (to review plats not served by public sewer according to the rules relating to lot size and elevation necessary for proper sanitary conditions).

**12.29** Subdivision. A division of a lot, outlot, parcel, or tract of land by the owner thereof or the owner's agent for the purpose of transfer of ownership or of building development, including condominium development, where the act of division creates five or more parcels or building sites, inclusive of the original remnant parcel, any one of which is twenty (20) acres or less in area, by a division or by successive divisions of any part of the original property within a period of five years.

**12.291** Subdivider. Any person or entity, or any agent thereof, dividing or proposing to divide land resulting in a subdivision, minor land division, or replat, or who creates a condominium under Chapter 703, Wis. Stats.

### **12.3 GENERAL REQUIREMENTS AND PROCEDURES**

**12.31** Applicability and Compliance.

1. General. No person shall divide any land located within the Town, and no document evidencing such land division shall be entitled to be recorded, and no street shall be laid out or improvements placed therein, without compliance with all requirements of this Ordinance and the following:

- a. The provisions of Wis. Stats. Ch. 236 and Wis. Stats. § 82.18.
- b. The rules of the Wisconsin Department of Commerce for land divisions not served by public sewer.
- c. The rules of the Division of Transportation Infrastructure Development, Wisconsin Department of Transportation, for land divisions that abut a state trunk highway or connecting street.
- d. The rules of the Wisconsin Department of Natural Resources concerning wetlands, shorelands and floodplain management, sewers, septic systems, and pollution abatement.
- e. The comprehensive plan adopted by the Town.
- f. All applicable local, county, and state rules and regulations, including zoning, sanitary, erosion control, building and official mapping ordinances.
- g. All other applicable rules contained in the Wisconsin Administrative Code.

2. Minor Land Divisions. Minor land divisions shall be effected by use of a certified survey map, pursuant to the procedures in this Ordinance.

3. Subdivisions. Any division of land resulting in a subdivision shall be effected pursuant to the subdivision application and approval procedures in this Ordinance.

4. Regulation of Condominiums. It is the express intent of this Ordinance to regulate condominiums. The maximum number of units in a condominium shall not exceed the maximum number of lots the same parcel could have conventionally divided. A condominium plat prepared by a registered land surveyor is required for all condominium plats or any amendments or expansions thereof. Such plat shall comply with the requirements of § 703.11, Wis. Stats., shall comply with the design standards, improvements, and other requirements of this Ordinance that would otherwise apply to subdivision plats, and shall be reviewed and approved or denied in the same manner as a subdivision plat as set forth herein.

5. Bisected Lots. For purposes of this Ordinance, a lot, parcel or tract of land which is bisected by an existing public roadway, railroad right-of-way, or navigable stream shall be considered to be effectively divided into separate lots, parcels or tracts.

**12.32** Initial Consultations. Before pursuing any land division, it is recommended that the subdivider consult with all affected utilities, the Town Building Inspector, the Town Clerk, and the County

Planning Department, in order to obtain advice and assistance. This consultation is intended to inform the subdivider of the purpose and objectives of these regulations, the adopted county or town comprehensive plans and other ordinances, and to otherwise assist the subdivider in planning the development. In so doing, both the subdivider and the Town may reach mutual conclusions regarding the objectives of the proposed development and its possible effects on the Town, and the subdivider will gain a better understanding of the subsequent required procedures.

### 12.33

Modifications.

1. Authority. Where, in the judgment of the Town Board, it would be inappropriate to apply literally the provisions of this Ordinance because exceptional or undue hardship would result, the Town Board may modify or waive any requirements to the extent deemed just and proper.
2. Application. Application for any such modification or waiver shall be made in writing by the land divider at the time when the preliminary plat or certified survey map is filed for consideration, stating fully all facts relied upon by the petitioner, and shall be supplemented with maps, plans, or other additional data that may aid the Town Board in its analysis.
3. Conditions for granting. The Town Board shall not grant modifications or waivers to the Ordinance unless it shall make findings based upon the evidence presented to it in each specific case that:
  - a. The granting of the modification will not be detrimental to the public health, safety, or welfare or injurious to other property or improvements in the neighborhood in which the property is located.
  - b. The conditions upon which the request for a modification is based are unique to the property for which the modification is sought and are not applicable generally to other property.
  - c. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, financial hardship, or self-imposed hardship, if the strict letter of this Ordinance were carried out.
  - d. Such modification is necessary for the preservation and enjoyment of substantial property rights possessed by other similar properties in the vicinity.
4. Granting by the Town Board.
  - a. The Town Board, if it approves of the modification or waiver to this Ordinance, shall do so by motion and the Town Clerk shall notify the applicant in writing.
  - b. Such relief shall be granted without detriment to the public good, without impairing the intent and purpose of this Ordinance or the desirable general development of the Town consistent with the Town comprehensive plan (or master plan) or this Ordinance.
  - c. Any modification granted can only provide the minimum relief needed to alleviate the unnecessary hardship or obtain reasonable use of the property.
  - d. A majority vote of the entire membership of the town Board shall be required to grant any modification of this Ordinance, and the reasons shall be entered in the minutes.

### 12.34

Enforcement.

1. Violations. It shall be unlawful to build upon, divide, convey, record, or monument any land in violation of this Ordinance or state law, and no person shall be issued a building permit by the Town authorizing the building on or improvement of any lot or parcel within the jurisdiction of this Ordinance not of record as of the effective date of this Ordinance until the requirements herein have been fully met. The Town may Institute appropriate action or proceedings to enjoin violations of this Ordinance or applicable state law.
2. Penalties. Penalties for violation of this Ordinance shall be as follows:
  - a. For failing to comply with this Ordinance, Town of Lyndon Municipal Code Section 9.\_ shall apply.
  - b. For recordation improperly made see § 236.30, Wis. Stats.
  - c. For conveyance of lots in unrecorded plats, see § 236.31, Wis. Stats.
  - d. For monuments disturbed or not placed, see § 236.32, Wis. Stats.

- e. Assessor's plat made under § 70.27, Wis. Stats. May be ordered by the Town as a remedy at the expense of the land divider when a subdivision is created by successive divisions.
3. Appeals. Any person aggrieved by an objection to a plat or a failure to approve a plat under this Ordinance may appeal therefrom, as provided in §§ 236.13(5) and 62.23(7)(e) 10, 14, and 15, Wis. Stats., within thirty (30) days of notification of the rejection of the plat. Where failure to approve is based on an unsatisfied objection, the agency making the objection shall be made a part to the action. The court shall direct that the plat be approved if it finds that the action of the approving or objecting agency is arbitrary, unreasonable, or discriminatory.

#### **12.4 CERTIFIED SURVEY MAPS**

##### **12.41**

##### Certified Survey Map Review and Approval Procedures

1. Submittal. The subdivider shall prepare the certified survey map in accordance with this Ordinance and shall file at least 5 copies of the map with the Town Clerk at least 10 days prior to the meeting of the Town Board at which action is desired.
2. Town Board Action. The Town Board shall approve, approve conditionally and require resubmission of a corrected map, or reject such map within 60 days from the date of filing of the map unless the time is extended by agreement with the subdivider. If the map is rejected, the reason shall be stated in the minutes of the meeting and a written statement forwarded to the subdivider.
3. Recordation. After the certified survey map has been approved, the Town Clerk shall cause the certification inscribed upon the map attesting to such approval to be duly executed and the map returned to the subdivider for recording with the County Register of Deeds. The Register of Deeds shall not record the map unless it is offered for recording within 30 days after the date of the last approval and within 12 months after the first approval.