

Town of Troy
Walworth County
N8870 Briggs Street
East Troy, Wisconsin 53120

ORDINANCE 2014-5

**AN ORDINANCE TO AMEND ORDINANCE NO. 2014-1
KNOWN AS THE LAND DIVISION ORDINANCE
FOR THE TOWN OF TROY**

Town of Troy, Walworth County, State of Wisconsin

WHEREAS, the Town Board for the Town of Troy adopted land division regulations for the Town of Troy and by Town of Troy Ordinance No. 2014-1; and

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

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

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

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

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

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

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

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

WHEREAS, this matter was submitted to the Town of Troy Plan Commission for its consideration at the September 3, 2014, commission meeting, pursuant to Wisconsin Statutes Section 236.45(4); and

WHEREAS, following publication of a Class 2 notice as required by Wisconsin Statute Section 236.45(4), a public hearing was held on October 30, 2014 before the Town of Troy Town Board; and

NOW, THEREFORE, the Town Board of the Town of Troy, Walworth County, Wisconsin DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The Town of Troy Land Division Ordinance, Ordinance No. 2014-1, Section 5 entitled “Exemptions,” subsection (A)(3) is hereby repealed and recreated as follows:

3. The sale or exchange of land between owners of adjoining property if additional lots are not thereby created and if the lots resulting are not reduced below the minimum size required by applicable laws, and meet all specifications required by applicable laws, including this ordinance and as permitted by zoning, subject to the review procedures described in Section 14.5 of this Land Division Ordinance.

SECTION 2: The Town of Troy Land Division Ordinance, Ordinance No. 2014-1, Section 7 entitled “Specific Compliance Provisions,” subsection (H) is hereby repealed and recreated as follows:

H. No person shall be issued a final land division approval by the Town Board until the land divider makes or installs all public improvements deemed necessary by the Town Board or until the land divider executes a letter of credit or other security acceptable to the Town Board to insure that the land divider will make these public improvements within a time established by the Town Board. 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 land division 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 land division by the Town Board, the Town 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. The land divider is also required to execute a Developer’s Agreement with the Town.

SECTION 3: The Town of Troy Land Division Ordinance, Ordinance No. 2014-1, Section 7 entitled “Specific Compliance Provisions,” subsection (Q) is hereby repealed and recreated as follows:

Q. Before or as a condition of receiving final approval from the Town Board of any plat or certified survey map for which public improvements are required by this Ordinance; or for which public improvements, dedications, or fees are being deferred under this Ordinance; or for which phasing approval is being granted; the land divider shall submit to and receive approval from the Town Board, Town Attorney, and the Town Engineer, a Developer’s Agreement and a financial guarantee in the form of a letter of credit, for the improvements (including all public, private and site development improvements), prior to commencing construction of any improvement, whether public or private, or site development or approval of the final plat, condominium plat, or certified survey map, whichever is earlier. Although developers may have a statutory ability to choose the form of 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 land division being recorded.

SECTION 4: The Town of Troy Land Division Ordinance, Ordinance No. 2014-1, Section 14.5 entitled “Prior Review of Sales or Exchanges of Parcels Between Adjoining Landowners,” is hereby created as follows:

14.5 PRIOR REVIEW OF SALES OR EXCHANGES OF PARCELS BETWEEN ADJOINING LANDOWNERS.

In every situation, regardless of circumstances, that a property owner seeks to convey land in a manner that would adjust a lot line or create or eliminate a lot line, and that conveyance does not require a certified survey map or subdivision plat pursuant to this ordinance, and where an adjacent property owner intends to acquire such interest in land, the proposed action shall be submitted to the Town of Troy Plan Commission for prior review, before the conveyance documents are signed and before the conveyance is recorded in the office of the Walworth County Register of Deeds. Such application must be filed with the Town Clerk/Treasurer 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 regulations, the Zoning Ordinances, and other applicable laws and ordinances. Such conveyance can only be approved if the same number of lots exists prior to the conveyance as would exist after the conveyance. Such conveyance can only be approved if the resulting lots would all be both legal and conforming, even if any such lots are legal nonconforming prior to the conveyance, because the conveyance creates new lots which do not predate the ordinance and therefore have no legal non-conforming rights. Such conveyance must not be approved if the conveyance includes land that has a legal nonconforming use, because the legal nonconforming rights are limited to use of the preexisting lot. Such conveyance shall not be approved if any of the resulting lots and the existing improvements on the lots would be in violation of applicable open space requirements. Such conveyance shall not be approved if the conveyance would make an existing conforming structure illegal or nonconforming, or would increase the extent of any preexisting legal nonconformity of an existing structure.

SECTION 5: 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 6: EFFECTIVE DATE

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

Dated this 12th day of November, 2014.

John Kendall
John Kendall, Chairman

ATTEST:

Michele Stute
Michele Stute, Clerk/Treasurer

Published and/or posted this 13th day of November, 2014.