

ORDINANCE 2021-04**AN ORDINANCE TO AMEND CHAPTER 480 OF THE MUNICIPAL CODE OF THE TOWN OF EAGLE
ENTITLED "LAND DIVISION AND DEVELOPMENT CONTROL CODE"****- Draft May 4, 2021 -**

WHEREAS, the Town Board of the Town of Eagle adopted land division regulations pursuant to the authority granted under Section 236.45 of the Wisconsin Statutes and has amended such regulations from time to time; and

WHEREAS, such land division regulations are found in Chapter 480 of the municipal code, which is entitled "Land Division and Development Control Code"; and

WHEREAS, the Town of Eagle Plan Commission at their meeting on May 3, 2021, made a recommendation to the Town Board to amend various parts of Chapter 480 as set forth in this ordinance; and

WHEREAS, the Town Board conducted a public hearing on June 7, 2021, to consider those revisions as recommended by the Plan Commission; and

WHEREAS, a class II public notice for that public hearing was published in the *Waukesha Freeman* on May 18 and 25, 2021, pursuant to Wisconsin Statutes Section 236.45(4); and

WHEREAS, the Town Board has carefully reviewed the recommendations of the Plan Commission, and all information received at the public hearing, and upon due consideration of, among other things, the character of the Town, and with a view to conserving the value of buildings placed upon land, providing the best possible environment for human habitation and for encouraging the most appropriate use of land throughout the Town, has determined that all the procedural requirements and notice requirements have been satisfied, and finds that the adoption of this ordinance (1) will promote the public health, safety and general welfare of the community; (2) will accomplish related purposes such as lessening the congestion in the streets and highways; (3) will further the orderly layout and use of land; will secure safety from fire, panic and other dangers; (4) will provide adequate light and air; will prevent overcrowding of land; (5) will avoid undue concentration of population; (6) will facilitate adequate provision for transportation, water, sewerage, schools, parks, playgrounds and other public requirements; (7) will facilitate the further re-subdivision of larger tracts into smaller parcels of land; and (8) will be consistent with the Town's comprehensive plan.

NOW, THEREFORE, the Town Board of the Town of Eagle, do ordain as follows:

Section 1. Repeal and recreate Article 15 to read as set forth in Attachment A.

Section 2. 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. This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Adopted this day of , 2021

TOWN OF EAGLE

Don Malek, Town Chairman

ATTEST:

Lynn Pepper, Town Clerk

Published and/or posted this ____ day of _____, 2021

Attachment A.

ARTICLE 15
RESIDENTIAL ALLOTMENT SYSTEM

Sections

480.201	General description
480.202	Project evaluation and scoring
480.203	Allocation of residential development permits

480.201 General description

The residential allotment system for the Town of Eagle consists of two parts. The first ~~step-part~~ involves an evaluation of proposed subdivisions and multi-family projects as set forth in s. 480.202. The second ~~step-part~~ involves allocation of residential permits to proposed subdivisions and multi-family projects that qualify as set forth in s. 480.203.

Amendments: 2021-

480.202 Project evaluation and scoring

(A) **Purpose.** The evaluation of proposed subdivisions and multi-family projects is intended to (1) help implement the Town's comprehensive plan, ~~(2) encourage a variety of lot sizes available;~~ (23) encourage the location and development of residential dwellings, which will promote the protection of the natural resource base such as the soils, lakes and streams, floodplains, wetlands, woodlands, wildlife and other environmentally sensitive areas; (34) preserve the prime agricultural areas in order to maintain the agricultural economy and ensure the preservation of the rural atmosphere of the Town; and (45) permit development properly related to the available and proposed facilities such as police protection, emergency services, fire protection, and roads and highways.

(B) **Criteria.** The plan commission and town board will utilize the criteria and scoring system set forth in Exhibit 1, which is included at the end of this article, in their review of proposed subdivisions and multi-family projects. The guidelines illustrate the point totals that will be assigned for the particular issues described in order to guide the town board and plan commission in the particular facts and circumstances presented on a case-by-case basis. These guidelines are not intended to be an exclusive list of the relevant facts and circumstances that may be presented. If the development has outstanding or exceptional circumstances, the town plan commission and town board, jointly, have the latitude of the maximum range shown in each category. Furthermore, the plan commission and town board have the latitude to interpolate the maximum and minimum points designated in the range in each category.

(C) **Review procedure.** The general steps outlined below shall be used to evaluate and score proposed subdivisions and multi-family projects.

- (1) **Pre-submittal meeting.** The applicant or the applicant's agent should meet with the town planner to review (i) applicable regulations and procedures, (ii) applicable sections of the town's comprehensive plan, and (iii) the proposal.
- (2) **Submittal of application materials.** The applicant shall submit a completed application provided by the Town along with the application fee as may be established by the town board.
- (3) **Determination of completeness.** The town planner reviews the submittal within 10 days of receiving the application and other required materials to make sure it is complete and ready for further review. If it

is not complete, the town planner will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The town planner will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record.

- (4) **Review date.** When the town planner determines the application is complete, he or she schedules the review with the plan commission and town board consistent with their adopted calendar.
- (5) **Staff report preparation and distribution.** The town planner prepares a written staff report and provides a copy of it to each member of the plan commission and town board, the applicant, and any other interested person upon request. As part of the staff report, the town planner and town engineer should provide their score for the criteria listed in Exhibit 1.
- (6) **Joint meeting.** Allowing for proper notice, the plan commission and the town board review the application and the staff report at a regular or special meeting.
- (7) **Joint decision.** The plan commission and town board jointly determine a composite score based on the decision criteria in this section.
- (8) **Preparation of decision notice.** Based on the action of the town board, the town planner prepares a decision notice which states the total number of points the project received.
- (9) **Applicant notification.** Within 10 days following the town board's decision, the town planner mails the decision notice to the applicant by regular mail.

(D) **Effect of approval.** ~~If a development project receives 7 points or more, the project must be carried out in substantial compliance with the representations in the application.~~ To ensure compliance with the criteria upon which the plan commission and town board evaluated the development initially, the town board may require plat restrictions, deed restrictions, or other agreements necessary to ensure the compliance with the preliminary layout.

(E) **Appeal.** An aggrieved person may appeal a final decision made pursuant to this section by filing an appeal with a court of competent jurisdiction within 40 days of the final decision.

Amendments: Ordinance 2018-01; 2021-

480.203 Allocation of residential development permits

(A) **Purpose** The allocation of residential development permits for proposed subdivisions and multi-family projects is intended to manage the rate of growth in accordance with the population projections in the Town's comprehensive plan (330 dwelling units over the 25-year period from 2010 to 2035¹) giving priority to those receiving higher evaluation scores.

(B) **Maximum allocation.** Starting in 2017 and thereafter, the plan commission and town board shall jointly allot no more than a total of 18 residential development permits to qualifying subdivisions or multi-family projects in a calendar year where a lot in a subdivision or a dwelling unit in multi-family project represents one residential development permit. Such allocations are subject to the following terms and conditions:

- (1) If 18 total residential development permits are not issued in a given year, the excess is carried forward for the next two years, and may be issued only if qualifying developments in the succeeding year exceed the residential development permit allotment for that year. If no residential development permits

¹ Between 2010 and 2017 there were no new subdivisions. The 330 units can be attained over the next 18 years (2018-2035) if 18 permits are issued each year (18 x 18 = 324).

are carried forward, the plan commission and town board may exceed the maximum number of allotted residential development permits in the subsequent year by not more than 10 percent, upon showing of good cause, provided that the total number of residential development permits allotted for any 5-year period does not exceed 90 permits for the 5-year period.

- (2) The plan commission and town board may only allocate residential development permits if there are 100 or fewer vacant residential development units, which includes (i) residential lots created by a certified survey map in the preceding 5 years for which a building permit has not been issued and the construction has not commenced, (ii) residential lots which were created by the subdivision platting process in the preceding 5 years for which a building permit has not been issued and the construction has not commenced; and (iii) residential units within a multi-family project that was approved in the preceding 5 years for which a building permit has not been issued for said multi-family units, and the construction has not commenced. Construction shall be considered to have commenced when the building has passed the rough-in inspection by the Town's building inspector.

(C) **Annual allocation request.** Applicants ~~may choose to~~ should apply for residential development permits in the year immediately prior to the year in which the permits would be issued. Such requests are to be submitted no sooner than October 1st and no later than noon on the first Wednesday of November of the year immediately prior to the year in which the permits could be issued. Those applications shall be considered at the December plan commission and town board meetings or at such different date as the town board may determine, but only to the extent that there are residential development permits available. If all residential development permits allocated for a given year are issued, applications will be held for consideration, unless withdrawn by the developer, for the longer of the following time periods: either for the following year's allotment or until such time that 100 or fewer vacant parcels exist that were created by the subdivision platting process in the preceding 5 years. No priority will be given to developments which have been submitted in previous years that were not granted an allocation that year.

If the total number of dwelling units in the proposed developments ~~that receive 7 or more points~~, does not exceed the allotment for the year in question, and there are 100 or fewer vacant parcels as described in subsection B(2) above, then the town plan commission and town board may jointly issue residential development permits for all dwelling units in all developments. The plan commission and town board reserves the right to prorate the allotment over a 3-year period, in which case the number of lots assigned to each of the 3 years are applied against the total residential development permits that are available for each of those years, respectively.

(D) **Subsequent requests for unallocated permits.** If there are any unallocated permits in a given year (i.e., following the December allocation in the preceding year), a subdivider may submit an application anytime during the year for any unallocated permits for a proposed subdivision or multi-family project ~~that received a score of 7 points or more~~.

(E) **Excessive development proposal.** If the total number of requested residential development permits exceeds the total number of residential development permits that are available in a given year, qualifying developments will be prioritized by their scores. The development that received the highest score total must receive some residential development permits, if they are available. In the event a development receives residential development permits prorated over a 2- or 3-year period, at least 20 percent of the proposed dwelling units shall be allocated to each year.

(F) **Reversion of allocated residential permits.** If a residential subdivision development, which has been allocated residential development permits does not receive final approval of a preliminary plat within 12 months from the date of allocation of the permits, or does not have the final subdivision plat recorded within the statutory time period following the final approval of the preliminary plat, the residential development permits are automatically withdrawn from the property in question without further action by the Town. If a multi-family development, which has been allocated residential development permits, does not receive final approval and start construction within 18 months from the date of allocation of the permits and continue in good faith to completion as determined by the town board, the residential development permits are automatically withdrawn from the property in question without further action by the town.

(G) **Appeal.** An aggrieved person may appeal a final decision made pursuant to this section by filing an appeal with a court of competent jurisdiction within 40 days of the final decision.

Amendments: 2018-01; 2021-

Exhibit 1. Evaluation Criteria (Refer to s. 480.202)

Any proposed subdivision must meet the requirements of the Zoning Code (Town, and County if applicable), the Land Division Ordinance, and any other ordinances that might be applicable.

All applicable documentation must be provided to the Town Board, Plan Commission, and Town Engineer if applicable, prior to any review or scoring.

The purpose of allotment scoring is to encourage high quality developments. Within each individual criteria, the intent is provided at the top. Focusing on the intent for this particular criteria, the development may score additional point(s) based upon, but not limited to, the considerations provided. If a development just barely meets all applicable codes and ordinances, and the practical realities of developing the parcel, the score should be zero. Likewise, a development may score a negative point within each criteria (with the exception of #9), if the scorer identifies a concern that has not been covered in legislation. In all cases, the scorer is asked to provide a brief comment as rationale for the assignment of points.

1. Preservation of Natural Resources

Intent: To preserve any natural resources on the site, and adjacent if applicable. Resources include Environmental Corridors, Conservancy areas, Isolated Natural Resource Areas, and areas of special interest.

Score Range: -1 to +3

Requirements / Documents: Land Inventory Worksheet

Considerations may include:

- Are there any deed restrictions on the natural areas to prevent abuse and further development?
- Are building envelopes used to protect any natural areas?
- Are natural areas put into outlots or otherwise protected for the future? Protected lands may be private, shared, or public.
- To what extent is grading planned or expected in or near the natural resources?

Score

Comments

2. Preservation of Agricultural Lands

Intent: To maintain the rural and agricultural atmosphere of the Town.

Score Range: -1 to +3

Considerations may include:

- Does the space to be developed have any natural or historical content, or none?
- Are there larger lot sizes to facilitate crops and/or animals? Are most lots created at just the minimum lot size?
- Do HOA covenants promote, or prohibit, maintenance of crop fields and keeping of agricultural animals and horses?
- Are there common lands that will be preserved for agricultural purposes?

Score

Comments

3. Soils and Surface Water Drainage

Intent: To assure soils are suitable for the intended uses, grading is kept to a minimum, and that any proposed subdivision not cause any drainage of water or erosion onto adjacent properties, or change any pre-existing drainage patterns.

Score Range: -1 to +1

Requirements / Documents: *Soils Analysis / Topographical Map / Stormwater Plan (provided to Town Engineer in advance)*

Considerations may include:

- Will significant new grading be done?
- Will existing drainage patterns be put at risk of being disrupted?
- Are existing drainage problems significantly improved?
- Will blasting of bedrock be necessary for basements?
- Will steep slopes be built upon?

Engineer's recommended Score: _____

Engineer's comments: _____

Score

Comments

4. Density, Lot Sizes, and Open Space

Intent: To maintain the rural atmosphere of the Town, lower density of development is desired, which can be achieved by means of larger lots and/or Planned Unit Developments that concentrate development in smaller areas in order to preserve more open space. Just meeting minimum requirements of ordinances and practical realities should be considered a score of zero.

Score Range: -1 to +1

Considerations may include:

- Are proposed lot sizes larger than the minimum requirement?
- Will common lands be set aside beyond basic requirements of agricultural or natural resource preservation?
- Are there areas that are not feasible or desirable to develop? Are they excluded from calculations of the number of allowable lots?

Score

Comments

5. Traffic

Intent: To maintain a safe and reasonable traffic flow, with provisions to connect with existing and future adjacent subdivisions, and not create additional hazards to pedestrians and other residential pursuits.

Score Range: -1 to +1

Requirements / Documents: Any necessary traffic data must be provided to Town Engineer prior to scoring

Considerations may include:

- Does the proposed traffic flow allow for adequate, or improved, emergency service access?
- Does the proposal improve area traffic flow?
- Are extra measures included to slow traffic in a residential area?
- Will the development increase volume and/or speed of traffic in residential areas?
- Will the development add long roads ending in cul-de-sac?

Engineer's recommended Score: _____

Engineer's comments: _____

Score

Comments

6. Buffers

Intent: To maintain the Town's rural atmosphere by screening development from roads and adjacent residential areas.

Score Range: -1 to +1

Considerations may include:

- Does the property have existing natural buffers? Are buffers needed or desired?
- What is the nature of the surrounding areas (including streets) from which the development will be visible?
- Will buffers be landscaped, or native?
- Will buffers be protected for the long term by covenants and/or in common outlots?
- Is screening provided by adjacent properties or developments?

Score

Comments

7. Compatibility

Intent: To have developments be compatible with adjacent uses and plans in the Town.

Score Range: -1 to +1

Considerations may include:

- Is the plan compatible with the Town's Comprehensive Plan?
- Are the plans compatible with adjacent uses?
- Are the subdivision covenants compatible with those of adjacent developments?
- Are the plans suitable, considering potential future development or preservation in the area?

Score

Comments

8. Future Public Costs

Intent: To capture potential impacts on Town expenses which may include impact on emergency services access, road maintenance, etc.

Score Range: -1 to +1

Considerations may include:

- What impact will the proposal have on Town expenses, such as the cost of road maintenance, emergency services, safety measures?
- Will there be other possible expenses to the Town that have not been considered in the previous criteria?
- Is there anything that might create a cost-savings to the Town?

Score

Comments

9. Design Creativity and Benefit to the Town

Intent: To allow a few additional points to be awarded for exceptional design, creativity, and/or significant benefit to the Town. This is to award points for designs that incorporate the very best of existing developments in the Town, and particularly those that bring features that are new and innovative to benefit the Town.

Score Range: 0 to +3

Considerations may include:

- Are there aspects of the development that are highly desirable and/or innovative?
- Is there anything in the proposal that will particularly benefit the Town in ways that have not been considered in the previous criteria?

Score

Comments