ORDINANCE NO. 02-05-13

AN ORDINANCE TO REGULATE ROAD CONSTRUCTION

Pursuant to its general statutory authority to regulate Town roads within its jurisdiction and by its adoption of Village powers under Section 60.10(2)(c), Wis. Stats., the Board of Supervisors of the Town of Exeter, Green County, Wisconsin, hereby creates an Ordinance entitled "Town Roads and Infrastructure Construction" to read as follows:

Section 1. Purpose. The Town of Exeter adopted a Land Division and Subdivision Regulations Ordinance, Ordinance No. 00-07-27A, regulating new divisions of land occurring within the Town and requiring any subdivider to construct Town roads in newly dedicated rights-of-way pursuant to certain construction procedures and standards. For the safety of the general public and to protect the financial and other best interests of the Town, the Town Board hereby determines that the location and construction of Town road improvements to be made in rights-of-way dedicated to the Town prior to the enactment of Ordinance 00-07-27A shall also be subject to the same construction procedures and standards. This Ordinance will ensure that all newly constructed roads in the Town are built pursuant to uniform procedures and standards, regardless of when the right-of-way was dedicated to the Town for road purposes.

Section 2. Requirements and Standards. All roads to be constructed by any person or entity in a right-of-way dedicated to the Town prior to the adoption of the Town's Land Division and Subdivision Regulations Ordinance No. 00-07-27A on July 27, 2000, must be constructed pursuant to the provisions of this Ordinance.

A. Prior to the commencement of any construction, construction plans and specifications for the road improvements conforming in all respects with the standards of this Ordinance and those of the Town Engineer shall be prepared at the person or entity's sole expense by a professional engineer registered in the State of Wisconsin under the engineer's seal. The plans and specifications shall include:

1. Street plans and profiles showing existing and proposed grades, elevations, and cross-sections of required improvements. All improvements must be contained within the dedicated right-of-way.

2. Erosion and sediment control plans showing those structures required to retard the rate of runoff water and those grading and excavation practices that will prevent erosion and sedimentation. Such plans shall comply with the Town's Erosion Control Ordinance.

3. Additional special plans or information as required by the Town Engineer.

B. The Town Engineer shall review or cause to be reviewed the plans and specifications for conformance with the requirements of this Ordinance and other pertinent Town Ordinances and design standards recommended by the Town Engineer and approved by the Town Board. If the Town Engineer rejects the plans and specifications, the plans and specifications shall be modified and corrected. When the plans and specifications are corrected, the Town Engineer shall approve the plans and specifications for transmittal to the Town Board. The Town Board must approve the plans and specifications before any road construction commences.

C. Prior to starting any of the road construction covered by the approved plans and specifications, any person or entity shall obtain written authorization to start the work from the Town Engineer upon receipt of all necessary permits and in accordance with the construction methods and standards of this Ordinance.

D. The design and construction of all roads or streets in the Town shall comply with the requirements and standards of Sections 7(a) and (b) of the Town's Land Division and Subdivision Regulations Ordinance No. 00-07-27A, as may be amended from time to time, which requirements and standards are incorporated in their entirety herein. All cul-de-sacs shall be constructed as required by Section 7(a)(14) of said Ordinance.

E. Construction of all road improvements required by this Ordinance shall be completed within two (2) years from the date of final approval of the plans and specifications by the Town Engineer and issuance of all permits, unless the person or entity demonstrates good cause for the Town Board to grant an extension.

F. To minimize erosion during construction, all gradings, excavations, open cuts, side slopes, and other land disturbances shall be mulched, seeded, sodded, or otherwise protected so that erosion, siltation, sedimentation, and washings are prevented. An erosion control plan shall be prepared and submitted to the Town Engineer for review and approval specifying the measures that will be taken to minimize erosion problems and otherwise comply with the Town's Soil Erosion Control Ordinance.

G. The Town shall issue no building permits until all road improvements required by this Ordinance are satisfactorily completed and accepted by the Town, unless otherwise authorized by the Town Board.

Section 3. Administrative and Engineering Fees. Any person or entity constructing a road which is subject to this Ordinance shall pay a fee to the Town equal to the actual cost to the Town for all administrative, including legal, and engineering work incurred by the Town in connection with the construction of the road, including such inspections required by this Ordinance or as the Town deems necessary to assure that

the construction of the road is in compliance with the plans, specifications and Ordinances of the Town or any other governmental authority.

Section 4. Financial Guarantees. No construction of any road which is subject to this Ordinance shall commence until the person or entity constructing the road supplies to the Town cash, or an Irrevocable Letter of Credit approved by the Town Board and the Town Attorney, in an amount equal to 125% of the Town Engineer's estimate of the cost of the road construction and other fees, including the Town's cost of inspection. No security or performance bonds will be accepted as financial security. The Town Engineer may, from time to time, adjust the amount of estimated cost of and reasons for said improvements and within thirty (30) days of written notice of said change, the person or entity shall increase the financial security by that amount or any other amount acceptable to the Town Board. Reduction of the financial security for any purpose shall only be made after the written recommendation of the Town Engineer and approval of the Town Board. Upon recommendation of the Town Engineer, the Town Board may authorize reductions of the financial security in an amount deemed appropriate. If the required improvements are not completed within the specified period, the financial guarantee shall be turned over and delivered to the Town and applied to the cost of the required road construction and other improvements in connection therewith. Any balance remaining after completion of such road and related improvements shall be returned to the person or entity. In addition to any other requirements the Town Board or Town Attorney may require, the Letter of Credit may not contain language indicating that the Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits International Chamber of Commerce Publication No. 500, must provide for reasonable notification of the Town before its expiration, must not require the Town to pay bank charges under any circumstances, and must otherwise conform to the terms and conditions of this Ordinance. In the event that any financial institution fails to pay the Letter of Credit upon demand, subject to its terms and conditions, in whole or in part, the Town shall be empowered, in addition to any and all other remedies, without notice or hearing, to impose the amount due or to become due for completion costs onto the tax rolls of each and every lot in the subdivision or minor subdivision and collect such as a special charge pursuant to Section 66.0627, Wis. Stats. The time for completion of the road construction and related improvements shall be determined by the Town Board upon the recommendation of the Town Engineer. The financial guarantee shall remain in place for a period of one (1) year following final acceptance of the public road improvements by the Town and shall serve as security for the one-year warranty of said improvements provided by the person or entity in favor of the Town.

Section 5. Variances.

A. Where, in the judgment of the Town Board, on the recommendation of the Plan Commission and Town Engineer, it would be inappropriate to apply literally the provisions of this Ordinance because excessive or undue hardship would result, or the requirement is deemed not to be required to protect the interests of the Town, the Town Board may waive or modify any requirements to

the extent deemed just and proper. Application for any such variance shall be made in writing by any individual or entity at the time when the road plans and specifications are submitted to the Town Board for approval, stating fully all facts relied upon by the person or entity, and shall be supplemented with maps, plans or other additional data which may aid the Town Board in consideration of the proposed variance.

B. The Plan Commission shall not recommend, nor shall the Town Board grant, a variance to the regulations of this Ordinance unless it shall make findings based upon the evidence presented to it in each specific case, that the granting of the variance will not be detrimental to the public safety, health, or welfare of the general public, or injurious to other property or improvements in the neighborhood of the proposed road construction, that the conditions upon which the request for variance is based is unique to the road construction project, that because of the physical nature of the land upon which the road is to be constructed particular hardship to the person or entity would result, as distinguished from mere inconvenience, financial hardship, or self-imposing hardship, if the strict letter of this Ordinance were carried out, and that the requirement is not required to protect the best interests of the Town.

C. The Town Board, if it approves of the variance, shall do so by motion or resolution and instruct the Town Clerk to notify the person or entity requesting the variance. A majority vote of the entire membership of the Town Board shall be required to grant any modification or variance to this Ordinance and the reasons shall be entered in the minutes of the Board.

Section 6. **Enforcement, Penalties and Remedies.** Any person who fails to comply with the provisions of this Ordinance shall, upon conviction thereof, forfeit not less than $50.00 nor more than $500.00 and the costs of prosecution for each violation, and in default of payment of such forfeiture shall be imprisoned in the county jail until the payment thereof, but not exceeding six (6) months. Each day a violation exists or continues shall constitute a separate offense.

Section 7. **Severability.** If any provision of this Ordinance is invalid or unconstitutional, or if the application of this Ordinance to any person or entity or circumstances is invalid or unconstitutional, such invalidity or unconstitutional shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provision or application.

Section 8. **Interpretation.** In their interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements and shall be liberally construed in favor of the Town of Exeter and shall not be deemed a limitation or repeal of any other power granted to the Town by the Wisconsin Statutes.

Section 9. **Effective Date.** This Ordinance shall take effect and be in full force and effect the day after its passage and publication as required by law.

TOWN OF EXETER

By: _____
William J. O'Connor, Chair

By: _____
Ted Fahey, Supervisor

By: _____
Roger Zweifel, Supervisor

Attest: _____
Candee J. Christen, Clerk

VOTE:

Ayes: 2
Noes: 1
Adopted: May 13, 2002
Published: May 14, 2002

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