

TOWN OF PORT WASHINGTON

ORDINANCE # 2011-1

AN ORDINANCE TO AMEND SECTIONS 340-115, 340-117, 340-119, and 340-132 OF CHAPTER 340 OF THE TOWN OF PORT WASHINGTON MUNICIPAL CODE, KNOWN AS THE ZONING AND SUBDIVISION CODE

WHEREAS, the Town of Port Washington has enacted a Zoning and Subdivision Code, which is codified as Chapter 340 of the Town of Port Washington Municipal Code and known as the Zoning and Subdivision Code; and

WHEREAS, the Wisconsin Legislature has enacted various changes to the Wisconsin Statutes related to local subdivision regulations; and

WHEREAS, the Plan Commission for the Town of Port Washington at a meeting duly noticed on _____, 2011 recommended the adoption of the amendments to Chapter 340 that are set forth in this Ordinance; and

WHEREAS, the Plan Commission determined it would be in the best interest of the Town of Port Washington to recommend that the Town Board schedule a public hearing to consider the zoning amendments described herein; and

WHEREAS, at the recommendation of the Plan Commission, upon due notice as required by Section 340-139 of the Town Zoning and Subdivision Ordinance and Wisconsin Statutes Section 236.45(4), the Town Board of Supervisors held a Public Hearing on _____, 2011 at the Town Hall, to gain public input regarding the Plan Commission's recommendations; and

WHEREAS, the Town Board of the Town of Port Washington having carefully reviewed the recommendation of the Plan Commission, having determined that all procedural requirements and notice requirements have been satisfied, having given the matter due consideration and having based its determination on the effect of the granting of such rezoning and the health, safety and welfare of the community, and having given due consideration to the municipal problems involved as well as the impact on the surrounding properties as to noise, smoke and odor, and others hereby determines that the public necessity, convenience, general welfare and good zoning practice requires that the zoning amendment be granted, as the zoning amendment will not violate the spirit or intent of the Zoning and Subdivision Code for the Town of Port Washington, will not be contrary to the public health, safety or general welfare of the Town of Port Washington, will not be hazardous, harmful, noxious, offensive or a nuisance by reason of noise, dust, smoke, odor or other similar factors and will not for any other reason cause a substantial adverse effect on the property values and general desirability of the neighborhood and is consistent with the recommendations found in the Comprehensive Plan 2035 for the Town of Port Washington;

NOW THEREFORE, the Town Board of Supervisors of the Town of Port Washington, do hereby ordain as follows:

SECTION I. Section 340-115., "Improvements", of the Town of Port Washington Municipal Code is hereby repealed and created to read as follows:

§ 340-115. Improvements.

A. For any final plat, certified survey map or condominium plat that requires the installation of street and utility improvements, and prior to the installation of the street and utility improvements as hereinafter provided, the subdivider shall, prior to recording of such plat or map, enter into a developer agreement with the Town. [Amended 3-6-2006 by Ord. No. 2006-1]

(1) The developer agreement shall:

(a) Require installation of the required improvements in accordance with the Town Engineer approved construction plans.

(b) Require the submittal of a contract surety (cash bond or letter of credit), meeting with the approval of the Town Attorney, in an amount equal to the estimated cost of such improvements as submitted by the subdivider and approved by the Town Engineer, plus 10%. The surety shall guarantee that the subdivider or subcontractor will complete such improvements as required by and within the time provided for in the developer agreement. The 10% shall be held as a guarantee of the work for one year after the date of the resolution of final acceptance by the Town Board. The surety may be submitted for the estimated cost, plus 10%, of each phase of development as specified in the developer agreement.

(c) State all obligations of the subdivider to complete the improvements and other development site preparation and work. The obligations may include, but are not limited to, extension of public sanitary sewer and water, placement of road name signs, traffic control signs, traffic signals, lighting, and landscaping, securing of utility and drainage easements, and construction of drainage facilities.

(d) State all obligations of the subdivider and/or assigns regarding the care and maintenance of commonly held land or other improvements to be maintained by an owners' association to the benefit of the subdivision, which may include, but not be limited to, subdivision identification signs, common landscaping and fencing, unified yard lighting, and open space and recreation facilities.

(e) Provide that the subdivider may construct the project in such phases as the Town Board approves. If the subdivider's project is permitted to be constructed in phases, the amount of any surety bond or other security required by the Town Board shall be limited to the phase of the project that is currently being constructed. The developer agreement may not, however, require the subdivider to provide any security for improvements sooner than is reasonably necessary before the commencement of the installation of the improvements.

(2) Developments of lands that are not part of a final plat, certified survey map or a condominium plat may be subject to entering into a developer agreement with the Town when the development involves public improvements, extension of sewer

and water service, or other factors of development that may require clarification of responsibilities, subject to the same criteria as noted above.

B. Governmental units to which these surety and contract provisions apply may file, in lieu of such contract and bond, a letter from officers authorized to act on their behalf agreeing to comply with the provisions of this chapter.

C. Survey monuments shall be in place before final acceptance of the development, and the subdivider shall ensure that survey monuments are placed in accordance with the requirements of Ch. 236, Wis. Stats., and as may be required by the Town Engineer.

SECTION 2. Section 340-117, "Submission of preliminary plat", of the Town of Port Washington Municipal Code is hereby repealed and created to read as follows:

§ 340-117. Submission of preliminary plat.

A. Prior to the submittal of a final plat, the subdivider shall file with the Town a preliminary plat along with an application for final plat and a sufficient number of copies to be forwarded within two days to the authorities to which the plat must be submitted for approval under §§ 236.10 and 236.12, Wis. Stats., and according to the following:

(1) Twelve copies to the Town along with two copies each of soil percolation results and soil borings.

(2) One copy to be forwarded to each of the utility companies serving the area. This is to inform the utility companies that there is a pending development in the area. It shall be the responsibility of the subdivider and the utility companies to arrange for the services needed and their location within the plat.

B. The State Department of Administration, Department of Commerce, and the Department of Transportation shall be hereinafter referred to as "objecting agencies." All other agencies mentioned, excepting the utility companies, shall hereafter be referred to as "approving agencies."

C. Within 20 days of the date of receiving the copies of the plat, any agency having objecting authority shall notify the subdivider and all approving authorities of any objection which it may have, based upon failure of the plat to comply with the statutes or rules which its examination is authorized to cover. If there are no objections the objecting agency shall so certify on a copy of the plat and return that copy to the Town. If any objecting agency fails to act within the established twenty-day period, it shall be deemed to have no objection to the plat.

D. After all objections have been formally removed by the objecting authorities, the approving agencies may approve the plat upon compliance with all other rules, regulations or plans which are in effect in the area of the plat. This decision shall be made within 90 days of the date of first submittal unless objections are received from any objecting authorities. Failure of the approval authority to act within the prescribed 90 days shall constitute an approval of the plat. However, copies shall be on file with the Town at least 28 days prior to the meeting of the Town Plan Commission at which action is desired. If submittal is not in time to meet the ninety-day required time for approval, the plat shall be denied at a regular meeting of the Plan Commission unless extended by agreement with the Town and

developer.

E. Approval of a preliminary plat shall not constitute automatic approval of the final plat, except that if the final plat is submitted within 36 months of the preliminary plat approval and conforms substantially to the preliminary plat layout as indicated in Ch. 236, Wis. Stats., the final plat may be entitled to approval with respect to such layout unless conditions in the area of the plat have changed substantially to require an alteration to the plat. The preliminary plat shall be deemed an expression of approval or conditional approval of the layout submitted as a guide to the preparation of the final plat which will be subject to further consideration by the Town at the time of its submission. Street plans and drainage plans shall be prepared and submitted prior to approval of the final plat or minor land division and may normally be submitted after preliminary approval or as a condition of preliminary approval. Construction may not commence until approval has been granted by all appropriate agencies.

SECTION 3. Section 340-119., "Submission of final plat", of the Town of Port Washington Municipal Code is hereby repealed and created to read as follows:

§ 340-119. Submission of final plat.

A. The subdivider shall prepare a final plat and an application for final plat in accordance with this chapter and shall file an adequate number of copies of the plat with the Town Clerk who shall within two days forward copies of the plat to the approving and objecting agencies.

B. The required number of copies shall be made at the subdivider's expense. Within 20 days of the date of receiving the copies of the plat, any objecting agency shall notify the subdivider and all agencies having the authority to object of any objection based upon failure of the plat to comply with the statutes or rules which its examination is authorized to cover. If there are no objections, it shall so certify on the face of a copy and return that copy to the Department of Administration. After each agency and the Department of Administration have certified that they have no objection or that their objections have been satisfied, the Department of Administration shall so certify on the face of the plat. If an agency fails to act within 20 days from the date of receipt of copies of the plat, and the Department of Administration fails to act within 30 days of receipt of the original plat, it shall be deemed that there are no objections to the plat and, upon demand, it shall be certified on the face of the plat by the Department.

C. The extraterritorial plat approval authority, county and the Town shall, within 60 days of the receipt of the final plat, approve or reject such plat unless the time is extended by agreement with the subdivider or unless objections have been filed which would require a formal resubmission of the plat after the corrections have been made.

(1) The Town Plan Commission shall recommend approval, conditional approval or rejection of the plat and shall transmit the final plat along with its recommendation to the Town Board which shall, within 60 days from the date of original receipt of the final plat by the Town Clerk, approve conditionally, approve outright, or reject the plat unless the time of review is extended as provided

elsewhere within this section.

(2) The Town Plan Commission shall examine the final plat as to its conformance with the approved preliminary plat, this chapter and all ordinances, rules, regulations or other plans which may affect the plat. The Town Engineer, planner, or other person charged by the Town to review plats shall also provide the Town Board with their conclusions as to whether the final plat conforms substantially with the preliminary plat and with his or her recommendation with regard to the approval of the final plat. Although the review and recommendation need not be in writing, it shall be included in the record of the meeting at which the final plat is considered.

(3) The final plat may constitute only that portion of the approved preliminary plat which the subdivider proposes to record at that time. The final plat may be rejected if it is not submitted

within 36 months of the date of the last required approval of the preliminary plat or the time for submission of the final plat may be extended.

(4) No approval by any approving agency shall be granted until all formal objections of the objecting agencies have been satisfied.

(5) Failure of any approving agency to act within 60 days, the time not having been extended and no objections having been filed, shall constitute an approval.

(6) The necessary certificates shall be placed upon the original drawing of the final plat and shall be signed by all appropriate review agencies prior to recording.

D. The final plat shall be recorded in the office of the Register of Deeds of the County in accordance with Ch. 236, Wis. Stats.

SECTION 4. Section 340-132., "Recording of final plat and map", of the Town of Port Washington Municipal Code is hereby repealed and created to read as follows:

§ 340-132. Recording final plat and map. The subdivider shall record the approved final plat or map with the County Register of Deeds within 12 months after the date of the final approval and 36 months after first approval

SECTION 5. Severability. The several sections and portions 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 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. This ordinance shall take effect immediately upon passage and publication or posting as provided by law.

ADOPTED THIS _____ day of _____, 2011.

**BY THE TOWN BOARD OF SUPERVISORS
TOWN OF PORT WASHINGTON
OZAUKEE COUNTY, WI**

Lee Schlenvogt, Town Chair

Scott Heatwole, Town Supervisor

James Melichar, Town Supervisor

Attest:

Jennifer Schlenvogt, Town Clerk

MyFiles:Ordinance:Subdivision Ord Revisions Pt Washington 062610.docx