

ORDINANCE NO. 279

**AN ORDINANCE TO REPEAL AND RECREATE SECTION 18.02(3)(c)
AND TO CREATE SECTION 18.14(3) OF THE VILLAGE OF
OCONOMOWOC LAKE SUBDIVISION AND PLATTING ORDINANCE,
RELATED TO THE SALE AND EXCHANGE OF PARCELS OF LAND
BETWEEN ABUTTING OWNERS**

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 Village of Oconomowoc Lake 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 Village) 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, upon the recommendation of the Village Administrator, this matter was submitted to the Village Plan Commission for its consideration, 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 20, 2014, before the Village of Oconomowoc Lake Village Board; and

WHEREAS, in order to ensure that the sale or exchange of parcels of land between owners of adjoining property is conducted in a lawful manner, the Village of Oconomowoc Lake Village Board hereby intends to require that all such transfers of interest of land within the Village of Oconomowoc Lake be submitted to the Village Plan Commission for review, prior to such interest being conveyed and prior to such conveyance being recorded in the office of the Waukesha County Register of Deeds.

NOW, THEREFORE, the Village Board of the Village of Oconomowoc Lake, Waukesha County, Wisconsin DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The Village of Oconomowoc Lake Ordinance known as Chapter 18 "Subdivision and Platting," Section 18.02, entitled "Application," subsection (3)(c) is hereby repealed and recreated as follows:

- (c) 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 minimize sizes required by this chapter or other applicable laws or ordinances, subject to the review procedures described in Section 18.14(3).

SECTION 2: The Village of Oconomowoc Lake Ordinance known as Chapter 18 "Subdivision and Platting," Section 18.14, entitled "All Land Divisions and Land Transfers Regulated," subsection (3) is hereby repealed and recreated as follows:

- 18.14(3) 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 Village of Oconomowoc Lake Plan Commission for prior review, before the conveyance documents are signed and before the conveyance is recorded in the office of the Waukesha County Register of Deeds. Such application must be filed with the Village Clerk 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 Village Board. The Village Plan Commission review shall be

limited to considering whether the conveyance is in compliance with 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 exist prior to the conveyance as would exist after the conveyance. Such conveyance can only be approved under this subsection (3) 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 under this subsection (3) 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 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 3: SEVERABILITY.

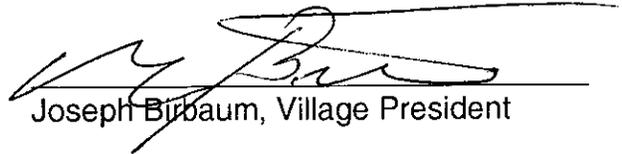
The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, 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 4: EFFECTIVE DATE.

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

Dated this 20th day of October, 2014.

VILLAGE OF OCONOMOWOC LAKE


Joseph Birbaum, Village President

ATTEST:


Cindy J. Schlieve, Village Clerk

Published and/or posted this 11th day of November, 2014.

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