

## CHAPTER 4

### PRIVATE DRIVEWAY SITING, CONSTRUCTION AND MAINTENANCE CONTROL

#### Section 4.1. Purpose.

Chapter 4 regulates the siting, construction and maintenance of residential Driveways that change the existing Topography of the land to assure that the siting will promote the public health, safety, and general welfare of the community, preserve Agricultural Land, protect environmentally sensitive areas, and enforce the goals and policies set forth in the Town of Hampden's Comprehensive Land Use Plan.

Design and construction of commercial driveways are not governed by Chapter 4 but shall instead be designed for the specific uses and traffic volumes involved in each application. The design for a commercial driveway shall be approved by the Town Board or its designee.

#### Section 4.2. Jurisdiction.

Jurisdiction of these regulations shall include all Driveways on parcels or building sites that are located within the Town of Hampden and is to be administered in conjunction with Chapter 3 applicable in the Town.

#### Section 4.3. Authority.

These regulations are adopted under the general police powers authority granted pursuant to sec. 60.10(2)(c), 60.22(3), and 61.34(1) of the Wisconsin Statutes.

#### Section 4.4. Definitions.

(a) **Agricultural Land.** Land within the Town of Hampden that is currently zoned agricultural.

(b) **Driveway.** A private Driveway, road, or other avenue of travel that runs through any part of a private parcel of land or that connects or will connect with any public highway, but shall not include any Field Road lying outside of the right-of-way of a public highway.

(c) **Shared Driveway.** A private Driveway serving no more than 4 private residences. A Shared Driveway shall have only one access to a public road or no more than 2 accesses separated by a minimum of 300 feet in rural areas and 150 feet in semi-urban areas. Where permitted, a Shared Driveway shall not exceed 500 feet in length.

(d) **Field Road.** A road used only for agricultural, recreational or other non-residential purposes.

- (e) **Topography.** The surface features of an area of land.
- (f) **Town.** The Town of Hampden, Columbia County, Wisconsin.
- (g) **Town Board.** The Town of Hampden Board of Supervisors.
- (h) **Town Clerk.** The Clerk of the Town of Hampden.

#### **Section 4.5. Application Requirements and Procedures.**

(a) **Who Must Apply.** No person or entity shall site or construct a Driveway without first obtaining a Driveway Siting Permit from the Town or its designee.

(b) **Application Forms.** The Town Board shall approve a form for applications for Driveway permits. These are available from the Town Clerk or Town Engineer.

(c) **Application.** Submit a completed Driveway Siting Permit Application together with the appropriate fee and the following attachments, as required, to the Town Clerk or Town Engineer:

- (i) Survey map.
- (ii) Aerial photo/site analysis.
- (iii) Soil/slope analysis.
- (iv) Town Erosion Control Plan.
- (v) Driveway Construction Plan or
- (vi) Engineer's Plan (if required by the Town Board or its designee).
- (vii) Other documents as deemed necessary by the Town Engineer.

(d) **Application Review.** The Permit Application shall be reviewed and evaluated pursuant to the provisions of Sections 4.10 and 4.11 and any other considerations deemed relevant by the Town Board or its designee.

(e) **Permit Application Denial.** If an application for a Driveway Siting Permit is denied by the Town, an applicant may not reapply for another Driveway Siting Permit for the same site unless the Town Engineer is of the opinion that the proposed Driveway siting for the property is substantially different than the prior application.

(f) **Permit Period.** The Driveway Siting Permit shall be effective for twelve (12) months from the date of issuance. Construction shall be completed within the time frame of the permit.

(g) **Building Permits.** No Building Permit for new residential construction will be issued until the Driveway is sited according to the specifications of this Chapter 4.

#### **Section 4.6. Costs of Application Review.**

An application fee in an amount to be determined from time to time by resolution of the Town Board will be charged. In addition, all reasonable costs for engineering, legal or clerical services incurred by the Town in the course of reviewing and evaluating the Driveway Siting Application shall be paid by the Applicant, to the extent not covered by the application fee. The applicant shall reimburse the Town for the costs within fifteen (15) days of billing. In the event the applicant fails to pay, in addition to any other remedies to which the Town may be entitled to pursue, including forfeiture, the delinquent costs and expenses shall be entered on the tax roll as a special tax against the property pursuant to Section 66.0627, Wis. Stats.

#### **Section 4.7. Preservation of Land.**

No Driveway shall be approved in the Town of Hampden if the Town Board or its designee finds that the Driveway has not been designed to minimize negative impacts on Agricultural Land or is inconsistent with the goals, objectives, and criteria of the Town's Comprehensive Land Use Plan. To minimize such impacts, construction of driveways shall, to the fullest extent possible, be done on an existing road, Driveway, or along a fence line and/or property line so the Driveway construction does not intrude on Agricultural Land. Wetlands should be avoided and preserved where at all possible and if impacted, will require Wisconsin Department of Natural Resources review and approval.

#### **Section 4.8. Field Roads.**

No exempt Field Road may be used for residential purposes unless the Field Road has been approved and improved as a Driveway under this Chapter.

#### **Section 4.9. Shared Driveways.**

Shared Driveways may be permitted by the Town Board under the following conditions:

(a) A Shared Driveway agreement between property owners designating usage rights and responsibilities for construction, maintenance and repair must be drafted in a form satisfactory to the Town Attorney and recorded with the deed for each property sharing the Driveway. The agreement must, among other things, acknowledge that the Driveway will never be improved to Town of Hampden road standards, or otherwise opened as a public road, and that the parties to the agreement forever waive and relinquish their right to petition or require the Town of Hampden to improve the Driveway to Town road standards and additionally, acknowledge that the Town of Hampden shall not have any obligation to ever maintain or repair the Driveway in any manner whatsoever.

(b) The Driveway is located, designed and constructed in accordance with this Chapter.

(c) The party or parties requesting a Shared Driveway can demonstrate (to the satisfaction of the Town Board) that construction of a single Driveway to serve multiple residences will minimize potential environmental degradation, enhance safety and/or maximize farmland preservation as compared with multiple Driveways.

#### **Section 4.10. Specifications for the Construction of Driveways.**

(a) **Slope.** No land with a slope of more than 20% shall be disturbed for the establishment, construction, improvement, modification, or reworking of a Driveway. No Driveway shall have a finished slope greater than 20%.

(b) **Width, Rise, and Ditch Distance.**

(1) A single use Driveway shall be constructed with a minimum of a finished surface of 10 feet, with a minimum of 4 feet side slope on each side with a maximum slope of 1 foot of vertical rise for each 4 feet of horizontal distance. (Such a rise equals 25% slope.) There shall be a minimum of 18 feet from the center of the ditch on one side of the Driveway to the center of the ditch on the other side. The center of each ditch must be at least 9 feet from the centerline of the 10-foot road.

(2) Shared Driveways shall have a minimum surface width of 18 feet with a minimum of 4 feet of side slope on each side. There shall be a minimum of 26 feet from center of ditch to center of ditch.

(c) **Culverts.** Each Driveway shall have a culvert issued in accordance with Chapter 3, if applicable.

(d) **Access.** The access for each Driveway shall be located, designed and constructed in accordance with the provisions of Chapter 3, if applicable.

(e) **Drainage.** Ditches along the right of way, roadway crowning, and culverts shall be provided by the property owner for acceptable drainage. The Driveway shall be planned, constructed, and maintained in a manner that prevents diversion of surface water onto the public road and/or the lands of other persons.

(f) **Back Slopes.** Ditch back slopes shall be graded to a slope of no more than 1 foot of vertical rise in each 3 feet of horizontal distance. (Such a rise equals 33% slope.) Excluded from this grading requirement are Driveways for which retaining walls and/or other erosion control measures are installed as specified in an Engineer's Plan approved by the Town Board or its designee.

(g) **Radius of Curves.** Curves in the Driveway shall have an inside radius of no less than 36 feet.

(h) **Erosion Control.** Once the construction of the Driveway has begun, all specified erosion controls – including retaining walls, ditching, culverts, crowning,

mulching, matting, and bank seeding – shall begin immediately. For winter construction, erosion control alternatives must be implemented until specified controls are available.

(i) **Substrate.** The Driveway and turnaround area must have at least 4 inches of 2-inch rock on the roadbed, covered with 2 inches of  $\frac{3}{4}$ -inch gravel. The surface of the Driveway may be constructed of any hard, clean, durable material such as concrete, bituminous or gravel so placed that the surface of the Driveway meets the existing edge of pavement. Driveways shall not create any obstruction to the maintenance or snow removal on the roadway.

(j) **Clearance/Turnouts for Emergency Vehicles.** An area 20 feet in width and 14 feet in height shall be cleared along the entire Driveway right-of-way in order to permit the safe passage of emergency vehicles to the structures served by the Driveway. If a Driveway in excess of 300 feet in length is permitted, one or more turnouts shall be constructed as determined and designed by the Town Engineer. A turnout shall be required, at a minimum, at least every 300 feet. The owner of the land shall ensure that the turnout is kept free from obstructions and snow at all times.

(k) **Turnaround.** Each Driveway and/or each branch of a Shared Driveway must have a turnaround area adequate to permit turnaround of emergency vehicles. Sketches of typical acceptable turnaround areas are attached as Exhibit A and incorporated herein.

(l) **Costs.** All costs of construction of said Driveway, including the cost of the culverts and Engineer's Plan, if required, shall be paid by the property owners requesting the permit.

#### Section 4.11. Engineering Plan Components.

(a) **Components.** If required by the Town Board or its designee, a plan prepared by a Professional Engineer registered in the State of Wisconsin will include drawings, drawn to scale, showing the following:

(1) **Plan.** A plan view showing the precise location of the Driveway or the segment of Driveway that requires an Engineer's Plan in relation to property lines, structures and significant topographic features. Minimum scale: 1" = 40'.

(2) **Profile.** The profile of the Driveway showing no segment exceeding 20%. Also show ditch profiles and culvert slopes.

(2) **Retaining Walls.** The location and structure of any retaining walls. Include design calculations for walls over 3' high.

(4) **Culverts.** The location and size of any culverts. Include hydraulic/hydrologic design calculation.

(5) **Topographic Map.** Contour map of the contributing watershed enhanced to show drainage patterns in the vicinity of the new Driveway.

(6) **Cross-section.** A cross-section of the proposed Driveway.

(7) **Erosion Control.** The required mulching, matting, silt fence or other erosion control measures in conformance with the WI Construction Site Best Management Practice Handbook.

(8) **Certification.** The plan will include the engineer's name, address, and signature; and a statement from the engineer that he has fully complied with all the provisions of this Chapter.

(b) **Approval.**

(1) **Conditions.** No construction of a Driveway or Shared Driveway may commence until the Plan is approved by the Town Board or its designee, until a Driveway Construction Permit is issued by the Town and, when applicable, any necessary approvals are obtained from Columbia County or the State of Wisconsin (See sec. 86.07 of the Wisconsin Statutes). The preparation of an Engineer's Plan does not guarantee the Town's approval of the Driveway Construction Permit Application.

(2) **Inspection.** After the Driveway has been completed, a minimum of 2 Town Board Supervisors or the Board's designee shall inspect the Driveway to determine whether or not it was constructed according to the plan(s) and is consistent with the requirements of this Ordinance.

#### **Section 4.12. Existing Driveways.**

Existing Driveways are not initially subject to the terms and conditions of this Chapter. In the event a Driveway is reconstructed, including replacement of any culvert, it shall thereafter be brought into compliance to the extent reasonably possible and feasible with the provisions of this Chapter. When washing or other conditions created by existing Driveways which do not meet the specifications required in this Chapter obstruct or become a potential hazard to a public road or the users of the Driveway, including emergency vehicles, the Town Board or its designee may notify the property owner of the condition(s). Any property owner failing to correct any condition(s) within thirty (30) days after notice by the Town Board shall be subject to the penalties described in the violations section of this Chapter.

#### **Section 4.13. Appeals.**

Any Person aggrieved by any decision made in the administration of this Chapter may appeal to the Town Board of the Town of Hampden. Appeals shall be filed within thirty (30) calendar days following the administrative decision by the Administrator. Appeals shall be filed in writing with the Town Clerk. The appeal shall specify the legal description of the Parcel and Access location in question, and the reason given for the appeal.

The Town Board shall make a decision on the appeal within forty-five (45) calendar days from the day the appeal was filed. The decision of the Town Board shall be made by the majority present.

#### **Section 4.14. Variances.**

(a) Where, in the sole judgment of the Town Board, on the recommendation of the Plan Commission, it would be inappropriate to apply literally the provisions of this Chapter because undue hardship would result, the Town Board may waive or modify any requirements to the extent deemed just and proper. Application for a variance shall be made in writing by the property owner on the application form provided by the Town. The application may not be filed until after a permit has been sought from the Town and discussions occurred with the Administrator. The applicant shall set forth all facts relied upon to justify the variance request and the application shall be supplemented with maps, plans or additional data which may aid the Plan Commission and Town Board in the analysis of the variance request.

(b) The Plan Commission shall not recommend nor shall the Town Board grant a variance unless it shall make findings based upon the evidence presented to it that:

(1) 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 in which the property is located;

(2) The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property.

(3) Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, financial hardship or self-imposed hardship, if the strict letter of the regulations were carried out.

(4) The alleged difficulty or hardship is caused by this ordinance and has not been created or self-imposed by the property owner. It shall not be deemed to be a hardship merely because a property owner desires a different Access location, for whatever reason, if the property can be otherwise Accessed in compliance with this Chapter.

(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 property owner.

(d) A majority vote of the entire membership of the Town Board shall be required to grant any modification of this ordinance, and the reasons shall be entered in the minutes of the Board. The Town Board may impose such conditions or restrictions upon the permit benefited by the variance as may be necessary in the sole opinion of the Board.

(e) The Plan Commission and Town Board shall have the power to call on the Administrator for assistance, including written reports, with respect to the variance.

#### **Section 4.15. Violations.**

(a) The Town or its designee is authorized to enter upon the lands regulated by this Chapter to inspect the land prior to permit issuance for the purpose of determining whether to approve the permit or to otherwise determine compliance with this Chapter. If permission cannot be received from the landowner or user, entry by the Town Engineer shall be by special inspection warrant pursuant to Sections 66.0119, Wis. Stats.

(b) The Town or its designee is authorized to post a stop-work order upon land which has a permit revoked or to post a stop-work order upon land upon which a Driveway is being constructed in violation of this Chapter, including without a permit. The Town Engineer shall supply a copy of the stop-work order to the Town Attorney. In lieu of a stop-work order, the Town Engineer may issue a written cease and desist order to any landowner or land user violating this Chapter. These orders shall specify that the activity must be ceased or brought into compliance with the order within seven (7) days. Any revocation, stop-work order or cease and desist order shall remain in effect unless retracted by the Town Board, the Town Engineer, or by a court of general jurisdiction, or until construction of the Driveway is brought into compliance with the Chapter. The Town Engineer is authorized to refer any violation of this Ordinance or a stop-work or cease and desist order issued pursuant to this Chapter to the Town Attorney for the commencement of further legal proceedings.

(c) Should a Driveway be sited, constructed or maintained in violation of the provisions of this Chapter 4, or create a hazard that is not corrected within thirty (30) days of notification, the owner(s) of the land through which the Driveway passes shall, upon conviction, pay a forfeiture between \$75.00 and \$200.00 plus applicable surcharges and court costs per violation. Each day that the violation continues to exist

shall constitute a separate offense. In the event of a violation of any provision of this Chapter, a cash deposit for inclusion in the citation is established as follows: 1<sup>st</sup> offense \$100.00; 2<sup>nd</sup> offense (and each subsequent day of offense) \$200.00.

(d) Compliance with the provisions of this Chapter may also be enforced by injunction after commencement of suit by the Town of Hampden. It shall not be necessary to prosecute a forfeiture action before resorting to injunctive proceedings.

(e) When the Town or its designee has determined that a landowner or land user has failed to obtain a permit as required by this Chapter, or that the holder of a permit issued pursuant to this Chapter has failed to make the improvements or to follow the practices as approved as a condition of the permit or required by this Chapter, the Town or its designee may enter upon the land and perform the work necessary to bring the Driveway into conformity with the permit or to restore the land to its pre-existing condition in the event that a permit has not been issued. The Town or its designee shall keep a detailed accounting of the costs and expenses of performing this work and these costs and expenses shall be entered on the tax roll as a special tax against the property pursuant to Section 66.0627, Wis. Stats. Notwithstanding this authority, nothing herein shall impose any liability upon the Town for any purpose for failing to undertake such work at any time.

#### **Section 4.16. Disclaimer.**

The Town's issuance of a Driveway permit does not constitute a determination that the Driveway is safe, suitable for use, or otherwise passable for emergency vehicles or any other use. No person may rely on the issuance of a permit to determine that a Driveway is fit for any purpose.