

11/25/2014

TOWN OF Eldorado  
FOND DU LAC COUNTY, WISCONSIN

ORDINANCE AUTHORIZING EXECUTION OF  
SHORELAND ZONING AGREEMENT

The Town Board of the Town of Eldorado, Fond du Lac County, Wisconsin, does hereby ordain as follows:

Section 1. Purpose. The purpose of this Ordinance is to authorize the Town of Eldorado to enter into a Shoreland Zoning Agreement with Fond du Lac County pursuant to Wis. Stat., § 59.692(4)(a).

Section 2. Authority. The Town has authority to adopt this Ordinance under Wis. Stat., § 59.692(4)(a) and under Wis. Stat., § 66.0301.

Section 3. Authorization of Agreement. The Town of Eldorado Town Board hereby authorizes the appropriate Town officers to execute the Shoreland Zoning Agreement attached hereto as Exhibit A.

Dated this 25<sup>th</sup> day of November, 2014.

TOWN OF Eldorado

By: Jay J. Miller  
Chairman

Attest:

Geri Ginger Clerk

## SHORELAND ZONING AGREEMENT

This Shoreland Zoning Agreement (“Agreement”) is entered into by and between the Town of Eldorado, Fond du Lac County, Wisconsin, (“Town”) and Fond du Lac County, Wisconsin (“County”) as of the latest date set forth below.

### Recitals

- A. The Town is a Wisconsin town with village powers that has in effect a Zoning Ordinance duly adopted pursuant to Chapters 60 and 62 of the Wisconsin Statutes. The Town’s Zoning Ordinance includes one or more Farmland Preservation Zoning Districts certified under Chapter 91 of the Wisconsin Statutes.
- B. Town residents located in a Farmland Preservation Zoning District certified under Chapter 91 of the Wisconsin Statutes may be eligible for farmland preservation tax credits pursuant to Wis. Stat. § 71.613.
- C. The County is a Wisconsin County that has adopted a Shoreland Zoning Ordinance adopted pursuant to Wis. Stat. § 59.692. The County’s Shoreland Zoning Ordinance applies to property located within one thousand feet from a lake, pond, or flowage; or within three hundred feet of a river, stream, or the landward side of a floodplain, whichever is greater (“Shoreland Areas”).
- D. Prior to the Wisconsin Court of Appeals decision in *Town of Eagle v. Hegwood*, 2013 WI 118, the Town and County administered their respective Zoning Ordinance and Shoreland Zoning Ordinance in a manner that applied both ordinances in Shoreland Areas so that property located in Shoreland Areas had to meet the standards of the more restrictive of the two ordinances. In *Town of Eagle v. Hegwood*, 2013 WI 118, the Wisconsin Court of Appeals held that except in circumstances not applicable in Fond du Lac County, town zoning ordinances no longer apply and are of no effect in Shoreland Areas. As a result, property located in a Shoreland Area that had previously been in a certified Farmland Preservation Zoning District is no longer in a certified Farmland Preservation Zoning District and is no longer eligible for farmland preservation tax credits.
- E. The Town and County anticipate that future legislation will reverse the holding in *Town of Eagle v. Hegwood* and, in the meantime, wish to administer their respective ordinances in the same manner that they were administered prior to *Town of Eagle v. Hegood*. Administering their ordinances in this manner will re-establish farmland preservation tax credit eligibility for property located in Shoreland Areas until the anticipated legislation occurs.

EXHIBIT

A

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- F. To that end, the Town and County intend to incorporate by reference the terms of the Town's Zoning Ordinance into the County's Shoreland Zoning Ordinance so that the terms of the Town's Zoning Ordinance become applicable again within Shoreland Areas located in the Town.
- G. The County intends to delegate administrative and enforcement authority for the incorporated terms of the Town's Zoning Ordinance back to the Town upon incorporation of the Town's Zoning Ordinance into the County's Shoreland Zoning Ordinance.

NOW, THEREFORE, in consideration of the above recitals, which are contractual, and for other good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the parties agree as follows:

1. Authority. This Agreement is entered into pursuant to Wis. Stat. § 66.0301 for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. It is also entered into pursuant to Wis. Stat. § 59.692(4)(a), which allows intergovernmental cooperation in the administration of shoreland zoning.
2. Incorporation of Town Zoning Ordinance. By December 31, 2014, the County will amend its Shoreland Zoning Ordinance to incorporate by reference all terms of the Town's Zoning Ordinance, including all future amendments thereto, as well as all Town Zoning Ordinance administrative policies, procedures, and documents. The incorporated Zoning Ordinance, policies, procedures, and documents will apply in all Shoreland Areas located in the Town.
3. Delegation of Enforcement and Administrative Authority. Effective upon the incorporation of the Town's Zoning Ordinance as described in Section 2, the County hereby delegates to the Town all administrative and enforcement authority with respect to the incorporated terms and provisions of the Town's Zoning Ordinance. Pursuant to this delegation, the Town will administer the incorporated terms of its Zoning Ordinance in Shoreland Areas located in the Town in the same manner that it did prior to *Town of Eagle v. Hegwood*.
4. Other Shoreland Zoning Ordinance Standards. Except to the extent delegated in Section 3, the County shall retain all administrative and enforcement authority with respect to the Shoreland Zoning Ordinance. The County will administer its Shoreland Zoning Ordinance in Shoreland Areas in the same manner that it did prior to *Town of Eagle v. Hegwood*.

5. Town Indemnification. To the fullest extent authorized by law, the Town shall defend, indemnify, and hold harmless the County, its officers, agents, employees, and insurers from and against all claims, losses, and damages of any kind, including reasonable attorneys' fees, (together, "Claims") arising out of the Town's administration and enforcement of the incorporated terms of the Town's Zoning Ordinance. The preceding applies to all Claims except to the extent of the County's fault.
6. County's Indemnification. To the fullest extent authorized by law, the County shall defend, indemnify, and hold harmless the Town, its officers, agents, employees, and insurers from and against all claims, losses, and damages of any kind, including reasonable attorneys' fees, (together, "Claims") arising out of the County's administration and enforcement of the terms of its Shoreland Zoning Ordinance other than those administered and enforced by the Town pursuant to Section 3. The preceding applies to all Claims except to the extent of the Town's fault.
7. Authority to Amend Ordinances. Nothing in this Agreement prohibits the Town from amending its Zoning Ordinance at its sole discretion. Nor does anything in this Agreement prohibit the County from amending its Shoreland Zoning Ordinance at its sole discretion.
8. Term. This Agreement shall remain in effect from the date of its execution until December 31, 2015 unless earlier terminated by mutual agreement of the parties.
9. Ordinance. The Town and the County shall adopt ordinances authorizing this Agreement, as required by Wis. Stat. § 59.692(4)(a). The parties further agree to take such further actions that are reasonably required to accomplish the intended purposes of this Agreement.
10. Severability. If any provision of this Agreement is held invalid, illegal or unenforceable, such provision may not affect or impair the validity, legality or enforceability of this Agreement or any of the other provisions hereof, and a valid and enforceable provision as similar as possible to the provision at issue must be substituted for the provision at issue.
11. Challenge to Agreement. The parties waive all rights to challenge the validity or enforceability of this Agreement or any of its provisions or to challenge any actions taken pursuant to or in accordance with this Agreement. In the event of a court action by a third party challenging the validity or enforceability of this Agreement or any of its provisions, the parties shall fully cooperate to vigorously defend the Agreement. If one party is named as a party to the action, the other party shall seek to intervene and the named party shall support such intervention. No settlement of such an action shall be permitted without the approval of both parties.

12. Remedies. In the event of a breach of this Agreement, except as limited by Section 11, either party may seek declaratory judgment or specific performance of this Agreement by court action. No party shall challenge the standing of the other in such an action. The breaching party shall pay the other party's reasonable attorneys' fees incurred in seeking remedies for the breach, provided that the breaching party has been given notice and a reasonable opportunity to cure the breach prior to the commencement of any proceedings for a remedy.
13. Binding Effect. This Agreement is binding upon the parties and their successors. This Agreement is for the exclusive benefit of the parties and their successors and shall not be deemed to give any legal or equitable right, remedy, or claim to any other person or entity. The enforceability of this Agreement will not be affected by changes in the forms of Town or County government or changes in elected officials.
14. Authority. Each party represents that it has the authority to enter into this Agreement and that all necessary procedures have been followed to authorize this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to do so.
15. Miscellaneous. References to the Town's Zoning Ordinance and County's Shoreland Zoning Ordinance in this Agreement include their respective maps. This Agreement constitutes the complete agreement between the parties as to the matters dealt with herein. This Agreement may be signed in counterparts and digital, facsimile, or electronic signatures shall be deemed originals. This Agreement shall be liberally construed to accomplish its intended purposes. The parties acknowledge that the language contained in this Agreement is the product of joint drafting. Therefore, ambiguities shall not be construed against the drafter of this document. The failure of either party to require strict performance of any provision of this Agreement will not constitute a waiver of the provision or of any other right under this Agreement. Rights and obligations under this Agreement may only be waived or modified in writing.

Dated this 25<sup>th</sup> day of November, 2014

TOWN OF Eldorado

Gary L. Miller  
Chairperson or Authorized Supervisor

Attest: Geri Singer  
Town Clerk or Clerk-Treasurer