

TOWN OF CASSIAN

ORDINANCE NO. 2008 - 001

AMENDED LAND DIVISION AND SUBDIVISION CONTROL ORDINANCE

The Town Board of the Town of Cassian, Wisconsin intending to amend the existing Land Division and Subdivision Control Ordinance does ordain *as follows*:

1. Authority. This Ordinance is adopted under the authority granted by §236.45 Wis. Stats.
2. Purpose. The purpose of this Ordinance is to regulate and control the division of land within the limits of the Town in order to promote the public health, safety, morals, prosperity, aesthetics and general welfare of the Town.
3. Name. This Ordinance shall be known and cited as the Cassian Land Division and Subdivision Control Ordinance.
4. Interpretation. In its interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Town and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes to the Town.
5. Severability. The provisions of this Ordinance shall be deemed severable and it is expressly declared that the Cassian Town Board would have passed the other provisions of this Ordinance irrespective of whether one or more provisions are declared invalid. If any portion of this Ordinance or the application to any person or circumstances is held invalid, the remainder of the Ordinance and the application of such provisions to other persons or circumstances shall not be affected.
6. Jurisdiction. This Ordinance shall apply to all lands within the Town of Cassian. These regulations apply to all land divisions, condominium projects, mobile home parks or travel trailer parks, and such projects, divisions, parks and trailer parks shall require approval by the Town Board of Cassian before any parcels, lots, units, spaces or sites may be sold, rented or conveyed.
7. Definitions. The following definitions shall apply and control this Ordinance. Words or phrases not defined specifically below, but used in this Ordinance, shall be interpreted so as to give them the same meaning *as* they have at common law and to give this Ordinance its reasonable application.

Divide: To create a land division.

Land Division: A division of a lot, parcel or tract of land.

Lot: A distinct parcel or plot of land.

Off Water Lot: A lot which has no frontage on a navigable lake, river, stream, pond or flowage.

On Water Lot: A lot which has frontage on a navigable lake, river, stream, pond or flowage.

8. **Prohibition.** No person shall divide any land located within the Town of Cassian without submitting the land division proposal to the Town Clerk and without compliance with all the requirements of this Ordinance, applicable state ordinances, and applicable county ordinances.
9. **Minimum Lot Size.**
 - a) No off water lot smaller than 5 acres may be created by a land division in the Town of Cassian except as permitted in subparagraph c).
 - b) For on water lots, the Town hereby adopts Section 9.93 of the Oneida County Zoning and Shore land Protection Ordinance ("OCZSPO") to regulate lot size. Any on water lot created must comply with the size requirement set forth in Table A of Appendix B of the OCZSPO effective May 15, 2000 and amended to August 29, 2001.
 - c) The Town hereby adopts an exception to paragraph a). A land owner may elect to create one lot which deviates from the "5 acre" standard. The lot size of said lot must meet or exceed the minimum requirements established by Oneida County in its applicable ordinance. Once exercised, the land owner or its successor in title would not be permitted to exercise the foregoing option again and must record a Lot Size Deed Restriction acknowledging the same. It is the intent of this Ordinance that each land owner is allowed to create one off water lot less than the required minimum 5 acre size. All properties within the proposed subdivision shall be subject to the limitation that no further divisions may occur with respect to the same.
 - d) For purposes of computing the area of a lot under this Ordinance, no road right-of-way may be included within the area required to satisfy the lot size requirement contained in this paragraph.
 - e) In developing subdivisions, outlots smaller than minimum lot size may be permitted provided the approved map must indicate that such outlots may not be improved for housing units and a written deed restriction must be recorded with language acceptable to the Town prohibiting construction of structures for human habitation thereon.
10. **Road Design Standards.** The Road Design Standards found in Ordinance 3.06, Town of Cassian, apply to all roads in the Town and, in addition:

a) The minimum right of way width for roads providing access to lots created by land divisions is 66 feet. Any proposed road in a proposed land division that services more than 2 parcels of land must be constructed in accordance with the minimum standards for town road construction as set forth in the Town of Cassian, Ordinance 3.06 entitled "Amended Requirements For Town Road Construction."

b) Every lot created shall front or abut for a distance of at least 66 feet on the applicable road whether it is a town road built to town road specifications or is a private road with a 66 foot right of way.

c) Blacktop surface must be completed within two (2) years of Town approval and a bond must be posted to ensure compliance with town road standards (with good cause this requirement may be extended at the discretion of the Town Board).

d) Developer of road system which will not be transferred to the Town shall set up a framework of an association made up of all property owners using the road which equitably distributes the cost but requires maintenance to keep the road in safe operating condition.

11. Preliminary Consultation: Prior to the filing of an application for approval of a land division, the subdivider shall consult with the Town Board and present a preliminary plan or sketch plan of the proposed land division together with information such as the existing physical conditions, the type of development proposed and related improvements. This preapplication procedure does not require formal application or the payment of fees and shall be advisory only. The preapplication procedure gives the subdivider an opportunity to seek the advice and assistance of the Town Board before preparation of the preliminary plat and before formal application for its approval. The Town Board will advise the subdivider *as to* the degree of conformity or non-conformity of the proposed plat with the Town Land Division and Subdivision Control Ordinance, the Land Use Plan, if any, and the provisions of other applicable laws and ordinances and otherwise, assist the subdivider in planning the development. In this manner, the subdivider and the Town Board may reach mutual conclusions regarding the general plan and objectives of the proposed development and possible effects on the neighborhood and the community. The subdivider will also gain a better understanding of the subsequent required procedures.

12. Alterations to Plats. Except with the express consent of the Town Board of Cassian, no property owner may alter acreage boundaries or dimensions of any lot created by plat, subdivision or certified survey which has previously been approved by the Town Board of Cassian.

13. Town Board Approval Required: All land divisions, condominium projects, mobile home parks or travel trailer parks shall require the approval of the Town Board of Cassian before any such parcels, units, spaces or sites maybe sold, rented or conveyed. In the event that sale or conveyance is attempted without compliance with the terms of this Ordinance, the Town

shall be entitled to notify the County tax lister not to issue tax parcel numbers for the lots, units, spaces, and to seek injunctive relief prohibiting sale.

14. Variance. The Town Board shall have the power, upon appeal, to authorize such variance from the terms and provisions of this Ordinance *as* will not be contrary to the public interest, nor violative of the Oneida County Subdivision Ordinance. The Town Board shall limit and restrict the granting of such variances to those instances in which, due to special conditions, a literal enforcement of this Ordinance would result in extreme hardship or a denial of due process of law.

15. Penalty Provisions.

i) Unless specified in this paragraph, any person who shall violate any of the provisions of this Ordinance shall upon conviction of such violation be subject to a penalty as follows:

a) First Offense. Any person who shall violate any provision of this Ordinance shall, upon conviction thereof, forfeit not less than \$100.00 nor more than \$500.00, together with the costs of prosecution.

b) Second Offense. Any person found guilty of violating this Ordinance who previously had been convicted of a violation of this Ordinance within one (1) year, shall, upon conviction thereof, forfeit not less than \$500.00 nor more than \$1,000.00 for each such offense, together with the costs of prosecution.

ii) Continued Violations. Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Ordinance shall preclude the Town from maintaining any appropriate action to prevent, enjoin or remove violation of any provision of this Ordinance.

iii) Execution Against Defendant's Property. Whenever any person fails to pay any forfeiture and the costs of prosecution upon the order of any court for violation of any terms of this Ordinance, the court may issue an execution against the property of the defendant for such forfeiture and costs.

iv) Citation Method of Enforcement. Citations may be issued for violations of this Ordinance including any portion of this Ordinance for which a statutory counterpart exists. The form of such citation shall comply with Section 66.0113(1)(b) Wis. Stats.

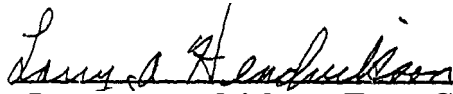
(a) The issuance of citations *is* expressly limited to following town officials and the authority delegated to a town official to issue such citations may only be granted or revoked by the town board. The town chairman and town clerk are authorized to issue citations for violations of the Cassian Land Division and Subdivision Control Ordinance.

- (b) Cash deposits from citations issued shall be paid at the clerk's office or mailing to the Town Clerk. Upon receipt of the deposit, the Town Treasurer shall issue a receipt for the same.
- (c) Cash deposits for violation of any provision of the Cassian Land Division and Subdivision Control Ordinance shall be \$500.00 and in addition shall include any and all court costs, assessments and penalty assessments as permitted by Section 165.87 Wis. Stats., including a 23% penalty assessment, a \$5.00 justice information fee, a \$40.00 court support fee, \$20.00 court costs, \$5.00 circuit court automation project fee and \$10.00 jail assessment fee.
- (d) Whenever any violation has occurred, the town attorney shall prosecute as provided by law.
- (e) In addition to the forfeiture described above, the owner of property who divides the property without compliance with this Ordinance and without town approval shall be subject to paying all costs necessary to rectify the infraction.. These costs may consist of, but not be limited to, the following: Surveying costs, recording fees, removal or relocation of structures, removal, abandonment or resurfacing of roadways and roadbeds. If the town board determines that a subdivider divides land in a manner not in compliance with the terms of the approval given by the Town, the Town may amend, suspend or revoke the approval. The decision of the Town Board shall be furnished to the subdivider in writing stating the reasons therefore.

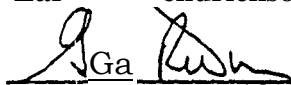
16. **Effective date.** This Ordinance shall take effect and be in force from and after passage by the Cassian Town Board and posting as provided by law and publication.

Adopted this 6 day of December, 2008.

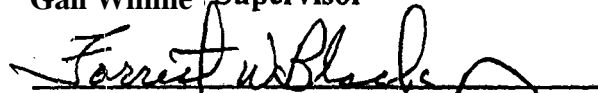
**TOWN OF CASSIAN
BOARD OF SUPERVISORS**



Larry A. Hendrickson, Town Chairman




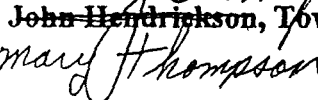
Gail Winnie, Supervisor



Forrest Black, Supervisor

ATTEST:



John Hendrickson, Town Clerk


STATE OF WISCONSIN)
)ss.
COUNTY OF ONEIDA)

AFFIDAVIT

LOT SIZE DEED RESTRICTION

_____ being duly sworn on oath, depose and state as follows:

1. I am the developer of the land division evidenced by the survey map prepared by _____ surveyor, dated _____ and identified as Map No. _____. A copy of said map is attached as Exhibit A and the legal description of all property included in the subdivision is attached as Exhibit B.
2. I am hereby restricting all of the property described in Exhibit B.
3. Pursuant to the terms of the Cassian Land Division and Subdivision Control Ordinance, I/we have exercised our option to create:

One off water lot smaller than 5 acres in area as permitted by paragraph 9c of the Cassian Land Division and Subdivision Control Ordinance. The lot created is identified as Lot No. _____ on Exhibit A.
4. I hereby declare that all lots in the subdivision evidenced by the attached Exhibit B are hereby restricted against any further division and may not be further subdivided.
5. This deed restriction shall be enforceable by the owners of any of the lots in said subdivision or by the Town of Cassian. Any person or entity violating the terms of this deed restriction shall be responsible for paying actual costs and attorney's fees incurred by the owner of any other lot in the subdivision or by the Town of Cassian in obtaining a court order to enforce the terms of this Deed Restriction.
6. This deed restriction is adopted and created in order to comply with the Cassian Land Division and Subdivision Control Ordinance. It should be interpreted consistent with said ordinance.

Dated this _____ day of _____

Subscribed and Sworn to before
me this _____ day of

NOTARY PUBLIC
My Commission Expires: _____