

ORDINANCE #2008-2
REGARDING ADMINISTRATIVE APPEALS
TOWN OF PRAIRIE LAKE

SECTION 1- PURPOSE - REVIEW OF ADMINISTRATIVE DETERMINATIONS

The Town Board of the Town of Prairie Lake, Barron County, Wisconsin, in order to provide for a method of appeal by which citizens who disagree with a decision of the Town Board, or a commission, committee, agency, officer or employee of the Town or agent acting on its behalf may have such determination reviewed as provided in this Ordinance. The remedies under this Ordinance shall not be exclusive, but an election to proceed hereunder shall be an election of remedies. (State Law Reference: 68 Wis. Stats.)

SECTION 2 - AUTHORITY

The Town of Prairie Lake, pursuant to Wis. Stat. Sec. 68.16, chooses not to be governed by Chapter 68 of the Wisconsin Statutes regarding municipal administrative procedure. In place of the provisions of Chapter 68, the Town of Prairie Lake establishes the procedures contained in this Ordinance to govern review of administrative determinations in the Town of Prairie Lake.

SECTION 3 - RESPONSIBILITIES OF THE ADMINISTRATIVE APPEALS BOARD

3.1 To hear and decide appeals as described in Section 5 of this Ordinance.

3.2 To authorize upon appeal in specific cases such exceptions from the terms of the ordinances as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the Ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. --

3.3 To become familiar with all of the duly enacted ordinances of the Town that it may be expected to act upon as well as with the applicable State Statutes.

3.4 To become familiar with community goals, desires and policies as expressed in the Comprehensive Plan, and grant the minimum relief that will ensure that the goals and policies of the Plan are preserved and substantial justice is done.

SECTION 4 - COMPOSITION AND TERM PERIODS OF THE BOARD

4.1 The membership of the Administrative Appeals Board shall consist of three (3) citizens of the town who shall be appointed by the Town Board Chairperson subject to approval of the Town Board, for terms of three (3) years, except that of those first appointed, one shall serve for one (1) year, one for two (2) years and one for three (3) years. Members appointed to the Administrative Appeals Board shall not be Plan Commission members, Town Board members or their spouses, except that former Plan Commission or Town Board members shall be eligible to serve once the term of his/her office has expired. The appointments will be made annually at the May meeting of the Town Board and shall take effect on June 1 of that year.

4.2 The Town Chairperson shall also appoint two (2) alternates to serve staggered terms of two (2) years, and these alternates shall annually be designated Alternate 1 and Alternate 2. The appointments will be made annually at the May meeting of the Town Board and shall take effect on June 1 of that year. The alternates shall act, with full power, only when a member of the Board refuses to vote because of interest or when a member is absent.

4.3 Persons appointed to the Administrative Appeals Board shall take an oath to uphold the Constitution of the United States and of the State of Wisconsin and to faithfully discharge the duties of the office to which they are appointed. The Chairman or the Clerk of the Town Board shall

administer the oath.

4.4 The Town Chairperson shall designate one of the members as chairperson.

4.5 An organizational meeting of the Administrative Appeals Board shall occur prior to June 1 of each year at which time the necessary officers will be designated and the members will review the Administrative Appeals Ordinance as well as any other materials relating to the appeals process as may be necessary.

4.6 The Administrative Appeals Board may designate a member to serve as acting chairperson in the absence of the Chairperson.

4.7 The Administrative Appeals Board may designate a member to keep minutes of all proceedings and records of all official actions and to perform such duties as may give sufficient notice of all meetings of the Administrative Appeals Board, or it may appoint a person who is not a member of the Administrative Appeals Board to act as secretary to do so. All minutes and records of proceedings must be immediately filed in the office of the Town Board and shall be a public record.

4.8 Any member of the Administrative Appeals Board may be removed from the Administrative Appeals Board, for cause, by the Town Board before expiration of his/her term, but only after notice and an opportunity for a hearing at which the member in question has an opportunity to refute specific charges against him/her. The term "for cause" shall include failure to attend Administrative Appeals Board meetings or hearings without sufficient justification, or voting when the member has a conflict of interest.

4.9 A quorum of the Administrative Appeals Board shall require three (3) members to be present.

4.10 Decisions of the Board shall be by majority vote of a quorum of the members.

4.11 Members of the Board shall receive no compensation for their services, except that they may be authorized repayment of any out-of-pocket expenses incurred in relation to their assigned duties.

4.12 Should a permanent vacancy occur, the Chairman of the Administrative Appeals Board will immediately inform the Town Clerk who will bring it to the Town Board Chairperson. The appointment to fill the unexpired term shall be made within 45 days upon the same criteria as regular appointments.

SECTION 5 - MATTERS OF APPEAL

5.1 Persons aggrieved whose rights, duties or privileges are adversely affected by a determination of an authority authorized by the Town Board have the right to file an appeal to the Administrative Appeals Board as an administrative appeal. Persons aggrieved include any individual, partnership, limited liability company, corporation, association, public or private organization, officer, department, board, commission or agency of the Town.

5.2 Decisions by the Town Board, an inspector, a law enforcement officer or any other authority authorized by the Town Board that consists of interpretations of the terms of a Town Ordinance that are considered in the course of determining whether the Town Board will issue a permit or approval are matters for appeal to the Administrative Appeals Board as administrative appeals.

5.3 Decisions by the Town Board, an inspector, a law enforcement officer or any other authority authorized by the Town Board to issue an ordinance violation, or to commence other ordinance enforcement activities where the inspector, the law enforcement officer or any other authority authorized by the Town Board has determined that violation of the ordinances exists, is a matter for appeal to the Administrative Appeals Board as an administrative appeal.

SECTION 6 - MATTERS NOT SUBJECT TO APPEAL (68.03 1-7 Wis. Stats.)

6.1 A legislative enactment. A legislative enactment is an ordinance, resolution or adopted motion of the Town Board.

6.2 Any action subject to administrative or judicial review procedures under other provisions of the Town Ordinances.

6.3 The denial of a tort or contract claim for money required to be filed with the Town under Wis. Stat. 60.44.

6.4 The suspension, removal or disciplining or nonrenewal of a contract of a Town employee or

officer.

6.5 The non-renewal, grant, denial, suspension or revocation of an alcohol beverage license under Wis. Stat. 125.12(1).

6.6 Judgments and orders of a court.

6.7 Determinations made during Town labor negotiations.

6.8 Awards of contract by the Town Board.

SECTION 7 - APPEALS PROCESS 7.1 APPLICATION FOR APPEAL

7.1.2. Any person aggrieved by an action which comes under the jurisdiction of the Administrative Appeals Board must file such application for appeal, in writing, within thirty (30) days of the notice of the decision on such action. The applicant shall file this appeal at the office of the Town Clerk, setting forth the grounds for his/her appeal. Upon receiving the application for appeal, the Town Clerk shall immediately notify the Chairperson of the Administrative Appeals Board.

7.1.3. The fee to accompany applications for appeal shall be fifty (\$50) dollars. Checks are to be made payable to the Town of Prairie Lake.

7.2 HEARINGS

7.2.1. The Administrative Appeals Board shall schedule a public hearing on all appeals applications within thirty (30) days of the filing of a completed appeal application and shall so notify the Town Clerk.

7.2.2 The Administrative Appeals Board shall authorize the Town Clerk to cause notice of the date, time and place of such hearing, and the general nature of the question involved, to be given to the person making the application and to be posted in the 3 public posting places in the town at least seven (7) days prior to the hearing. The Board shall also cause notice of the hearing be given to the Town Board and all other interested parties.

7.2.3. The Administrative Appeals Board may exclude irrelevant, immaterial, or unduly repetitious evidence.

7.2.4. The Chairperson may limit the length of time that any individual is allowed to speak when reasonably necessary to expedite the hearing.

7.2.5. The order of business at a public hearing of the Administrative Appeals Board shall be as follows:

1. The Chairperson calls the hearing to order and announces that business of the Board shall be conducted in accord with Wisconsin Statutes, Town of Prairie Lake Ordinances and Robert's Rules of Order.
2. The Chairperson announces that this is a properly noticed and authorized public meeting.
3. The Chairperson determines whether there is a quorum and then whether any conflicts of interest of the members of the Administrative Appeals Board affect that quorum.
4. The Chairperson reads the application for appeal to the assembled personages.
5. The Board determines whether it has jurisdiction over the appeal.
6. The Board decides whether the applicant has the right to appear before the Board.
7. The chairperson then requests that all persons who may wish to be considered "interested parties" who have not yet signed the register should do so at this time. The information on the register must be legible and include the name and address of the person and a notation of what category the person would consider his/her interest to be, e.g. "abutting property owner", "cross examine witnesses", "testimony in support of appellant", etc.
8. The Board determines which individuals attending the hearing are "interested parties". "Interested parties" are those persons who request to offer testimony and evidence and to participate in oral cross-examination. They would include abutting property owners and those who might be adversely affected by the Board's decision. Parties may be required by the Board to consolidate or join their appearances in part or in whole if their interests or contentions are substantially similar and such consolidation would expedite the hearing. Members of the Town Board and any other municipal officers or commission members shall automatically be made parties to the proceeding if

they have testimony relevant to the appeal. Representatives of federal, state, municipal and other governmental agencies shall be permitted to make oral or written statements and/or to submit oral or written questions through the Chair.

9. The appellant is given the opportunity to present his or her case without interruption.

10. The Board and interested parties may ask questions of the appellant upon recognition by the Chair.

11. The interested parties are given the opportunity to present their case. The Board may call its own witnesses.

12. The appellant may ask questions of the interested parties and Board witnesses directly.

13. All parties are given the opportunity to refute or rebut statements made throughout the hearing.

14. The Board shall receive comments and questions from all observers and interested citizens who wish to express their views upon recognition by the Chair.

15. The hearing is closed after all parties have been heard. If additional time is needed, the hearing may be continued to a later date. All participants should be notified of the date, time and place of the continued hearing.

16. Written testimony may be accepted by the Board for seven (7) days after the close of the hearing if the Board so rules.

7.2.5. The Administrative Appeals Board may waive any of the above rules if good cause is shown.

7.3 DELIBERATIONS AND DECISIONS

7.3.1. Decisions by the Administrative Appeals Board may be made immediately upon conclusion of testimony and comments of the hearing but shall be made not later than thirty (30) days from the date of the final hearing at a properly noticed public meeting. The Board may convene into closed session to deliberate on its decision in which case the notice of the hearing would list a closed session pursuant to; 19.85(1)(a) Wis. Stats. Any vote on the decision must be conducted in open session; therefore the entry "reconvene into open session to vote on any decision" would be noted on the notice.

7.3.2. The final decision of any matter before the Administrative Appeals Board shall be made by written order signed by the chairperson. Said decision shall contain language informing the appellant that he/she has thirty (30) days from date of receipt of the final determination to seek review thereof by certiorari. The recording of testimony, if any, and exhibits, together with all papers and requests filed in the proceeding shall constitute the record. All decisions become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefore, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial thereof.

7.3.3. The Administrative Appeals Board, in reaching said decision, shall be guided by standards specified in the applicable state laws, local ordinances, policies specified in the Comprehensive Plan and by Findings of Fact by the Board in each case.

7.3.4. Notice of any decision shall be sent by certified or registered mail or hand delivered to the appellant or his/her designated representative or agent within seven (7) days of the decision.

7.3.5. Decisions of the Administrative Appeals Board shall be immediately filed in the office of the Town Clerk and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the Administrative Appeals Board.

SECTION 8 - VALIDITY OF PORTIONS

If any section, sub-section, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of Competent Jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion thereof.

SECTION 9 - EFFECTIVE DATE

This ordinance shall become effective upon adoption by the Town Board and publishing or posting as provided by law.

The foregoing ordinance was adopted at a regular meeting of the Town Board of the Town of Prairie Lake on March 11, 2008.

Filed this 11th day of March, 2008
in the Office of the Town Clerk

/s/ Al Morley
Al Morley, Chairman

/s/ Karn Moe
Karn Moe, Clerk

/s/ Janice Rustong
Janice Rustong, Supervisor

/s/ Almar Larson
Almar Larson, Supervisor