

## **TOWN OF CLAYTON ORDINANCE 2022-002**

### **AN ORDINANCE REPEALING ORDINANCE 2014-003 AND RECREATING ORDINANCE 2022-002 ESTABLISHING REQUIREMENTS FOR THE CREATION AND MAINTENANCE OF ARTIFICIAL PONDS, DITCHES AND DIKES IN THE TOWN OF CLAYTON**

**WHEREAS,** The Town Board For the Town of Clayton, County of Winnebago, State of Wisconsin, has Enacted a Town Ordinance Establishing Requirements for the Creation and Maintenance of Artificial Ponds, Ditches and Dikes in the Town of Clayton; and

**WHEREAS,** The Town Board For the Town of Clayton, County of Winnebago, State of Wisconsin, has enacted a Zoning Code of Ordinances for the Town of Clayton; and

**WHEREAS,** The Town Board for the Town of Clayton, County of Winnebago, State of Wisconsin, understands that the Town Ordinance Establishing Requirements for the Creation and Maintenance of Artificial Ponds, Ditches and Dikes in the Town of Clayton is in conflict with the Town's Zoning Code of Ordinances; and

**WHEREAS,** The Town Board for the Town of Clayton, County of Winnebago, State of Wisconsin, believes that any Ordinance adopted by the Town Board should not conflict with any other Ordinance adopted by the Town Board; and

**WHEREAS,** The Town Board for the Town of Clayton, County of Winnebago, State of Wisconsin, wishes to amend the Town's Ordinance Establishing Requirements for the Creation and Maintenance of Artificial Ponds, Ditches and Dikes in the Town of Clayton so as to eliminate any conflict with the Town's Zoning Code of Ordinances; and:

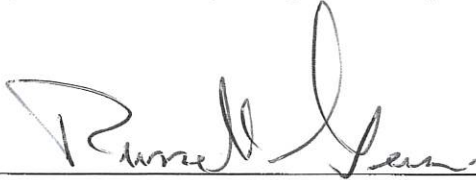
**WHEREAS,** The Town Board for the Town of Clayton, County of Winnebago, State of Wisconsin, has prepared Attachment A to this document amending the Town's Ordinance Establishing Requirements for the Creation and Maintenance of Artificial Ponds, Ditches and Dikes in the Town of Clayton so as to eliminate any conflict with the Town's Zoning Code of Ordinances; and

**NOW, THEREFORE BE IT ORDAINED THAT,** the Town Board of the Town of Clayton, County of Winnebago, State of Wisconsin, does hereby rescind the Town's Ordinance establishing Requirements for the Creation and Maintenance of

Artificial Ponds, Ditches and Dikes in the Town of Clayton and does recreate the Town's Ordinance Establishing Requirements for the Creation and Maintenance of Artificial Ponds, Ditches and Dikes in the Town of Clayton as shown on Attachment A of this document.

Vote: Yes: 5 No: 0

Adopted this 20<sup>th</sup>, day of April, 2022 by the Town Board of the Town of Clayton



Russell Geise, Chair

ATTEST:



Kelsey Faust-Kubale, Clerk

Attachment A to Ordinance 2022-002

AN ORDINANCE ESTABLISHING REQUIREMENTS FOR THE CREATION AND MAINTENANCE OF ARTIFICIAL PONDS, DITCHES AND DIKES IN THE TOWN OF CLAYTON

Amended this 20th, day of April, 2022 by the Town Board of the Town of Clayton

**SECTION 1. INTRODUCTION:**

**1. Authority:**

This ordinance is adopted pursuant to authority conferred by Chapter 60, Wis. Stats.

**SECTION 2. DEFINITIONS:**

**1. Artificial Pond:**

An impoundment of water excavated by creating a depression in the ground that accumulates diffused surface water or groundwater or an impoundment of water created by diking banks on the ground that accumulates diffused surface water or groundwater. Artificial ponds shall not include any navigable lake, stream or impoundment under the jurisdiction of the Wisconsin Department of Natural Resources pursuant to Chapter 30, Wis. Stats.

**2. Artificial Ditch:**

A watercourse with a definite channel and banks created by excavating a ditch or diking banks. Artificial ditch shall not include any navigable lake, stream or impoundment under the jurisdiction of the Wisconsin Department of Natural Resources pursuant to Chapter 30, Wis. Stats.'

**3. Artificial Dike:**

A waterbody or watercourse created by constructing an embankment through some combination of excavating, dredging or depositing fill which results in the retention or detention of water.

**4. Enlargement:**

Any increases in the surface area or depth of an artificial pond, ditch or dike, or any extension or increase in the cross section of an artificial ditch or dike.

**5. Maintenance:**

Affirmative actions to maintain water quantity and quality including but not limited to algae control through chemical or mechanical means, removal of silt, aeration, bank stabilization, weed control and the like.

**6. Garden Pond:**

A manmade body of water with an area of less than 100 square feet of water not needed for stormwater management purposes.

### **SECTION 3. APPLICABILITY OF REGULATIONS:**

1. This ordinance shall not apply to any pond, ditch or dike approved by the Town in connection with a required drainage plan and drainage improvements for a land division, subdivision, or site plan, or any pond, ditch or dike approved by any federal, state or county agency in connection with agricultural use.
2. Except as provided in subparagraph 1, no artificial pond, ditch or dike shall hereafter be created, enlarged or extended except in conformity with the regulations and requirements of this ordinance. Existing ponds shall not be subject to these regulations unless enlarged as defined in Section 2.
3. This ordinance shall not apply to Garden Ponds as defined in Section 2.

### **SECTION 4. GENERAL REQUIREMENTS:**

#### **1. Setbacks:**

- a. No part of an artificial pond or dike, including the embankment for the retention of water, shall be created or enlarged within 25 feet of a property line or habitable building or within 50 feet of a public right-of-way or on-site sewage system.
- b. No part of an artificial pond or dike, including the embankment for the retention of water, with an embankment height of 36 inches or more above grade shall be created or enlarged within 50 feet of a property line or habitable building or on-site sewage system or within 50 feet of a public right-of-way.

#### **2. Slopes:**

No artificial pond or dike shall be created, enlarged or extended with bottom slopes greater than 3 to 1. The embankment side slope above to the water surface shall provide a 4 to 1 slope to the shelf of the pond.

#### **3. Safety Shelf:**

Ponds shall have a safety shelf based on the water surface area of the pond. Ponds from 1,000 square feet to 3,600 square feet shall have a minimum shelf of five feet not less than 12 inches below the ordinary high water mark. Ponds greater than 3,600 square feet shall have a minimum shelf of 10 feet not less than 12 inches below the ordinary high water mark.

#### **4. Artificial Ponds or Dikes Over 10,000 Cubic Feet:**

The creation or enlargement of any artificial pond or dike resulting in greater than 10,000 cubic feet of water capacity shall require plans prepared by a State of Wisconsin licensed civil engineer. The plans shall address seepage, liners, landscaping, subsidence, embankment strength, surface water drainage in the pool area, erosion control and be certified by the engineer.

#### **5. Diversion of Water onto Adjacent Lands Prohibited:**

No artificial pond, ditch or dike shall be created or maintained such that water is diverted onto or set back upon adjacent properties through seepage or overflow.

**6. Landscaping:**

The perimeter of any artificial pond or dike shall be landscaped and seeded within 30 days after completion of excavation, within the active growing season. The full cross section of any artificial ditch shall be seeded within 30 days after completion of excavation, within the active growing season.

**7. Swimming:**

Ponds used for swimming shall comply with the Town of Clayton Swimming Pool Ordinance.

**8. Embankment:**

All embankments must be constructed of quality earthen material that does not include deleterious material including, but not limited to, muck, stumps, debris, compost or other material that is structurally unsound and prone to failure. The applicant is encouraged to retain a geotechnical engineer to evaluate proposed embankment materials. The applicant is to research whether a Dam permit, as regulated by the Wisconsin Department of Natural Resources through Chapter NR 333 or State Statute Chapter 31, is required.

**SECTION 5. ADMINISTRATION:**

**1. Permits:**

No artificial pond, ditch or dike requiring a Condition Use Permit may hereafter be created, enlarged or extended without a permit obtained from the Town Board of the Town of Clayton. Winnebago County may also require a conditional use permit.

**2. Permit Submittals:**

Application for a permit shall be made in writing and shall include the following information.

- a. Name and address of property owner.
- b. A statement about the purpose of the artificial pond, ditch or dike.
- c. Site topography with one-foot contour intervals and the direction and flow of the surface water on the site.
- d. Cross sections of the pond, ditch or dike every 25 feet showing the embankment, channel and depth along with the estimated volume and flow of water in cubic feet per second for a 25 year return rainfall for a watercourse.
- e. Embankment materials and methods of construction including erosion and sedimentation control.

f. A site plan of the property drawn to scale showing the exact location, size and dimensions of the artificial pond, ditch or dike and the location of any buildings, right of way, easements (drainage, utility, access, etc.) and on-site sewage disposal systems on the subject property and adjacent properties with distances between the artificial pond, ditch or dike and right-of-way lines, property lines and buildings. For artificial ponds and dikes over 10,000 cubic feet, a certification by a State of Wisconsin civil engineer is required.

g. Determination of navigability for any watercourse or waterbody, and location of any wetland within 300 feet of the proposed pond, ditch or dike. For wetlands adjacent to the proposed construction area, a delineation is required.

h. Operation and Maintenance measures for water quantity and quality.

i. Received permits as needed from other County, State or Federal agencies or utility companies.

### **3. Permit Approvals:**

The Town Board may approve, conditionally approve or deny a permit. The Town Board shall take action to approve, conditionally approve or deny the application within 60 days of submittal and shall state in writing any condition of approval or reasons for denial. No public notice or hearing is required but the Town Board action shall be taken in public session as part of a previously prepared agenda.

### **4. Permit Application Review Fee:**

A permit application fee shall be paid for all ponds to the Town Clerk at the time of permit application submittal. A permit granted after work has begun will double the base permit (see the Fee Schedule for Permit costs).

### **5. Violations:**

It shall be a violation of this ordinance to create, enlarge, or extend Any artificial pond, ditch or dike without a permit. It shall be a violation of this ordinance to maintain an artificial pond, ditch or dike such that water is diverted onto or set upon adjacent properties through seepage or overflow.

### **6. Remedies:**

Compliance with the provisions of this ordinance may be enforced by appropriate fines and penalties or by suit by the Town.

### **7. Penalties:**

Any person who violates any provision of this ordinance or any order issued hereunder shall, upon conviction, forfeit not more than two hundred dollars (\$200.00) together with the cost of prosecution. Each day that a violation exists shall constitute a separate offense.

### **8. Appeals:**

Any person aggrieved by a decision of the Town Board may, within 30 days after the decision commence an action seeking the remedy available in Article 7 of the Town Zoning Code of Ordinances.

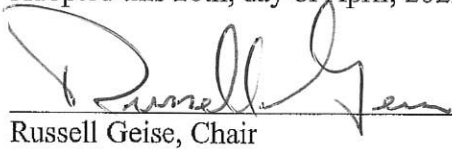
**9. Severability:**

It is declared to be the legislative intent that should any provision or part of this ordinance be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of this ordinance in its entirety or any part thereof, other than that so declared to be invalid.


**10. Effective Date:**

This ordinance shall be effective after adoption by the Town Board of Supervisors of the Town of Clayton and after publication.

Adopted this 20th, day of April, 2022 by the Town Board of the Town of Clayton

  
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Russell Geise, Chair

ATTEST:

  
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Kelsey Faust-Kubale, Clerk