

Chapter 5

Shoreland Wetland Protection

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Article A
STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF
PURPOSE AND TITLE

Sec. 16-5-1 Statutory Authorization.

This Ordinance is adopted pursuant to the authorization in Section 59.97, 59.971, 59.99, 87.30, and 144.26, Wisconsin Statutes.

Sec. 16-5-2 Finding of Fact.

Uncontrolled use of the shorelands and pollution of the navigable waters of Columbia County would adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The legislature of Wisconsin has delegated responsibility to the counties to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; and to preserve shore cover and natural beauty. This responsibility is hereby recognized by Columbia County, Wisconsin.

Sec. 16-5-3 Purpose.

For the purpose of promoting the public health, safety, convenience and welfare, this Ordinance has been established to:

- (a) **Further the Maintenance of Safe and Healthful Conditions and Prevent and Control Water Pollution Through:**
 - (1) Limiting structures to those areas where soil and geological conditions will provide a safe foundation.
 - (2) Establishing minimum lot sizes to provide adequate area for private sewage disposal facilities.
 - (3) Controlling filling and grading to prevent serious soil erosion problems.
- (b) **Protect Spawning Grounds, Fish and Aquatic Life Through:**
 - (1) Preserving wetlands and other fish and aquatic habitat.
 - (2) Regulating pollution sources.
 - (3) Controlling shoreline alterations, dredging and lagooning.
- (c) **Control Building Sites, Placement of Structures and Land Uses Through:**
 - (1) Separating conflicting land uses.
 - (2) Prohibiting certain uses detrimental to the shoreland area.
 - (3) Setting minimum lot sizes and widths.
 - (4) Regulating side yards and building setbacks from waterways.
- (d) **Preserve Shore Cover and Natural Beauty Through:**
 - (1) Restricting the removal of natural shoreland cover.
 - (2) Preventing shoreland encroachment by structures.
 - (3) Controlling shoreland excavation and other earth moving activities.
 - (4) Regulating the use and placement of boathouses and other structures.

Sec. 16-5-4 Title.

Shoreland-Wetland Protection Ordinance for Columbia County, Wisconsin.

Article B
GENERAL PROVISIONS

Sec. 16-5-10 Areas to be Regulated.

Areas regulated by this Ordinance shall include all the lands (referred to herein as shorelands) in the unincorporated areas of Columbia County which are:

- (a) Within one thousand (1,000) feet of the ordinary highwater mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in Columbia County shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources publication "Surface Water Resources of Columbia County" or are shown on United States Geological Survey quadrangle maps or other zoning base maps.
- (b) Within three hundred (300) feet of the ordinary highwater mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams in Columbia County shall be presumed to be navigable if they are designated as continuous waterways or intermittent waterways on United States Geological Survey quadrangle maps. Flood hazard boundary maps, flood insurance rate maps, flood boundary-floodway maps, county soil survey maps or other existing county floodplain zoning maps shall be used to delineate floodplain areas.
- (c) Determinations of navigability and ordinary highwater mark location shall initially be made by the Director of Planning and Zoning. When questions arise, the Director of Planning and Zoning shall contact the appropriate District Office of the Department for a final determination of navigability or ordinary highwater mark.
- (d) Under Section 144.26 (2m), Wisconsin Statutes, notwithstanding any other provision of law or administrative rule promulgated thereunder, this Shoreland Zoning Ordinance does not apply to lands adjacent to farm drainage ditches if:
 - (1) Such lands are not adjacent to a natural navigable stream or river;
 - (2) Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
 - (3) Such lands are maintained in nonstructural agricultural use.

Sec. 16-5-11 Shoreland Zoning Maps.

The maps designated below are hereby adopted and made part of this Ordinance. They are on file in the office of the Director of Planning and Zoning for Columbia County.

- (a) United States Geological Survey Quadrangle Maps for Columbia County (revised November 10, 1981).
- (b) Wisconsin Wetland Inventory maps stamped "FINAL" on May 25, 1983.
- (c) Floodplain zoning maps identified as FIRM and dated September 15, 1983.

Sec. 16-5-12 Compliance.

The use of any land or water, the size, shape and placement of lots, the use, size, type and location of structures on lots, the installation and maintenance of water supply and waste disposal facilities, the filling, grading, lagooning, dredging of any lands, the cutting of shoreland vegetation, the subdivision of lots, shall be in full compliance with the terms of this Ordinance and other applicable local, State or Federal regulations.

(However, see Sec. 16-5-80 for standards applicable to nonconforming uses.) Buildings, signs and other structures shall require a permit unless otherwise expressly excluded by a provision of this Ordinance. Property owners, builders and contractors are responsible for compliance with the terms of this Ordinance.

Sec. 16-5-13 Municipalities and State Agencies Regulated.

Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this Ordinance and obtain all necessary permits. State agencies are required to comply when Section 13.48 (13), Wisconsin Statutes, applies. The construction, reconstruction, maintenance and repair of State highways and bridges by the Wisconsin Department of Transportation are exempt when Section 30.12 (4)(a), Wisconsin Statutes, applies.

Sec. 16-5-14 Abrogation and Greater Restrictions.

Where a County Ordinance adopted under a statute other than Section 59.692, Wisconsin Statutes, is more restrictive than this Ordinance, that Ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

- (a) This Ordinance shall not require approval or be subject to disapproval by any town or town board.
- (b) If an existing town Ordinance relating to shorelands is more restrictive than this Ordinance or any amendments thereto, the town Ordinance continues in all respects to the extent of the greater restrictions but not otherwise.
- (c) This Ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail.

Sec. 16-5-15 Interpretation.

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the County and shall not be deemed a limitation or repeal of any other powers granted by Wisconsin Statutes. Where a provision of this Ordinance is required by a standard in Chapter NR 115, Wisconsin Administrative Code, and where the Ordinance provision is unclear, the provision shall be interpreted in light of the Chapter NR 115 standards in effect on the date of the adoption of this Ordinance or in effect on the date of the most recent text amendment to this Ordinance.

Sec. 16-5-16 Severability.

If any portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected.

Article D
DIMENSIONS OF BUILDING SITES.

Sec. 16-5-30 Lots Not Served by Public Sanitary Sewer.

- (a) **Minimum Area and Width for Each Lot.** The minimum lot area shall be twenty thousand (20,000) square feet and the minimum average lot width shall be one hundred (100) feet with at least one hundred (100) feet of frontage at the ordinary highwater mark.
- (b) **Side Yards.** There shall be a side yard for each main building. The minimum width of one main side yard shall be ten (10) feet. The minimum combined width of both main side yards shall be twenty-five (25) feet. There shall be a side yard of five (5) feet for accessory structures excluding fences.

Sec. 16-5-31 Lots Served by Public Sanitary Sewer.

- (a) **Minimum Area and Width for Each Lot.** The minimum lot area shall be ten thousand (10,000) square feet and the minimum average lot width shall be sixty-five (65) feet with at least sixty-five (65) feet of frontage at the ordinary highwater mark.
- (b) **Side Yards.** The minimum width of one main side yard shall be eight (8) feet. The minimum combined width of both main side yards shall be twenty (20) feet. There shall be a side yard of four (4) feet for accessory structures excluding fences.

Sec. 16-5-32 Substandard Lots.

- (a) **Substandard Lots Served by a Public Sanitary Sewer.** A substandard lot served by a public sanitary sewer which is at least seven thousand five hundred (7,500) square feet in area and is at least fifty (50) feet in width at the building setback line and at least fifty (50) feet in width at the ordinary highwater mark may be used as a building site for a single family dwelling upon issuance of a zoning permit by the Director of Planning and Zoning if it meets all of the following requirements:
 - (1) Such use is permitted in the zoning district.
 - (2) The lot was on record in the County Register of Deeds Office prior to the effective date of this Ordinance.
 - (3) The lot was in separate ownership from abutting lands prior to the effective date of this Ordinance. If abutting lands and the substandard lot were owned by the same owner as of the effective date of this Ordinance, the substandard lot shall not be sold or used without full compliance with the terms of this Ordinance, including minimum area and width requirements found in Sections 16-5-30 and 16-5-31 of this Ordinance.

- (b) **Substandard Lots Not Served by Public Sanitary Sewer.** A substandard lot not served by public sanitary sewer which is at least ten thousand (10,000) square feet in area and at least 65 feet in width at the building setback line and at least sixty-five (65) feet in width at the ordinary highwater mark may be used as a building site for a single-family dwelling upon issuance of a zoning permit by the Director of Planning and Zoning if it meets all of the requirements of Section 16-5-32 (a)(1)-(3) of this Ordinance.
- (c) **Other Substandard Lots.** Except for lots which meet the requirements of Sections 16-5-32 (a) or 16-5-32 (b), a building permit for the improvement of a lot having lesser dimensions than those stated in Sections 16-5-30 and 16-5-31 shall be issued only after granting of a variance by the Board of Adjustment.

Article E
SETBACKS FROM THE WATER

Sec. 16-5-40 Lots that Abut on Navigable Water.

All buildings and structures, except piers, boat hoists, boathouses and open fences which may require a lesser setback, shall be set back at least seventy-five (75) feet from the ordinary highwater mark of navigable waters.

Sec. 16-5-41 Reduced Building Setbacks.

A setback of less than that required by Section 16-5-40 shall not be permitted on any building site, except by order of the Board of Adjustment or the Planning and Zoning Committee pursuant to Sec. 16-1-12, unless there is at least one existing main building on either side of the applicant=s lot, within two hundred (200) feet of the proposed site that is built to less than the required setback. In such case, the setback shall be the average of the setbacks of the nearest existing main building on each side of the proposed site within said distance, or, if there is an existing main building on only one side, the setback shall be the average of the setback for the existing main building and the setback required by Section 16-5-40.

- (a) No setback permitted under this section shall be less than fifty (50) feet from the ordinary high water mark.
- (b) Setback averaging under this section shall not be based upon existing structures that were permitted by a variance approved pursuant to Section 16-5-94, or structures that were permitted by setback averaging under this section.
- (c) Unenclosed appurtenances such as open decks or patios shall not be considered in determining an average setback for a structure having walls and/or a roof.
- (d) Boathouses which are attached to the main building in any way shall not be considered in determining an average setback under this section.
- (e) Any other setback reduction may be permitted by the Board of Adjustment pursuant to Section 16-5-94 of this Ordinance or by the Planning and Zoning Committee pursuant to Sec. 16-1-12.

Sec. 16-5-42 Boathouses.

- a) The use of a boathouse for human habitation and the construction or placing of a boathouse waterward beyond the ordinary highwater mark of any navigable waters are prohibited.
- b) Boathouses shall be designed solely for storage of boats and related equipment, and there shall be no more than one boathouse per lot.
- c) The high point of the roof elevation of a boathouse shall not be more than twelve (12) feet vertical measurement above the ordinary high water mark.
- d) A boathouse shall not exceed six hundred (600) square feet in floor area. Width shall be limited to twenty-four (24) feet or a maximum of fifty (50%) percent of lot width as measured at the waterline.
- e) Earth-tone colors shall be required for all exterior surfaces of a boathouse.
- f) Erosion control practices as set forth in Section 12-5-63 shall be employed.

- g) Railings may be placed on top of a boathouse in excess of the twelve (12) foot height limit provided that the railing does not exceed three and one-half (3.5) feet in height and is not more than forty (40%) percent solid in appearance as viewed from a right angle.
- h) Boathouses shall not be constructed where:
 - (1) The original slope exceeds thirty-three(33%) percent.
 - (2) Any part of the roof line of the structure will extend below the original grade of the bank.

Sec. 16-5-43 Setbacks From the Water.

- a) EXEMPT STRUCTURES (NR 115.05(1m) All of the following structures are exempt from the shoreland setback standards in 16-5-40:
 - (1) Open sided and screened structures such as gazebos, decks, patios and screen houses in the shoreland setback area that satisfy the requirements in s. 59.692 (1v), Stats.
 - a. The part of the structure that is nearest to the water is located at least 35 feet landward from the ordinary-high water mark.
 - b. The floor area of all the structures in the shoreland setback area will not exceed 200 square feet.
 - c. The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.
 - d. The county must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least 70% of the half of the shoreland setback area that is nearest to the water.
 - (2) Fishing rafts that are authorized on the Wolf river and Mississippi river under s. 30.126, Stats.
 - (3) Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are 2 meters or less in diameter.
 - (4) Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with ch. Comm 83, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.
 - (5) Walkways, stairways or rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of 60-inches in width.

Article F
REMOVAL OF SHORE COVER

Sec. 16-5-50 Purpose.

The purpose of tree and shrubbery cutting regulations applicable to the shoreland area is to protect scenic beauty, control erosion and reduce effluent and nutrient flow from the shoreland. The provisions shall not apply to:

- (a) The removal of dead, diseased or dying trees or shrubbery at the discretion of the landowner.
- (b) Silvicultural thinning upon recommendation of a forester.
- (c) Removal of shore cover for the sole purpose of improving trout habitat on designated Class I, II and III trout streams with the approval and under the general supervision of the Department.

Sec. 16-5-51 Shoreline Cutting.

Tree and shrubbery cutting in an area parallel to the ordinary highwater mark, and extending thirty-five (35) feet inland from all points along the ordinary highwater mark, shall be limited in accordance with the following provisions:

- (a) No more than thirty (30) feet in any one hundred (100) feet, as measured along the ordinary highwater mark, may be clear cut to the depth of the thirty-five (35) foot area.
- (b) Natural shrubbery shall be preserved as far as practicable and, where removed, it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.

Sec. 16-5-52 Paths.

Any path, road or passage within the thirty-five (35) foot area shall be constructed and Shoreland-Wetland Protection surfaced so as to effectively control erosion.

Sec. 16-5-53 Cutting Plan.

As an alternative to Section 16-5-51, a special cutting plan allowing greater cutting may be permitted by the Planning and Zoning Committee by issuance of a conditional use permit, pursuant to Section 16-5-93. An application for such a permit shall include a sketch of the lot providing the following information: location of parking, topography of the land, existing vegetation, proposed cutting, and proposed replanting. The committee may grant such a permit only if it finds that such special cutting plans:

- (a) Will not cause undue erosion or destruction of scenic beauty, and
- (b) Will provide substantial visual screening from the water of dwellings, accessory structures and parking areas. Where the plan calls for replacement plantings, the Board may require the submission of a bond which guarantees the performance of the planned tree or shrubbery replacement by the lot owner.

Sec. 16-5-54 Cutting More than Thirty-Five (35) Feet Inland.

From the inland edge of the thirty-five (35) foot area to the outer limits of the shoreland, the cutting of trees and shrubbery shall be allowed when accomplished using accepted forest management and soil conservation practices which protect water quality.

Article G
FILLING, GRADING, LAGOONING, DREDGING, DITCHING
AND EXCAVATING

Sec. 16-5-60 General Standards.

Filling, grading, lagooning, dredging, ditching or excavating which does not require a permit under Section 16-5-61 may be permitted in the shoreland area provided that:

- (a) It is done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.
- (b) Filling, grading, lagooning, dredging, ditching or excavating in a Shoreland-Wetland District meets the requirements of Sections 16-5-72 (b) and (c) of this Ordinance.
- (c) All applicable Federal, State and local authority is obtained in addition to a permit under this Ordinance.
- (d) Any fill placed in the shoreland area is protected against erosion by the use of rip-rap, vegetative cover or a bulkhead.

Sec. 16-5-61 Permit Required.

- (a) Except as provided in Section 16-5-62, a zoning permit is required, and the permit conditions of Section 16-5-63 shall apply, for any filling or grading of any area which is within three hundred (300) feet of the ordinary high water mark of navigable water and which has surface drainage toward the water and on which there is either:
 - (1) Any filling or grading on slopes of more than twenty (20%) percent.
 - (2) Filling or grading of more than one thousand (1,000) sq. ft. on slopes of twelve (12%) percent to twenty (20%) percent.
 - (3) Filling or grading of more than two thousand (2,000) sq. ft. on slopes of less than twelve (12%) percent.
- (b) Except as provided in Section 16-5-62, a conditional use permit is required for any area described under (a) above on which there is filling or grading of more than ten thousand (10,000) square feet.
- (c) For any construction or dredging commenced on any artificial waterway, canal, ditch, lagoon, pond, lake or similar waterway which is within three hundred (300) feet landward of the ordinary high water mark of a navigable body of water or where the purpose is the ultimate connection with a navigable body of water.

Sec. 16-5-62 Soil Conservation Practices.

Soil conservation practices such as terraces, runoff diversions and grassed waterways which are used for erosion control shall not require a permit under Section 16-5-61 when designed and constructed to Soil Conservation Service technical standards.

Sec. 16-5-63 Permit Conditions.

For erosion control measures applied under this section, the WISCONSIN CONSTRUCTION SITE BEST MANAGEMENT PRACTICE HANDBOOK shall be used in determining proper installation and maintenance. In granting a conditional use permit under Section 16-5-61, the Planning and Zoning Committee shall attach the following conditions, where appropriate, in addition to those provisions specified in Sections 16-5-93 (b) and (c).

- (a) The smallest amount of bare ground shall be exposed for as short a time as feasible.
- (b) Temporary ground cover (such as mulch or jute netting) shall be used and permanent vegetative cover shall be established.
- (c) Diversion berms or bales, silting basins, terraces, filter fabric fencing, and other methods shall be used to prevent erosion.
- (d) Lagoons shall be constructed to avoid fish trap conditions.
- (e) Fill shall be stabilized according to accepted engineering standards.
- (f) Filling shall comply with any local floodplain zoning Ordinance and shall not restrict a floodway or destroy the flood storage capacity of a floodplain.
- (g) Channels or artificial watercourses shall be constructed with side slopes of two (2) units horizontal distance to one (1) unit vertical or flatter which shall be promptly vegetated, unless bulkheads or rip-rap are provided.

Article H
SHORELAND-WETLAND DISTRICT

Sec. 16-5-70 Designation.

- (a) **Designation.** This district shall include all shorelands within the jurisdiction of this Ordinance which are wetlands of five (5) acres or more, (excluding point symbols) and which are shown on the Wisconsin Wetland Inventory maps that are adopted and made a part of this Ordinance. A portion of a wetland which is less than five (5) acres in size, and which is located in the unincorporated shoreland area within the county, shall be included in the shoreland-wetland district where the wetland as a whole is five (5) acres or larger, but extends across the corporate limits of a municipality, across the county boundary or across the shoreland limits, so that the wetland is not regulated in its entirety by the county.
- (b) **Locating Shoreland-Wetland Boundaries.** Where an apparent discrepancy exists between the shoreland-wetland district boundary shown on the Wisconsin Wetland Inventory maps and actual field conditions at the time the maps were adopted, the Director of Planning and Zoning shall contact the appropriate District Office of the Department to determine if the Shoreland-Wetland District boundary as mapped is in error. If Department staff concur with the Director of Planning and Zoning that a particular area was incorrectly mapped as a Wetland, the Director of Planning and Zoning shall have the authority to immediately grant or deny a zoning permit in accordance with the regulations applicable to the correct Zoning District.

Sec. 16-5-71 Purpose.

This district is created to maintain safe and healthful conditions, to prevent water pollution, to protect fish spawning grounds and wildlife habitat, to preserve shore cover and natural beauty, and to control building and development in Wetlands whenever possible. When development is permitted in a wetland, the development should occur in a manner that minimizes adverse impacts upon the wetland.

Sec. 16-5-72 Permitted Uses.

The following uses shall be allowed, subject to general Shoreland Zoning Regulations contained in this Ordinance, the provisions of Chapters 30 and 31, Wisconsin Statutes and the provisions of other applicable local, State and Federal laws:

- (a) Activities and uses which do not require the issuance of a Zoning Permit, but which must be carried out without any filling, flooding, draining, dredging, ditching, tiling or excavating except as allowed under Sections 16-5-72 (b) or (c).
 - (1) Hiking, fishing, trapping, hunting, swimming, and boating;
 - (2) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits, and tree seeds, in a manner that is not injurious to the natural reproduction of such crops;
 - (3) The pasturing of livestock;

- (4) The cultivation of agricultural crops;
 - (5) The practice of silviculture, including the planting, thinning, and harvesting of timber; and
 - (6) The construction or maintenance of duck blinds.
- (b) Uses which do not require the issuance of a Zoning Permit and which may include limited filling, flooding, draining, dredging, ditching, tiling, or excavating but only to the extent specifically provided below:
- (1) Temporary water level stabilization measures necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on silvicultural activities if not corrected;
 - (2) The cultivation of cranberries including flooding, dike and dam construction or ditching necessary for the growing and harvesting of cranberries.
 - (3) The maintenance and repair of existing agricultural drainage systems where permissible by Section 30.20, Wisconsin Statutes, including ditching, tiling, dredging, excavating and filling necessary to maintain the level of drainage required to continue the existing agricultural use. This includes the minimum filling necessary for disposal of dredged spoil adjacent to the drainage system provided that the filling is permissible by Chapter 30 Wisconsin Statutes, and that dredged spoil is placed on existing spoil banks where possible;
 - (4) The construction or maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance;
 - (5) The construction or maintenance of piers, docks or walkways built on pilings, including limited excavating and filling necessary for such construction and maintenance; and
 - (6) The maintenance, repair, replacement or reconstruction of existing town and county highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.
- (c) Uses which require the issuance of a Zoning Permit under Section 16-5-91 and which may include limited filling, flooding, draining, dredging, ditching, tiling or excavating, but only to the extent specifically provided below:
- (1) The construction and maintenance of roads which are necessary to conduct silvicultural activities or agricultural cultivation, provided that:
 - a. The road cannot as a practical matter be located outside the Wetland;
 - b. The road is designed and constructed to minimize adverse impact upon the natural functions of the Wetland enumerated in Section 16-5-74 (b);
 - c. The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;
 - d. Road construction activities are carried out in the immediate area of the roadbed only.

- (2) The construction or maintenance of nonresidential buildings, provided that:
 - a. The building is essential for and used solely in conjunction with the raising of waterfowl, minnows or other wetland or aquatic animals; or some other use permitted in the Shoreland-Wetland District;
 - b. The building cannot, as a practical matter, be located outside the wetland;
 - c. Such building is not designed for human habitation and does not exceed five hundred (500) square feet in floor area; and
 - d. Only limited filling or excavating necessary to provide structural support for the building is authorized.
- (3) The establishment of public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms, fur animal farms, fish hatcheries, and public boat launching ramps and attendant access roads, provided that:
 - a. Any private development is used exclusively for the permitted use and the applicant has received a permit or license under Chapter 29, Wisconsin Statutes, where applicable;
 - b. Filling or excavating necessary for the construction or maintenance of public boat launching ramps or attendant access roads is allowed only where such construction or maintenance meets the criteria in Section 16-5-72 (c)(1)a-d and;
 - c. Ditching, excavating, dredging, or dike and dam construction in public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms, fur animal farms, and fish hatcheries is allowed only for the purpose of improving wildlife habitat and to otherwise enhance wetland values.
- (4) The construction or maintenance of electric, gas, telephone, water and sewer transmission and distribution facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members and the construction or maintenance of railroad lines provided that:
 - a. The transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland;
 - b. Such construction or maintenance is done in a manner designed to minimize adverse impact upon the natural functions of the wetland enumerated in Section 16-5-74 (b).

Sec. 16-5-73 Prohibited Uses.

Any use not listed in Sections 16-5-72 (a), (b), or (c) is prohibited, unless the wetland or portion of the wetland has been rezoned by amendment of this Ordinance in accordance with Section 16-5-74 of this Ordinance and Section 59.97 (5)(e), Wisconsin Statutes.

Sec. 16-5-74 Rezoning of Lands in the Shoreland-Wetland District.

- (a) For all proposed text and map amendments to the Shoreland-Wetland provisions of this Ordinance, the appropriate District Office of the Department shall be provided with the following:
 - (1) A copy of every petition for a text or map amendment to the Shoreland-Wetland provisions of this Ordinance, within five (5) days of the filing of such petition with the County Clerk. Such petition shall include a copy of the Wisconsin Wetland Inventory map adopted as part of this Ordinance describing any proposed rezoning of a Shoreland-Wetland;
 - (2) Written notice of the public hearing to be held on a proposed amendment at least ten (10) days prior to such hearing;
 - (3) A copy of the County Zoning Agency's findings and recommendations on each proposed amendment within ten (10) days after the submission of those findings and recommendations to the County Board; and
 - (4) Written notice of the County Board's decision on the proposed amendment within ten (10) days after it is issued.
- (b) A wetland, or a portion thereof, in the Shoreland-Wetland District shall not be rezoned if the proposed rezoning may result in a significant adverse impact upon any of the following:
 - (1) Storm and flood water storage capacity;
 - (2) Maintenance of dry season stream flow, the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
 - (3) Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
 - (4) Shoreline protection against soil erosion;
 - (5) Fish spawning, breeding, nursery or feeding grounds;
 - (6) Wildlife habitat; or
 - (7) Areas of special recreational, scenic or scientific interest, including scarce wetland types.
- (c) If the Department notifies the County Zoning Agency that a proposed text or map amendment to the Shoreland-Wetland provisions of this Ordinance may have a significant adverse impact upon any of the criteria listed in Section 16-5-74 (b) of this Ordinance, that amendment, if approved by the County Board, shall contain the following provision: "This amendment shall not take effect until more than thirty (30) days have elapsed after written notice of the County Board's approval of this amendment is mailed to the Department of Natural Resources. During that thirty (30) day period, the Department of Natural Resources may notify the County Board that it will adopt a superseding shoreland Ordinance for the County under Section 59.971 (6), Wisconsin Statutes. If the Department does so notify the County Board, the effect of this amendment shall be stayed until the Section 59.971 (6) adoption procedure is completed or otherwise terminated."

Article I
NONCONFORMING USES AND STRUCTURES.

Sec. 16-5-80

- (a) **NONCONFORMING USES.** The lawful use of a building, structure or property which existed at the time this Ordinance, or an applicable amendment to this Ordinance, took effect and which is not in conformity with the provisions of this Ordinance, including the routine maintenance of such a building or structure, may be continued, subject to the following conditions:
- (1) If a nonconforming use is discontinued for twelve (12) consecutive months, any future use of the building, structure or property shall conform to this Ordinance.
 - (2) If the nonconforming use of temporary structure is discontinued, such nonconforming use may not be recommenced.
 - (3) No structural alteration, addition or repair of a building or structure with a nonconforming use, over the life of the building or structure, shall exceed fifty percent (50%) of its current equalized assessed value unless it is permanently changed to conform to the requirements of this Ordinance.
 - (4) If the alteration, addition or repair of a building or structure with a nonconforming use is prohibited because it is in excess of fifty (50%) percent of the current estimated fair market value, the property owner may still make the proposed alteration, addition or repair if:
 - a. A nonconforming use is permanently changed to a conforming use;
 - b. The property owner appeals the determination of the Director of Planning and Zoning and either the County Board of Adjustment or the Circuit Court find in the property owner's favor under Section 59.99 (4) or 59.99 (10), Wisconsin Statutes.
 - c. The property owner successfully petitions to have the property rezoned by amendment to this Ordinance in accordance with Section 16-5-97 of this Ordinance and Section 59.97 (5)(e), Wisconsin Statutes.
- (b) **GENERAL RULE FOR NONCONFORMING USES.** Pursuant to ss. 59.692 (2) (a), Stats.,
- (1) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this s. 59.692 stats. may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (2), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:
 - a. The nonconforming structure was damaged or destroyed on or after October 14, 1997.
 - b. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

- (2) An ordinance enacted under this section to which par. (1) applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.
- (c) **MAINTANENCE OF NONCONFORMING PRINCIPAL STRUCTURE.** An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback per section 16-5-40 may be maintained and repaired within its existing building envelope. Maintenance and repair includes such activities as interior remodeling, plumbing, insulation, and replacement of windows, doors, siding, or roof.
- (d) **VERTICAL EXPANSION OF NONCONFORMING PRINCIPAL STRUCTURE.** An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback per section 16-5-40 may be expanded vertically, provided that all of the following requirements are met:
- (1) The use of the structure has not been discontinued for a period of 12 months or more.
 - (2) The existing principal structure is at least 35 feet from the ordinary high-water mark.
 - (3) Vertical expansion is limited to the height of 35 feet.
 - (4) The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the county determines adequate to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the expansion being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the County Register of Deeds.
 - (5) All other provisions of the shoreland ordinance shall be met.
- (e) **EXPANSION OF A NONCONFORMING PRINCIPAL STRUCTURE BEYOND SETBACK.** An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. 16-5-40, may be expanded horizontally, landward or vertically provided that the expanded area meets the building setback requirements per section 16-5-40 and that all other provisions of the shoreland ordinance are met. A mitigation plan is not required solely for expansion under this paragraph.
- (f) **REPLACEMENT OR RELOCATION OF NONCONFORMING PRINCIPAL STRUCTURE.** An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback per section 16-5-40 may be replaced or relocated on the property provided all of the following requirements are met:

- (1) The use of the structure has not been discontinued for a period of 12 months or more.
 - (2) The existing principal structure is at least 35 feet from the ordinary high-water mark.
 - (3) No portion of the replaced or relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.
 - (4) The county determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for replacement or relocation that will result in compliance with the shoreland setback requirement per section 16-5-40.
 - (5) The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the county determines are adequate to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the replaced or relocated structure being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the County Register of Deeds.
 - (6) The county shall issue a permit that requires that all other accessory structures on the lot or parcel that do not comply with the shore-land setback requirement per section 16-5-40 and are not exempt under section 16-5-43 to be removed by the date specified in the permit.
 - (7) All other provisions of the shoreland ordinance shall be met.
- (g) WET BOATHOUSES. The maintenance and repair of nonconforming boathouses which extend beyond the ordinary high-water mark of any navigable waters shall be required to comply with s. 30.121, Stats.

Sec. 16-5-90 Director of Planning and Zoning.

The Director of Planning and Zoning shall have the following duties and powers:

- (a) Advise applicants as to the provisions of this Ordinance and assist them in preparing permit applications and appeal forms.
- (b) Issue permits and certificates of compliance and inspect properties for compliance with this Ordinance.
- (c) Keep records of all permits issued, inspections made, work approved and other official actions.
- (d) Submit copies of variances, special exceptions and decisions on appeals for map or text interpretations and map or text amendments within ten (10) days after they are granted or denied to the appropriate District Office of the Department.
- (e) Investigate and report violations of this Ordinance to the appropriate County Zoning Committee and the District Attorney or Corporation Counsel.

Sec. 16-5-91 Zoning Permits.

- (a) **When Required.** Except where another section of this Ordinance specifically exempts certain types of development from this requirement (as in Sections 16-5-72 (a) and (b), a Zoning Permit shall be obtained from the Director of Planning and Zoning before any new development, as defined in Sec. 16-5-100 (e), or any change in the use of an existing building or structure, is initiated.
- (b) **Application.** An application for a Zoning Permit shall be made to the Director of Planning and Zoning upon forms furnished by the County and shall include for the purpose of proper enforcement of these regulations, the following data:
 - (1) Name and address of applicant and property owner.
 - (2) Legal description of the property and type of proposed use.
 - (3) A sketch of the dimensions of the lot and location of buildings relative to the lot lines, center line of abutting highways and the ordinary highwater mark of any abutting watercourses and water level on a date specified.
 - (4) Location and description of any existing private water supply or sewage system or notification of plans for any such installation.
- (c) **Expiration of Permit.** Zoning Permits shall expire 12 months from date issued if no substantial work has commenced.

Sec. 16-5-92 Certificates of Compliance.

- (a) No land shall be occupied or used and no building hereafter erected, altered or moved shall be occupied, until a certificate of compliance is issued by the Director of Planning and Zoning.
 - (1) The certificate of compliance shall certify that the building or premises or part thereof, and the proposed use thereof, conform to the provisions of this Ordinance.
 - (2) Application for such certificate shall be concurrent with the application for a

Zoning Permit.

- (3) The certificate of compliance shall be issued within ten (10) days after notification of the completion of the work specified in the Zoning Permit, if the building or premises or proposed use thereof conforms with all the provisions of this Ordinance.
- (b) The Director of Planning and Zoning may issue a temporary certificate of compliance for part of a building, pursuant to rules and regulations established by the County Board.
- (c) Upon written request from the owner, the Director of Planning and Zoning shall issue a Certificate of Compliance for any building or premises existing at the time of the adoption of this Ordinance, certifying after inspection the extent and type of use made of the building or premises and whether or not such use conforms to the provisions of this Ordinance.

Sec. 16-5-93 Special Exception Permits.

- (a) **Application for a Conditional Use Permit.** Any use listed as a conditional use in this Ordinance shall be permitted only after an application has been submitted to the Director of Planning and Zoning and a conditional use permit has been granted by the Planning and Zoning Committee.
- (b) **Standards Applicable to All Conditional Uses.** In passing upon a conditional use permit, the Planning and Zoning Committee shall evaluate the effect of the proposed use upon:
 - (1) The maintenance of safe and healthful conditions.
 - (2) The prevention and control of water pollution including sedimentation.
 - (3) Compliance with local floodplain zoning Ordinances and opportunity for damage to adjacent properties due to altered surface water drainage.
 - (4) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover.
 - (5) The location of the site with respect to existing or future access roads.
 - (6) The need of the proposed use for a shoreland location.
 - (7) Its compatibility with uses on adjacent land.
 - (8) The amount of liquid and solid wastes to be generated and the adequacy of the proposed disposal systems.
 - (9) Location factors under which:
 - a. Domestic uses shall be generally preferred;
 - b. Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source;
 - c. Use locations within an area tending to minimize the possibility of pollution shall be preferred over use locations tending to increase that possibility.

- (c) **Conditions Attached to Conditional Uses.** Upon consideration of the factors listed above, the Planning and Zoning Committee shall attach such conditions, in addition to those required elsewhere in this Ordinance, as are necessary to further the purposes of this Ordinance. Violations of any of these conditions shall be deemed a violation of this Ordinance. Such conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking and signs; and type of construction. To secure information upon which to base its determination, the Planning and Zoning Committee may require the applicant to furnish, in addition to the information required for a Zoning Permit, the following information:
- (1) A plan of the area showing surface contours, soil types, ordinary highwater marks, ground water conditions, subsurface geology and vegetative cover.
 - (2) Location of buildings, parking areas, traffic access, driveways, walkways, piers, open space and landscaping.
 - (3) Plans of buildings, sewage disposal facilities, water supply systems, and arrangement of operations.
 - (4) Specifications for areas of proposed filling, grading, lagooning or dredging.
 - (5) Other pertinent information necessary to determine if the proposed use meets the requirements of this Ordinance.

Sec. 16-5-94 Variances.

- (a) The Board of Adjustment may grant upon appeal a variance from the dimensional standards of this Ordinance where an applicant convincingly demonstrates that literal enforcement of the provisions of the Ordinance will:
- (1) result in unnecessary hardship on the applicant;
 - (2) due to special conditions unique to the property; and
 - (3) that such variance is not contrary to the public interest.
- (b) **No Use Variance.** A variance shall not grant or increase any use of property which is prohibited in the Zoning District.
- (c) **Notice, Hearing and Decision.** Before passing on an application for a variance, the Board of Adjustment shall hold a public hearing. Notice of such hearing specifying the time, place and matters of concern, shall be given a Class 2 notice under Chapter 985, Wisconsin Statutes. Such notice shall be mailed to the appropriate District Office of the Department at least ten (10) days prior to the hearing. The Board shall state in writing the reasons for granting or refusing a variance and shall mail a copy of such decision to the appropriate Department District Office within ten (10) days of the decision.

Sec. 16-5-95 Board of Adjustment.

The chairman of the County Board shall appoint a Board of Adjustment consisting of five (5) members under Section 59.99, Wisconsin Statutes. The County Board shall adopt such rules for the conduct of the business of the Board of Adjustment as required by Section 59.99 (3), Wisconsin Statutes.

- (a) **Powers and Duties.**
- (1) The Board of Adjustment shall adopt such additional rules as it deems necessary and may exercise all of the powers conferred on such boards by Section 59.99, Wisconsin Statutes.
 - (2) It shall hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by an administrative official in the enforcement or administration of this Ordinance.
 - (3) It may grant a variance from the dimensional standards of this Ordinance pursuant to Section 16-5-94.
- (b) **Appeals To The Board.** Appeals to the Board of Adjustment may be made by any person aggrieved or by an Officer, Department, Board or Bureau of the County affected by any decision of the Director of Planning and Zoning or other Administrative Officer. Such appeal shall be made within a reasonable time, as provided by the rules of the Board, by filing with the Officer whose decision is in question, and with the Board of Adjustment, a Notice of Appeal specifying the reasons for the appeal. The Director of Planning and Zoning or other Officer whose decision is in question shall promptly transmit to the Board all the papers constituting the record concerning the matter appealed.
- (c) **Hearing Appeals and Applications for Variances and Special Exception Permits.**
- (1) The Board of Adjustment shall fix a reasonable time for a hearing on the appeal or application. The Board shall give public notice thereof by publishing a Class 2 Notice under Chapter 985, Wisconsin Statutes, specifying the date, time and place of the hearing and the matters to come before the Board. Notice shall be mailed to the parties in interest. Written notice shall be given to the appropriate District Office of the Department at least 10 days prior to hearings on proposed Shoreland variances and appeals for map or text interpretations.
 - (2) A decision regarding the appeal or application shall be made as soon as practical. Copies of all decisions on Shoreland variances and appeals for map or text interpretations shall be submitted to the appropriate District Office of the Department within ten (10) days after they are granted or denied.
 - (3) The final disposition of an appeal or application to the Board of Adjustment shall be in the form of a written Resolution or Order signed by the Chairman and Secretary of the Board. Such Resolution shall state the specific facts which are the basis of the Board's determination and shall either affirm, reverse, vary or modify the Order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or prosecution or grant the application.
 - (4) At the public hearing, any party may appear in person or by agent or by attorney.

Sec. 16-5-96 Fees.

The County Board may, by resolution, adopt fees for the following:

- (a) Zoning permits.
- (b) Certificates of Compliance.
- (c) Public Hearings.
- (d) Legal notice publications.

Sec. 16-5-97 Changes and Amendments.

The County Board may from time to time, alter, supplement or change the boundaries of use districts and the regulations contained in this Ordinance in accordance with the requirements of Section 59.97 (5)(e), Wisconsin Statutes, Chapter NR 115, Wisconsin Administrative Code and Section 16-5-74 of this Ordinance where applicable.

- (a) Amendments to this Ordinance may be made on petition of any interested party as provided in Section 59.97 (5)(e), Wisconsin Statutes.
- (b) Every petition for a text or map amendment filed with the County Clerk shall be referred to the County Zoning Agency. A copy of each petition shall be mailed to the appropriate District Office of the Department within five (5) days of the filing of the petition with the County Clerk. Written notice of the public hearing to be held on a proposed amendment shall be mailed to the appropriate District Office of the Department at least ten (10) days prior to the hearing.
- (c) A copy of the County Board's decision on each proposed amendment shall be forwarded to the appropriate District Office of the Department within ten (10) days after the decision is issued.

Sec. 16-5-98 Enforcement and Penalties.

- (a) The provisions of this Ordinance shall be enforced under the direction of the County Board of Supervisors, through the County Zoning Committee, the Planning and Zoning Department and the County law enforcement officers. Any person, firm, company, or corporation who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be subject to a forfeiture as listed in the Penalty Section in Title 1, Chapter 2. Violations may be abated pursuant to Section 59.97 (11), Wisconsin Statutes, and each day of violation shall constitute a separate offense.
- (b) Compliance may be enforced by injunctive order at the suit of the County or the owner or owners of land within the district affected by the regulations of this Ordinance.

Article K
DEFINITIONS

Sec. 16-5-100 Definitions.

For the purpose of administering and enforcing this Ordinance, the terms or words used herein shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; and words in the plural number include the singular number. The word "shall" is mandatory, not permissive. All distances unless otherwise specified shall be measured horizontally. The following terms used in this Ordinance mean:

- (a) **Accessory Structure or Use.** A detached subordinate structure or a use which is clearly incidental to, and customarily found in connection with, the principle structure or use to which it is related, and which is located on the same lot as the principle structure or use.
- (b) **Boathouse.** Any permanent structure designed solely for the purpose of protecting or storing boats and related equipment for noncommercial purposes.
- (c) **County Zoning Agency.** That committee or commission created or designated by the County Board under Section 59.97 (2)(a), Wisconsin Statutes, to act in all matters pertaining to County Planning and Zoning.
- (d) **Department.** The Department of Natural Resources.
- (e) **Development.** Any man-made change to improved or unimproved real estate, including, but not limited to the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of mobile homes; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations, and the deposition or extraction of earthen materials.
- (f) **Drainage System.** One or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.
- (g) **Floodplain.** The land which has been or may be hereafter covered by flood water during the regional flood. The floodplain includes the floodway and the flood fringe as those terms are defined in Chapter NR 116, Wisconsin Administrative Code.
- (h) **Navigable Waters.** Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this State, including the Wisconsin portion of boundary waters, which are navigable under the laws of this State. Under Section 144.26 (2m), Wisconsin Statutes, notwithstanding any other provision of law or administrative rule promulgated thereunder, Shoreland Ordinances required under Section 59.971, Wisconsin Statutes, and Chapter NR 115, Wisconsin Administrative Code, do not apply to lands adjacent to farm drainage ditches if:
 - (1) Such lands are not adjacent to a natural navigable stream or river.
 - (2) Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
 - (3) Such lands are maintained in nonstructural agricultural use.

- (i) **Ordinary Highwater Mark.** The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristics.
- (j) **Regional Flood.** A flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics, once in every 100 years.
- (k) **Shorelands.** Lands within the following distances from the ordinary highwater mark of navigable waters: one thousand (1,000) feet from a lake, pond or flowage; and three hundred (300) feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.
- (l) **Shoreland-Wetland District.** The zoning district, created as a part of this Shoreland Zoning Ordinance, comprised of shorelands that are designated as wetlands on the Wetland maps which have been adopted and made a part of this Ordinance.
- (m) **Conditional Use.** A use which is permitted by this Ordinance provided that certain conditions specified in the Ordinance are met and that a permit is granted by the the Planning and Zoning Committee.
- (n) **Unnecessary Hardship.** That circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of this Ordinance.
- (o) **Variance.**