

CHAPTER 20

SHORELAND-WETLAND ZONING ORDINANCE

20.01 Statutory Authorization, Findings of Fact, Statement of Purpose and Title

- 20.02 General Provisions
- (1) Compliance-Other Permits
 - (2) Municipalities and State Agencies Regulated
 - (3) Abrogation and Greater Restrictions
 - (4) Interpretation
 - (5) Severability
 - (6) Annexed Areas
 - (7) Wisconsin Wetland Inventory Maps

ARTICLE I SHORELAND-WETLAND ZONING DISTRICT

- 20.10 District Boundaries of Shoreland-Wetlands
- 20.11 Filled Wetlands
- 20.12 Shoreland-Wetland Zoning Maps
- 20.13 Permitted Uses in Shoreland-Wetlands
- 20.14 Prohibited Uses in Shoreland-Wetlands
- 20.15 Rezoning Shoreland-Wetlands

ARTICLE II NONCONFORMING STRUCTURES AND USES

- 20.30 General Provisions
- 20.31 Shoreland-Wetlands

ARTICLE III ADMINISTRATION

- 20.40 Zoning Administrator
- 20.41 Zoning Permits
- 20.42 Certificate of Compliance
- 20.43 Fees
- 20.44 Planning & Development Commission
- 20.45 Board of Appeals
- 20.46 Variances
- 20.47 To Review Appeal of Permit Denials
- 20.48 Public Information
- 20.60 Amendments – Procedures
- 20.70 Enforcement and Penalties
- 20.80 Definitions

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20.01 STATUTORY AUTHORIZATION, FINDINGS OF FACT, STATEMENT OF PURPOSE AND TITLE

(1) STATUTORY AUTHORIZATION

This ordinance is adopted pursuant to the authorization in ss. 59.692, 61.35 and 61.351 for Villages; and ss.87.30 and281.31, Wis. Stats.

(2) FINDINGS OF FACT

Uncontrolled development and use of the shoreland-wetlands, floodplains, rivers and streams and the pollution of the navigable waters of this Village would adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The Legislature has delegated responsibility to municipalities to maintain 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 preserve shore cover and natural beauty. This responsibility is hereby recognized by the Village of Plain, Sauk County, Wisconsin.

(3) PURPOSE

To promote the public health, safety, convenience and general welfare, and protect life, health and property this ordinance has been established to: (a) maintain the storm and flood water storage capacity of wetlands; (b) prevent and control water pollution by preserving wetlands which filter or store sediments, nutrients, heavy metals or organic compounds that would otherwise drain into waters of the state; (c) protect fish spawning grounds, fish, aquatic life and wildlife by preserving wetlands and other fish and aquatic habitat; (d) prohibit certain uses detrimental to the shoreland-wetland area; (e) preserve shore cover and natural beauty by restricting shoreland and wetland excavation, filling and other earth moving activities; (f) minimize expenditures of public monies for flood control projects; (g) reduce rescue and relief efforts, generally undertaken at the expense of the taxpaying public; (h) controlling filling and grading to prevent soil erosion and runoff problems; (i) reduce damage to public facilities such as utilities, buildings, streets and bridges which may be located in wetlands or floodplains; (j) preserving wetlands and aquatic habitats; (k) discourage the victimization of unwary land and home buyers; (l)control shoreline and wetland alterations; and (m) limit or prohibit uses in shorelands and wetlands.

(4) TITLE

This ordinance shall be known as the Shoreland-Wetland Zoning Ordinance for Plain, Wisconsin.

20.02 GENERAL PROVISIONS

(1) COMPLIANCE-OTHER PERMITS

Any development, as defined in 20.80(2)(h), of this ordinance shall be in full compliance with the terms of this ordinance and applicable state and federal regulations. In addition, if the proposed development is located in a Floodplain, see Chapter 19 of the Plain Village Code for the standards applicable to developments in Floodplains. For nonconforming uses see ARTICLE II of this Ordinance. Development permitted by this ordinance in shorelands or wetlands shall require issuance of a Floodplain, Shoreland/Wetland Zoning permit unless otherwise expressly excluded by this ordinance.

It is the responsibility of the applicant to secure all other necessary permits from appropriate federal, state and local agencies, including those required by the U.S. Army Corps of Engineers under Section 404 of the Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1334.

(2) 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 if s. 13.48(13), Wis. Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when s. 302.022(1), Wis. Stats., applies.

(3) ABROGATION AND GREATER RESTRICTIONS

This ordinance supersedes all the provisions of any municipal zoning ordinance enacted under s. 62.23 for cities or 61.35 for villages or 87.30, Wis. Stats., which relate to shoreland-wetlands and floodplains, except if another Village zoning ordinance is more restrictive than the provisions contained in this ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise. The more restrictive of the Shoreland-Wetland District or Floodplain District regulations shall apply when a property is located in both zoning districts.

The ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, if this ordinance is more restrictive, the provisions of this ordinance shall prevail.

(4) 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 municipality and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this ordinance is required by a standard in chs. NR 116 or NR 117, Wis. Adm. Code, and where the ordinance provision is unclear, the provision shall be interpreted according to the standards in effect in chs. NR 116 or NR 117 on the date of the adoption of this ordinance, or in effect on the date of the most recent text amendment to this ordinance.

(5) SEVERABILITY

Should any portion of this ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

(6) ANNEXED AREAS

The Sauk County shoreland zoning provisions in effect on the date of annexation remain in effect administered by the Village for all shoreland/wetland areas annexed by the Village after May 7, 1982 unless any of the changes allowed under s. 59.692(7)(a)(1-3), Stats. occurs.

ARTICLE I SHORELAND-WETLAND ZONING DISTRICT

20.10 DISTRICT BOUNDARIES OF SHORELAND-WETLANDS

- (1) The shoreland-wetland zoning district includes all wetlands in the Village which are five acres or more in size and are shown on the final Wisconsin Wetland Inventory Map that has been adopted and made a part of this ordinance and 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 the municipality shall be presumed to be navigable if they are listed in the Department's Surface Water Data Viewer or are shown on the United States Geological Survey (USGS) quadrangle maps. Lakes, ponds and flowages not listed in the publications or maps referenced in this section shall be evaluated on a case-by-case basis to determine whether they are navigable under the laws of the state following the procedure in 20.10(2) of this ordinance.
 - (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 shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey quadrangle maps. Rivers and streams not shown on the maps referenced in this section shall be evaluated on a case-by-case basis to determine whether they are navigable under the laws of the state following the procedure found in 20.10(2) of this ordinance.
- (2) Determinations of navigability and ordinary highwater mark location shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the appropriate district office of the Department for a final determination of navigability or ordinary highwater mark.
- (3) When an apparent discrepancy exists between the shoreland-wetland district boundary shown on the official Wisconsin Wetland Inventory maps and the actual field conditions at the time the maps were adopted, the Zoning Administrator 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 Zoning Administrator that a particular area was incorrectly mapped as a wetland, the Zoning Administrator shall have the authority to immediately grant or deny a land use or building permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors shown on the official Wisconsin Wetland Inventory maps, the Zoning Administrator shall be responsible for initiating a map amendment within a reasonable period.
- (4) Under s. 281.31(2m), Wis. Stats., notwithstanding any other provision of law or administrative rule, wetland zoning ordinances required under Wis. Stats., ss. 61.351 for villages or 62.231 for cities and ch. NR 117, Wis. Adm. Code, do not apply to lands adjacent to farm drainage ditches if;
 - (a) Such lands aren't adjacent to a natural navigable stream or river;
 - (b) Those parts of the drainage ditches adjacent to such lands were not navigable streams before ditching; and,
 - (c) Such lands are maintained in nonstructural agricultural use.

20.11 FILLED WETLANDS

Wetlands which are filled prior to December 18, 2009 in a manner which affect their wetland characteristics to the extent that the area can no longer be defined as wetland, are not subject to this ordinance.

20.12 SHORELAND-WETLAND ZONING MAPS.

The following maps are hereby adopted and made part of this ordinance.

- (1) Wisconsin Wetland Inventory Maps as produced by the Wisconsin Department of Natural Resources, dated May 6, 1994 and all subsequent updates and revisions.
- (2) United States Geological Survey maps, current or latest revision(s).
- (3) Zoning Map of the Village of Plain, dated 10/31/2008 and all subsequent updates and revisions as kept on file in the Office of the Village Clerk.

20.13 PERMITTED USES IN SHORELAND-WETLANDS (NOTE: Under NR 117.05(2), Wis. Adm. Code, cities and village may permit, authorize as a conditional use or prohibit the following uses of shoreland-wetlands.)

The following uses are permitted subject to the provisions of chs. 30 and 31, Wis. Stats., and the provisions of other local, state and federal laws, if applicable:

- (1) Activities and uses which do not require the issuance of a zoning permit, provided that no wetland alteration occurs:
 - (a) Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating;
 - (b) 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;
 - (c) The practice of silviculture, including the planting, thinning and harvesting of timber;
 - (d) The pasturing of livestock;
 - (e) The cultivation of agricultural crops; and
 - (f) The construction and maintenance of duck blinds.
- (2) Uses which do not require a zoning permit and which may involve wetland alterations only to the extent specifically allowed below:
 - (a) The practice of silviculture, including limited temporary water level stabilization measures necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silvicultural activities if not corrected;
 - (b) The cultivation of cranberries, including limited wetland alterations necessary for growing and harvesting cranberries;
 - (c) The maintenance and repair of existing drainage systems, where permissible under s. 30.20, Wis. Stats., to restore pre-existing levels of drainage, including the minimum amount of filling necessary to dispose of dredged spoil, provided

that the filling is permissible under ch. 30, Wis. Stats., and that dredged spoil is placed on existing spoil banks where possible;

- (d) The construction and maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance;
 - (e) The construction and maintenance of piers, docks and walkways, observation decks and trail bridges built on piling, including limited excavating and filling necessary for such activities;
 - (f) The installation and maintenance of sealed tiles for the purpose of draining lands outside the shoreland-wetland zoning district if such installation or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the shoreland-wetland listed in 20.15(1) of this ordinance; and
 - (g) The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such activities.
- (3) Uses allowed with a zoning permit and which include wetland alterations only to the extent specifically allowed below:
- (a) The construction and maintenance of roads which are necessary for the continuity of the municipal street system, the provision of essential utility and emergency services or to allow access to uses permitted under 20.13, if:
 - 1. The road cannot, as a practical matter, be located outside the wetland;
 - 2. The road is designed and constructed to minimize the adverse impact upon the natural functions of the wetland listed in s. 20.15(1) of this ordinance;
 - 3. The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;
 - 4. Road construction activities are carried out in the immediate area of the roadbed only; and
 - 5. Any wetland alteration must be necessary for the construction or maintenance of the road.
 - (b) The construction and maintenance of nonresidential buildings if:
 - 1. The building is used solely in conjunction with a use permitted in the shoreland-wetland district or for the raising of waterfowl, minnows or other wetland or aquatic animals;
 - 2. The building cannot, as a practical matter, be located outside the wetland;
 - 3. The building doesn't exceed 500 square feet in floor area; and
 - 4. Only limited filling and excavating necessary to provide structural support for the building is allowed.
 - (c) The establishment and development of public and private parks and recreation areas, outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game

bird and animal farms, wildlife preserves and public boat launching ramps, provided that:

1. Any private development allowed under this paragraph shall be used exclusively for the permitted purpose;
 2. Only limited filling and excavating necessary for developing public boat launching ramps, swimming beaches or constructing park shelters or similar structures is allowed;
 3. Constructing and maintaining roads necessary for the permitted uses under this paragraph is allowed only if such construction and maintenance meets the criteria in 20.13(3)(a); and,
 4. Wetland alterations in game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms, and wildlife preserves shall be for improving wildlife habitat or to otherwise enhance wetland values.
- (d) The construction and maintenance of electric and telephone transmission lines and water, gas and sewer lines, and related facilities and the construction and maintenance of railroad lines provided that:
1. The transmission and distribution lines and related facilities and railroad lines cannot, as a practical matter, be located outside the wetland;
 2. Only limited filling or excavating necessary for such construction or maintenance is allowed; and
 3. Such construction or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the wetland listed in 20.15(1).

20.14 PROHIBITED USES IN SHORELAND-WETLANDS

- (1) Any use not listed in 20.13 is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this ordinance in accordance with ss. 20.15 and 20.60.
- (2) The use of a boathouse for human habitation and the construction or placement of a boathouse or fixed houseboat below the ordinary highwater mark of any navigable waters is prohibited.

20.15 REZONING SHORELAND-WETLANDS

- (1) Rezoning of a shoreland-wetland shall require amendment of the Final Wisconsin Wetland Inventory map, made part of this ordinance pursuant to procedures established by the Department. To insure that any amendment will be consistent with the shoreland protection objectives of Chap. ,281.31 Wis. Stats., the municipality shall not rezone a wetland in a shoreland-wetland zoning district, or any portion thereof, where the proposed rezoning may result in a significant adverse impact upon any of the following:
 - (a) Storm and flood water storage capacity;

- (b) Maintenance or dry season stream flow or 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;
 - (c) Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would drain into navigable waters;
 - (d) Shoreline protection against soil erosion;
 - (e) Fish spawning, breeding, nursery or feeding grounds;
 - (f) Wildlife habitat; or
 - (g) Special recreational, scenic or scientific interest areas, including scarce wetland types and endangered species habitat.
- (2) Upon notification of a proposed amendment as required by 20.60, if the district office of the Department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in 20.15(1), of this ordinance, the Department shall so notify the municipality of its determination either prior to or during the public hearing held on the proposed amendment.
- (3) If the Department notifies the municipal planning agency in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed 20.15(1), that proposed amendment, if approved by the municipality, shall not become effective until more than 30 days have elapsed since written notice of the council or board approval was mailed to the Department, as required by 20.60. If the Department notifies the council or board within the 30 day period that it intends to adopt a superseding shoreland-wetland zoning ordinance for the municipality under ss. 62.231(6) or 61.351(6), Wis. Stats., the proposed amendment shall not become effective until that ordinance adoption procedure is completed or otherwise terminated. The record of the council or board decision on the proposed amendment shall advise the petitioner of the provisions of this section.

ARTICLE II NONCONFORMING STRUCTURES AND USES

20.30 GENERAL PROVISIONS

(1) APPLICABILITY

Insofar as the standards in this section are not inconsistent with the provisions of s. 62.23(7)(h), Stats., they shall apply to all nonconforming uses and nonconforming structures. These regulations apply to the repair, reconstruction, renovation remodeling or expansion of a nonconforming structure or any environmental control facility and to the use of any structure which was lawful before the passage of this ordinance or any amendment thereto. All other modifications to nonconforming structures are subject to s. 62.23(7)(h) which limits total lifetime repairs and alterations to 50% of current fair market value.

- (2) The existing lawful use of a structure, building or property or its accessory use which is not in conformity with the provisions of this ordinance may continue subject to the following conditions:
- (a) If a nonconforming use or the use of a nonconforming structure is discontinued for twelve (12) consecutive months, it is no longer permitted and any future use

of the property, and any structure or building thereon, shall conform to the applicable provisions of this ordinance.

- (b) Any legal nonconforming use of property which does not involve the use of a structure and which existed at the time of the adoption or subsequent amendment of this ordinance adopted under sections 61.351 or 62.231, Wis. Stats., may be continued although such use does not conform to the provisions of the ordinance. However, such nonconforming use may not be extended or increased.
- (c) The maintenance and repair of nonconforming boathouses which are located below the ordinary highwater mark of any navigable waters shall comply with the requirements of section 30.121, Wis. Stats.
- (d) Uses which are nuisances under common law shall not be permitted to continue as nonconforming uses.

20.31 SHORELAND-WETLANDS

Notwithstanding s. 62.23(7)(h), Wis. Stats., the repair, reconstruction, renovating, remodeling or expansion of a legal nonconforming structure, or any environmental control facility related to a legal nonconforming structure, in existence at the time of adoption or subsequent amendment of this ordinance adopted under s. 61.531, Wis. Stats., is permitted under s. 61.531(5), Wis. Stats.

ARTICLE III ADMINISTRATION

20.40 ZONING ADMINISTRATOR

The Building Committee Chairman is hereby appointed Zoning Administrator and is authorized to administer the provisions of this ordinance and shall have the following duties and powers:

- (1) Advise applicants of the provisions of this ordinance, assist them in preparing permit applications and appeal forms, and insure that all permit applications have complete information.
- (2) Issue permits and certificates of compliance and inspect properties for compliance with this ordinance.
- (3) Keep records of all official actions such as:
 - (a) All permits issued, inspections made and work approved;
 - (b) Documentation of certified lowest floor elevations for shoreland development permitted by this Ordinance;
 - (c) Records of nonconforming uses and structures including changes, appeals, variances and amendments.
- (4) Have access to any structure or premises between the hours of 8 a.m. and 6 p.m. for the purpose of performing these duties.
- (5) Submit the following items to the Department District office;

- (a) Within 10 days of the decision, a copy of any decisions on variances, conditional use permits, appeals for a map or text interpretation, and map or text amendments.
 - (b) Copies of any case-by-case analyses, and any other information required by the Department including an annual summary of the number and types of Shoreland-Wetland zoning actions taken.
- (6) Investigate, prepare reports, and report violations of this ordinance to the Development and Planning Commission and the Village attorney for prosecution. Copies of the violation reports shall also be sent to the Department District office.
- (7) Designate a Village employee or consultant to assist with the preparation and evaluation of permit applications.

20.41 ZONING PERMITS

(1) When Required

Unless another section of this ordinance specifically exempts certain types of development from this requirement, a land use/zoning permit shall be obtained from the Zoning Administrator before any new development, as defined in 20.80, or any change in the use of an existing building or structure, including sewage disposal systems and water supply facilities, may be initiated.

(2) Application

An application for a permit shall be made to the Zoning Administrator upon forms furnished and shall include the following information for the purpose of proper enforcement of these regulations:

(a) GENERAL INFORMATION

1. Name, address, and telephone number of applicant, property owner and contractor-builder.
2. Legal description of the property and a general description of the proposed use or development indicating new construction or modification to existing structures.

(b) SITE DEVELOPMENT PLAN

The site development plan shall be drawn to scale and submitted as a part of the permit application form and shall contain the following information:

1. Location, dimensions, area and elevation of the lot noted on a copy of the Wetland Inventory Map, if applicable,
2. Location and boundaries of wetlands;
3. Specifications and dimensions for areas of proposed wetland alteration.
4. Location of the ordinary highwater mark of any abutting navigable waterways;

5. Existing and proposed topographic and drainage features and vegetative cover;
6. Location of any structures with distances measured from the lot lines and center line of all abutting streets or highways;
7. Location of any existing or proposed in-site sewage systems or private water supply systems;
8. Location and elevation of existing or future access roads; and,
9. Location of Shoreland Zoning or Wetland limits pursuant to Sect. 20.10 and/or floodplain and floodway limits on the property as determined from floodplain zoning maps used to delineate floodplain areas;
10. The elevation of the lot, lowest floor of proposed buildings, structures and/or fills using National Geodetic and Vertical Datum (NGVD).

(3) EXPIRATION

All permits issued under the authority of this ordinance shall expire one year from the date of issuance.

20.42 CERTIFICATES OF COMPLIANCE

- (1) Except where no building, zoning or conditional use permit is required, no land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, rebuilt or replaced shall be occupied, until a certificate of compliance is issued by the Zoning Administrator subject to the following provisions:
 - (a) The certificate of compliance shall show that the building or premises or part thereof, and the proposed use, conform to the provisions of this ordinance.
 - (b) Application for such certificate shall be concurrent with the application for a permit.
 - (c) The certificate of compliance shall be issued within 10 days after notification of completion of the work specified in the permit, providing the building or premises or proposed use conforms to all the provisions of this ordinance.
- (2) Upon written request from the owner, the Zoning Administrator shall issue a certificate of compliance for any building or premises existing at the time of 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.
- (3) The applicant must secure all other necessary permits from all appropriate federal, state, and local agencies, including those required by the Wisconsin Department of Natural Resources and the U.S. Army Corps of Engineers under s. 404 of the Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1334, before the Zoning Administrator is obligated to issue a certificate of compliance.

20.43 FEES

The Village Board may resolve to adopt the following fees.

- (1) Building, zoning and conditional use permits.
- (2) Certificates of compliance.
- (3) Public hearings.
- (4) Legal notice publications.

20.44 DEVELOPMENT & PLANNING COMMISSION

- (1) The Development & Planning Commission shall:
 - (a) oversee the functions of the office of the Zoning Administrator;
 - (b) review and make recommendations to the Governing body on all proposed amendments to this ordinance, maps and text.
 - (c) hear request for conditional use permits under section 20.47 of this ordinance
- (2) The Development & Planning Commission shall not:
 - (a) grant variances to the terms of the ordinance in place of action by the Board of Appeals; nor
 - (b) amend the text or zoning maps in place of official action by the Governing body.

20.45 BOARD OF APPEALS

The Village Board of the Village of Plain will act as the Board of Appeals. The Board of Appeals shall exercise the powers conferred by Wis. Stats., and adopt rules for the conduct of their business as required by s. 62.23(7)(e)., Wis. Stats.

(1) Powers and Duties

The Board of Appeals shall consider matters in the following areas:

(a) Appeals

Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this ordinance.

(b) Variances

Hear and decide, upon appeal, a variance from the dimensional standards of this ordinance pursuant to 20.46.

(c) Boundary disputes

Hear and decide disputes concerning the district boundaries.

(2) Appeals to the Board

Appeals to the Board may be taken by any person aggrieved, or by an officer, department, board or bureau of the community affected by any decision of the Zoning Administrator or other administrative officer. Such appeals shall be taken within 30

days as provided by the rules of the Board, by filing with the official whose decision is in question, and with the Board of Appeals, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the Board all the documents constituting the record concerning the matter appealed.

(3) Hearing Appeals and Applications for Zoning Permits.

(a) Notice – The Board shall:

1. Fix a reasonable time for the hearing;
2. Publish adequate notice pursuant to Wis. Stats, specifying the date, time and place and subject of the hearing.
3. Assure that notice shall be mailed to the parties in interest and the appropriate district office of the Department at least 10 days prior to the hearing.

(b) Hearing – Any party may appear in person or by agent or attorney. The board shall:

1. Resolve boundary disputes according to 20.45(4).
2. Decide variance applications according to 20.46.
3. Decide appeals of permit denials according to 20.47.

(c) Decision – The final decision regarding the appeal or variance application shall:

1. Be made within a reasonable time;
2. Be sent to the appropriate district office of the Department within 10 days of the decision;
3. Be a written determination signed by the chairman or secretary of the Board;
4. State the specific facts which are the basis for the Board's decision;
5. 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 grant or deny the application for a variance;
6. Include the reasons or justifications for granting an appeal, with a description of the hardship or practical difficulty demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the Board proceedings.

(4) BOUNDARY DISPUTES

The following procedure shall be used by the Board of Appeals in hearing disputes concerning the district boundaries as described in Sect 20.10 or as shown on the Wisconsin Wetland Inventory Map or USGS quadrangle maps:

- (a) When Shoreland or Wetland Zoning districts as designated under Section 20.10 are disputed, the designations provided by the Department shall be presumed to be accurate unless documentation provided through a Registered Surveyor or

Professional Engineer licensed in the State of Wisconsin can be provided to contest the accuracy.

- (b) In all cases, the person contesting the location of the district boundary shall be given a reasonable opportunity to present arguments and technical evidence to the Board of Appeals.
- (c) Where it is determined that the district boundary is incorrectly mapped, the Board of Appeals should inform the planning agency or the person contesting the location of the boundary to petition the Department for a map amendment.

20.46 VARIANCES

- (1) The Board of Appeals may, upon appeal, grant a variance from the dimensional standards of this ordinance where an applicant convincingly demonstrates that:
 - (a) Literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship on the applicant;
 - (b) The hardship is due to adoption of this ordinance and special conditions unique to the property; and not common to a group of adjacent lots or premises (in such case the zoning ordinance or map must be amended);
 - (c) Such variance is not contrary to the public interest.
 - (d) Such variance is consistent with the purpose of this ordinance in 20.01(3).
- (2) A variance shall not:
 - (a) Grant, extend or increase any use prohibited in the zoning district;
 - (b) Be granted for a hardship based solely on an economic gain or loss;
 - (c) Be granted for a hardship which is self-created;
 - (d) Damage the rights or property values of other persons in the area;
 - (e) Allow actions without the amendments to this ordinance or maps required in 20.60.
 - (f) Allow any alteration of an historic structure, including its use, which would preclude its designation as an historic structure.

20.47 CONDITIONAL USE PERMITS

- (1) Application
Any use listed as a conditional use in this ordinance shall be permitted only after an application has been submitted to the Zoning Administrator and a conditional use permit has been granted by the Development and Planning Commission following the procedures in Sect.20.45 of this ordinance.

- (2) Conditions

Upon consideration of the permit application and the standards applicable to the conditional uses designated in Sect. 20.13(3), the Development and Planning Commission shall attach such conditions to the permit, in addition to those required

elsewhere in this ordinance, as are necessary to further the purposes of this ordinance as listed in Sect. 20.01(3). Such conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; erosion controls; increased setbacks; landscaping and planting screens; period of operation; operational control; deed restrictions; location of piers, docks, parking areas and signs; and type of construction. To secure information upon which to base its determination, the Development and Planning Commission may require the applicant to furnish, in addition to the information required for a permit, other pertinent information which is necessary to determine if the proposed use is consistent with the purpose of this ordinance.

20.48 TO REVIEW APPEALS OF PERMIT DENIALS

- (1) The Board of Appeals shall review all data constituting the basis for the appeal of permit denial. This data may include (where appropriate):
 - (a) Permit application data listed in 20.41(2);
 - (b) Other data submitted to the Zoning Administrator with the permit application, or submitted to the Board with the appeal.
- (2) For appeals of all denied permits the Board shall:
 - (a) Follow the procedures of 20.45;
 - (b) Consider any Department recommendations, all information submitted with application and reason(s) for denial;
 - (c) Either uphold the denial or grant the appeal.

20.48 PUBLIC INFORMATION

- (1) All available information in the form of maps, engineering data and regulations shall be readily available and should be widely distributed.
- (2) All legal descriptions of property located in the shoreland zoning district should include information designating the shoreland zoning classification when such property is transferred.

20.60 AMENDING SHORELAND-WETLAND ZONING REGULATIONS-PROCEDURES

- (1) The municipal governing body may supplement or change the district boundaries and the regulations contained in this ordinance according to s. 62.23(7)(d)2., Wis. Stats., NR 116 and 117, Wis. Adm. Code, and the following:
 - (a) The Shoreland-Wetland District amendment provisions of 20.15 apply.
 - (b) All proposed text and map amendments shall be referred to the Development and Planning Commission and a public hearing shall be held as required by s. 62.23(7)(d)2., Wis. Stats., following publication of a Class 2 notice as defined in 20.80(2)(jj). Copies of the proposed amendment and notice of the public hearing shall be submitted to the appropriate district office of the Department at least 10 days prior to such hearing.
 - (c) A copy of the decision on each amendment shall be provided to the Department district office within 10 days of the decision.

20.70 ENFORCEMENT AND PENALTIES

Any violation of the provisions of this ordinance, by any person, firm, association or corporation shall be unlawful and shall be referred to the Village attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit a penalty to the municipality of **(see fine schedule)** per offense, together with the taxable costs of such action. Each day of continued violation shall constitute a separate offense. Every violation of this ordinance is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of the municipality, the state, or any citizen thereof pursuant to s. 87.30(2), Wis. Stats.

20.80 DEFINITIONS

- (1) The terms or words used in this ordinance shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; 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.
- (2) 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 with, the principal structure or use to which it is related and which is located on the same lot as that of the principal structure or use.
 - (b) "Basement" – Any enclosed area of a building having its floor subgrade, i.e., below ground level, on all sides.
 - (c) "Boathouse" – As defined in section 30.121(1), Wis. Stats., means a permanent structure used for the storage of watercraft and associated materials and includes all such structures which are totally enclosed, have roofs or walls or any combination of structural parts.
 - (d) "Certificate of compliance" – A certification issued by the Zoning Administrator stating that any construction and use of land or a building, the elevation of fill or the first floor of a structure is in compliance with all of the provisions of this ordinance.
 - (e) "Channel" – A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.
 - (f) "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 Development & Planning Commission.
 - (g) "Department" - The Wisconsin Department of Natural Resources.
 - (h) "Development" – Any new use, change of use and any change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; any placement of mobile homes, the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials, public or private sewage disposal systems or water supply facilities.

- (i) "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.
- (j) "Environmental control facility" – Any facility, temporary or permanent, which is reasonably expected to abate, reduce, or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste and thermal pollution, radiation of other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.
- (k) "Fixed houseboat" – As defined in s. 30.121(1), Wis. Stats., means a structure not actually used for navigation which extends beyond the ordinary highwater mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.
- (l) "Flood" or "Flooding" – A general and temporary condition of partial or complete inundation of normally dry land areas caused by:
 - 1. The overflow or rise of inland waters;
 - 2. The rapid accumulation or runoff of surface waters from any source; and
 - 3. The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; and
 - 4. The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.
- (m) "Floodfringe" – That portion of the floodplain outside of the floodway which is covered by floodwaters during the regional flood; it is generally associated with standing water rather than rapidly flowing water.
- (n) "Floodplain" – That land which has been or may be hereafter covered by floodwater during the regional flood. The floodplain includes of the floodway and the floodfringe and general floodplain areas.
- (o) "Floodway" – The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.
- (p) "Hearing Notice" – Publication or posting meeting the requirements of Ch. 985 Wis. Stats. Class 1 notice is required at a minimum for appeals, published once at least one week (7 days before the hearing). Class 2 notice is required at a minimum for all zoning ordinances and amendments including map amendments; published twice, once each week consecutively, the last publication at least a week (7 days) before the hearing.
- (q) "Historic structure" – Any structure that is:
 - 1. Listed individually in the national Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - 2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district of a

district preliminarily determined by the Secretary to qualify as a registered historic district;

3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior, or directly by the Secretary in states without approved programs.
- (r) "Land use" – Any structural use made of unimproved or improved real estate. (Also see DEVELOPMENT.)
- (s) "Mobile home" or "Manufactured Home" – A structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. For the purpose of this ordinance, it does not include recreational vehicles or travel trailers which remain licensed and ready for highway use and remain on-site less than 180 days.
- (t) "Municipal" – As used in this ordinance, it shall mean the Village of Plain who has enacted, and shall administer and enforce this Zoning ordinance.
- (u) "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 281.31, Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under section 61.351 and Chap. NR 117, Wis. Admin. Code, do not apply to lands adjacent to farm drainage ditches if:
1. Such lands are not adjacent to a navigable stream or river. Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
 2. Such lands are maintained in nonstructural agricultural use.
 3. The Wisconsin Supreme Court has declared navigable bodies of water with a bed differentiated from adjacent uplands and with levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis. [Muench v. Public Service Commission, 261 Wis. 492 (1952) & DeGayner and Co., Inc v. Department of Natural Resources, 70 Wis. 2d 936 (1975)]
- (v) "Nonconforming Structure" - An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this ordinance for the area of the shoreland and/or wetland which it occupies. (For example, an existing structure in the Shoreland district is a conforming use. However, if the structure is greater than 500 square feet in size, the structure is nonconforming.)
- (w) "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 characteristic.

- (x) "Planning agency" – The municipal planning commission, agency, committee, or a board of public land commissioners of the municipality's governing body created under s. 62.23(1), Wis. Stats., which acts on matters pertaining to planning and zoning.
- (y) "Private Sewage System" – A sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Commerce, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.
- (z) "Shorelands" – Lands within the following distances from the ordinary highwater mark of navigable waters, 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.
- (aa) "Shoreland-Wetland district" – The zoning district, created in this zoning ordinance, comprised of shorelands that are designated as wetlands on the wetlands inventory maps which have been adopted and made a part of this ordinance.
- (bb) "Unnecessary hardship" – That circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with the restrictions governing dimensional standards (such as area, setbacks, frontage, or height) unnecessarily burdensome or unreasonable in light of the purpose of this ordinance. Unnecessary hardship is present only where, in the absence of a variance, no feasible use can be made of the property.
- (cc) "Variance" – An authorization granted by the Board of Appeals to construct, alter or use a building or structure in a manner that deviates from the dimensional standards of this ordinance.
- (dd) "Wetlands" – Those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.
- (ee) "Wetland alteration" – Any construction filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.