

**CHAPTER 29**

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## **SHORELAND-WETLAND ZONING**

### **Sec. 29.01** Statutory Authorization

This Chapter is adopted pursuant to the authorization in Section 61.35, 61.351, 62.23, 62.231, 87.30 and 144.26, Wis. Stats.

### **Sec. 29.02** Findings of Fact

- 1) **FINDINGS OF FACT.** Uncontrolled use of the shoreland-wetlands and the pollution of the navigable waters of the Village of Whiting would adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The Legislature of Wisconsin has delegated responsibility to all municipalities 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 preserve shore cover and natural beauty.
- 2) **PURPOSE.** To promote the public health, safety, convenience and general welfare, this Chapter has been established to:
- 3) Maintain the storm and flood water storage capacity of wetland.
- 4) Prevent and control water pollution by filtering or storage of sediments, nutrients heavy metals or organic compounds that would otherwise drain into navigable waters.
- 5) Protect fish spawning grounds, fish, aquatic life and wildlife by preserving wetlands and other fish and aquatic habitat.
- 6) Prohibit certain uses detrimental to the shoreland-wetland area.
- 7) Preserve shore cover and natural beauty by restricting the removal of natural shoreland cover and controlling shoreland-wetland excavation, filling and other earth moving activities; and
- 8) Promote the public health, safety, convenience and general welfare.

### **Sec. 29.03** Compliance

The use of wetlands and the alteration of wetlands within the shoreland area of the Village of Whiting shall be in full compliance with the terms of this Chapter and other applicable local, state, or federal regulations. All permitted development shall require the issuance of a zoning permit unless otherwise expressly excluded by a provision of this Chapter.

### **Sec. 29.04** Municipalities and State Agencies Regulated

Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this Chapter and obtain all necessary permits. State agencies are required to comply if Section 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 Section 30.12(4) (a), Wis. Stats., applies.

### **Sec. 29.05** Abrogation and Greater Restrictions

- 1) This Chapter supersedes all the provisions of any municipal zoning ordinance enacted under Section 61.35, 62.23 or 87.30, Wis. Stats., which relate to shoreland-wetlands, except that where another municipal zoning ordinance is more restrictive than the provisions contained in this Chapter, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
- 2) This Chapter is not intended to repeal, abrogate or impair any existing deed restrictions, the provisions of this Chapter shall prevail.

### **Sec. 29.06** Interpretation

In their interpretation and application, the provisions of this Chapter 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 Chapter is required by a standard in Chapter NR 117, Wis. Ads. Code, and where the Chapter provision is unclear, the provision shall be interpreted in light of the Chapter NR 117

standards in effect on the date of the adoption of this Chapter or in effect on the date of the most recent text amendment to this Chapter.

**Sec. 29.07** Severability

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

**Sec. 29.08** Purpose of Shoreland-Wetland Zoning

This Chapter is adopted to maintain safe and healthful conditions, to prevent and control water pollution, to protect fish spawning grounds, fish and aquatic life 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 which minimized adverse impacts upon the wetland.

**Sec. 29.09** Official Shoreland-Wetland Zoning Maps

The following maps are hereby adopted and made a part of this ordinance and are on file in the office of the Clerk-Treasurer for the Village of Whiting, Wisconsin:

- 1) Wisconsin Wetland Inventory Map(s) stamped "FINAL" on April 17, 1986.
- 2) Floodplain zoning maps titled "Village of Whiting Flood Hazard Boundary Map" and dated October 9, 1981.
- 3) Zoning maps titled "Zoning Maps-Village of Whiting" and dated October 8, 1971, as amended.

**Sec. 29.10** District Boundaries

- 1) The shoreland-wetland zoning district includes all wetlands in the Village of Whiting, Wisconsin which is five acres or more and is shown on the final Wetland Inventory Map that has been adopted and made a part of this Chapter.
- 2) When an apparent discrepancy exists between the shoreland-wetland district conditions at the time the maps were adopted, the building Inspector shall contact the appropriate district office of the Department to determine if the shoreland-wetland district boundary as mapped, is in error. If the department staff concur with the Building Inspector that a particular area was incorrectly mapped as a wetland, the Building Inspector shall have the authority to immediately grant to deny 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 shoreland-wetland zoning maps, the Building Inspector shall be responsible for initiating a shoreland-wetland map amendment within a reasonable period.

**Sec. 29.11** Permitted Uses

The following uses are permitted subject to the provisions of Chapters 30 and 31, Wis. Stats., and the provisions of other local, state and deferral 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.
- 2) Uses which do not require the issuance of a zoning permit and which may involve wetland alterations only to the extent specifically provided below:
  - a. The practice of silviculture, including limited temporary water level stabilization measures which are 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 maintenance and repair of existing drainage ditches, where permissible under Section 30.20, Wis. Stat., or of other existing drainage systems (such as tiling) 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 Chapter 30, Wis. Stats., and that dredged spoil is placed on existing spoil banks where possible.
- c. 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 construction or maintenance.
  - d. The installation and maintenance of sealed tiles for the purpose of draining lands outside the shoreland-wetland zoning district provided that 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 this Chapter; and
  - e. The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.
- 3) Uses which are allowed upon the issuance of a conditional use permit and which may include wetland alterations only to the extent specifically provided 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 provide access to uses permitted in this section, provided that:
    - (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 this Chapter.
    - (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 provided that:
    - (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 does not exceed five hundred (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 developmental allowed under this paragraph shall be used exclusively for the permitted purpose.
    - (2) Only limited filling and excavating necessary for the development of public boat launching ramps, swimming beaches or the construction of park shelters, or similar structures is allowed.
    - (3) The construction and maintenance of roads necessary for the uses permitted under this paragraph are allowed only where such construction and maintenance meet the criteria in subsection (c)(1) of this Section; and
    - (4) Wetland alterations in game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms, wildlife preserves shall be for the purpose of improving wildlife habitat or to otherwise enhance wetland values.
  - d. The construction and maintenance of electric and telephone transmission lines water and gas distribution lines, and sewage collection lines, and related facilities 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 this Chapter.

### **Sec. 29.12** Prohibited Uses

- 1) Any use not listed in this Chapter is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this Chapter in accordance with this Chapter.

- 2) The use of a boathouse for human habitation and the construction or placement of a boathouse or fixed houseboat below the ordinary high-water mark of any navigable waters is prohibited.

**Sec. 29.13** Nonconforming Structures and Uses

The lawful use of a building structure or property which existed at the time this Ordinance, or an applicable amendment to this Chapter, took effect and which is not in conformity with the provisions of the Chapter, including the routine maintenance of such a building or structure, may be continued, subject to the following conditions:

- 1) Notwithstanding Section 62.23(7) (h), Wis. Stats., the repair, reconstruction, renovation, remodeling, or expansion of a legal nonconforming structure or of an environmental control facility related to a legal nonconforming structure, in existence on October 14, 1986, or subsequent amendment of this Ordinance adopted under Section 61.351, Wis. Stats., is permitted under section 61.351(5), Wis. Stats.
- 2) If a nonconforming use or the use of a nonconforming structure is discontinued for twelve (12) consecutive months, any future use of the building, structure or property shall conform to the appropriate provisions of this Chapter.
- 3) 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 chapter adopted under Sections 62.231 or 61.351, Wis. Stats., may be continued although such use does not conform to the provisions of this Chapter. However, such nonconforming use may not be extended.
- 4) The maintenance and repair of nonconforming boathouses which are located below the ordinary high-water mark of any navigable waters shall comply with the requirements of section 30.121, Wis. Stats.
- 5) Uses which are nuisances under common law shall not be permitted to continue as nonconforming uses.

**Sec. 29.14** Building Inspector

The Building Inspector shall have the following duties and powers:

- 1) Advise applicants as to the provisions of this Chapter and assist them in preparing permit applications and appeal forms.
- 2) Issue permits and certificates of compliance and inspect properties for compliance with this Chapter.
- 3) Keep records of all permits issued, inspections made, work approved and other official actions.
- 4) Have access to any structure or premises between the hours of 8:00 a.m. and 6:00 p.m. for the purpose of performing these duties.
- 5) Submit copies of decisions on variances, conditional use permits, appeals for a map or text interpretation, and map or text amendments within ten (10) days after they are granted or denied, to the appropriate district office of the Department.
- 6) Investigate and report violations of this Chapter to the appropriate Village planning agency and the District Attorney, corporation counsel or Village Attorney.

**Sec. 29.15** Zoning Permits

- 1) WHEN REQUIRED. Unless another section of this Chapter specifically exempts certain types of development from this requirement, a zoning permit shall be obtained from the Building Inspector before any new development or any change in the use of an existing building or structure is initiated.
- 2) APPLICATION. An application for a permit shall be made to the Building Inspector upon forms furnished by the Village and shall include, for the purpose of proper enforcement of these regulations, the following information:
  - a. General Information.
    - (1) Name, address, and telephone number of applicants, property owner and contractor, where applicable
    - (2) Legal description of the property and a general description of the proposed use or development.
    - (3) Whether or not a private water or sewage system is to be installed.
  - 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) Dimensions and area of the lot.
    - (2) Location of any structures with distances measured from the lot lines and centerline of all abutting streets or highways.

- (3) Description of any existing or proposed on-site sewage systems or private water supply systems.
  - (4) Location of the ordinary high-water mark of any abutting navigable waterways
  - (5) Boundaries
  - (6) Existing and proposed topographic and drainage features and vegetative cover.
  - (7) Location of floodplain and floodway limits on the property as determined from floodplain zoning maps used to delineate floodplain area.
  - (8) Location of existing or future access roads; and
  - (9) Specifications and dimensions for areas of proposed wetland alteration.
- 3) EXPIRATION. All permits issued under the authority of this Chapter shall expire six (6) months from the date of issuance.

**Sec. 29.16** Certificates of Compliance

- 1) Except where no zoning permit or conditional use permit is required, no land shall be occupied or use, 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 Building Inspector subject to the following provisions:
  - a. The certificate of compliance shall show that the building or premises or part thereof, and the proposed use thereof, conform to the provisions of this ordinance.
  - b. Application for such certificate shall be concurrent with the application for a zoning or conditional use permit.
  - c. The certificate of compliance shall be issued within ten (10) days after the completion of the work specified in the zoning or conditional use permit, providing the building or premises or proposed use thereof conforms to all the provisions of this Chapter.
- 2) The Building Inspector may issue a temporary certificate of compliance for a building, premises or part thereof pursuant to rules and regulations established therefore, by the Village Board.
- 3) Upon written request from the owner, the Building Inspector shall issue a certificate of compliance for any building or premises existing at the time of the adoption, 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 Chapter.

**Sec. 29.17** Conditional Use Permits for Wetland Areas

- 1) APPLICATION. Any use listed as a conditional use in this Chapter shall be permitted only after an application has been submitted to the Building Inspector and a conditional use permit has been granted by the Board of Appeals, following the procedures as set forth for hearing and deciding appeals.
- 2) CONDITIONS. Upon consideration of the permit application and the standards applicable to the permitted uses of this Chapter, the Board of Appeals shall attach such conditions to a conditional use permit, in addition to those required elsewhere in this Chapter, as are necessary to further the purpose of this Chapter. Such conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; erosion potential; increased side yard setbacks; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking areas and signs; and type of construction. To secure information upon which to base its determination, the Board of Appeals may require the applicant to furnish, in addition to the information required for a zoning permit, other pertinent information which is necessary to determine if the proposed use is consistent with the purpose of this Chapter.

**Sec. 29.18** Fees

The Village Board may by resolution, adopt fees for the following permits and administrative procedures under this Chapter as follows:

- 1) Zoning permits.
- 2) Certificates of compliance.
- 3) Public hearings.
- 4) Legal notice publications.
- 5) Conditional use permits.
- 6) Rezoning petitions.

**Sec. 29.19** Recording

Where a zoning permit or conditional use permit is approved, an appropriate record shall be made by the Building Inspector of the land use and structure permitted.

**Sec. 29.20** Revocation

Where the conditions of a zoning permit or conditional use permit are violated, the permit shall be revoked by the Board of appeals.

**Sec. 29.21** Board of Appeals

- 1) APPOINTMENT. The Village President shall appoint a Board of Appeals under Section 5.05 of this Code of Ordinances and Section 62.23(7) (e), Wis. Stats., consisting of five (5) members subject to confirmation by the Village Board. The Board of Appeals shall adopt rules for the conduct of the business of the Board of Appeals as required by Section 63.23(7) (e) 3, Wis. Stats.
- 2) POWERS AND DUTIES. The Board of Appeals shall:
  - a. 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 Chapter.
  - b. Hear and decide applications for conditional use permits under this Chapter.
  - c. May authorize upon appeal in specific cases, such variance from the terms of the ordinance as shall not be contrary to the public interest, where owing to special conditions, a literal enforcement of this Chapter will result in unnecessary hardship. In the issuance of a variance, the spirit of the Chapter shall be observed, and substantial justice done. No variance from the terms of this Chapter shall be granted which is contrary to the public interest. An enforcement of the provisions of this Chapter would result in unnecessary hardship. The granting of a variance shall not have the effect of granting or extending any use of property which is prohibited in that zoning district by this Chapter.
- 3) APPEALS TO THE BOARD. Appeals to the Board of Appeals may be taken by any person aggrieved or by an officer, department, board or bureau of the community affected by any order, requirement decision, or determination of the Building Inspector or other administrative official. Such appeals shall be taken within a reasonable time, as provided by the rules of the Board by filing with the official from whom the appeal is taken, and with the Board of Appeals, a notice of appeal specifying the reasons, therefore. The Building Inspector or other official from whom the appeal is taken shall transmit to the Board all the papers constituting the record on which the appeal action was taken.
- 4) PUBLIC HEARINGS.
  - a. Before making a decision on an appeal, the Board of appeals shall, within a reasonable period of time, hold a public hearing. The Board shall give public notice of the hearing by publishing a class 2 notice under Ch. 985, Wis. Stats., specifying the date, time and place of the hearing and the matters to come before the Board. At the public hearing, any party may appear in person, by agent or any attorney and present testimony.
  - b. A copy of such notice shall be mailed to the parties in interest and the appropriate district office of the department at least ten (10) days prior to all public hearings on issues involving shoreland-wetland zoning.
- 5) DECISIONS.
  - a. The final disposition of an appeal or application for a conditional use permit, to the Board of Appeals shall be in the form of a written decision, made within a reasonable time after the public hearing, signed by the Board chairperson. Such decision shall state the specific facts which are the basis of the Board's determination and shall either affirm, reverse, or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal dismiss the appeal for lack of jurisdiction or persecution, or grant the application for a conditional use.
  - b. A copy of such decision shall be mailed to the parties in interest and the appropriate district office of the department within ten (10) days after the decision is issued.

**Sec. 29.22** Amending Shoreland-Wetland Zoning Regulations

The Village Board may from time to time, alter, supplement or change the district boundaries and the regulations contained in this Chapter in accordance with the requirements of section 62.23(7)(d)2, Wis. Stats., NR 117, Wis. Adm. Code, and the following:

- 1) A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the department within five (5) days of the submission of the proposed amendment to the Plan Commission.
- 2) All proposed text and map amendments to the shoreland-wetland zoning regulations shall be referred to the Plan Commission, and a public hearing shall be held as required by section 62.23(7) (d) 2, Wis. Stats. The appropriate district office of the Department shall be provided with written notice of the public hearing at least ten (10) days prior to such hearing.
- 3) In order to ensure that the shoreland protection objectives in section 144.26, Wis. Stats., will be accomplished by the amendment, the Village Board may 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 of 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 otherwise drain into navigable waters.
  - d. Shoreline protection against soil erosion.
  - e. Fish spawning, breeding, nursery or feeding grounds.
  - f. Wildlife habitat; or
  - g. Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.
- 4) Where the district office of the Department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in Subsection (c) of this Section, the Department shall so notify the Village of its determination either prior to or during the public hearing held on the proposed amendment.
- 5) The appropriate district office of the Department shall be provided with:
  - a. A copy of the recommendations and report, if any, of the Village Plan Commission on the proposed text or map amendment, within ten (10) days after the submission of those recommendations to the Village Board; and
  - b. Written notice of the Village Board's action on the proposed text or map amendment within ten (10) days after the action is taken.
- 6) If the Department notifies the Plan Commission in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in Subsection (c), of this Section, that proposed amendment, if approved by the Village Board, may not become effective until more than thirty (30) days have elapsed since written notice of the Village Board approval was mailed to the Department, as required by Subsection (e) of this Section. If within the thirty (30) day period, the Department notifies the Village Board that the Department intends to adopt a superseding shoreland-wetland zoning ordinance for the Village under Section 62.231(6), Wis. Stats., the proposed amendment may not become effective until the ordinance adoption procedure under Section 62.231(6), Wis. Stats., is completed, or otherwise terminated.

### **Sec. 29.23** Enforcement and Penalties

Any development, building or structure or accessory building or structure constructed, altered, added to, modified, rebuilt or replaced or any use or accessory use established after the effective date of this Chapter in violation of the provisions of this Chapter, by any person, firm, association, corporation (including building contractors or their agents) shall be deemed a violation. The Building Inspector shall refer violations to the Plan Commission and the Village Attorney who shall prosecute such violations. Any person, firm, association, or corporation who violates or refuses to comply with any of the provisions of this Chapter shall be subject to forfeiture as specified in "General Penalties," of this Code of Ordinances, together with the taxable costs of such action. Each day of continued violation shall constitute a separate offense. Every violation of this Chapter is a public nuisance, the creation thereof may be enjoined, and the maintenance thereof may be abated by action at suit of the Village, the State, or any citizen thereof pursuant to Section 87.30(2), Wis. Stats.

### **Sec. 29.24** Definitions

- 1) For the purpose of administering and enforcing this Chapter, 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; 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 Chapter mean:
  - a. Accessory Structure or Use means a detached subordinate structure or a use which is clearly incidental to, and customarily found in connection 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. 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 structures which are totally enclosed, have roofs or walls or any combination of structural parts.
  - c. Class 2 Public Notice means publication of a public hearing notice under Chapter 985, Wis. Stats., in a newspaper of circulation in the affected area. Publication is required on two (2) consecutive weeks, the last at least seven days prior to the hearing.
  - d. Conditional Use means 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 Board of Appeals or, where appropriate, the planning agency designated by the municipal governing body.
  - e. Department means the Wisconsin Department of Natural Resources.
  - f. Development means any man-made change to improved or unimproved real estate, including, but not limited to, the constructions of buildings, structures or accessory structures, 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.
  - g. Drainage System means one or more artificial ditches, tile drains or similarly devices which collect surface runoff or groundwater and convey it to a point of discharge.
  - h. Environmental Control Facility means 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 or 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.
  - i. Fixed Houseboat, as defined in Section 30.121(1), Wis. Stats., means a structure not actually used for navigation which extends beyond the ordinary high-water mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spud poles attached to the bed of the waterway.
  - j. Navigable Waters means Lake Superior, Lake Michigan, all-natural inland lakes within Wisconsin, and all streams, ponds, sloughs, flowages and other water 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(2) (d), Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated there under, shoreland ordinances required under Section 62.231, Wis. Stats., and Chapter NR 117, Wis. Ad. Code, do not apply to land 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.
    - (4) NOTE: Wisconsin’s Supreme Court has declared navigable bodies on water that have a bed differentiated from adjacent uplands and levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis (Muench C. Public Service Commission, 261 Wis. 492 (1952) and DeGaynor and Co., Inc., V. Department of Natural Resources, 70 Wis. 2d 936 (1975). For example, a stream which is navigable by skiff or canoe during normal spring high water is navigable, in fact, under the laws of this state though it may be dry during other seasons.
  - k. Ordinary High-Water Mark means the point on the bank or shore up to which the presence and action of surface water is so continuous so 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.

- l. Planning Agency means the Plan Commission created under section 62.23(1), Wis. Stats.
- m. Shorelands means lands within the following distances from the ordinary high-water 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.
- n. Shoreland-Wetland District means the zoning strict, created in this shoreland-wetland zoning ordinance, comprised of shorelands that are designated a wetland on the wetlands inventory maps which have been adopted and made a party of this Chapter as described in this Chapter.
- o. Special Exception or Conditional Use. Means a use which is permitted by this Ordinance provided that certain conditions specified in the Chapter are met and that a permit is granted by the Board of Appeals or, where appropriate, the planning agency designated by the Village Board.
- p. Unnecessary Hardship means that circumstance where special conditions, which were not self-created, affect a particular property and made strict conformity with the restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purpose of this Chapter.
- q. Variance means 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 Chapter.
- r. Wetlands means 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.
- s. Wetland Alteration means any filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.