

## **ORDINANCE NO. 6-22**

### **APPROVE TEXT AMENDMENTS TO THE SHAWANO COUNTY SHORELAND – WETLAND ZONING ORDINANCE NO. 6-16**

**Whereas**, the Planning, Development, and Zoning Committee desires to update the Shawano County Shoreland – Wetland Zoning Ordinance No. 6-16 so as to keep pace with State law changes as well as to update standards it deems appropriate; and

**Whereas**, the County Board of Supervisors must also formally approve said amendments; and

**Whereas**, the Shawano County Planning Development and Zoning Committee discussed and reviewed the proposed amendments on July 6, 2022 and has determined them to be appropriate as well as necessary; and

**Whereas**, a public hearing was held on August 3, 2022 to discuss, review and take action on the proposed amendments; and

**Whereas**, the Shawano County Planning, Development, and Zoning Committee now recommends that the Shawano County Board of Supervisors approve said text amendments.

**Now, therefore, be it ordained by the Shawano County Board of Supervisors**, in session this 28<sup>th</sup> day of September, 2022 that the Shawano County Shoreland – Wetland Zoning Ordinance No. 6-16, be amended as proposed, with an effective date upon passage and publication.

\*NOTE: The amendments are available for review in the Planning and Development Department during regular business hours and on the Shawano County Website ([www.co.shawano.wi.us](http://www.co.shawano.wi.us))

Amendments consist of formatting and language clean-ups, updating the ordinance language to include changes from the DNR 2021 Act 200 & Act 105 and changing Section 8.2 to allow for a shoreland disturbance permit instead of a conditional use permit when the requirements for a shoreland disturbance permit have been met.

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PLANNING, DEVELOPMENT & ZONING COMMITTEE

## Shawano County Shoreland – Wetland Zoning Ordinance



Ordinance 6-16

Approved by County Board 8/24/16

Effective Date 10/1/16

Amended 10/7/22

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**1.0 STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE AND TITLE**

**1.1 STATUTORY AUTHORIZATION.**

This ordinance is adopted pursuant to the authorization in ss. 59.692 Wis. Stats to implement 59.692 and 281.31.

**1.2 FINDING OF FACT.**

Uncontrolled use of the shorelands and pollution of the navigable waters of Shawano 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 Shawano County, Wisconsin.

**1.3 PURPOSE AND INTENT.**

For the purpose of promoting the public health, safety, convenience, welfare, and promote and protect the public trust in navigable waters this ordinance has been established to:

1.31 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 on-site waste treatment systems.
- (3) Controlling filling and grading to prevent serious soil erosion problems.
- (4) Limiting impervious surfaces to control runoff which carries pollutants.

1.32 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.

1.33 Control building sites, placement of structures and land uses through:

- (1) Separating conflicting land uses.
- (2) Prohibiting certain uses detrimental to the shoreland and wetlands.
- (3) Setting minimum lot sizes and widths.
- (4) Setting minimum building setbacks from waterways.
- (5) Setting the maximum height of near shore structures.

1.34 Preserve and restore shoreland vegetation and natural beauty through:

- (1) Restricting the removal of natural shoreland cover.
- (2) Preventing shoreline encroachment by structures.
- (3) Controlling shoreland excavation and other earth moving activities.
- (4) Regulating the use and placement of boathouses and other structures.

**1.4 TITLE.**

Shoreland Zoning Ordinance for Shawano County, Wisconsin.

## **2.0 GENERAL PROVISIONS.**

### **2.1 AREAS TO BE REGULATED.**

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

- 2.11 Within one thousand (1,000) feet of the ordinary highwater mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in Shawano County shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources publication FH-800 2009 "Wisconsin Lakes" book or are shown on United States Geological Survey quadrangle maps or other zoning base maps.
- 2.12 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 Shawano County shall be presumed to be navigable if they are designated as perennial 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.
- 2.13 The provisions of this chapter apply to regulation of the use and development of unincorporated shoreland areas, and to annexed or incorporated areas as provided in s. 59.692 (7), Stats. Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48 (13), Stats., applies, state agencies are required to comply with, and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance or repair of state highways and bridges carried out under the direction and supervision of the Wisconsin Department of transportation is not subject to local shoreland zoning ordinances if s. 30.2022 (1), Stats., applies. (NR 115.02)
- 2.14 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.
- 2.15 Under s. 281.31(2m), Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, this shoreland zoning ordinance does not apply to:
  - 1) Lands adjacent to farm drainage ditches if:
    - a) Such lands are not adjacent to a natural navigable stream or river;
    - b) Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
  - 2) Lands adjacent to artificially constructed drainage ditches, ponds or stormwater retention basins that are not hydrologically connected to a natural navigable water body

### **2.2 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 Zoning Administrator for Shawano County.

- 2.21 United States Geological Survey Quadrangle Maps (7.5' 1:24,000 scale) for Shawano County. The

names and dates of publication of each quadrangle map are as follows: 1969: Embarrass, Lunds, Leeman; 1970: Clintonville North, Marion, Tigerton, Tigerton NW; 1973: Aniwa, Mattoon, Zoar, 1974: Cecil, Krakow, Bonduel, Zachow, Pulaski, Nichols, Seymour, Oneida North; 1982: Birnamwood, Regina, Neopit, Keshena, Wittenberg, Shepley, Bowler, Gresham, Shawano, Thornton, Buerney Lake.

- 2.22 Wisconsin Wetland Inventory Maps stamped "FINAL" on February 11, 1985.
- 2.23 Final Flood Insurance Study Maps dated November 15, 1985, and adopted October 16, 1985 by the Shawano County Board of Supervisors.
- 2.24 Shawano County Zoning Base and Detail Maps as described in Section 4.08 of Shawano County Zoning Ordinance No. 7-14.
- 2.25 The most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer. The maps can be viewed at [Wisconsin DNR Surface Water Data Viewer](http://dnr.wisconsin.gov/topic/SurfaceWater/swdvhttp://dnrmaps.wi.gov/SL/Viewer.html?Viewer=SWDV&runWorkflow=Wetland)  
<http://dnr.wisconsin.gov/topic/SurfaceWater/swdvhttp://dnrmaps.wi.gov/SL/Viewer.html?Viewer=SWDV&runWorkflow=Wetland>

**Commented [JVB1]:** DNR Changed website in 2016.  
Updated link

### 2.3 **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 section 9.0 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.

### 2.4 **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 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. 30.2022(1), Wis. Stats., applies.

### 2.5 **ABROGATION AND GREATER RESTRICTIONS.**

The provisions of this ordinance supersede all the provisions of any county zoning ordinance adopted under s. 59.69 and 59.692, Wis. Stats., which relate to shorelands. However, where an ordinance adopted under a statute other than s. 59.692, Wis. Stats., 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.

- 2.51 This ordinance shall not require approval or be subject to disapproval by any town or town board.
- 2.52 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.
- 2.53 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.
- 2.54 The provisions of the Shawano County Zoning Ordinance 7-14 are hereby incorporated by reference and

shall only apply to the shoreland area where they impose greater restrictions than this ordinance otherwise imposes.

2.55 This ordinance may establish standards to regulate matters that are not regulated in NR 115, but that further the purposes of shoreland zoning as described in section 1.3 of this ordinance.

2.56 Counties may not establish shoreland zoning standards in a shoreland zoning ordinance that requires any of the following:

- 1) Approval to install or maintain outdoor lighting in shorelands, impose any fee or mitigation requirement to install or maintain outdoor lighting in shorelands, or otherwise prohibits or regulates outdoor lighting in shorelands if the lighting is designed or intended for residential use.
- 2) Requires any inspection or upgrade of a structure before the sale or other transfer of the structure may be made.

## **2.6 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 statute and a standard in ch. NR 115, Wis. Adm. Code, and where the ordinance provision is unclear, the provision shall be interpreted in light of the statute and ch. 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.

## **2.7 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.

## **3.0 SHORELAND AND WETLAND DISTRICT**

### **3.1 DESIGNATION.**

This district shall include all shorelands within the jurisdiction of this ordinance which are designated as wetlands on the most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer.

#### **3.11 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 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 zoning permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors on the official zoning map, an official zoning map amendment must be initiated within a reasonable period of time.

### **3.2 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.

### 3.3 **PERMITTED USES.**

The following uses shall be allowed, subject to general shoreland zoning regulations contained in this ordinance, the provisions of chapters 30, 31, 281.36 and 281.37 Wis. Stats. and the provisions of other applicable local, state and federal laws:

- 3.31 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 3.31 or 3.32.
- 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.
- 3.32 Uses which do not require the issuance of a conditional use or land use 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 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 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.
- 3.33 Uses which require the issuance of a conditional use permit under section 134 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 3.52;
  - (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 and 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 500 sq. ft. 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, Wis. Stats., 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 meet the criteria in section 3.33 (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 3.52.

**3.4 PROHIBITED USES.**

Any use not listed in sections 3.31, 3.32, 3.33 is prohibited, unless the wetland or portion of the wetland has been rezoned by amendment of this ordinance in accordance with section 3.5 of this ordinance and s.59.69 (5) (e), Wis. Stats.

**3.5 REZONING OF LANDS IN THE SHORELAND-WETLAND DISTRICT.**

3.51 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 5 days 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 10 days prior to such hearing;
- 3) A copy of the county zoning agency's findings and recommendations on each proposed amendment within 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 10 days after it is issued.

3.52 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) Wetlands both within the boundary of designated areas of special natural resource interest and those wetlands which are in proximity to or have a direct hydrologic connection to such designated areas as defined in NR 103.04 which can be accessed at the following web site: <http://www.legis.state.wi.us/rsb/code/nr/nr103.pdf> .

3.53 If the Department notifies the Shawano County Planning, Development and Zoning Committee 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 3.52 of this ordinance, that amendment, if approved by the Shawano County Board, shall contain the following provision:

"This amendment shall not take effect until more than 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 30-day period the Department of Natural Resources may notify the Shawano County Board that it will adopt a superseding shoreland ordinance for the county under s. 59.692(6), Wis. Stats. If the Department does so notify the Shawano County Board, the effect of this amendment shall be stayed until the s. 59.692(6) adoption procedure is completed or otherwise terminated,"

#### **4.0 LAND DIVISION REVIEW AND SANITARY REGULATIONS.**

##### **4.1 LAND DIVISION REVIEW.**

The Shawano County Planning, Development & Zoning Committee shall review, pursuant to s. 236.45, Wis. Stats., all land divisions in shoreland areas which create 3 or more parcels or building sites of 5 acres each or less within a 5-year period. In such review the following factors shall be considered:

- (a) Hazards to the health, safety or welfare of future residents.
- (b) Proper relationship to adjoining areas.
- (c) Public access to navigable waters, as required by law.
- (d) Adequate storm drainage facilities.
- (e) Conformity to state law and administrative code provisions.

##### **4.2 PLANNED UNIT DEVELOPMENT**

4.21 PURPOSE. The Planned Residential Unit Development is intended to permit smaller lots than would otherwise be required in the district where the physical layout of the lots is so arranged by clustering development near a single location, setting structures back farther from navigable water and sensitive areas, and other appropriate means so as to better achieve the objectives of this ordinance. A condition of all Planned Residential Unit Development is the preservation of open space along the shoreline in perpetuity REQUIREMENTS FOR PLANNED UNIT DEVELOPMENT. The County Board may at its discretion, upon its own motion or upon petition, approve a Planned Unit Development by approving an overlay district and a plat for the specific planned residential project upon finding, after a public hearing, that all of the following facts exist:

- 1) Area. The area proposed for the Planned Residential Unit Development shall be at least 2 acres in size or have a minimum of 200 feet of frontage on a navigable water.
- 2) Lots. Any proposed lot in the Planned Residential Unit Development that does not meet the minimum size standards of Section 5.2 (unsewered lots 20,000 sq.ft.) and 5.3 (sewered lots 10,000 sq.ft.) shall be a non-riparian lot.
- 3) Vegetative Buffer Zone and Preservation of Ground Cover. The location of home sites and the dedication of part of the land for use by the public or residents of the Planned Unit Development will preserve the vegetative buffer zone and ground cover of the shoreland and scenic beauty of the navigable water, prevent erosion, provide wildlife habitat, and other pertinent factors. Land not used for lots and streets shall be dedicated in perpetuity to remain in open space. This may be accomplished by conveyance in common to each of the owners of lots in the development or to a corporation formed by them, or by dedication to the county, town or municipality. Lands dedicated to the public must be accepted by action of the governing body of the accepting unit of government. If the land is to be conveyed to owners of lots in the development, a homeowner's association or similar legally constituted body shall be created to maintain the open space land. Any restriction placed on platted land by covenant, grant of easement or

any other manner which was required by a public body or which names a public body as grantee, promisee or beneficiary, shall be recorded in the county register of deeds office and shall vest in the public body the right to enforce the restriction at law or in equity against anyone who has or acquires an interest in the land subject to the restriction.

- 4) Density. The number of platted lots shall not exceed those which would have been possible if the same land were platted in accordance with the minimum lot sizes and widths provided by the applicable provisions of the zoning ordinance. This figure shall be determined by dividing the total area of the subdivision by the minimum lot size required by Section 5.0 of this ordinance.
- 5) Lot Sizes, Widths and Other Standards. Lot sizes, widths, setbacks, and vegetation removal. When considering approval of a Planned Residential Unit Development the governing body shall consider whether proposed lot sizes, widths, and setbacks are of adequate size and distance to prevent pollution or erosion along streets or other public ways and waterways. Increased shoreland setbacks shall be a condition of approval as a way of minimizing adverse impacts of development. Shore cover provisions in Section 6.2 shall apply.

4.22 PROCEDURE FOR ESTABLISHING A PLANNED UNIT DEVELOPMENT DISTRICT. The procedure for establishing limited rezoning in the form of a Planned Residential Unit Development district shall be as follows:

- 1) Petition. A petition setting forth all of the facts required in section 4.22 shall be submitted to the County Clerk with sufficient copies to provide for distribution by the Clerk as required by section 4.23(2).
- 2) Review and Hearing: The petition shall be submitted to the county zoning agency established as required by S. 59.69(3) (d), Wis. Stats., which shall hold a public hearing and report to the County Board as required by law. Copies of the petition and notice of the hearing shall also be sent to the appropriate district office of the Department as described in Section 13.42 of this ordinance.

The county zoning agency's report to the County Board shall reflect the recommendations of any federal, state or local agency with which the county zoning agency consults. If a petition seeks approval of a Planned Unit Development plat without first seeking the granting of an overlay district, a hearing shall be held on such plat as in any regular amendment to the zoning ordinance. If, however, a hearing is first held on the overlay for a Planned Unit Development district, a second public hearing need not be held in connection with the approval of a subsequent plat or plats which comply with the overlay district as approved.

- 3) Findings and Conditions of Approval. The County Board shall make written findings as to the compliance or noncompliance of the proposed overlay district with each of the applicable requirements set forth in section 4.22. If the petition is granted in whole or part, the County Board shall attach such written conditions to the approval as are required by and consistent with section 4.22. The conditions of approval shall in all cases establish the specific restrictions applicable with regard to minimum lot sizes, width, setbacks, dimensions of vegetative buffer zone and the location of septic systems and the preservation of ground cover and open space.
- 4) Planning Studies. A landowner or petitioner may at his own expense develop the facts required to establish compliance with the provisions of Section 4.22 or may be required to contribute funds to the county to defray all or part of the cost of such studies being undertaken by the county or any agency or person with whom the county contracts for such work.

4.3 SANITARY REGULATIONS.

Shawano County has adopted sanitary regulations for the protection of health and the preservation and enhancement of water quality.

- 1) Where public water supply systems are not available, private well construction shall be required to conform to ch. NR 812, Wis. Adm. Code.
- 2) Where a public sewage collection and treatment system is not available, design and construction of private on-site waste water treatment system shall be governed by the ~~private sewage system ordinance~~ [Private On-site Wastewater Treatment System Ordinance](#) No. 4-13 adopted by the Shawano County Board under s. 59.70(5), Wis. Stats. on April 16, 2013.

## **5.0 MINIMUM LOT SIZE.**

### **5.1 PURPOSE**

Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

### **5.2 UNSEWERED LOTS.**

#### **5.21 MINIMUM AREA AND WIDTH FOR EACH MAIN BUILDING.**

The minimum lot area shall be 20,000 sq. ft. and the minimum average lot width shall be 100 feet.

#### **5.22 AVERAGE WIDTH CALCULATIONS:**

The width shall be calculated by averaging the measurements at the following locations:

- 1) The ordinary high water mark; and
- 2) 75' back from ordinary high or midpoint of lot depth, whichever is closer to the ordinary high.

#### **5.23 SIDE YARDS.**

Side yard setbacks for all principal and accessory structures shall be determined and conform to the provisions and regulations as stated in the Shawano County Zoning Ordinance 7-14 or applicable local zoning.

### **5.3 SEWERED LOTS.**

#### **5.31 MINIMUM AREA AND WIDTH FOR EACH MAIN BUILDING.**

The minimum lot area shall be 10,000 sq. ft. and the minimum average lot width shall be 65 feet.

#### **5.32 AVERAGE WIDTH CALCULATIONS:**

The width shall be calculated by averaging the measurements at the following locations:

- 1) The ordinary high water mark and
- 2) 75' back from ordinary high or midpoint of lot depth, whichever is closer to the ordinary high.

#### **5.33 SIDE YARDS.**

Side yard setbacks for all principal and accessory structures shall be determined and conform to the provisions and regulations as stated in the Shawano County Zoning Ordinance 7-14 or applicable local zoning.

### **5.4 SUBSTANDARD LOTS.**

A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following

apply:

- 1) The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.
- 2) The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
- 3) The substandard lot or parcel is developed to comply with all other ordinance requirements.

#### 5.5 **OTHER SUBSTANDARD LOTS.**

Except for lots which meet the requirements of sections 5.4, a land use permit for the improvement of a lot having lesser dimensions than those stated in sections 5.2 and 5.3 shall be issued only after granting of a variance by the Board of Adjustment.

#### 5.6 **LOTS IN CLUSTER SUBDIVISIONS.**

Lots in cluster subdivisions not served by public sanitary sewers may be reduced to the minimum allowed by the county private sewage system ordinance No.4-13, pursuant to the procedures set forth section 4.3 of this ordinance.

### 6.0 **BUILDING SETBACKS.**

#### 6.1 **PURPOSE**

Permitted building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution.

#### 6.2 **SHORELAND SETBACK.**

All buildings and structures, unless exempt under 6.21 or reduced under 6.22 or 6.23, shall be set back at least 75 feet from the ordinary highwater mark of navigable waters.

#### 6.21 **EXEMPT STRUCTURES**

- 1) Boathouses located entirely above the ordinary high-water mark and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation
  - a) Boathouses shall be designed and constructed solely for the storage of boats and related equipment.
  - b) One boathouse is permitted on a lot as an accessory structure. A Boathouse shall not exceed 350 square feet or be more than one story in height.
  - c) Boathouses shall be constructed in conformity with local floodplain zoning standards and shall be located at least ten (10) feet landward from the ordinary high-water mark.
  - d) The roof of a boathouse may be used as a deck provided that"
    - i. The boathouse has a flat roof.
    - ii. The roof has no side walls or screens
    - iii. The roof may have a railing that meets the Department of Safety and Professional Services standards.
- 2) 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. 40
  - 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

**Commented [JVB2]:** Changes per DNR 2021 Act 200 & 105. Changes per statute changes.

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.
- 3) Fishing rafts that are authorized on the Wolf River and Mississippi river under s. 30.126, Stats.
- 4) 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.
- 5) Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pump house covers, private on-site wastewater treatment systems that comply with DSPS 383, 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.
- 6) Walkways, stairways or rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of 60-inches in width.
- 7) A fence associated with a roadway that meets all of the following requirements:
- a. A height not taller than 15 feet.
  - b. Located not less than 2 feet landward of the ordinary high water mark.
  - c. Located entirely outside of a highway right-of-way.
  - d. Located not less than 10 feet from the edge of a roadway and not more than 40 feet from the edge of a roadway or highway right-of-way, whichever is greater.
  - e. Generally perpendicular to the shoreline
- ~~6)8)~~ A bridge for which the department has issued a permit under s. 30.123 Stats.

**Commented [JVB3]:** Changes per DNR 2021 Act 200 & 105. Changes per statute changes.

6.22 **ONE SIDED REDUCED PRINCIPAL STRUCTURE SETBACKS.**

Where there is an existing principal structure in only one direction, the setback shall equal the average of the distance that the existing principal structure is setback from the ordinary high water mark and the required setback of 75' from the ordinary high water mark provided all of the following are met:

- a) The existing principal structure is located on an adjacent lot to the proposed principal structure.
- b) The existing principal structure is located within 250' of the proposed principal structure.
- c) The existing principal structure is located less than 75' from the ordinary high water mark.
- d) The average setback shall not be reduced to less than 35' from the ordinary high water mark of any navigable water.

6.23 **TWO SIDED REDUCED PRINCIPAL STRUCTURE SETBACKS.**

Where there are existing principal structures in both directions, the setback shall equal the average of the distances the two existing structures are set back from the ordinary high water mark provided all of the following are met:

- a) Both of the existing principal structures are located on an adjacent lot to the proposed principal structure.
- b) Both of the existing principal structures are located within 250' of the proposed principal structure.
- c) Both of the existing principal structures are located less than 75' from the ordinary high water mark.
- d) The average setback shall not be reduced to less than 35' from the ordinary high water mark of any

navigable water.

**6.24 FLOODPLAIN STRUCTURES**

Buildings and structures to be constructed or placed in a floodplain shall be required to comply with any applicable floodplain zoning ordinance.

**7.0 VEGETATION.**

**7.1 PURPOSE.**

To protect natural scenic beauty, fish and wildlife habitat, and water quality, a county shall regulate removal of vegetation in shoreland areas, consistent with the following: The County shall establish ordinance standards that consider sound forestry and soil conservation practices and the effect of vegetation removal on water quality, including soil erosion, and the flow of effluents, sediments and nutrients.

**7.2 ESTABLISHMENT OF A VEGETATIVE BUFFER ZONE.**

To protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote preservation and restoration of native vegetation, the county ordinance shall designate land that extends from the ordinary high water mark to a minimum of 35 feet inland as a vegetative buffer zone and prohibit removal of vegetation in the vegetative buffer zone except as follows.

- 1) Routine maintenance of vegetation.
- 2) Removal of trees and shrubs in the vegetative buffer zone to create access and viewing corridors. ~~The maximum width of an access and viewing corridor may be 10 feet or up to 35 percent of the shoreline frontage, whichever is greater, except the maximum width of an access and viewing corridor may not exceed 200 feet. The access and viewing corridor may run contiguously for the entire maximum allowed width of 200 feet, provided that the combined width of all access on a riparian lot the viewing corridor is 35 feet wide for every 100 feet of shoreline frontage. The viewing corridor is allowed to run contiguously for the entire maximum width or shoreline frontage owned per 59.692 (1f) (b).~~
- 3) Removal of trees and shrubs in the vegetative buffer zone on a parcel with 10 or more acres of forested land consistent with "generally accepted forestry management practices" as defined in s. NR 1.25 (2) (b), and described in Department publication "Wisconsin Forest Management Guidelines" (publication FR-226), provided that vegetation removal be consistent with these practices.
- 4) Removal of vegetation within the vegetative buffer zone to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation creating an imminent safety hazard, provided that any vegetation removed be replaced by replanting in the same area as soon as practicable.
- 5) The Zoning Administrator or designee may authorize by permit additional vegetation management activities in the vegetative buffer zone. The permit issued under this subd. par. shall require that all management activities comply with detailed plans approved by the county and designed to control erosion by limiting sedimentation into the waterbody, to improve the plant community by replanting in the same area, and to maintain and monitor the newly restored area. The permit also shall require an enforceable restriction to preserve the newly restored area.

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**7.3 CUTTING MORE THAN 35 FEET INLAND.**

From the inland edge of the 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.



## **8.0 FILLING, GRADING, LAGOONING, DREDGING, DITCHING AND EXCAVATING.**

Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with the provisions of s. NR 115.04, the requirements of ch. 30, Stats., and other state and federal laws where applicable, and only if done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat and natural scenic beauty.

### **8.1 GENERAL STANDARDS.**

Filling, grading, lagooning, dredging, ditching or excavating which does not require a permit under section 8.2 may be permitted in the shoreland area provided that:

- 1) It is done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.
- 2) Filling, grading, lagooning, dredging, ditching or excavating in a shoreland-wetland district meets the requirements of sections 3.32 and 3.33 of this ordinance.
- 3) All applicable federal, state and local authority is obtained in addition to a permit under this ordinance.
- 4) Any fill placed in the shoreland area is protected against erosion by the use of riprap, vegetative cover or a bulkhead.

### **8.2 PERMIT REQUIRED.**

Except as provided in section 8.3, a [shoreland disturbance permit](#) ~~conditional use permit~~ is required:

- 8.21 For any filling or grading of any area which is within 300 feet landward of the ordinary highwater 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 20%.
  - 2) Filling or grading of more than 1,000 sq. ft. on slopes of 12%-20%.
  - 3) Filling or grading of more than 2,000 sq. ft. on slopes less than 12%

[Requirements to obtain a shoreland disturbance permit:](#)

- 1) [Site plan which shall include the following at a minimum:](#)
  - i. [Scale](#)
  - ii. [Property lines](#)
  - iii. [Structures](#)
  - iv. [Septic system \(if applicable\)](#)
  - v. [Required setbacks including roadway, zoning, waterbody and wetlands](#)
  - vi. [Area to be disturbed including calculations](#)
  - vii. [Amount of fill to be brought in indicating amount in yards](#)
  - viii. [Erosion control devices including type and location](#)
  - ix. [Direction of surface water flow indicated by arrows \(existing and proposed\)](#)
- 2) [An Erosion Control Plan and Stormwater management plan including at a minimum:](#)
  - i. [The location, size, dimensions, elevations and grades of existing and proposed bridges, culverts, catch basins, waterways, drainage ditches and swales, storm sewers and detention and retention basins](#)
  - ii. [Existing ground contours at two foot intervals and proposed contours \(if applicable\)](#)
  - iii. [Erosion Control practices including type, products and proposed locations.](#)
  - iv. [Other information deemed necessary by the Zoning Administrator and staff.](#)

8.22 For any construction or dredging commenced on any artificial waterway, canal, ditch, lagoon, pond, lake or similar waterway which is within 300 feet landward of the ordinary highwater mark of a navigable body of water or where the purpose is the ultimate connection with a navigable body of water.

### **8.3 SOIL CONSERVATION PRACTICES AND AGRICULTURAL DRAINAGE MAINTENANCE.**

Soil conservation practices such as tiled terraces, runoff diversions and grassed waterways used for erosion control shall not require a permit under section 8.2 when designed and constructed to Natural Resources Conservation Service technical standards.

### **8.4 PERMIT CONDITIONS.**

In granting a ~~conditional use~~shoreland disturbance permit under section 8.2, the Planning, Development & Zoning Committee shall attach the following conditions, where appropriate, in addition to those provisions specified in sections 13.42 and 13.43.

- 1) The smallest amount of bare ground shall be exposed for as short a time as feasible.
- 2) Temporary ground cover (such as mulch or jute netting) shall be used and permanent vegetative cover shall be established.
- 3) Diversion berms or bales, silting basins, terraces, filter fabric fencing, and other methods shall be used to prevent erosion.
- 4) Lagoons shall be constructed to avoid fish trap conditions.
- 5) Fill shall be stabilized according to accepted engineering standards.
- 6) Filling shall comply with the Shawano County Floodplain Zoning Ordinance and shall not restrict a floodway or destroy the flood storage capacity of a floodplain.
- 7) 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 riprap are provided.

~~7)8)~~ Drainage to maintained as detailed on the Erosion Control Plan and Stormwater management plan.

### **9.0 NONCONFORMING USES AND STRUCTURES.**

#### **9.1 DISCONTINUED NONCONFORMING USE.**

If a nonconforming use is discontinued for a period of 12 months, any future use of the building, structure or property shall conform to the ordinance.

#### **9.2 MAINTENANCE, REPAIR, REPLACEMENT OR VERTICAL EXPANSION OF NONCONFORMING STRUCTURES.**

An existing structure that was lawfully placed when constructed but that does not comply with the required shoreland setback may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does

not expand the footprint of the of the non-conforming structure. Further, an existing structure that was lawfully placed when constructed but that does not comply with the required shoreland setback may be vertically expanded unless the vertical expansion would extend more than 35 feet above grade level. Expansion of a structure beyond the existing footprint may be allowed if the expansion is necessary to comply with applicable state or federal requirements.

**\*Notes:**

*Permits, fees, and mitigation activities are not required under section 9.2; however property owners may be required to obtain permits or approvals and pay fees under ordinances adopted pursuant to other statutory requirements, such as floodplain zoning, general zoning, sanitary codes, building codes, or even stormwater erosion control.*

*Structures that were granted under variances are considered legal, conforming structures and do not apply under section 9.2. Illegally constructed structures are not considered nonconforming structures.*

*Structures listed under section 6.21 of this ordinance and referred under NR115.05 (1)(b)1m are considered conforming structures.*

**9.3 LATERAL EXPANSION OF NONCONFORMING PRINCIPAL STRUCTURE WITHIN THE SETBACK.**

An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback per section 6.1 may be expanded laterally, 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 if a nonconforming use.
- (2) The existing principal structure is at least 35 feet from the ordinary high-water mark.
- (3) Lateral expansions are limited to a maximum of 200 square feet over the life of the structure. No portion of the expansion may be any closer to the ordinary high-water mark than the closest point of the existing principal structure.
- (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 meet the standards found in section 12.0.
- (5) All other provisions of the shoreland ordinance shall be met.

**9.4 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 section 6.2, may be expanded horizontally, landward or vertically provided that the expanded area meets the building setback requirements per section 6.2 and that all other provisions of the shoreland ordinance are met. A mitigation plan is not required solely for expansion under this paragraph, but may be required per Impervious Surface standards in section 11.0.

Commented [CH25]: Update from DNR Comments

**9.5 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 sections 6.22 and 6.23 may be 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 if a nonconforming use.

- (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 relocation that will result in compliance with the shoreland setback requirement per section 6.2.
- (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 meet the standards found in section 12.0 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) All other provisions of the shoreland ordinance shall be met.

## 10.0 HEIGHT.

### 10.1 STANDARDS.

To protect and preserve wildlife habitat and natural scenic beauty, on or after February 1, 2010, a county may not permit any construction that results in a structure taller than 35 feet within 75 feet of the ordinary high-water mark of any navigable waters.

#### 10.11 Measurement.

Structure height is the measurement of the vertical line segment starting at the lowest point of any exposed wall and it's intersect with the ground (Point A in the following diagram) to a line horizontal to the highest point of a structure (Point B in the following diagram), unless specified under other sections of this code.

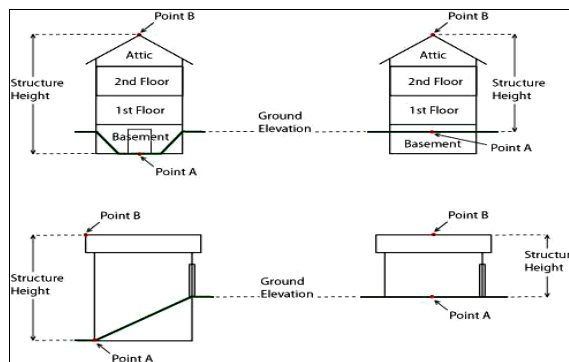


Figure 1: Height Measurement Examples

## 11.0 IMPERVIOUS SURFACES

### 11.1 APPLICATION.

Impervious surface standards are to protect water quality and fish and wildlife habitat and to protect against pollution of navigable waters. Impervious surface standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface on:

- 1) A riparian lot or parcel and,
- 2) A non-riparian lot or parcel that is located **entirely** within 300 feet of the ordinary high-water mark of any navigable waterway.

Commented [JVB6]:

### 11.2 CALCULATION OF PERCENTAGE OF IMPERVIOUS SURFACE.

Percentage of impervious surface (IS) shall be calculated by dividing the surface area of the existing and proposed impervious surfaces on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark by the total surface area of that lot or parcel, and multiplied by 100.

$$(\text{Existing and Proposed IS} / \text{Total Surface Area}) \times 100 = \text{Percent IS}$$

Impervious surfaces described in 11.5 shall be excluded from the calculation of impervious surface on the lot or parcel. If an outlot lies between the ordinary high water mark and the developable lot or parcel and both are in common ownership, the lot or parcel and the outlot shall be considered one lot or parcel for the purposes of calculating the percentage of impervious surface.

### 11.3 GENERAL IMPERVIOUS SURFACE STANDARD.

Except as allowed in sections 11.4, on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark Impervious Surface standards are as follows:

- 1) General Standard: Allow impervious surfaces up to 15%,
- 2) Maximum Impervious Surface Area: A property owner may have more than 15% impervious surface but not more than 30% impervious surface by obtaining a permit with a mitigation plan that meets the standards found in section 12.0.

### 11.4 IMPERVIOUS SURFACE STANDARDS FOR HIGHLY DEVELOPED SHORELINES.

Locations identified in the Highly Developed Overlay on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark Impervious Surface standards are as follows:

- 1) General Standard: Allow impervious surfaces up to 30% for residential land use and up to 40% for commercial, industrial or business land uses.
- 2) Maximum Impervious Surface Area: A property owner may have more than 30% impervious surface, but not more than 40% impervious surface for residential land uses and; for commercial, industrial or business land uses a property owner may have more than 40% impervious surface, but not more than 60% impervious surface by obtaining a permit with a mitigation plan that meets the standards found in section 12.0.

#### 11.41 Highly Developed Shoreland Overlay

The County has adopted areas that meet the following requirements as part of an overlay layer identifying locations to be considered Highly Developed Shoreland (Appendix A). This area was adopted after a public hearing on (August 3, 2016), approved by the Department, and available on the Shawano County GIS database.

- 1) The highly developed shoreline is identified as an Urbanized Area or Urban Cluster in the 2010 US Census or has a commercial, industrial, or business land use as of January 31, 2013.
- 2) Additional areas of highly developed shorelines that are at least 500 feet in length and located on a lake served by a sewerage system as defined in NR 110.03(30), Wis. Adm. Code.

Impervious Surface Standards Summary		
Location	Allowed Impervious Surface Area	Permitted Impervious Surface area with Mitigation
General	15%	30%
Highly Developed Shorelands- <i>Residential</i>	30%	40%
Highly Developed Shorelands- <i>Commercial/ Business</i>	40%	60%
Table illustrates a summary of section 11.3 and 11.4 in the Shawano County Shoreland Zoning Ordinance.		

#### 11.5 TREATED IMPERVIOUS SURFACES:

Impervious surfaces that can be documented to show they meet either of the following standards shall be excluded from the impervious surface calculations under section 11.2.

- 1) The impervious surface is treated by devices such as stormwater ponds, constructed wetlands, infiltration basins, rain gardens, bio-swales or other engineered systems.
- 2) The runoff from the impervious surface discharges to an internally drained pervious area that retains the runoff on or off the parcel and allows infiltration into the soil.

##### 11.51 Permitted Process

To qualify for the statutory exemption, property owners shall submit a complete permit application that is reviewed and approved by the county. The application shall include the following:

- 1) Calculations showing how much runoff is coming from the impervious surface area.
- 2) Documentation that the runoff from the impervious surface is being treated by a proposed treatment system, treatment device or internally drained area.
- 3) An implementation schedule and enforceable obligation on the property owner to establish and maintain the treatment system, treatment devices or internally drained area.

#### 11.6 EXISTING IMPERVIOUS SURFACES.

For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the impervious surface standard in section 11.3 or 11.4, the property owner may do any of the following:

- 1) Maintain and repair the existing impervious surfaces;
- 2) Replace existing impervious surfaces with similar surfaces within the existing building envelope;  
Relocate or modify an existing impervious surface with similar or different impervious surface, provided that the relocation or modification does not result in an increase in the percentage of impervious surface that existed on or before October 1, 2016, and the impervious surface meets the applicable setback requirements in s. Wis. Admin. Code NR 115.05 (1) (b).

**Note:** The impervious surface standards in this ordinance shall not be construed to supersede other provisions in the county shoreland ordinance. All of the provisions of the county shoreland ordinance still apply to new or existing development.

## 12.0 **MITIGATION**

### 12.1 **PURPOSE AND APPLICATION.**

Mitigation provides balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities. Mitigation is necessary when amount of impervious surface on a property is increased as described in section 11.3 and 11.4 as well as the lateral expansion of a legal, nonconforming structure as described in section 9.3.

### 12.2 **REQUIRED MITIGATION**

Mitigation practices will be assessed on the square footage of the development activity that exceed standards identified in section 11.3, 11.4, and section 9.3. The mitigation measures must be proportional to the amount and impacts of development action being permitted.

### 12.3 **MITIGATION OPPORTUNITIES**

Property owners may choose among the following practices to achieve the amount of mitigation required by the development activity. At the discretion of the Zoning Administrator, additional mitigation practices may be approved for restoration or protection activities that are likely to provide significant benefits to meet the objectives of this ordinance. Mitigation is only permitted on the parcel where development occurs and to be located within 300' of the ordinary high water mark of a navigable waterbody.

Mitigation Practices	Square Feet Implemented to Mitigation Achieved
Establishing a vegetation buffer <sup>1</sup> consisting of ground, shrub, and canopy layers	1:1
Establishing a vegetation buffer <sup>1</sup> consisting of uncut grass or other ground cover without shrub and canopy layers	2:1
Establishing a side yard buffer along the property consisting of ground, shrub, and canopy layers	1:1
Reducing the width of the view / access corridor	1:1

Additional Mitigation Practices	Square Feet of Mitigation
Removal of Structures without option to replace including but not limited to non-conforming structures, sanitary privy, or other structure	Total square feet of surface area
Replacement of failing septic system due to surface water or groundwater impacts	One half of the failing drain field area
Remove of seawall and installation of bioengineered shoreline	Width of seawall above the OHWM by the length of seawall on property
Replacement of a non-conforming well	Up to 100 sq. ft. credit
Treatment devices such as storm water ponds, constructed wetlands, infiltration basins, rain gardens, bio-swales or other engineered systems or impervious surface discharges to an internally drained pervious area that retains the runoff on or off the parcel and allows infiltration into the soil <sup>2</sup> .	Square footage shall be determined by the capacity of the treatment device.

1: Vegetation Buffer consists of land that extends from the ordinary high water mark to a minimum of 35 feet inland. Vegetation pattern must be

consistent with that described in section 7.2 of this ordinance.

2: Excluded for mitigation required on Impervious Surfaces, see Section 11.5 for reference calculations.

#### **12.4 MITIGATION PLAN REQUIREMENTS**

A site plan with the following requirements will be reviewed by Zoning Administrator or his/or her designee:

- 1) A drawing prepared to scale or dimensioned showing existing and proposed improvements with corresponding distances to property lines, private sewage system components, roadway centerlines, and ordinary high water mark.
- 2) A complete listing of mitigation standards meeting the requirements of section 12.2 and where those practices will occur on the property.
- 3) Where standard erosion control practices will be implemented and a description of what those practices are.
- 4) Location of the view/access corridor.
- 5) Location of existing vegetation on the property.
- 6) An implementation schedule for the mitigation standards.

Under no circumstances shall a permit be issued until a site plan, as referenced above, has been submitted to and approved by the County Zoning Department. The site plan shall, upon approval, be recorded in the County Register of Deeds Office upon which time required permits for development can be obtained. The approved site plan must be implemented within one year from the date of permit issuance and completed within two years from the date of permit issuance. A mitigation plan will not be determined complete until a final inspection has been performed by the County Zoning Department.

#### **13.0 ADMINISTRATIVE PROVISIONS.**

##### **13.1 ZONING ADMINISTRATOR.**

The Zoning Administrator or his or her designee shall have the following duties and powers:

- 1) Advise applicants as to the provisions of this ordinance and assist them in preparing permit applications and appeal forms.
- 2) Issue permits and inspect properties for compliance with this ordinance.
- 3) Keep records of all permits issued, inspections made, work approved and other official actions.
- 4) Provide copies of variances, conditional uses and decisions on appeals for map or text interpretations and map or text amendments within 10 days after they are granted or denied to the appropriate district office of the Department.
- 5) Investigate and report violations of this ordinance to the Planning, Development & Zoning Committee and the district attorney or corporation counsel.
- 6) The Zoning Administrator may delegate any duty or power under this Ordinance to a fellow county employee in the Planning and Development Department as needed.

##### **13.2 ZONING PERMITS.**

- 13.21 WHEN REQUIRED. Except where another section of this ordinance specifically exempts certain types of development from this requirement, a land use permit shall be obtained from the Zoning Administrator before any new development, as defined in section 16.2, or any change in the use of an existing building or structure, is initiated.



13.22 APPLICATION. An application for a zoning permit shall be made to the Zoning Administrator 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 plan for any such installation.
- 5) Plans for appropriate mitigation when required
- 6) Payment of the appropriate fee.
- 7) Additional information required by the zoning administrator and approved by the Planning, Development and Zoning Committee.

13.23 EXPIRATION OF PERMIT. Zoning permits shall expire 12 months from date issued if no substantial work has commenced, except that the Zoning Administrator may grant an extension of such permit for a period not to exceed 12 months, upon the showing of valid cause.

### **13.3 CONDITIONAL USE PERMITS**

#### **13.31 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 Zoning Administrator and a conditional use permit has been granted by the Planning, Development & Zoning Committee.

#### **13.32 STANDARDS APPLICABLE TO ALL CONDITIONAL USES.**

In passing upon a conditional use permit the Planning, Development & 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.

13.33 CONDITIONS ATTACHED TO CONDITIONAL USES.

Upon consideration of the factors listed above, the Planning, Development & 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, Development & 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.

13.34 NOTICE, PUBLIC HEARING AND DECISION.

Before passing upon an application for a conditional use permit, the Planning, Development & Zoning Committee shall hold a public hearing. Notice of such public hearing, specifying the time, place and matters to come before the Committee, shall be given as a Class 2 notice under ch. 985, Wis. Stats. Such notice shall be provided to the appropriate district office of the Department at least 10 days prior to the hearing. The Committee shall state in writing the grounds for granting or refusing a conditional use permit.

13.35 RECORDING.

When a conditional use permit is approved, an appropriate record shall be made of the land use and structures permitted and such permit shall be applicable solely to the structures, use and property so described. A copy of any decision on a conditional use permit shall be provided to the appropriate district office of the Department within 10 days after it is granted or denied.

13.36 REVOCATION.

Where the conditions of a conditional use permit are violated as determined by the Planning, Development & Zoning Committee and not corrected, the conditional use permit shall be revoked by the Planning, Development & Zoning Committee.

**13.4 VARIANCES.**

The Board of Adjustment may grant upon appeal a variance from the dimensional standards of this ordinance where an applicant convincingly demonstrates that:

- 1) Literal enforcement of the provisions of the ordinance will result in unnecessary hardship on the applicant;
- 2) The hardship is due to special conditions unique to the property; and
- 3) Such variance is not contrary to the public interest.

**13.41 NO USE VARIANCE.**

A variance shall not grant or increase any use of property, which is prohibited in the zoning district.

**13.42 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 ch. 985, Wis. Stats. Such notice shall be provided to the appropriate district office of the Department at least 10 days prior to the hearing. The board shall state in writing the reasons for granting or refusing a variance and shall provide a copy of such decision to the appropriate Department district office within 10 days of the decision.

**13.5 BOARD OF ADJUSTMENT.**

The chairman of the Shawano County Board shall appoint a Board of Adjustment consisting of 5 members under s. 59.694, Wis. Stats. The county board shall adopt such rules for the conduct of business of the board of adjustment as required by s. 59.694(3), Wis. Stats.

**13.51 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 s. 59.694, Wis. Stats.
- 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 13.4.
- 4) It may grant a variance from the standards of this ordinance pursuant to section 13.5.
- 5) In granting a variance, the board may not impose conditions which are more restrictive than any of the specific standards in the ordinance. Where the ordinance is silent as to the extent of restriction, the board may impose any reasonable permit conditions to effect the purpose of this ordinance.

**13.52 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 Zoning Administrator 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 Zoning Administrator or other officer whose decision is in question shall promptly transmit to the board all the papers constituting the record concerning the matter appealed.

**13.53 HEARING APPEALS AND APPLICATIONS FOR VARIANCES.**

- 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 ch. 985, Wis. Stats, 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, conditional uses, 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 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.

**13.6 FEES.**

All Fees under this ordinance are established pursuant to the Shawano County Planning & Development, Ordinances and Service Fee Schedule created by Shawano County Ordinance No. 2-10 and amendments adopted from time to time.

**14.0 CHANGES AND AMENDMENTS.**

**14.1 PURPOSE:**

The Shawano 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 s. 59.69(5)(e), Wis. Stats, ch. NR 115, Wis. Adm. Code and of this ordinance where applicable.

**14.2 AMENDMENTS.**

Amendments to this ordinance may be made on petition of any interested party as provided in s. 59.69(5), Wis. Stats.

**14.3 SHORELAND WETLAND MAP AMENDMENTS.**

Every petition for a text or Shoreland Wetland map amendment filed with the Shawano County Clerk shall be referred to the Shawano County Planning, Development & Zoning Committee. A copy of each petition shall be mailed to the appropriate district office of the Department within 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 provided to the appropriate district office of the Department at least 10 days prior to the hearing.

A copy of the county board's decision on each proposed amendment shall be forwarded to the appropriate district office of the Department within 10 days after the decision is issued.

**15.0 ENFORCEMENT AND PENALTIES.**

Any development, any building or structure constructed, moved or structurally altered, or any use established after the effective date of this ordinance in violation of the provisions of this ordinance, by any person, firm,

association, corporation (including building contractors or their agents) shall be deemed a violation. The Zoning Administrator or the Shawano County Planning, Development & Zoning Committee shall refer violations to the district attorney or corporation counsel who shall expeditiously prosecute violations. Penalties will be pursuant to the Shawano County Citation Authority Ordinance.

## **16.0 DEFINITIONS.**

### **16.1 PURPOSE**

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.

### **16.2 TERMS.**

The following terms used in this ordinance mean:

- 1) **Access and viewing corridor:** (NR 115.03(1d)) means a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.
- 2) **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 the principal structure or use.
- 3) **Boathouse:** 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 these structural parts.
- 4) **Building envelope:** means the three dimensional space within which a structure is built.
- 5) **Class II Public Notice:** Publication of a public hearing notice ~~posted in a newspaper circulation~~ in the affected area on two consecutive weeks, the last at least 7 days prior to the hearing. (Ch. 985, Stats.)
- 6) **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 adjustment or, where appropriate, the planning, development and zoning committee or county board.
- 7) **County Zoning Agency:** means that committee or commission created or designated by the county board under s. 59.69(2) (a), Wis. Stats, to act in all matters pertaining to county planning and zoning.
- 8) **Department:** means the Department of Natural Resources.
- 9) **Development:** means 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.
- 10) **Drainage System:** means one or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.
- 11) **Existing development pattern:** Means that principal structures exist within 250 feet of a proposed principal

structure in both directions along the shoreline.

- 12) **Floodplain:** means the land which has been or may be hereafter covered by floodwater during the regional flood. The floodplain includes the floodway and the flood fringe as those terms are defined in ch. NR 116, Wis. Adm. Code.
- 13) **Footprint:** The land area covered by a structure at ground level measured on a horizontal plane. The footprint of a residence or building includes the horizontal plane bounded by the furthest exterior wall and eave if present, projected to natural grade. For structures without walls (decks, stairways, patios, carports) a single horizontal plane bounded by the furthest portion of the structure projected to natural grade.
- 14) **Generally accepted forestry management practices:** means forestry management practices that promote sound management of a forest. Generally accepted forestry management practices include those practices contained in the most recent version of the department publication known as Wisconsin Forest Management Guidelines and identified as PUB FR-226.
- 15) **Impervious surface:** means an area that releases as runoff all or a majority of the precipitation that falls on it. "Impervious surface" excludes frozen soil but includes rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed, constructed, and maintained to be pervious. Roadways as defined in s. 340.01(54) Wis. Adm. Code or sidewalks as defined in s. 340.15(58) Wis. Adm. Code are not to be calculated as impervious surface.
- 16) **Lot:** a continuous parcel of land, not divided by a public right-of-way, and sufficient in size to meet the lot width and lot area provisions of this ordinance
- 17) **Lot area:** The area of a horizontal plane bounded by the front, side, and rear lot lines of a lot, but not including the area of any land below the ordinary high water mark of navigable waters.
- 18) **Lot of Record:** Any lot, the description defined by metes and bounds, certified survey, recorded subdivision plat, or other means of description recorded with the Register of Deeds and separated from other lots by such description under a single tax parcel number of which is properly recorded with the Register of Deeds, which at the time of its recordation complied with all applicable laws, ordinances, and regulations.
- 19) **Mitigation:** means balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities
- 20) **Navigable waters:** means 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 s. 281.31(2)(d), Wis. Stats, notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Wis. Stats, and ch. NR 115, Wis. Adm. Code, do not apply to lands adjacent to:
  - a) Farm drainage ditches where such lands are not adjacent to a natural navigable stream or river and such lands were not navigable streams before ditching; and
  - b) Artificially constructed drainage ditches, ponds or stormwater retention basins that are not hydrologically connected to a natural navigable water body
- 21) **Non-Conforming Structure:** an existing structure that was lawfully placed when constructed but does not comply with the required shoreland setback.

- 22) **Ordinary highwater mark:** means 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.
- 23) **Principal Structure:** A structure containing or encompassing the principal use of the property.
- 24) **Regional Flood:** means 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.
- 25) **Routine maintenance of vegetation:** means normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.
- 26) **Shoreland:** means 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.
- 27) **Shoreland setback:** also known as the "Shoreland setback area" in s. 59.692(1)(bn) means an area in a shoreland that is within a certain distance of the ordinary high-water mark in which the construction or placement of structures has been limited or prohibited under an ordinance enacted under section 59.692, Wis. Stats.
- 28) **Shoreland-wetland district:** means the zoning district, created as a part of this shoreland zoning ordinance, comprised of shorelands that are designated as wetlands on the Wisconsin wetland inventory maps prepared by the department.
- 29) **Structure:** means any man-made object with form, shape and utility, either permanently or temporarily attached to or placed upon the ground, river bed, stream bed or lake bed. This includes the principal structure or any accessory structure including a garage, shed, boathouse, sidewalk, walkway, patio, deck, retaining wall, porch or fire pit.
- 30) **Substandard Lots:** A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements for a new lot.
- 31) **Substantial Alterations:** Means any change in the supporting members of a structure such as foundations, bearing walls, columns, beams or girders, footing and piles or any substantial change in the roof structure, or in the exterior walls.
- 32) **Unnecessary Hardship:** means 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.
- 33) **Variance:** means an authorization granted by the board of adjustment to construct, alter or use a building or structure in a manner that deviates from the dimensional standards of this ordinance.
- 34) **Vegetation Buffer:** Land that extends from the ordinary high water mark to a minimum of 35 feet inland as a buffer zone and prohibit removal of vegetation in the vegetative buffer zone except as indicated under section 7.2 of this ordinance.
- 35) **Wetlands:** means those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.