

Chapter 28

Floodplain and Shoreland - Wetland Zoning

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

A. Statutory Authorization: This Ordinance is adopted pursuant to the authorization in Sections 61.35 and 61.351 for Villages, and Sections 87.30 and 144.26, Wisconsin Statutes.

B. Findings of Fact: Uncontrolled development and use of the shoreland-wetlands, floodplains, rivers and streams, and the pollution of the navigable waters of this Village and 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. The governing body does ordain:

C. Purpose: To promote the public health, safety, convenience and general welfare, and protect life, health and property, this Ordinance has been established to:

- (1) Maintain the storm and flood water storage capacity of wetlands;
- (2) Prevent and control water pollution by preserving wetlands which filter or store sediments, nutrients, heavy metals or organic compounds that would otherwise drain into waters of the State;
- (3) Protect fish spawning grounds, fish, aquatic life and wildlife by preserving wetlands and other fish and aquatic habitat;
- (4) Prohibit certain uses detrimental to the shoreland-wetland area;
- (5) Preserve shore cover and natural beauty by restricting shoreland-wetland excavation, filling, and other earth moving activities;
- (6) Minimize expenditures of public moneys for costly flood control projects;
- (7) Reduce rescue and relief efforts, generally undertaken at the expense of the tax paying public;

- (8) Prevent business interruptions which usually result in the loss of local incomes;
- (9) Reduce damage to public facilities such as utilities, municipal buildings, streets and bridges which may be located in the floodplains;
- (10) Prevent the occurrence of future flood blight areas on floodplains; and
- (11) Discourage the victimization of unwary land and home buyers.
- (12) Prevents increases in regional flood heights which would increase damage during floods and which may result in conflicts or litigation between property owners.

D. Title: This Ordinance shall be known as the Floodplain and Shoreland-Wetland Zoning Ordinance for the Village of Amherst, Portage County, Wisconsin.

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28.2 GENERAL PROVISIONS

A. Compliance-Other Permits: Any development, as defined in Section 9.2, in floodplains and shoreland-wetlands shall be in full compliance with the terms of this Ordinance. (However, see Section 28.5 of this Ordinance, for the standards applicable to nonconforming uses.) It is the responsibility of the applicant to secure all other necessary permits from appropriate Federal, State, and local agencies, including those required by the U.S. Army Corps of Engineers under Section 404 of the Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1334.

B. Municipalities and State Agencies Regulated: Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this Ordinance and obtain all necessary permits. State agencies are required to comply if Section 13.48(13), Wisconsin Statutes, applies. The construction, reconstruction, maintenance and repair of State highways and bridges by the Wisconsin Department of Transportation are exempt when 3.30.12(4)(a), Wisconsin Statutes, applies.

C. Abrogation and Greater Restrictions

- (1) This Ordinance supersedes all the provisions of any municipal zoning ordinance enacted under Section 61.35 for Villages, Wisconsin Statutes, which relate to floodplains and shoreland-wetlands, except that where another municipal zoning ordinance is more restrictive than the provisions contained in this Ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise. The more restrictive of either the Shoreland-Wetland District or Floodplain District regulations shall apply when a property is located in both zoning districts.
- (2) 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.

D. Interpretation: In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the municipality and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this Ordinance is required by a standard in Chapter NR 116 or NR 117, Wisconsin Administrative Code, and where the Ordinance provision is unclear, the provision shall be interpreted in light of Chapters NR 116 or NR 117 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.

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

F. Warning and Disclaimer of Liability: The degree of flood protection provided by this Ordinance is considered reasonable for regulatory purposes and is based on engineering experience and scientific methods of study. Larger floods may occur or the flood height may be increased by man-made or natural causes such as ice jams or bridge openings restricted by debris. Therefore, this Ordinance does not imply that areas outside of the delineated floodplain or permitted land uses within the floodplain will be totally free from flooding and associated flood damages. Nor does this Ordinance create liability on the part of, or a cause of action, the municipality or any officer or employee thereof for any flood damage that may result from reliance on this Ordinance.

G. Zoning Maps: The maps designated below are hereby adopted and made part of this Ordinance. They are on file in the office of the Clerk of the Village of Amherst, Portage County, Wisconsin. The most restrictive of the following maps will prevail.

- (1) Wisconsin Wetland Inventory maps stamped "FINAL" on January 20, 1998.
- (2) Flood Insurance Study Maps with corresponding profiles and the Flood Insurance Study from FEMA dated January 17, 1991.
- (3) Comprehensive Zoning Base Map titled Village of Amherst Zoning Map and dated December 1984.
- (4) USGS quadrangle map for Amherst dated May 1969,

H. Annexed Areas: The zoning of annexed lands shall comply with the provisions of Section 59.97(7) and 59.971(7) Wisconsin Statutes. Annexed lands are designated on the municipality's official zoning map. The Portage County shoreland and floodplain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the municipal Zoning Administrator.

- (1) Annexed Floodplains: The Portage County floodplain zoning provisions in Chapter 28 - Page 5

effect on the date of annexation shall remain in effect and shall be enforced by the Village for all areas annexed by the municipality until the Village adopts and enforces an ordinance which meets the requirements of Chapter NR 116, Wisconsin Administrative Code.

- (2) Annexed Shorelands: The Portage County shoreland zoning provisions in effect on the date of annexation remain in effect administered by the Village for all shoreland areas annexed by the Village after May 7, 1982 until the Village adopts and enforces an ordinance which meets the requirements of Chapter NR 117, Wisconsin Administrative Code.

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28.3 SHORELAND - WETLAND ZONING DISTRICT

A. District Boundaries of Shoreland-Wetlands

- (1) The shoreland-wetland zoning district includes all wetlands in the municipality and are shown on the final Wetland Inventory Map that has been adopted and made a part of this Ordinance in Section 28.2(G).
- (2) When an apparent discrepancy exists between the shoreland-wetland district boundary shown on the official maps and the actual field conditions at the time the maps were adopted, the Zoning Administrator shall contact the appropriate district office of the Department to determine if the Shoreland-Wetland District boundary as mapped, is an error. If Department staff concur with the Zoning Administrator that a particular area was incorrectly mapped as a wetland, the Zoning Administrator shall have the authority to immediately grant or deny a land use or building permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors shown on the official zoning maps, the Zoning Administrator shall be responsible for initiating a map amendment within a reasonable period.
- (3) Under Section 144.26(2m), Wisconsin Statutes, notwithstanding any other provision of law or administrative rule, wetland zoning ordinance required under Wisconsin Statutes, Sections 61.351 for Villages, Chapter NR 117, Wisconsin Administrative Code, do not apply to lands adjacent to farm drainage ditches if:
 - (a) Such lands are not adjacent to a natural navigable stream or river;
 - (b) Those parts of the drainage ditches adjacent to such lands were not navigable streams before ditching; and
 - (c) Such lands are maintained in nonstructural agricultural use.

B. Permitted Uses in Shoreland-Wetlands: The following uses are permitted subject to the provisions of Chapters 30 and 31, Wisconsin Statutes, and the provisions of other local, State and Federal laws, if applicable:

- (1) Activities and uses which do not require the issuance of a zoning permit,

provided that no wetland alteration occurs:

- (a) Hiking, fishing, trapping, hunting, swimming, snowmobiling, cross country skiing, and boating;
 - (b) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits, and tree seeds, in a manner that is not injurious to the natural reproduction of such crops;
 - (c) The practice of silviculture, including the planting, thinning and harvesting of timber;
 - (d) The pasturing of livestock;
 - (e) The construction and maintenance of duck blinds.
- (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 cultivation of cranberries, including limited wetland alterations necessary for the purpose of growing and harvesting cranberries;
 - (c) The maintenance and repair of existing drainage systems, where permissible under Section 30.20, Wisconsin Statutes, to restore preexisting levels of drainage, including the minimum amount of filling necessary to dispose of dredged spoil, provided that the filling is permissible under Chapter 30, Wisconsin Statutes, and that dredged spoil is placed on existing spoil banks where possible;
 - (d) The Construction and maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance.
 - (e) The construction and maintenance of piers, docks and walkways, observation decks and trail bridges built on pilings, including limited excavating and filling necessary for such construction or maintenance.
 - (f) 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 Section 3.4(1) of this Ordinance; and
 - (g) The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such 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 under Section 3.2, provided:
 - (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 Section 3.4(1) of this Ordinance;
 - (3) The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;
 - (4) Road construction activities are carried out in the immediate area of the roadbed only; and
 - (5) Any wetland alteration must be necessary for the construction or maintenance of the road.
- (b) The construction and maintenance of nonresidential buildings provided that:
 - (1) The building is used solely in conjunction with a use permitted in a shoreland-wetland district and 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 500 square feet in floor area; and
 - (4) Only limited filling and excavating necessary to provide structural support for the building is allowed.
- (c) The establishment and development of public and private parks and recreation areas, outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms, wildlife preserves and public boat launching ramps, provided that:
 - (1) Any private development allowed under this paragraph shall be used exclusively for the permitted purpose;
 - (2) Only limited filling and excavating necessary for the development of public boat launching ramps, swimming beaches, or the construction of park shelters or similar structures as allowed;
 - (3) The construction and maintenance of roads necessary for the uses permitted under this paragraph are allowed only where such construction and maintenance meets the criteria in Section 3.2(3)(a); and
 - (4) Wetland alterations in game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and

animal farms, and wildlife preserves shall be for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

- (d) The construction and maintenance of electric and telephone transmission lines and water, gas and sewer lines, and related facilities and the construction and maintenance of railroad lines provided that:
 - (1) The transmission and distribution lines and related facilities and railroad lines cannot, as a practical matter, be located outside the wetland;
 - (2) Only limited filling or excavating necessary for such construction or maintenance is allowed; and
 - (3) Such construction or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the wetland listed in Section 3.4(1).

C. Prohibited Uses in Shoreland-Wetlands

- (1) Any use not listed in Section 3.2 is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this Ordinance in accordance with Sections 3.4 and 7.0
- (2) The use of a boathouse for human habitation and the construction or placement of a boathouse or fixed boathouse below the ordinary high-water mark of any navigable waters are prohibited.

D. Rezoning Shoreland-Wetlands

- (1) Rezoning of a shoreland-wetland shall require amendment of the Final Wisconsin Wetland Inventory map adopted in Section 2.7 of this Ordinance pursuant to procedures established in Section 7.0. In order to insure that any amendment will be consistent with the shoreland protection objectives of Section 144.26, Statutes, the municipality shall not rezone a wetland in a shoreland-wetland zoning district, or any portion thereof, where the proposed rezoning may result in a significant adverse impact upon any of the following:
 - (a) Storm and flood water storage capacity.
 - (b) Maintenance 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.

- (2) Upon notification of a proposed amendment as required in Section 7.0, if the district office of the Department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in Section 3.4(1), of this Ordinance, the Department shall so notify the municipality of its determination either prior to or during the public hearing held on the proposed amendment.
- (3) If the Department notifies the municipal planning agency in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in Section 3.4(1), that proposed amendment, if approved by the municipality, shall not become effective until more than thirty (30) days have elapsed since written notice of the board approval was mailed to the Department, as required by Section 7.0. If within the 30 day period, the Department notifies the board the Department intends to adopt a superseding shoreland-wetland zoning ordinance for the municipality under Section 61.351(6), Wisconsin Statutes, the proposed amendment shall not become effective until that Ordinance adoption procedure is completed or otherwise terminated. The record of the board decision on the proposed amendment shall advise the petitioner of the provisions of this section.

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28.4 FLOODPLAIN ZONING DISTRICT

A. General Provisions for all Floodplains

- (1) Areas to be regulated: Areas regulated by this Ordinance shall include all areas, within the incorporated limited of the municipality, that would be covered by the "regional flood" as defined in Section 9.2.
- (2) Establishment of Districts: The regional floodplain areas within the jurisdiction of this Ordinance are hereby divided into three districts defined as follows:
 - (a) The Floodway District (FW) consists of the channel of a river or stream and those portions of the floodplain adjoining the channel that are required to carry and discharge the regional flood waters.
 - (b) The Floodfringe District (FF) consists of that portion of the floodplain between the regional flood limits and the floodway.
 - (c) The General Floodplain District (GFP) consists of all areas which have been or may be hereafter covered by flood water during the regional flood. It includes both the floodway and the floodfringe districts.
- (3) Locating Floodplain Boundaries: Where an apparent discrepancy exists between the location of the outermost boundary of the flood fringe district or general floodplain district shown on the official floodplain zoning map

and actual field conditions, the location of the district boundary line shall be initially determined by the Zoning Administrator using the criteria set forth in paragraphs (a) and (b) below. Where the Zoning Administrator finds that there is a significant difference between the district boundary shown on the map and the actual field conditions, the map shall be amended using the procedures established in Section 4.1(9). Disputes between the Zoning Administrator and an applicant, over the location of the district boundary line shall be settled by the Board of Appeals according to Section 6.5(4).

(a) Where flood profiles exist, the location of the district boundary line shall be determined by the Zoning Administrator using both the scale appearing on the map and the elevations shown on the water surface profile of the regional flood. Where a discrepancy exists between the boundary line location shown on the map and actual field conditions, the regional flood elevations shall govern. A map amendment is required where there is a significant discrepancy between the map and the actual field conditions. The Zoning Administrator shall have the authority to immediately grant or deny a land use permit on the basis of a district boundary derived from the elevations shown on the water surface profile of the regional flood, whether or not a map amendment is required. The Zoning Administrator shall be responsible for initiating any map amendments required under this section within a reasonable period of time.

(b) Where flood profiles do not exist, the location of the district boundary line shall be determined by the Zoning Administrator using the scale appearing on the map, visual on-site inspection and any available information provided by the Department. Where there is a significant difference between the district boundary line shown on the map and actual field conditions, the map shall be amended. Where the map amendment has been approved by both the municipal governing body and the Department, the Zoning Administrator shall have the authority to grant or deny a land use permit.

(4) Removal of Lands from Floodplain: Compliance with the provisions of this Ordinance shall not be grounds for removing lands from the floodplain district, unless they are removed by filling to a height of at least two feet above the regional flood elevation, the fill is contiguous to lands outside the floodplain district, and the map is amended pursuant to Section 4.1(9). To remove flood insurance requirements, FEMA must first revise the Flood Insurance Rate Map, or issue a Letter of Map Amendment or Revision.

(5) Hydraulic and Hydrologic Analyses:

(a) Except as provided in paragraph (b) below, no development shall be

allowed in floodplain areas which will:

- (1) Cause an obstruction to flow, defined in Section 9.2 as any development which physically blocks the conveyance of floodwaters by itself or in conjunction with future similar developments causing an increase in regional flood height;
or
 - (2) Cause an increase in regional flood height due to floodplain storage area lost, which is equal to or exceeding 0.01 foot;
 - (b) Obstructions or increases equal to or greater than 0.01 foot may only be permitted if amendments are made to this Ordinance, the official floodplain zoning maps, including floodway lines and water surface profiles, according to Sections 4.1(9) and 7.0, and only if the total cumulative effect of the proposed development will not increase the height of the regional flood more than 1.0 foot for the affected hydraulic reach of the stream.
 - (c) The Zoning Administrator shall deny permits where it is determined the proposed development will cause an obstruction to flow or increase in regional flood height of 0.01 foot or greater
- (6) Mobile Homes and Manufactured Homes
- (a) Owners or operators of all new and existing manufactured or mobile home parks and subdivisions located in the regional floodplain shall provide for adequate surface drainage to minimize flood damage.
 - (b) All new, replacement, or substantially improved manufactured or mobile homes to be placed or improved on a site located in the regional floodplain shall:
 - Be elevated to the flood protection elevation;
 - Meet the residential development standards for the floodfringe in Section 4.3(3); and
 - Shall be anchored so they do not float, collapse, or move laterally during the flood.
- (7) Watercourse Alterations: Prior to any alteration or relocation of a watercourse, and prior to the issuance of any land use permit which may be required for the alteration or relocation of a watercourse, the local zoning official shall notify adjacent municipalities, district office of the Department and the appropriate office of FEMA and shall require the applicant to secure all necessary State and Federal permits. The flood carrying capacity within the altered or relocated portion of any watercourse shall be maintained.
- (8) Floodproofing:
- (a) Where floodproofing measures are required, they shall be designed to:
 - (1) Withstand the flood pressures, depths, velocities, uplift and

impact forces, and other factors associated with the regional flood; and

- (2) Assure protection to the flood protection elevation; and
 - (3) Provide anchorage of structures to foundations to resist flotation and lateral movement; and
 - (4) Shall insure that the structural walls and floors are watertight and completely dry without human intervention during flooding to the flood protection elevation.
- (b) No permit or variance shall be issued until the applicant submits a plan or document certified by a registered professional engineer or architect that the floodproofing measures are adequately designed to protect the structure or development the flood protection elevation for the particular area.
- (c) Floodproofing measures could include:
- Reinforcement of walls and floors to resist rupture or collapse caused by water pressure or floating debris;
 - Addition of mass or weight to structures to prevent flotation;
 - Placement of essential utilities above the flood protection elevation;
 - Surface and subsurface drainage systems, including pumping facilities, to relieve external foundation wall and basement floor pressure;
 - Construction of water supply wells, and waste treatment systems to prevent the entrance of flood waters into such systems; and
 - Cutoff valves on sewer lines and the elimination of gravity flow basement drains.

(9) Amendments:

- (a) When amendments are required, the procedures in Section 7.0 shall apply. Actions which require an amendment include, but are not limited to, the following:
- (1) Any change to the official floodplain map including the floodway line or boundary of the floodplain area;
 - (2) Correction of significant discrepancies between the water surface profiles and floodplain zoning maps;
 - (3) Any fill in the floodplain which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain;
 - (4) Any fill or encroachment into the floodplain that will obstruct flow or cause an increase of 0.01 foot or more in the height of the regional flood; and
 - (5) Any upgrading of floodplain zoning ordinances required by Section NR 116.05, Wisconsin Administrative Code, or

otherwise required by law, or for changes by the municipality.

- (b) No amendment to the maps or text of this Ordinance shall become effective until reviewed and approved by the Department of Natural Resources.
- (c) All persons petitioning for a map amendment which involves an obstruction to flow causing an increase in the height of the regional flood of 0.01 foot or more shall obtain flooding easements, or other appropriate legal arrangements, from all adversely affected property owners and notify affected local units of government before the municipality may approve an amendment which would result in such an increase to the regional flood elevation.
- (d) When considering amendments to the official floodplain, zoning map, in areas where no water surface profiles exist, the zoning agency shall consider data submitted by the Department, the Zoning Administrator's visual on-site inspections and other available information. [See section 28.4(A)(3).]

B. Floodway District (FW)

- (1) Applicability: The provisions of this section apply to all areas mapped as floodway on the official floodplain zoning maps, and to those portions of the general floodplain district determined to be floodway.
- (2) Permitted Uses: The following open space uses are allowed within the floodway district, and in the floodway portion of the general floodplain district, provided that they are not prohibited by any other regulations, that the standards contained in paragraph (3) below are met, and that all permits or certificates required under this Ordinance have been issued:
 - (a) Agricultural uses, such as: general farming, pasturing, outdoor plant nurseries, horticulture, silviculture, truck farming, forestry, sod farming and wild crop harvesting.
 - (b) Nonstructural industrial and commercial uses, such as: loading areas, parking areas, and airport landing strips.
 - (c) Private and public recreational uses, such as: golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking and horseback riding trails.
 - (d) Uses or structures accessory to open space uses, or essential for historical areas, providing they are not in conflict with the provisions in Sections (3) and (4) below.
 - (e) Extraction of sand, gravel, or other materials, according to Section 3(d) below.

- (f) Functionally water dependent uses such as docks, piers, or wharves, including those used as part of a marina; other water related uses, such as dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines may be allowed if all other necessary local, State and Federal permits are secured, including Chapter 30 or 31 permits from the Department.
 - (g) Public utilities, streets and bridges, according to Section (3)(c) below.
- (3) Standards for Developments in Floodway Areas:
- (a) General:
 - (1) Any development in floodway areas shall meet all of the provisions of Section 4.1, and have a low flood damage potential.
 - (2) Applicants shall provide the following data for the Zoning Administrator to determine the effects of the proposal according to Section 4.1(5).
 - (a) A cross section elevation view of the proposal, perpendicular to the water course, indicating whether the proposed development will obstruct flow; or
 - (b) An analysis calculating the effects of this proposal on regional flood height.
 - (3) The Zoning Administrator shall deny the permit application where it is determine the project will increase flood elevations upstream or downstream 0.01 foot or more, based on the data submitted for Paragraph 2 above.
 - (b) Structures: Only structures which are necessary to permitted open space uses, or are essential for historical areas, or are functionally dependent on a waterfront location, may be allowed by permit, providing the structures meet all of the following criteria:
 - (1) The structures are not designed for human habitation;
 - (2) The structures are constructed and placed on the building site to cause less than 0.01 foot increase in flood height and offer minimum obstruction to the flow of flood waters. Structures shall be constructed with the longitudinal axis parallel to the direction of flow of flood waters, and approximately on the same line as those of adjoining structures;
 - (3) The structures are firmly anchored to prevent them from floating away and restricting bridge openings or other restricted sections of the streams or rivers; and
 - (4) The structures have all service facilities, such as electrical and heating equipment at or above the flood protection elevation for the particular area.
 - (c) Public utilities, streets and bridges may be allowed by permit, provided that:

- (1) Adequate floodproofing measures are provided to the flood protection elevation;
 - (2) Construction does not cause an increase in the height of the regional flood according to Section 28.1(5), except where the water surface profiles, floodplain zoning maps, and floodplain zoning ordinance are amended as needed, to reflect any changes resulting from such construction.
- (d) Fills or deposition of materials may be allowed by permit, provided that:
- (1) The requirements of Section 4.1 are met;
 - (2) The fill or deposition of materials does not encroach on the channel area between the ordinary high-water mark on each bank of the stream unless a Chapter 30 permits has been granted by the Department and a permit pursuant to Section 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1334 has been issued, if applicable, and the other requirements of this section are met;
 - (3) The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading sufficient to prevent erosion; and
 - (4) Such fills are not associated with private or public solid waste disposal.
- (4) Prohibited Uses: All uses not listed as permitted uses in Section 4.2(2) are prohibited, in floodways and the floodway portions of the general floodplain:
- (a) The storage of any materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or other aquatic life;
 - (b) Any uses which are not in harmony with, or which may be detrimental to, the uses permitted in the adjoining districts;
 - (c) All private or public on-site sewage disposal systems except portable latrines that are removed during flooding, and systems associated with public recreational areas and Department approved campgrounds, that meet the applicable provisions of Chapter ILHR 83, Wisconsin Administrative Code.
 - (d) All public or private wells which are used to obtain water for ultimate human consumption, except those for recreational areas that meet the requirements of local ordinances and Chapters NR 111 and NR 112, Wisconsin Administrative Code;
 - (e) All solid and hazardous waste disposal sites, whether public or private;
 - (f) All wastewater treatment ponds or facilities, except those permitted under Chapter NR 110.15(3)(b), Wisconsin Administrative Code;

- (g) All sanitary sewer or waterlines, except those used to service existing or proposed development outside of the floodway which complies with the regulations for the floodplain area occupied.

C. Floodfringe District (FF)

- (1) Applicability: The provisions of this section apply to all areas within the floodfringe district, as shown on the official floodplain zoning maps, and to those portions of the general floodplain district that are determined to be in the floodfringe area.
- (2) Permitted Uses: Any structures, land use, or development, including accessory structures and uses, are allowed within the floodfringe district and floodfringe portions of the general floodplain district, provided that the use is not prohibited by any other ordinance or local, State or Federal regulation and that all permits or certificates required under this ordinance have been issued.
- (3) Standards for Development in Floodfringe Areas: All of the provisions of Section 4.1 shall apply in addition to the following requirements according to the use requested:
 - (a) Residential Uses: Any structure or building used for human habitation, which is to be erected, constructed, reconstructed, altered, or moved into the floodfringe area shall meet or exceed the following standards:
 - (1) The lowest floor, excluding the basement or crawlway, shall be placed on fill at or above the flood protection elevation (which is a point two feet above the regional flood elevation), except where paragraph 2 is applicable. The fill elevation shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. The Department may authorize other floodproofing measures where existing streets or sewer lines are at elevations which make compliance impractical provided the Board of Appeals grants a variance due to dimensional restrictions.
 - (2) The basement or crawlway floor may be placed at the regional flood elevation providing it is floodproofed to the flood protection elevation. No permit or variance shall allow any floor, basement, or crawlway below the regional flood elevation.
 - (3) Contiguous dryland access defined in Section 9.2 as a vehicular access route above regional flood elevation, shall be provided from a structure or building to land which is outside the floodplain, except as provided in paragraph 4.
 - (4) In existing development where existing streets or sewer lines are at elevations, which make compliance with paragraph 3

impractical, the municipality may permit new development and substantial improvements where access roads are at or below the regional flood elevation, provided:

- (a) The municipality has written assurance from the appropriate local units of police, fire, and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles, considering the anticipated depth, duration, and velocity of the regional flood event; or
 - (b) The municipality has an adequate natural disaster plan concurred with the Division of Emergency Government and approved by the Department.
- (b) Accessory Structures or Uses: Any accessory structure or use (not connected to a principal structure), including nonresidential agricultural structures, shall meet all the applicable provisions of Sections 4.2(3)(a), (b), and (d), and 4.2(4). A lesser degree of protection, compatible with these criteria and the criteria in paragraph (c) below may be permissible for an accessory structure or use provided the site is not inundated to a depth greater than two feet or subjected to flood velocities greater than two feet per second during the regional flood.
- (c) Commercial Uses: Any commercial structure or building which is to be erected, constructed, reconstructed, altered or moved into the floodfringe area shall meet the requirements of Section 4.3(3)(a) Residential Uses. Storage yards, parking lots and other accessory land uses may be at lower elevations, subject to the requirements of (e) below. However, a depth greater than two feet or subjected to flood velocities greater than two feet per second during the regional flood. Inundation of such yards or parking areas to depths greater than two feet may be approved provided an adequate warning system exists to protect life and property.
- (d) Manufacturing and Industrial Uses: Any manufacturing, or industrial structure or building which is to be erected, constructed, reconstructed, or altered or moved into the floodfringe area shall be protected to the flood protection elevation utilizing fill, levees, floodwalls, or other adequate floodproofing measures according to Section 4.1(8), or any combination of these. On streams or rivers having prolonged flood duration's, greater protection may be required to minimize interference with normal plant operations. A lesser degree of protection, compatible with the criteria in paragraphs (c) and (e) above may be permissible for storage yards, parking lots, and other similar uses.
- (e) Storage or Processing of Materials: The storage or processing of materials that are buoyant, flammable, explosive, or which in times

flooding, could be injurious to human, animal or plant life, shall be at or above the flood protection elevation for the particular area of floodproofed in compliance with Section 4.1(8). Adequate measures shall be taken to assure that these materials will not enter the river or stream during flooding.

- (f) Public Utilities, Streets, and Bridges: Should be designed to be compatible with the local comprehensive floodplain development plans and:
 - (1) When failure or interruption of public utilities, streets, and bridges would result in danger to the public health or safety, or where such facilities are essential to the orderly functioning of the area, construction of and substantial improvements to such facilities may only be permitted if they are floodproofed to the flood protection elevation in compliance with Section 4.1(8).
 - (2) Minor or auxiliary roads or nonessential utilities may be constructed at lower elevations providing they withstand flood forces to the regional flood elevation.
- (g) Sewage Systems, Wells, Solid Waste Sites:
 - (1) All on-site sewage disposal systems shall be floodproofed to the flood protection elevation and shall meet the applicable provisions of all local ordinances and Chapter ILHR 83, Wisconsin Administrative Code.
 - (2) All wells, whether public or private, shall be floodproofed to the flood protection elevation, and shall meet applicable provisions of Chapters NR 111 and NR 112, Wisconsin Administrative Code.
 - (3) All solid or hazardous waste disposal sites, whether public or private, are prohibited.
- (h) Deposition of Materials: for any purpose may only be allowed if the provisions of this Ordinance are met.

D. General Floodplain District (GFP):

- (1) Applicability: The provisions for this district shall apply to all floodplains, for which regional flood data is not available, or where regional flood data is available, but floodways have not been delineated. As adequate regional flood data becomes available and floodways are delineated for portions of this district, such portions shall be placed in the floodfringe district or floodway district, as appropriate.
- (2) Permitted Uses: The general floodplain district encompasses both floodway and floodfringe areas. Therefore, a determination shall be made pursuant to paragraph (4), to determine whether the proposed uses is located within a floodway or floodfringe area. Those uses permitted in floodways (Section 4.2) and floodfringe areas (Section 4.3) are allowed

within the general floodplain district, according to the standards of paragraph (3) and provided that all permits or certificates required under this Ordinance have been issued.

- (3) Standards for Development in the General Floodplain District: Once it is determined according to paragraph (4) that a proposed use is located within a floodway, the provisions of Section 4.2 shall apply. Once determined that the proposed use is located within the floodfringe, the provisions of Section 4.3 shall apply. All provisions of the remainder of this Ordinance apply to either district.
- (4) Determining Floodway and Floodfringe Limits: Upon receiving an application for development within the general floodplain district, the Zoning Administrator shall:
 - (a) Require the applicant to submit, at the time of application, two copies of an aerial photograph, or a plan which accurately locates the proposed development with respect to the general floodplain district limits, channel of stream, existing floodplain developments, together with all pertinent information such as the nature of the proposal, legal description of the property, fill limits and elevations, building floor elevations and floodproofing measures.
 - (b) Require the applicant to furnish any of the following additional information as is deemed necessary by the Department for evaluation of the effects of the proposal upon flood height and flood flows, the regional flood elevation, and where applicable, to determine the boundaries of the floodway:
 - (1) A typical valley cross section showing the channel of the stream, the floodplain adjoining each side of the channel, the cross-sectional area to be occupied by the proposed development, and all historic high water information.
 - (2) Plan (surface view) showing: elevations or contours of the ground, pertinent structure, fill or storage elevations; size, location and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types; and other pertinent information.
 - (3) Profile showing the slope of the bottom of the channel or flow line of the stream.
 - (4) Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage of materials, water supply, and sanitary facilities.
 - (c) Transmit one copy of the information described in paragraphs (a) and (b) to the Department along with a written request to have that agency provide technical assistance to establish regional flood elevations, and where applicable, floodway data. Where the

provisions of Section 6.2(2)(c) Data Requirements apply, the applicant shall provide all required information and computations.

Effective: 8-23-88

28.5 NONCONFORMING STRUCTURES AND USES

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

- (1) If a nonconforming use 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 Ordinance.
- (2) Any legal nonconforming use of property which does not involve the use of a structure and which existed at the time of the adoption or subsequent amendment of this Ordinance adopted under Sections 62.231 or 61.351, Wisconsin Statutes, may be continued although such use does not conform with the provisions of this Ordinance. However, such nonconforming use may not be extended or increased.
- (3) The maintenance and repair of nonconforming boathouses which are located below the ordinary highwater mark of any navigable waters shall comply with the requirements of Section 31.121, Wisconsin Statutes
- (4) Uses which are nuisances under common law shall not be permitted to continue as nonconforming uses.

B. Shoreland-Wetlands: Notwithstanding Section 62.23(7)(h), Wisconsin Statutes, the repair, reconstruction, renovating, remodeling, or expansion of a legal nonconforming structure, or any environmental control facility related to a legal nonconforming structure, in existence at the time of adoption or subsequent amendment of this Ordinance adopted under Section 61.351, Wisconsin Statutes, is permitted under Section 61.351(5), Wisconsin Statutes.

C. Floodplains - General Provisions

- (1) No modifications or additions to a nonconforming use or a nonconforming structure shall be permitted unless they are made in conformity with the provisions of this Ordinance for the area of the floodplain it occupies. For the purpose of this Section, the words "modification" and "addition" shall include, but not be limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing uses, structure or accessory structure or use. Ordinary maintenance repairs are not considered modifications or additions; such ordinary maintenance

repairs include internal and external painting, decorating, paneling and the replacement of doors, windows, and other nonstructural components; and the maintenance, repair or replacement of existing private sewage or water supply systems, or connections to public utilities.

- (2) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would exceed fifty percent (50%) of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this Ordinance and contiguous dry land access is provided in compliance with Section 4.3(3)(a).
- (3) As requests are received for modifications or additions to nonconforming uses or nonconforming structures in the floodplain, a record shall be kept which lists the nonconforming uses and nonconforming structures, their present equalized assessed value, and the cost of those additions or modifications which have been permitted.
- (4) If any nonconforming structure or any structure with a nonconforming use is destroyed or is so badly damaged that it cannot be practically restored, it cannot be replaced, reconstructed or rebuilt unless the provisions of Section 4.2 are met. For the purpose of this subsection, restoration is deemed impractical where the total cost of such restoration would exceed fifty percent (50%) of the present equalized assessed value of the structure.

D. Floodway Areas

- (1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a floodway area, unless such modification or addition:
 - (a) Has been granted a permit or variance; and
 - (b) Meets criteria of Section 5.3; and
 - (c) Will not increase the amount of obstruction of flood flows as provided in Section 4.1(5).
 - (d) Any addition to an existing structure shall be floodproofed, pursuant to Section 4.1(9), by means other than the use of fill, to the flood protection elevation.
- (2) No new site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a floodway area. Any replacement, repair, or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all local ordinances and Chapter ILHR 83, Wisconsin Administrative Code.
- (3) No new well or modification to an existing well, used to obtain water for ultimate human consumption, shall be allowed in a floodway area. Any

replacement, repair or maintenance of an existing well in a floodway area shall meet the applicable requirements of this Ordinance and Chapters NR 111 and NR 112, Wisconsin Administrative Code.

E. Floodfringe Areas

- (1) No modification or addition shall be allowed to any nonconforming structure of any structure with a nonconforming use in the floodfringe area unless such modification or addition has been granted a permit or variance and, except where paragraph (2) below is applicable, the modification or addition is placed on fill or is floodproofed to the flood protection elevation in compliance with the applicable regulations for that particular use in a floodfringe area in Section 4.3.
- (2) Where compliance with the provisions of paragraph (1) above would result in unnecessary hardship, and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Board of Appeals, using the procedures established in Sections 6.5 and 6.6, may grant a variance from those provisions, for modifications or additions, using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted provided:
 - (a) No floor is below regional flood elevation for residential or commercial structures;
 - (b) Human lives are not endangered;
 - (c) Public facilities, such as water or sewer, are not to be installed;
 - (d) Flood depths will not exceed two (2) feet;
 - (e) Flood velocities will not exceed two (2) feet per second; and
 - (f) The structure will not be used for storage of materials that are buoyant, flammable, explosive, or injurious to human, animal, plant, fish or aquatic life.
- (3) An addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in a floodfringe area on a one-time basis only if the addition:
 - (a) Has been granted by permit or variance; and
 - (b) Does not exceed sixty (60) square feet in area; and
 - (c) In combination with other modifications or additions to the building, does not exceed fifty percent (50%) of the present equalized assessed value of the building.
- (4) All new on-site sewage disposal systems, or addition to, replacement, repair or maintenance of an on-site sewage disposal system, in a floodfringe area shall meet all the applicable provisions of all local ordinances and Chapter ILHR 83, Wisconsin Administrative Code.
- (5) All new wells, or addition to, replacement, repair, or maintenance of a well, in a floodfringe area shall meet the applicable provisions of this

Ordinance and Chapters NR 111 and NR 112, Wisconsin Administrative Code.

Effective: 8-23-88

28.6 ADMINISTRATION

A. Zoning Administrator: The Zoning Administrator shall have the following duties and powers:

- (1) Advise applicants as to the provisions of this Ordinance, assist them in preparing permit applications and appeal forms, and insure that the regional flood elevation is shown on permit applications where appropriate.
- (2) Issue permits and certificates of compliance and inspect properties for compliance with this Ordinance.
- (3) Keep records of all official actions such as:
 - (a) All permits issued;
 - (b) Inspections made;
 - (c) Work approved;
 - (d) Documentation of certified lowest floor and regional flood elevations for floodplain development; and
 - (e) Records of water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures, including changes, appeals, variances and amendments.
- (4) Have access to any structure or premises between the hours of 8 am and 6 pm 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 to 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 Ordinance to the appropriate municipal planning agency and the district attorney, corporation counsel, or municipal attorney.
- (7) Submit copies of floodplain text and map amendments and biennial reports to the regional FEMA office.

B. Building/Zoning Permits

- (1) When required: Unless another section of this Ordinance specifically exempts certain types of development from this requirement, a building or zoning permit shall be obtained from the Zoning Administrator before any development, as defined in Section 9.2, including 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 Zoning Administrator upon forms furnished and shall include the following

information for the purpose of proper enforcement of these regulations:

(a) General Information

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

(b) Site Development Plan: The site development plan shall be drawn to scale and submitted as a part of the permit application form and shall contain the following information:

- (1) Location, dimensions, area and elevation of the lot noted on a copy of the Wetland Inventory Map, if applicable;
- (2) Location and boundaries of wetlands;
- (3) Specifications and dimensions for areas of proposed wetland alteration;
- (4) Location of the ordinary highwater mark of any abutting navigable waterway;
- (5) Existing and proposed topographic and drainage features and vegetative cover;
- (6) Location of any structures with distances measured from the lot lines and center line of all abutting streets or highways;
- (7) Location of any existing or proposed on-site sewage systems or private water supply systems;
- (8) Location and elevation of existing or future access roads;
- (9) Location of floodplain and floodway limits on the property as determined from floodplain zoning maps used to delineate floodplain areas;
- (10) The elevation of the lot, lowest floor of proposed buildings and fill using National Geodetic and Vertical Datum (NGVD); and
- (11) Data sufficient to determine the regional flood elevation at the location of the development and to determine whether or not the requirements of Section 4.1 are met. This may include any of the information noted in Section 4.4(4).

c. Data Requirements to Analyze Developments

- (1) The applicant shall provide all computations required to show the effects of the project on flood heights, velocities and floodplain storage, for all subdivision proposals, "subdivision" as defined in Section 236.02(8), Wisconsin Statutes, and other proposed developments exceeding five (5) acres in area or where the estimated cost exceeds \$125,000. The applicant shall provide:
 - a. regional flood elevation data.
 - b. vehicular access to lands outside the floodplain; and

c. adequate surface drainage to minimize flood damage. The estimated cost of the proposal shall include all structural development, landscaping improvements, access and road development, electrical and plumbing, and similar items reasonably applied to the overall development costs, but may not include land costs.

(2) The Department will determine elevations and evaluate the proposal where the applicant is not required to provide computations as above, and inadequate data exists. The municipality may transmit additional information, such as the data in Section 4.4(4) where appropriate, to the Department with the request for analysis.

(3) Expiration: All permits issued under the authority of this Ordinance shall expire 24 months from the date of issuance.

C. Certificates of Compliance

(1) Except where no building, zoning or conditional use permit is required, no land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, rebuilt, or replaced shall be occupied, until a certificate of compliance is issued by the Zoning Administrator subject to the following provisions:

(a) The certificate of compliance shall show that the building or premises or part thereof, and the proposed use, conform to the provisions of this Ordinance.

(b) Application of such certificate shall be concurrent with the application for a permit.

(c) The certificate of compliance shall be issued within 10 days after notification of completion of the work specified in the permit, providing the building or premises or proposed use conforms with all the provisions of this Ordinance.

(d) For floodplain development, the applicant shall submit a certification signed by a registered professional engineer or registered land surveyor that the fill and lowest floor elevations are in compliance with the permit issued, including any required floodproofing. Floodproofing adequacy may also be certified by a registered professional architect.

(2) The Zoning Administrator may issue a temporary certificate of compliance for a building, premises, or part thereof according to rules and regulations established by the municipality.

(3) Upon written request from the owner, the Zoning Administrator shall issue a certificate of compliance for any building or premises existing at the time of adoption of this Ordinance, certifying after inspection, the extent and type of use made of the building or premises and whether or not such use conforms to the provisions of this Ordinance.

D. Fees: The Village Board may, by resolution, adopt fees for the following:

- (1) Building and/or zoning permits.
- (2) Certificates of compliance.
- (3) Public hearings.
- (4) Legal notice publication.
- (5) Conditional use permits.

E. Board of Appeals: The municipality's chief executive officer shall appoint a Board of Appeals under Section 62.23(7)(e), Wisconsin Statutes, consisting of five member subject to confirmation by the governing body. The Board of Appeals shall adopt rules for the conduct of their business as required by Section 62.23(7)(e)3., Wisconsin Statutes.

(1) 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 Ordinance.

(b) May grant, upon appeal, a variance from the dimensional standards of this Ordinance pursuant to Section 6.6.

(2) Appeals to the Board: Appeals to the Board of Appeals may be taken by any person aggrieved by an officer, department, board or bureau of the community affected by any order, requirement decision, or determination of the official whose decision is in question. Such appeals shall be taken within 10 days as provided by the rules of the Board, by filing with the official whose decision is in question, and with the Board of Appeals, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the Board all the documents constituting the record concerning the matter appealed.

(3) Hearing Appeals and Application for Variances

(a) Notice and Hearing: The Board of Appeals shall fix a reasonable time for a hearing on the appeal or application for a variance. The Board shall give public notice by publishing a Class 2 notice under Chapter 985, Wisconsin Statutes, specifying the date, time, and place of the hearing and the matters to come before the Board. Notice shall be mailed to the parties in interest. Written notice shall be given to the appropriate district office of the Department at least 10 days prior to hearings on proposed variances, conditional uses, and appeals for map or text interpretations. At the public hearing, any party may appear in person or by agent or attorney.

(b) Decision: A decision regarding the appeal or application shall be made as soon as practical. Copies of all decisions on 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. The final disposition of an appeal or

application to the Board of Appeals 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) Boundary Disputes: The following procedure shall be used by the Board of Appeals in hearing disputes concerning the district boundaries shown on the official floodplain zoning map:
- (a) Where a floodplain district boundary is established by approximate or detailed floodplain studies, the regional flood elevations or profiles for the point in question shall be the governing factor in locating the district boundary. If no regional flood elevations or profiles are available to the Board, other available evidence may be examined.
 - (b) In all cases, the person contesting the location of the district boundary shall be given a reasonable opportunity to present arguments and technical evidence to the Board of Appeals.
 - (c) Where it is determined that the district boundary is incorrectly mapped, the Board should either inform the planning agency to petition the municipality or inform the person contesting the location of the boundary to petition the municipality for a map amendment.

F. Variances:

- (1) The Board of Appeals may, upon appeal, grant a variance from the dimensional standards of this Ordinance where an applicant convincingly demonstrates that:
 - (a) Literal enforcement of the provisions of the Ordinance will result in unnecessary hardship on the applicant;
 - (b) The hardship is due to adoption of this Ordinance and special conditions unique to the property; and not common to a group of adjacent lots or premises (in such case the Zoning Ordinance or map must be amended);
 - (c) Such variance is not contrary to the public interest.
- (2) A variance shall not:
 - (a) Allow development below the regional flood elevation for residential or commercial structures;
 - (b) Grant or increase any use of property prohibited in the zoning district;
 - (c) Be granted for a hardship based solely on an economic gain or loss;
 - (d) Be granted for a hardship which is self created;
 - (e) Damage the rights or property values of other persons in the area;
 - (f) Permit a lower degree of flood protection in any floodplain area than

the flood protection elevation. In the floodfringe area, a lower degree of flood protection than the flood protection elevation may only be allowed pursuant to Section 5.5(2).

- (3) When a variance is granted in a floodplain area, the applicant shall be notified in writing, by the Board of Appeals, that increased flood insurance premiums may result. A copy of this notification shall be maintained with the variance appeal record.

G. Conditional Use Permit

- (1) Any use listed as a conditional use in this Ordinance shall be permitted only after an application has been reviewed by the Village Plan Commission and a conditional use permit has been granted by the Village Board, following the procedures in Section 9.13A of the Village Zoning Ordinance. To secure information upon which to base its determination, the Plan Commission and Village Board may require the applicant to furnish, in addition to the information required for a building/zoning permit, other pertinent information which is necessary to determine if the proposed use is consistent with the purpose of this Ordinance.
- (2) Conditions: Upon consideration of the permit application and the standards applicable to the permitted uses in this Ordinance, the Plan Commission and/or Village Board may attach such conditions to a conditional use permit, in addition to those required elsewhere in this Ordinance, as are necessary to further the purposes of this Ordinance as listed in Section 1.3. Such conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; erosion protection measures; increase 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.

H. To Review Appeals of Permit Denials

- (1) The Board of Appeals shall review all data constituting the basis for the appeal of permit denial. This data may include (where appropriate):
 - (a) Permit application data listed in Section 28.6(B)(2);
 - (b) Floodway/floodfringe determination data in Section 4.4(4);
 - (c) Data listed in Section 4.2(3)(a) where the applicant has not submitted this information to the Zoning Administrator.
 - (d) Other data submitted to the Zoning Administrator with the permit application, or submitted to the Board with the appeal.
- (2) For appeals of all denied permits the Board shall:
 - (a) Follow the procedures of Section 6.5;
 - (b) Consider any zoning agency recommendations;
 - (c) Either uphold the denial or grant the appeal.

- (3) For appeals concerning increases in regional flood elevation, the Board shall:
 - (a) Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increase equal to or greater than 0.01 foot may only be allowed after amending the flood profile and map and any appropriate legal arrangements are made with all adversely affected property owners.
 - (b) Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase equal to or greater than 0.01 foot, provided no other reasons for denial exist.

I. Public Information

- (1) Where useful, marks on bridges or buildings or other markers may be set to show the depth of inundation during the regional flood at appropriate locations within the floodplain.
- (2) All available information in the form of maps, engineering data and regulations shall be readily available and should be widely distributed.
- (3) All legal descriptions of property in the floodplain should include information designating the floodplain zoning classification when such property is transferred.

Effective: 8-23-88

28.7 AMENDING FLOODPLAIN AND SHORELAND-WETLAND ZONING REGULATIONS - PROCEDURES

A. The municipal governing body may supplement or change the district boundaries and the regulations contained in this Ordinance according to Section 62.23(7)(d)2., Wisconsin Statutes, NR 116 and 117, Wisconsin Administrative Code, and the following:

- (1) The Shoreland-Wetland District amendment provisions of Section 3.4 and the Floodplain District amendment provisions of Section 4.1 apply.
- (2) A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the Department within 5 days of the submission of the proposed amendment to the municipal planning agency.
- (3) All proposed text and map amendments shall be referred to the municipal planning agency, and a public hearing shall be held as required by Section 62.23(7)(d)2., Wisconsin Statutes, following publication of a Class 2 notice as defined in Section 9.2. The appropriate district office of the Department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.

- (4) A copy of the decision on each amendment shall be provided to the Department district office within 10 ten days of the decision.

Effective: 8-23-88

28.8 ENFORCEMENT AND PENALTIES

Any development as defined in Section 9.2 or use established after the effective date of this Ordinance in violation of this Ordinance, by any person, firm, association, corporation (including building contractors or their agents) shall be deemed a violation. The Zoning Administrator shall refer violations to the planning agency and the municipal 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 Ordinance shall be subject to a forfeiture of not less than \$100 nor more than \$1,000 per offense, together with the taxable costs of such action. Each day of continued violation shall constitute a separate offense. Every violation of this Ordinance is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated by action at suit of the municipality, the State, or any citizen thereof pursuant to Section 87.30(2), Wisconsin Statutes.

Effective: 8-23-88

28.9 DEFINITIONS

A. The terms or words used in this Ordinance shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; words in the plural number include the singular number. The word "shall" is mandatory, not permissive. All distances unless otherwise specified, shall be measured horizontally.

B. The following terms used in this Ordinance mean:

- (1) "A-Zones" - Those areas shown on a municipality's "Official Floodplain Zoning Map" (see definition) which would be inundated by the base flood or "regional flood" as defined herein. These areas may be numbered or unnumbered A-Zones. The A-Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.
- (2) "Accessory structure or use" - A detached subordinate structure or a use which is clearly intended to, and customarily found with, the principal structure or use to which it is related and which is located on the same lot as that of the principal structure or use.
- (3) "Boathouse" - As defined in Section 30.121(1), Wisconsin Statutes, means a permanent structure used for the storage of watercraft and associated materials and includes all such structures which are totally enclosed, have roofs or walls, or any combination of structural parts.

- (4) "Board" - Refers to the Board of Trustees of the Village of Amherst, WI.
- (5) "Bulkhead line" - A geographic line along a reach of navigable water that has been specified by adoption of a municipal ordinance and approved by the Department of Natural Resources pursuant to Section 30.11, Wisconsin Statutes, and which allows limited filling between the bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this Ordinance.
- (6) "Certificate of compliance" - A certification issued by the Zoning Administrator stating that any construction and use of land or a building, the elevation of fill or the first floor of a structure is in compliance with all of the provisions of this Ordinance.
- (7) "Channel" - A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.
- (8) "Conditional use" - A use which is permitted by this Ordinance provided that certain conditions specified in the Ordinance are met and that a permit is granted by the Village Board or, where designated, the planning or zoning agency.
- (9) "Department" - The Wisconsin Department of Natural Resources.
- (10) "Development" - Any new use, change of use and any change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structure or accessory buildings; any placement of mobile homes; the construction of additions or substantial alterations to buildings, structures, or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials, public or private sewage disposal systems or water supply facilities.
- (11) "Drainage system": One or more artificial ditches, tile drains, or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.
- (12) "Dryland access" - A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land which is outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.
- (13) "Encroachment" - Any fill, structure, building, use, or development in the floodway.
- (14) "Environmental control facility" - Any facility, temporary or permanent, which is reasonably expected to abate, reduce or aid in the prevention, measurement, control or monitoring of noise, air, or water pollutants, solid waste and thermal pollution, radiation 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.
- (15) "Existing manufactured or mobile home park or subdivision" - A parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale on which the construction of facilities for servicing the lots (including, at a minimum, the installation of utilities, either final site grading or the pouring of

- concrete pads, and the construction of streets) is completed before the effective date of this Ordinance.
- (16) "Federal Emergency Management Agency (FEMA)" - The federal agency that administers the National Flood Insurance Program.
 - (17) "Fixed houseboat" - As defined in Section 30.121(1), Wisconsin Statutes, means a structure not actually used for navigation which extends beyond the ordinary highwater mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.
 - (18) "Flood" or "Flooding" - A general and temporary condition of partial or complete inundation of normally dry land areas caused by:
 - (a) The overflow or rise of inland waters;
 - (b) The rapid accumulation or runoff of surface waters from any source; and
 - (c) The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; and
 - (d) The sudden increase caused by unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.
 - (19) "Floodfringe" - That portion of the floodplain outside of the floodway which is covered by floodwaters during the regional flood; it is generally associated with standing water rather than rapidly flow water.
 - (20) "Flood Hazard Boundary Map" - A map prepared for the municipality by FEMA designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A-Zones and do not contain floodway lines or regional flood elevations. These maps form the basis for both the regulatory and insurance aspects of the National Flood Insurance Program.
 - (21) "Flood Insurance Study" - A technical engineering examination, evaluation, and determination of flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and regional flood elevations as well as floodway lines. The flood hazard areas are designated as numbered or unnumbered A-Zones. Flood insurance study maps form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.
 - (22) "Floodplain" - That land which has been or may be hereafter covered by floodwater during the regional flood. The floodplain includes the floodway, floodfringe, and general floodplain areas.
 - (23) "Floodplain island" - A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.
 - (24) "Flood profile" - A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.
 - (25) "Floodproofing" - Any combination of structural or nonstructural additions, changes, or adjustments which reduce or eliminate flood damage to unimproved or improved real estate, water, and sanitary facilities, structures, and their contents.

- (26) "Flood protection elevation" - An elevation that corresponds to a point two feet of freeboard above the water surface profile associated with the regional flood.
(Also see: Freeboard)
- (27) "Floodway" - The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.
- (28) "Floodway encroachment lines" - Represent the limits of obstruction to flood flows. These lines are designated on both sides of, and generally parallel to, the channel of a river or stream. They are established by assuming that the area landward (outside of the encroachment lines) will ultimately be developed in such a way that it will not convey flood flows, but the development will not cause an increase to regional flood elevations upstream. It is assumed that any development riverward of these lines will cause an obstruction and will require a detailed analysis to determine its effect on the regional flood elevations upstream.
- (29) "Freeboard" - Represents a factor of safety usually expressed in terms of a certain amount of feet above a calculated flood level. Freeboard compensates for the many unknown factors that contribute to flood heights greater than the height calculated. These unknown factors include, but are not limited to, ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of urbanization on the hydrology of the watershed, loss of flood storage areas due to development and the sedimentation of a river or stream bed.
- (30) "Hearing notice" - Publication or posting meeting the requirements of Chapter 985, Wisconsin Statutes. Class 1 notice is required at a minimum for appeals; published once at least one week (7 days before the hearing). Class 2 notice is required at a minimum for all zoning ordinances and amendments, including map amendments; published twice, once each week consecutively, the last publication at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice exceeding these minimums.
- (31) "High flood damage potential" - Any danger to human life or public health or the potential for any significant economic loss to a structure or its contents.
- (32) "Increase in Regional Flood Height" - A calculated upward rise in the regional flood elevation, equal to or greater than 0.01 foot, resulting from a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain, but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.
- (33) "Land use" - Any nonstructural use made of unimproved or improved real estate.
(Also see: Development)
- (34) "Mobile home" or "Manufactured home" - A structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. For the purpose of this Ordinance, it does not include recreational vehicles or travel trailers.

- (35) "Municipality" - Refers to the Village of Amherst, WI.
- (36) "Navigable waters" - Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin, and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this State, including the Wisconsin portion of boundary waters, which are navigable under the laws of this State. The Wisconsin Supreme Court has declared navigable bodies of water with a bed differentiated from adjacent uplands and with levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis. [Muench v. Public Service Commission, 261 Wis. 492 (1952) & DeGayner and Co., Inc. V. Department of Natural Resources, 70 Wis. 2d 936 (1975)]
- (37) "Obstruction to Flow" - Any development which physically blocks the conveyance of floodwaters such that this development by itself or in conjunction with any future similar development will cause an increase in regional flood height.
- (38) "Official floodplain zoning map" - That map, adopted and made part of this Ordinance, as described in Section 2.7, which has been approved by the Department and FEMA.
- (39) "Open space use" - Those uses having a relatively low flood damage potential and not involving structures.
- (40) "Ordinary highwater mark" - The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.
- (41) "Person" - An individual, or group of individuals, corporation, partnership, association, municipality, or State agency.
- (42) "Planning agency" - The municipal planning commission, agency, committee, or a board of public land commissioners of the municipality's governing body, created under Section 62.23(1), Wisconsin Statutes, which acts on matters pertaining to planning and zoning.
- (43) "Regional flood" - A flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics. The flood frequency of the regional flood is once in every 100 years. This means that in any given year, there is a 1% chance that the regional flood may occur or be exceeded. During a typical 30 year mortgage period, the regional flood has a 26% chance of occurrence. The regional flood is based upon a statistical analysis of stream flow records available for the watershed or an analysis of rainfall and runoff characteristics in the general watershed region or both. FEMA uses the term "base flood" which means the regional flood.
- (44) "Shorelands" - Lands within the following distances from the ordinary highwater mark of navigable waters; 1,000 feet from a lake, pond, or flowage; and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.
- (45) "Shoreland-wetland district" - The zoning district created in this zoning ordinance, comprised of shorelands that are designated as wetlands on the wetlands

- inventory maps which have been adopted and made a part of this Ordinance.
- (46) "Storage capacity of a floodplain" - The volume of space above an area of floodplain land that can be occupied by flood water of a given stage at a given time, regardless of whether the water is moving.
 - (47) "Unnecessary hardship" - That circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with the restrictions governing dimensional standards (such as area, setbacks, frontage, or height) unnecessarily burdensome or unreasonable in light of the purpose of this Ordinance. Unnecessary hardship is present only where, in the absence of a variance, no feasible use can be made of the property.
 - (48) "Variance" - An authorization granted by the Board of Appeals to construct, alter or use a building or structure in a manner that deviates from the dimensional standards of this Ordinance. A variance may not permit a use of property otherwise is prohibited by the Ordinance or allow construction not protected to the flood protection elevation.
 - (49) "Water surface profile" - A graphic representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.
 - (50) "Wetlands" - Those areas where water is at, near, or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.
 - (51) "Wetland alteration" - Any construction filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.
 - (52) "Zoning Administrator" - Refers to the Zoning Administrator/Building Inspector for the Village of Amherst, Wisconsin.

Effective: 8-23-88