

**178<sup>th</sup> BOARD YEAR**

**LEGISLATIVE ITEMS RECEIVED FOR COMMITTEE REFERRAL**

File No.	Rec/Ref:	To:	Title
178-O-036	07/27/23 07/27/23	LU	ORD: Repeal And Recreate Table 6(b)1.B.ii. Of The Waukesha County Shoreland And Floodland Protection Ordinance To Incorporate The Laitsch Dam Failure Analysis (RZ118)
178-O-037	07/27/23 07/27/23	LU	ORD: Amend The Waukesha County Shoreland And Floodland Protection Ordinance District Zoning Map Of The Towns Of Genesee And Mukwonago By Rezoning Certain Lands Located In Sections 27 And 34, T6N, R18E, Town Of Genesee And Sections 3 And 4, T5N, R18E, Town Of Mukwonago, Waukesha County, Wisconsin To Apply A C-1 Conservancy Overlay District On The Subject Lands (RZ119)
178-O-038	08/02/23 08/02/23	LU	ORD: Create The Waukesha County Floodland Protection Ordinance (RZ123)
178-O-039	08/02/23 08/02/23	LU	Ord: Adopt Text Amendments And Rename The Waukesha County Shoreland And Floodland Protection Ordinance To Repeal Numerous Floodplain Standards That Will Be Administered Within The Waukesha County Floodland Protection Ordinance And Amend Other Shoreland Zoning Provisions (RZ124)
178-O-040	08/02/23 08/02/23	PW FI	ORD: Modify The 2023 Department Of Public Works, Airport Operations Fund Budget For Increased Contracted Snow Removal Expenses And In-House Snow Removal Operations, And Create Two FTE Park Maintenance Worker Positions
178-A-030	07/25/23	EX	APPT: Arnold Moncada Reappointment Of Waukesha County Representative To The Ethics Board
178-A-031	07/25/23	EX	APPT: Robert Peregrine Reappointment Of Waukesha County Representative To The Waukesha County Park and Planning Commission
178-A-032	07/25/23	EX	APPT: Robert Hamilton Reappointment Of Waukesha County Representative As An Alternate Member To The Waukesha County Park And Planning Commission
178-A-033	07/25/23	EX	APPT: Chris Lambert Appointment Of City Of Waukesha Representative To The Community Development Block Grant (CDBG) Board
178-A-034	07/25/23	EX	APPT: Frank Palm Appointment Of City Of Waukesha Representative To The Community Development Block Grant (CDBG) Board
178-A-035	07/25/23	EX	APPT: Bob Rohde Reappointment Of Waukesha County Representative To The Community Development Block Grant (CDBG) Board
178-A-036	07/25/23	EX	APPT: Joel Gaughan Reappointment Of Waukesha County Board Supervisor To The Community Development Block Grant (CDBG) Board
178-A-037	07/31/23	EX	APPT: Joseph Kershek Appointment Of Waukesha County Representative To The Waukesha County Board of Adjustment
178-A-038	08/01/23	EX	APPT: Rebecca Klebsch Appointment of Waukesha County Representative To The WOW Workforce Development Board
178-O-041	08/02/23 08/02/23	CB	ORD: Authorization To Enter Into Settlement Agreement In The Condemnation Lawsuits Against Waukesha County Brought By Gregory Backus, Valerie Zorek, Jamie Shirley And Nicholas Brock

1 REPEAL AND RECREATE TABLE 6(b)1.B.ii. OF THE WAUKESHA COUNTY  
2 SHORELAND AND FLOODLAND PROTECTION ORDINANCE  
3 TO INCORPORATE THE LAITSCH DAM FAILURE ANALYSIS  
4 (RZ118)  
5

6 WHEREAS, the Waukesha County Board of Supervisors enacted the Waukesha County  
7 Shoreland and Floodland Protection Ordinance on January 23, 1970; and  
8

9 WHEREAS, the Waukesha County Board of Supervisors may make amendments to such  
10 Ordinance pursuant to Section 59.692; and  
11

12 WHEREAS, the matter of this Ordinance having been duly referred to and considered by the  
13 Waukesha County Park and Planning Commission, after Public Hearing and the giving of  
14 requisite notice of said hearing and the recommendation thereon reported to the Land Use, Parks  
15 and Environment Committee and the Waukesha County Board of Supervisors, as required by  
16 Section 59.692, Wis. Stats.  
17

18 THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS  
19 that Table 6(b)1.B.ii. of the Waukesha County Shoreland and Floodland Protection Ordinance is  
20 repealed and recreated to read as follows:  
21

22 **Table 6(b)1.B.ii.**  
23

24 **List of Official Maps Based Upon Other Studies to be Used in Conjunction with the**  
25 **Waukesha County Shoreland and Floodland Protection Ordinance Zoning Maps is as**  
26 **follows:**  
27

- 28 1. Dam Failure Analysis and Emergency Action Plan for Wambold and Kroll Dams on Eagle Spring  
29 Lake, prepared by Graef, Anhalt, Schloemer & Associates, Inc., revised April 2002. Approved  
30 by the WDNR in April of 2002 and adopted by the Waukesha County Board on April 13, 2004.  
31
- 32 2. Dam Failure Analysis and Proposed Dam Capacity Analysis-Monches Dam, Hey and Associates,  
33 Inc., April 17, 2006; amended on October 13, 2006 by Hey and Associates, Inc.; further amended  
34 on May 17, 2011 by the Waukesha County Department of Public Works; and further amended by  
35 R.A. Smith National on January 19, 2012. Approved by the WDNR on January 24, 2012 and  
36 adopted by the Waukesha County Board on March 27, 2012.  
37
- 38 3. Dam Failure Analysis – Monterey Dam, prepared by Kunkel Engineering Group, LLC on  
39 September 2, 2011. Approved by the WDNR and adopted by the Waukesha County Board on  
40 December 18, 2012.  
41
- 42 4. Dam Failure Analysis – Mukwonago Dam, prepared by Mead & Hunt, June 2012. Approved by  
43 the WDNR on July 11, 2012 and adopted by the Waukesha County Board on November, 26,  
44 2013.  
45
- 46 5. Waukesha County Flood Storage District Maps, Panels 1, 2, 3, 4, 5, 6, 7, 8, 11, 12. Dated  
47 November 05, 2014. Prepared by the WDNR. Approved by the WDNR.

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6. Revised Waukesha County Flood Storage District Map Panel 3 and 3A. Prepared by SEH on December 22, 2015. Approved by the WDNR and adopted by the Waukesha County Board on June 28, 2016.
7. Saylesville Dam Failure Analysis and Assessment, prepared by Bloom Companies, Inc. on July 9, 2014. Approved by the WDNR on July 14, 2014 and adopted by the Waukesha County Board on July 28, 2015.
8. School Section Lake Dam Failure Analysis and Assessment, prepared by Leif Hauge, PE, Professional Hydrologist, Sr. Civil Engineer, Waukesha County Land Resources Division, on April 20, 2020. Approved by the WDNR on April 23, 2020, and adopted by the Waukesha County Board on February 23, 2021.
9. Willow Springs Lake (Laitsch) Dam Failure Analysis, prepared by Stormwater Solutions Engineering, LLC on September 9, 2022, approved by the WDNR on October 18, 2022 and adopted by the Waukesha County Board on August 22, 2023. The adopted dam failure analysis includes the following:
  - a. Map dated October 7, 2022 and titled "Laitsch Dam Failure Analysis, Dam Breach."
  - b. Floodway data table dated October 7, 2022, and titled "Floodway Data Laitsch Dam Breach Hydraulic Shadow."
  - c. Flood profiles dated September 9, 2022, and titled "Laitsch Dam Failure Analysis-Breach."


BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.

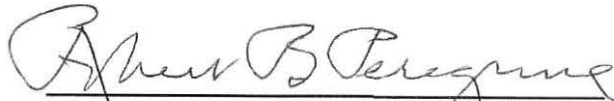
**COMMISSION ACTION**


The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Waukesha County Shoreland and Floodland Protection Ordinance, hereby recommends **approval** of **RZ118 (Text Amendment/Laitsch Dam Failure Analysis, Towns of Genesee and Mukwonago)** in accordance with the attached "Staff Report and Recommendation".

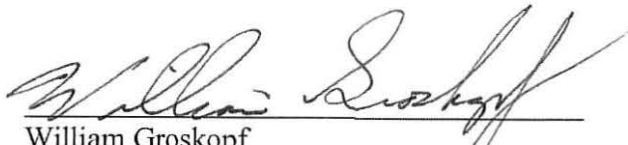
**PARK AND PLANNING COMMISSION**

**July 20, 2023**

  
James Siepmann, Chairperson

  
Robert Peregrine

  
Richard Morris

  
William Groskopf

  
Gary Szpara



**WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE**  
**STAFF REPORT AND RECOMMENDATION**  
**ZONING MAP AND TEXT AMENDMENT**

**FILE NO's:** RZ118 (text) and RZ119 (map)

**DATE:** July 20, 2023

**PETITIONER:** Waukesha County Park and Planning Commission  
515 W. Moreland Blvd. Room AC230  
Waukesha, WI 53188

**LOCATION:**

The properties affected by the rezone amendment are located in Section 34 and the S ½ of Section 27 in the Town of Genesee (T6N, R18E) as well as the NW ¼ of Section 3 and the NE ¼ of Section 4 in the Town of Mukwonago (T5N, R18E). Maps of the area and an informational letter were provided with the notices sent to the individual property owners affected. Exhibit A specifically identifies the proposed C-1 Conservancy Overlay District boundary based on the Dam Failure Zone. The information can also be viewed on the Waukesha County GIS website at: <https://www.waukeshacounty.gov/interactivemap/>. The dam failure layer is noted as “Draft dam failure (Willow Springs Dam) and is located within the “Floodplains FEMA and Other Sources” layer group on GIS.

**EXISTING ZONING:**

The dam failure study area extends across roughly 135 acres of land. Except for approximately 3,000 sq. ft. of land currently subject to Town of Genesee zoning, all lands are currently zoned C-1 Conservancy Overlay District. With respect to base zoning, most of lands are zoned HG High Groundwater District, with the remainder of lands in the A-1 Agricultural District. It should be noted that there is no proposal to amend base zoning designations, just the overlay zoning district boundaries.

**PROPOSED ZONING:**

The proposal would amend the text and map of the Waukesha County Shoreland and Floodland Protection Ordinance (SFPO) in order to adopt the dam failure analysis (study) for the Laitsch Dam. The hydraulic shadow of the dam failure analysis is proposed to be mapped as an additional floodplain boundary along Spring Brook from the Laitsch Dam to approximately 8,500 feet downstream of the dam. Only one (1) lot within the entire study area contains lands within the dam failure shadow that are not already zoned C-1 Conservancy (Floodplain) Overlay District due to the existing 100-year floodplain. The single lot impacted is an outlot in the Fields Crossing subdivision which currently has a substantial area of C-1 Conservancy Overlay District zoning due to an area of mapped floodplain. The outlot, which is fractionally owned by all subdivision lot owners, is used for stormwater purposes and is not buildable. That outlot would see roughly 2,800 sq. ft. of additional lands become subject to C-1 Conservancy (Floodplain) Overlay District due to the rezone action. In addition, because the County’s shoreland jurisdictional limits extend to the full extent of the floodplain limits, the small area of the above noted outlot would become subject to shoreland jurisdiction since the floodplain in this section extends further than 300 feet from Spring Brook. Lastly, the table of official floodplain maps and studies in Section 6(b)1.B.ii of the SFPO will be repealed and re-created in its entirety (see Exhibit B).

All undeveloped floodplains within the county’s zoning jurisdictional area are zoned C-1 Conservancy District Overlay. The C-1 Conservancy Overlay District of the Waukesha County SFPO contains unique standards for wetlands, floodplains and floodways. These standards are

described within the zoning district text and are further identified throughout the other general sections of the ordinance. Properties with overlays maintain their base zoning districts, while natural resources are mapped within layers on top of the base zoning districts. As noted above, wetlands, floodplains and floodways are uniquely identified on the official county zoning maps. The county's floodplain zoning standards have been approved by both the Federal Emergency Management Agency (FEMA) and the DNR.

**PUBLIC HEARING DATES:**

Town of Genesee: May 27, 2023  
Town of Mukwonago: June 7, 2023

**PUBLIC REACTION:**

- Town of Genesee: None
- Town of Mukwonago: A question was asked at the hearing regarding any impacts to flood insurance requirements due to the zoning change. County staff noted that this change would not impact National Flood Insurance Program (NFIP) requirements since the dam failure rezone is not based on a hazard zone established from a Federal Insurance Rate Map (FIRM).

**TOWN OF GENESEE PLAN COMMISSION AND BOARD ACTION:**

On May 27, 2023, the Town of Genesee Plan Commission recommended approval of the request to the Town Board.

On May 27, 2023, the Town of Genesee Plan Board recommended approval of the text and map amendment to Waukesha County.

**TOWN OF MUKWONAGO**

On June 7, 2023, the Town of Mukwonago Plan Commission unanimously recommended approval of the request to the Town Board.

On June 7, 2023, the Town of Mukwonago Plan Board unanimously recommended approval of the text and map amendment to Waukesha County.

**COMPLIANCE WITH THE COMPREHENSIVE DEVELOPMENT PLAN (CDP) FOR WAUKESHA COUNTY AND THE TOWNS OF GENESEE AND MUKWONAGO CDP:**

Prevention of flooding is a key natural resource protection recommendation of both the Town and County CDPs, and the proposed rezoning will protect the newly studied floodplain from fill and prevent future property damage and personal injury for the portion of the properties to be rezoned and on the properties upstream and downstream of the subject area.

**STAFF ANALYSIS:**

A dam failure study has recently been completed by Stormwater Solutions Engineering for the Laitsch Dam, which is located on Willow Spring Lake and is managed by the Spring Brook Watershed Lake Management District. The dam, located in the Town of Mukwonago, defines the upstream extent of the study area with the downstream extent in the Town of Genesee where a bridge serving State Highway 83 crosses over Spring Brook.

NR116 of the Wisconsin Administrative Code requires areas downstream of dams be zoned and regulated to reduce potential loss of life and property. The WDNR has recently advised Waukesha

County that the study must be adopted on zoning maps and be referenced in the official maps section of the Waukesha County Shoreland and Floodland Protection Ordinance. As a result, the C-1 Conservancy (Floodway) Overlay District must be expanded to match the boundaries of the dam failure shadow.

**STAFF RECOMMENDATION:**

Based on the above analysis, the Planning and Zoning Division staff recommend **approval** of the request.

As noted above, NR116 of the Wisconsin Administrative Code requires that areas downstream of dams shall be zoned and regulated by municipalities with floodplain zoning ordinances to reduce potential loss of life and property located downstream of dams.

Rezoning the dam failure shadow as floodplain or floodway within the C-1 Conservancy Overlay District on the County zoning map prevents development within said areas, which ultimately protects the subject landowners and downstream property owners and their improvements from flooding danger. Over 99.9% of the lands with the dam failure study are already under a C-1 Conservancy Overlay zoning designation and the remaining affected lands are located in an undevelopable outlot. Approval of the request is consistent with the purpose and intent of the ordinance and follows CDP recommendations.

Respectfully submitted,

*Jason Fruth*

Jason Fruth  
Planning & Zoning Manager

*Benjamin Greenberg*

Ben Greenberg  
Senior Planner

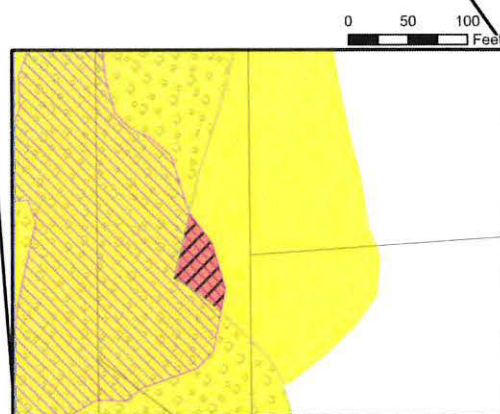
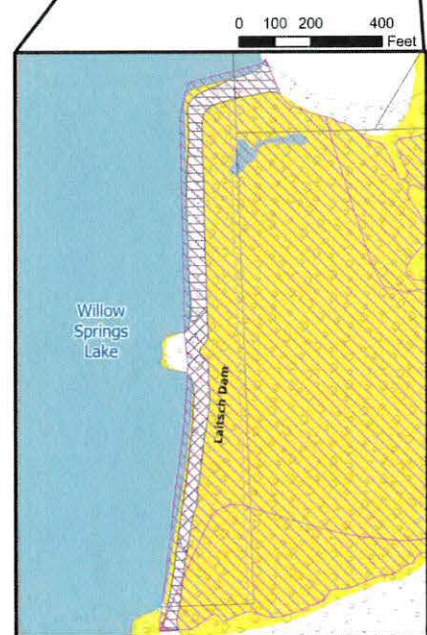
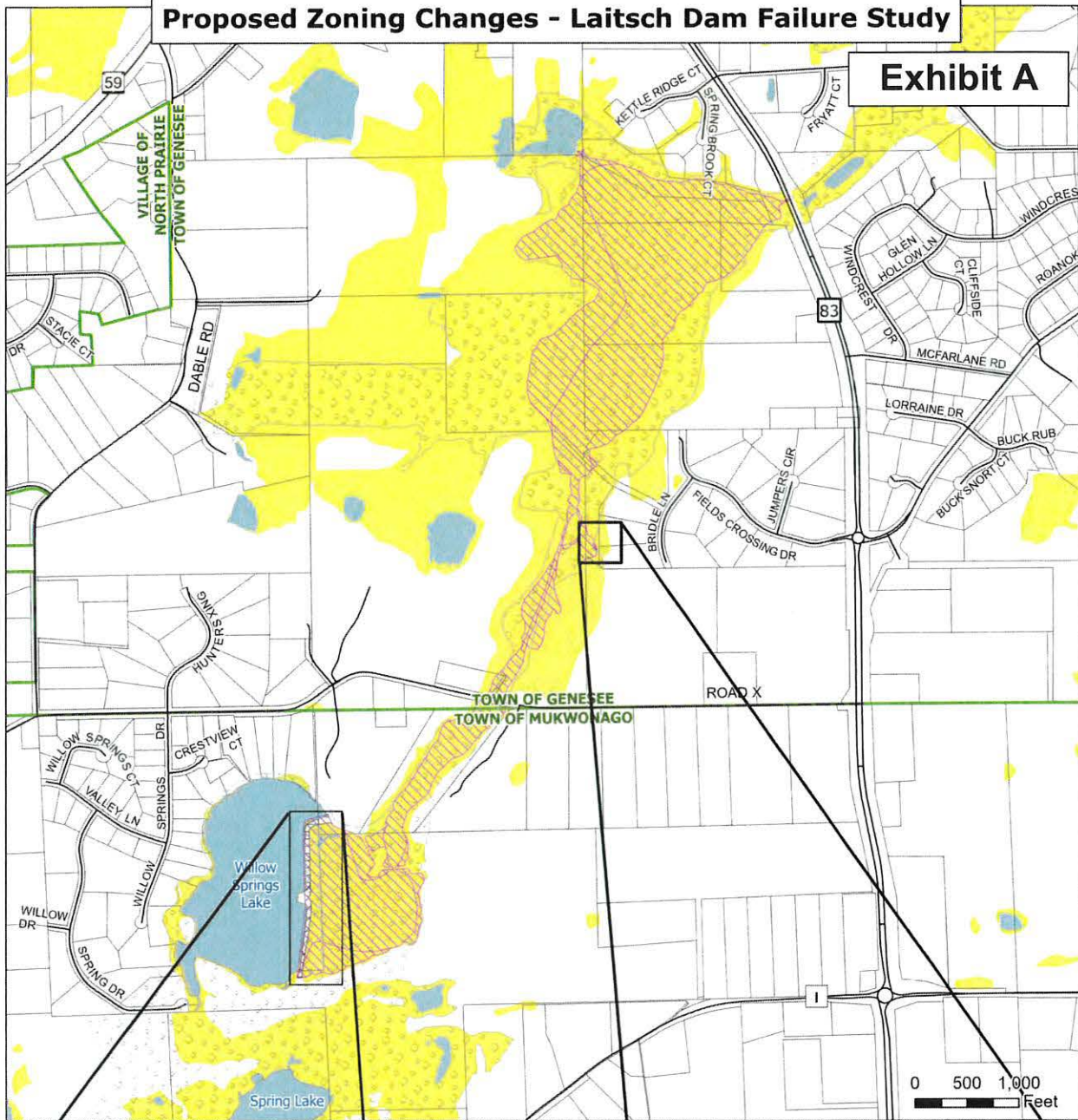
Enclosures: Exhibit A (floodplain map)  
Exhibit B (draft table of official maps and studies)

N:\PRKANDLU\Planning and Zoning\Rezoning\Staff Reports\RZ118 Text and RZ119 Map Laitsch Dam gnt\_mkt.doc



# Proposed Zoning Changes - Laitsch Dam Failure Study

## Exhibit A



Parcel affected: GNT 1576022; 0.04 Acres - Existing Town Zoning: C-1 District

- Legend**
- Proposed Dam Failure Zone (C-1 Floodway)
  - Existing C-1 Conservancy Overlay (DNR Wetlands and FEMA Floodplain)
  - C-1 Floodway Overlay (Existing HG District Remains)
  - C-1 Floodway Overlay (Existing P-I District Remains)
  - Establish HG Zoning District with C-1 Floodway Overlay
  - Water
  - Civil Division
  - Environmental Corridor Overlay

Establish High Groundwater (HG) District with a C-1 Floodway Overlay.

**Table 6(b)1.B.ii.**

**List of Official Maps Based Upon Other Studies to be Used in Conjunction with the Waukesha County Shoreland and Floodland Protection Ordinance Zoning Maps is as follows:**

1. Dam Failure Analysis and Emergency Action Plan for Wambold and Kroll Dams on Eagle Spring Lake, prepared by Graef, Anhalt, Schloemer & Associates, Inc., revised April 2002. Approved by the WDNR in April of 2002 and adopted by the Waukesha County Board on April 13, 2004.
2. Dam Failure Analysis and Proposed Dam Capacity Analysis-Monches Dam, Hey and Associates, Inc., April 17, 2006; amended on October 13, 2006 by Hey and Associates, Inc.; further amended on May 17, 2011 by the Waukesha County Department of Public Works; and further amended by R.A. Smith National on January 19, 2012. Approved by the WDNR on January 24, 2012 and adopted by the Waukesha County Board on March 27, 2012.
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4. Dam Failure Analysis – Mukwonago Dam, prepared by Mead & Hunt, June 2012. Approved by the WDNR on July 11, 2012 and adopted by the Waukesha County Board on November, 26, 2013.
5. Waukesha County Flood Storage District Maps, Panels 1, 2, 3, 4, 5, 6, 7, 8, 11, 12. Dated November 05, 2014. Prepared by the WDNR. Approved by the WDNR.
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  - b. Floodway data table dated October 7, 2022, and titled “Floodway Data Laitsch Dam Breach Hydraulic Shadow”.
  - c. Flood profiles dated September 9, 2022, and titled “Laitsch Dam Failure Analysis-Breach”.

1 AMEND THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION  
2 ORDINANCE DISTRICT ZONING MAP OF THE TOWNS OF GENESEE AND  
3 MUKWONAGO BY REZONING CERTAIN LANDS LOCATED IN SECTIONS 27 AND 34,  
4 T6N, R18E, TOWN OF GENESEE AND SECTIONS 3 AND 4, T5N, R18E, TOWN OF  
5 MUKWONAGO, WAUKESHA COUNTY, WISCONSIN TO APPLY A C-1  
6 CONSERVANCY OVERLAY DISTRICT ON THE SUBJECT LANDS  
7 (RZ119)  
8

9 WHEREAS, after proper notice was given, a public hearing was held and the subject matter of  
10 this Ordinance was approved by the Town of Genesee Board on May 27, 2023 and approved by  
11 the Town of Mukwonago Board on June 7, 2023; and  
12

13 WHEREAS, the matter was referred to and considered by the Waukesha County Park and  
14 Planning Commission, which recommended approval and reported that recommendation to the  
15 Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors,  
16 as required by Section 59.692, Wis. Stats.  
17

18 THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS  
19 that the Waukesha County Shoreland and Floodland Protection Ordinance District Zoning Map  
20 for the Towns of Genesee and Mukwonago, Waukesha County, Wisconsin, adopted by the  
21 Waukesha County Board of Supervisors on June 23, 1970, is hereby amended to rezone certain  
22 lands located in Sections 27 and 34, T6N, R18E, Town of Genesee and Sections 3 and 4, T5N,  
23 R18E, Town of Mukwonago, Waukesha County, Wisconsin to apply a C-1 Conservancy Overlay  
24 District on the subject lands, and more specifically described in the "Staff Report and  
25 Recommendation" and map on file in the office of the Waukesha County Department of Parks and  
26 Land Use and made a part of this Ordinance by reference RZ119, is hereby approved.  
27

28 BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of  
29 this Ordinance with the Towns of Genesee and Mukwonago Clerks.  
30

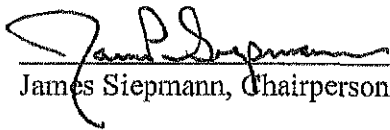
31 BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage,  
32 approval and publication.

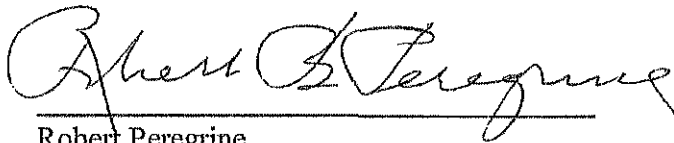
COMMISSION ACTION

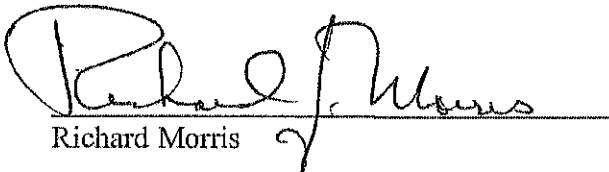
The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Waukesha County Shoreland and Floodland Protection Ordinance, hereby recommends **approval** of **RZ119 (Map Amendments/Laitsch Dam, Towns of Genesee and Mukwonago)** in accordance with the attached "Staff Report and Recommendation".

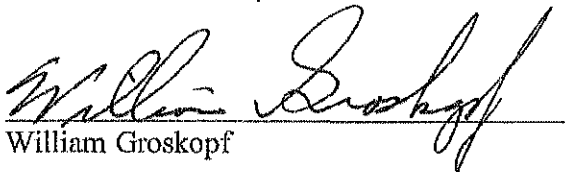
PARK AND PLANNING COMMISSION

July 20, 2023

  
James Siepmann, Chairperson

  
Robert Peregrine

  
Richard Morris

  
William Groskopf

  
Gary Szpara

**WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE**  
**STAFF REPORT AND RECOMMENDATION**  
**ZONING MAP AND TEXT AMENDMENT**

**FILE NO's:** RZ118 (text) and RZ119 (map)

**DATE:** July 20, 2023

**PETITIONER:** Waukesha County Park and Planning Commission  
515 W. Moreland Blvd. Room AC230  
Waukesha, WI 53188

**LOCATION:**

The properties affected by the rezone amendment are located in Section 34 and the S ½ of Section 27 in the Town of Genesee (T6N, R18E) as well as the NW ¼ of Section 3 and the NE ¼ of Section 4 in the Town of Mukwonago (T5N, R18E). Maps of the area and an informational letter were provided with the notices sent to the individual property owners affected. Exhibit A specifically identifies the proposed C-1 Conservancy Overlay District boundary based on the Dam Failure Zone. The information can also be viewed on the Waukesha County GIS website at: <https://www.waukeshacounty.gov/interactivemap/>. The dam failure layer is noted as "Draft dam failure (Willow Springs Dam) and is located within the "Floodplains FEMA and Other Sources" layer group on GIS.

**EXISTING ZONING:**

The dam failure study area extends across roughly 135 acres of land. Except for approximately 3,000 sq. ft. of land currently subject to Town of Genesee zoning, all lands are currently zoned C-1 Conservancy Overlay District. With respect to base zoning, most of lands are zoned HG High Groundwater District, with the remainder of lands in the A-1 Agricultural District. It should be noted that there is no proposal to amend base zoning designations, just the overlay zoning district boundaries.

**PROPOSED ZONING:**

The proposal would amend the text and map of the Waukesha County Shoreland and Floodland Protection Ordinance (SFPO) in order to adopt the dam failure analysis (study) for the Laitsch Dam. The hydraulic shadow of the dam failure analysis is proposed to be mapped as an additional floodplain boundary along Spring Brook from the Laitsch Dam to approximately 8,500 feet downstream of the dam. Only one (1) lot within the entire study area contains lands within the dam failure shadow that are not already zoned C-1 Conservancy (Floodplain) Overlay District due to the existing 100-year floodplain. The single lot impacted is an outlot in the Fields Crossing subdivision which currently has a substantial area of C-1 Conservancy Overlay District zoning due to an area of mapped floodplain. The outlot, which is fractionally owned by all subdivision lot owners, is used for stormwater purposes and is not buildable. That outlot would see roughly 2,800 sq. ft. of additional lands become subject to C-1 Conservancy (Floodplain) Overlay District due to the rezone action. In addition, because the County's shoreland jurisdictional limits extend to the full extent of the floodplain limits, the small area of the above noted outlot would become subject to shoreland jurisdiction since the floodplain in this section extends further than 300 feet from Spring Brook. Lastly, the table of official floodplain maps and studies in Section 6(b)1.B.ii of the SFPO will be repealed and re-created in its entirety (see Exhibit B).

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described within the zoning district text and are further identified throughout the other general sections of the ordinance. Properties with overlays maintain their base zoning districts, while natural resources are mapped within layers on top of the base zoning districts. As noted above, wetlands, floodplains and floodways are uniquely identified on the official county zoning maps. The county's floodplain zoning standards have been approved by both the Federal Emergency Management Agency (FEMA) and the DNR.

**PUBLIC HEARING DATES:**

Town of Genesee: May 27, 2023  
Town of Mukwonago: June 7, 2023

**PUBLIC REACTION:**

- Town of Genesee: None
- Town of Mukwonago: A question was asked at the hearing regarding any impacts to flood insurance requirements due to the zoning change. County staff noted that this change would not impact National Flood Insurance Program (NFIP) requirements since the dam failure rezone is not based on a hazard zone established from a Federal Insurance Rate Map (FIRM).

**TOWN OF GENESEE PLAN COMMISSION AND BOARD ACTION:**

On May 27, 2023, the Town of Genesee Plan Commission recommended approval of the request to the Town Board.

On May 27, 2023, the Town of Genesee Plan Board recommended approval of the text and map amendment to Waukesha County.

**TOWN OF MUKWONAGO**

On June 7, 2023, the Town of Mukwonago Plan Commission unanimously recommended approval of the request to the Town Board.

On June 7, 2023, the Town of Mukwonago Plan Board unanimously recommended approval of the text and map amendment to Waukesha County.

**COMPLIANCE WITH THE COMPREHENSIVE DEVELOPMENT PLAN (CDP) FOR WAUKESHA COUNTY AND THE TOWNS OF GENESEE AND MUKWONAGO CDP:**

Prevention of flooding is a key natural resource protection recommendation of both the Town and County CDPs, and the proposed rezoning will protect the newly studied floodplain from fill and prevent future property damage and personal injury for the portion of the properties to be rezoned and on the properties upstream and downstream of the subject area.

**STAFF ANALYSIS:**

A dam failure study has recently been completed by Stormwater Solutions Engineering for the Laitsch Dam, which is located on Willow Spring Lake and is managed by the Spring Brook Watershed Lake Management District. The dam, located in the Town of Mukwonago, defines the upstream extent of the study area with the downstream extent in the Town of Genesee where a bridge serving State Highway 83 crosses over Spring Brook.

NR116 of the Wisconsin Administrative Code requires areas downstream of dams be zoned and regulated to reduce potential loss of life and property. The WDNR has recently advised Waukesha

County that the study must be adopted on zoning maps and be referenced in the official maps section of the Waukesha County Shoreland and Floodland Protection Ordinance. As a result, the C-1 Conservancy (Floodway) Overlay District must be expanded to match the boundaries of the dam failure shadow.

**STAFF RECOMMENDATION:**

Based on the above analysis, the Planning and Zoning Division staff recommend **approval** of the request.

As noted above, NR116 of the Wisconsin Administrative Code requires that areas downstream of dams shall be zoned and regulated by municipalities with floodplain zoning ordinances to reduce potential loss of life and property located downstream of dams.

Rezoning the dam failure shadow as floodplain or floodway within the C-1 Conservancy Overlay District on the County zoning map prevents development within said areas, which ultimately protects the subject landowners and downstream property owners and their improvements from flooding danger. Over 99.9% of the lands with the dam failure study are already under a C-1 Conservancy Overlay zoning designation and the remaining affected lands are located in an undevelopable outlot. Approval of the request is consistent with the purpose and intent of the ordinance and follows CDP recommendations.

Respectfully submitted,

*Jason Fruth*

Jason Fruth  
Planning & Zoning Manager

*Benjamin Greenberg*

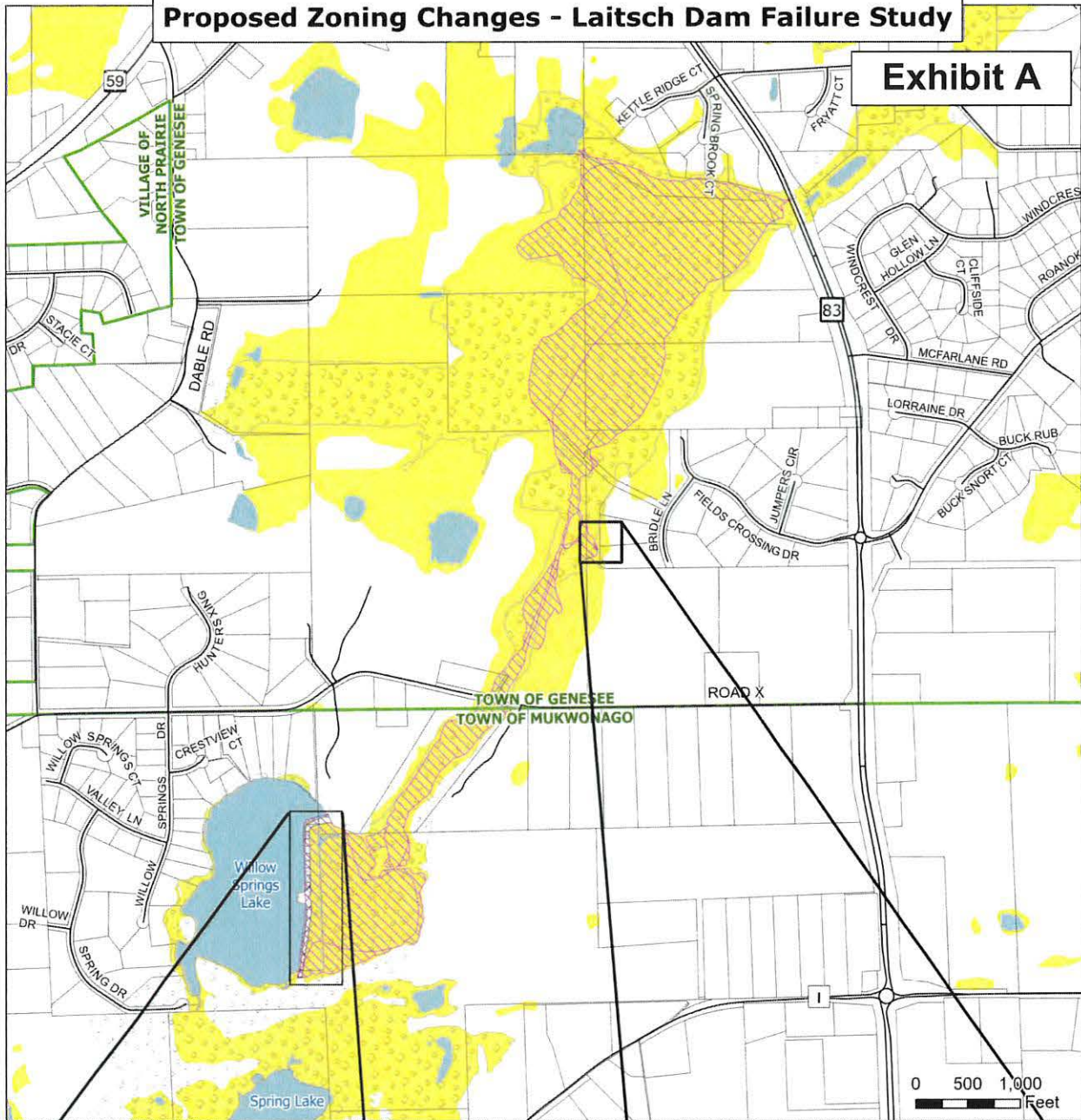
Ben Greenberg  
Senior Planner

Enclosures: Exhibit A (floodplain map)  
Exhibit B (draft table of official maps and studies)

N:\PRKANDLU\Planning and Zoning\Rezoning\Staff Reports\RZ118 Text and RZ119 Map Laitsch Dam gnt\_mkt.doc

# Proposed Zoning Changes - Laitsch Dam Failure Study

## Exhibit A



Parcel affected: GNT 1576022; 0.04 Acres - Existing Town Zoning: C-1 District

- Legend**
- Proposed Dam Failure Zone (C-1 Floodway)
  - Existing C-1 Conservancy Overlay (DNR Wetlands and FEMA Floodplain)
  - C-1 Floodway Overlay (Existing HG District Remains)
  - C-1 Floodway Overlay (Existing P-I District Remains)
  - Establish HG Zoning District with C-1 Floodway Overlay
  - Water
  - Civil Division
  - Environmental Corridor Overlay

Parcels affected: MUKT1882999002, MUKT1882992001 1.6 Acres  
 Existing County Zoning: HG District with EC Overlay, P-1 District  
 Referred on: 07/27/23

Prepared by Waukesha County Parks and Land Use - April 20, 2023

**Table 6(b)1.B.ii.**

**List of Official Maps Based Upon Other Studies to be Used in Conjunction with the Waukesha County Shoreland and Floodland Protection Ordinance Zoning Maps is as follows:**

1. Dam Failure Analysis and Emergency Action Plan for Wambold and Kroll Dams on Eagle Spring Lake, prepared by Graef, Anhalt, Schloemer & Associates, Inc., revised April 2002. Approved by the WDNR in April of 2002 and adopted by the Waukesha County Board on April 13, 2004.
2. Dam Failure Analysis and Proposed Dam Capacity Analysis-Monches Dam, Hey and Associates, Inc., April 17, 2006; amended on October 13, 2006 by Hey and Associates, Inc.; further amended on May 17, 2011 by the Waukesha County Department of Public Works; and further amended by R.A. Smith National on January 19, 2012. Approved by the WDNR on January 24, 2012 and adopted by the Waukesha County Board on March 27, 2012.
3. Dam Failure Analysis – Monterey Dam, prepared by Kunkel Engineering Group, LLC on September 2, 2011. Approved by the WDNR and adopted by the Waukesha County Board on December 18, 2012.
4. Dam Failure Analysis – Mukwonago Dam, prepared by Mead & Hunt, June 2012. Approved by the WDNR on July 11, 2012 and adopted by the Waukesha County Board on November, 26, 2013.
5. Waukesha County Flood Storage District Maps, Panels 1, 2, 3, 4, 5, 6, 7, 8, 11, 12. Dated November 05, 2014. Prepared by the WDNR. Approved by the WDNR.
6. Revised Waukesha County Flood Storage District Map Panel 3 and 3A. Prepared by SEH on December 22, 2015. Approved by the WDNR and adopted by the Waukesha County Board on June 28, 2016.
7. Saylesville Dam Failure Analysis and Assessment, prepared by Bloom Companies, Inc. on July 9, 2014. Approved by the WDNR on July 14, 2014 and adopted by the Waukesha County Board on July 28, 2015.
8. School Section Lake Dam Failure Analysis and Assessment, prepared by Leif Hauge, PE, Professional Hydrologist, Sr. Civil Engineer, Waukesha County Land Resources Division, on April 20, 2020. Approved by the WDNR on April 23, 2020, and adopted by the Waukesha County Board on February 23, 2021.
9. Willow Springs Lake (Laitsch) Dam Failure Analysis, prepared by Stormwater Solutions Engineering, LLC on September 9, 2022, approved by the WDNR on October 18, 2022 and adopted by the Waukesha County Board on \_\_\_\_\_. The adopted dam failure analysis includes the following:
  - a. Map dated October 7, 2022 and titled “Laitsch Dam Failure Analysis, Dam Breach”.
  - b. Floodway data table dated October 7, 2022, and titled “Floodway Data Laitsch Dam Breach Hydraulic Shadow”.
  - c. Flood profiles dated September 9, 2022, and titled “Laitsch Dam Failure Analysis-Breach”.

1 CREATE THE WAUKESHA COUNTY FLOODLAND PROTECTION ORDINANCE  
2 (RZ123)  
3

4 WHEREAS, Section 87.30, Wisconsin Statutes requires that counties establish floodplain zoning  
5 requirements for unincorporated area; and  
6

7 WHEREAS, Waukesha County has maintained floodplain zoning regulations within the  
8 Waukesha County Shoreland and Floodland Protection Ordinance since 1970; and  
9

10 WHEREAS, this ordinance will create a stand-alone floodplain zoning ordinance to comply with  
11 Section 87.30, Wisconsin Statutes; and  
12

13 WHEREAS, the Waukesha County Department of Parks and Land Use held a public hearing on  
14 July 20, 2023; and  
15

16 WHEREAS, the Waukesha County Park and Planning Commission has forwarded the proposed  
17 ordinance and the Staff Report and Recommendation to the Land Use, Parks and Environment  
18 Committee and to the Waukesha County Board of Supervisors with its recommendation that the  
19 proposed ordinance be approved.  
20

21 THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS  
22 that the creation of the Waukesha County Floodland Protection Ordinance, and more specifically  
23 described in the "Staff Report and Recommendation" on file in the office of the Waukesha  
24 County Department of Parks and Land Use, made available to the public on the website of  
25 Waukesha County on the webpage for the Department of Parks and Land Use, Division of  
26 Planning and Zoning, and made a part of this Ordinance by reference RZ123, is hereby  
27 approved, subject to the following conditions:  
28

- 29 1. The effective date of this ordinance shall be October 19, 2023.  
30  
31 2. This approval is subject to the final review of the DNR.  
32

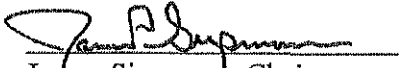
33 BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of  
34 this Ordinance with each of the town clerks within Waukesha County.

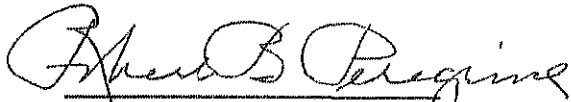
**COMMISSION ACTION**

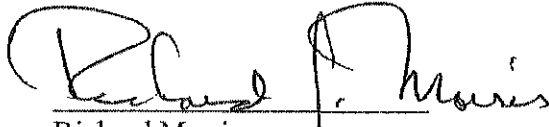
The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to create the Waukesha County Floodland Protection Ordinance hereby recommends **approval** of **RZ123 (Waukesha County Park & Planning Commission)** in accordance with the attached "Staff Report and Recommendation".

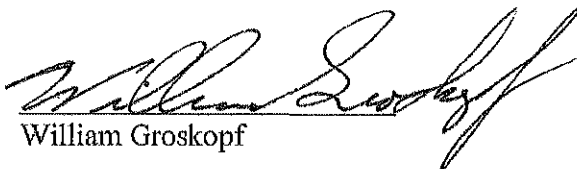
**PARK AND PLANNING COMMISSION**

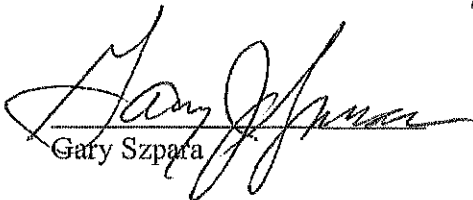
**July 20, 2023**

  
James Siepmann, Chairperson

  
Robert Peregrine

  
Richard Morris

  
William Groskopf

  
Gary Szpara



**WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE**  
**STAFF REPORT AND RECOMMENDATION**  
**CREATE THE WAUKESHA COUNTY FLOODLAND PROTECTION ORDINANCE**

**FILE NO.:** RZ123  
**DATE:** July 20, 2023  
**PETITIONER:** Waukesha County Park and Planning Commission

**REQUEST:**  
Create the Waukesha County Floodland Protection Ordinance.

**PUBLIC HEARING DATE:** July 20, 2023

**PUBLIC COMMENT:**

Any comments offered by the public at the July 20, 2023 hearing will be made a part of the record and considered in the final staff recommendation.

Peter Jensen, W345 S10489 Cty Hwy E – Mr. Jensen, Chairperson for the Eagle Spring Lake Management District, noted that he was in support of the separation of shoreland and floodplain zoning rules into two ordinances and was in support of the proposed modifications to the regulations. In addition, he shared the concerns of two property owners with lots on one of the islands on Eagle Spring Lake who believe that the FEMA maps do not take into account the topography of the island.

Don Reinbold, N73 W32385 River Rd., asked about floodplain regulations around North Lake. He stated the importance of maintaining the flood protection provided by the zoning in place (North Lake Overlay District).

Shane Schlieve, W378 S5089 W. Pretty Lake Rd., had questions about septic systems in floodplains and environmental corridors.

Sandy Scherer, Ottawa Town Planner, provided a number of administrative considerations and suggestions in writing.

**STAFF ANALYSIS:**

The Federal Emergency Management Agency (FEMA) has recently finalized new floodplain mapping panels that must be adopted by communities that administer floodplain zoning ordinances. The FEMA map update process has been many years in the making and included a local open house where maps were displayed. An appeals period was also provided as is typical of any FEMA map update. Waukesha County administers floodplain zoning within the county's eight unincorporated towns. As part of the map update, FEMA also requires that zoning ordinance text be brought into compliance with updated state and federal floodplain zoning standards. Those standards are maintained in a state model floodplain zoning ordinance that was used as the framework for this ordinance. Some unique language is proposed to supplement model language in order to continue to maintain Waukesha County's protections of flood prone property. The unique language is identified in a "tracked changes" format (see Exhibit A). FEMA has set October 19, 2023 as the effective date for the new mapping and the deadline by which the county must adopt the new maps and the updated zoning ordinance text.

Unincorporated Waukesha County is just one of many local floodplain zoning entities that experiences some change with the new FEMA maps. This update largely focused on new detailed studies for major

tributaries to the Fox River. However, there are not many major tributaries to the Fox River within Waukesha County's zoning jurisdiction, so the areas of change within the county's jurisdictional portion of the Fox River basin are fairly modest. One stream that is newly studied is Spring Brook along STH 83 in Genesee and Mukwonago. The study results in significantly less FEMA floodplain along that stream. Many areas both within and outside of the Fox River basin have unstudied floodplains that become refined because an engineering basis is being incorporated. This results in some significant reductions in floodplain area in the western part of the county. Revised floodplain boundaries can be viewed by visiting the Waukesha County Internet Mapping site ([www.waukeshacounty.gov/interactivemap](http://www.waukeshacounty.gov/interactivemap)) and clicking the Floodplains box and then the Floodplain Data (Other Sources) box. To compare against existing floodplains, click the FEMA Floodplain box.

The county has long maintained both shoreland and floodland (floodplain) standards within the Waukesha County Shoreland & Floodland Protection Ordinance. Because the floodplain standards are spread throughout the combined ordinance and mixed with shoreland provisions, updates to floodplain standards have become more time intensive and difficult over time. The proposed ordinance would consolidate floodplain zoning regulations in a single ordinance making the floodplain rules easier for the code reader to understand and for staff to administer. The move to a single ordinance also makes DNR and FEMA review more expedient. Shoreland zoning standards will be maintained within a revised Waukesha County Shoreland Protection Ordinance (pending as rezone file RZ124).

A summary of changes is attached as Exhibit B. The county has historically zoned existing homes and structures within floodplains within an Existing Floodplain Development District. This district recognized that existing houses within floodplains were constructed before zoning rules and represent significant family financial assets. Accordingly, the district allowed for re-builds and vertical expansions of structures within the floodplain. However, the district was quite restrictive in mandating floodproofing measures of homes where even very minor structural changes were proposed. This ordinance would ease that requirement and allow for improvements up to 50% of a structure's equalized value without the need for floodproofing. The ordinance standards will also allow for limited horizontal expansions of floodplain structures but will require floodplain compensation for any fill. This will ensure that neighboring properties are not adversely affected.

FEMA map panels and other floodplain studies, such as dam failure studies, are incorporated into the ordinance by text reference and contained within floodplain tables at the end of the ordinance. While state and federal floodplain standards are not changing significantly at the present time, the transition to a standalone floodplain zoning ordinance will make future administrative changes, such as modified definitions, easier to implement.

**STAFF RECOMMENDATION:**

It is the opinion of the Planning and Zoning Division Staff that this request be **approved** subject to the following conditions.

1. The effective date of this ordinance shall be October 19, 2023.
2. This approval is subject to the final review of the DNR and Waukesha County Corporation Counsel's office.

As conditioned, the proposed ordinance will become effective on the same day that new FEMA mapping becomes effective. The proposed ordinance consolidates floodplain zoning provisions in a stand-alone ordinance that is compliant with state and federal floodplain zoning standards. These provisions ensure the



protection of life and property in flood prone areas while also allowing for limited improvement of existing structures within the floodplain.

Enclosures: Exhibit A (draft zoning ordinance located at [www.waukeshacounty.gov/planningandzoning](http://www.waukeshacounty.gov/planningandzoning) -at bottom of page, click the blue “Zoning Ordinances” tab and then “Draft County/Town Ordinances”).  
Exhibit B – Summary of Floodplain Changes

Respectfully submitted,

*Jason Fruth*

Jason Fruth  
Planning & Zoning Manager

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## 2023 floodplain ordinance amendments- summary of proposed changes

### What stays the same?

- Replacement structures are the only new buildings permitted within the floodplain/floodway.
- First floor of residences must be 2' above 1% flood elevation.
- Basement must be 2' above 1% flood elevation.
- Crawlspace must be at or above the flood elevation and floodproofed.
- No fill of floodplain without compensation.
- Flood storage districts.
- Permitted uses in the floodplain.
- Redevelopment standards for structures damaged or substantially destroyed in a non-flood disaster.

### What is new or different?

#### ➤ Mapping

- New FEMA mapping must be adopted into ordinance.
- Many A zones assigned an engineering basis, which causes smaller floodplains in many cases.
- Some tributaries of Fox River studied in detail, Ashippun River updates rolled in.

#### ➤ Floodplain Standards

- Separates floodplain rules from shoreland zoning rules (two separate ordinances). Makes updates, administration and ordinance interpretation easier.
- Separates C-1 (floodplain) rules from C-1 (wetland) rules.
- Creates a new general floodplain district for A Zones on the Federal Insurance Rate Maps.
- Creates floodway district whereas floodway rules were previously somewhat scattered.
- Eliminates the EFD Existing Floodplain Development District in favor of reliance upon non-conforming rules and floodplain storage compensation rules. Will afford owners of floodplain structures more ability to expand provided that they can compensate for any lost storage.
- Allows for improvements to both floodplain and floodway structures, up to 50% of their value, whereas existing rules required floodproofing in the floodfringe for very minor structural changes and prohibited any improvements to floodway structures. Floodway structure improvements may require obstruction analysis.
- Allows parking lots within floodplain and floodway areas with proper flood warning system.
- More flexibility to propose fill projects without rezoning lands.
- Amend appeal procedures to be consistent with the model (30 days to appeal).

### Other changes:

- The most current DNR wetlands inventory and SEWRPC environmental corridor inventory will be incorporated into draft zoning maps.
- We are exploring the possibility of becoming a CRS (Community Rating System) community. This could potentially reduce flood insurance rates for property owners in the floodplain.

1 ADOPT TEXT AMENDMENTS AND RENAME THE WAUKESHA COUNTY  
2 SHORELAND AND FLOODLAND PROTECTION ORDINANCE TO REPEAL NUMEROUS  
3 FLOODPLAIN STANDARDS THAT WILL BE ADMINISTERED WITHIN THE  
4 WAUKESHA COUNTY FLOODLAND PROTECTION ORDINANCE AND AMEND  
5 OTHER SHORELAND ZONING PROVISIONS  
6 (RZ124)  
7

8 WHEREAS, the Waukesha County Board of Supervisors enacted the Waukesha County  
9 Shoreland and Floodland Protection Ordinance on January 23, 1970; and

10 WHEREAS, the Waukesha County Board of Supervisors may make amendments to such  
11 Ordinance pursuant to Section 59.692, Wisconsin Statutes; and

12  
13  
14 WHEREAS, the Waukesha County Department of Parks and Land Use held a public hearing on  
15 July 20, 2023; and

16  
17 WHEREAS, the proposed amendments have been duly referred, considered and approved by the  
18 Waukesha County Park and Planning Commission at its meeting of July 20, 2023; and

19  
20 WHEREAS, the Waukesha County Park and Planning Commission has forwarded the proposed  
21 amendments and the Staff Report and Recommendation to the Land Use, Parks and Environment  
22 Committee and to the Waukesha County Board of Supervisors with its recommendation that the  
23 proposed amendments be approved.

24  
25 THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS  
26 that the Waukesha County Shoreland and Floodland Protection Ordinance is hereby amended to  
27 repeal numerous floodplain standards that will be administered within the newly proposed  
28 Waukesha County Floodland Protection Ordinance and amend other shoreland zoning  
29 provisions, and are more specifically described in the "Staff Report and Recommendation" by  
30 reference RZ124, on file in the office of the Waukesha County Department of Parks and Land  
31 Use, and made a part of this Ordinance, subject to the following conditions:

- 32  
33 1. The effective date of this ordinance shall be October 19, 2023.  
34 2. This approval is subject to the final review of the DNR.

35  
36 BE IT FURTHER ORDAINED that the title of the Waukesha County Shoreland and Floodland  
37 Protection Ordinance shall be changed to the Waukesha County Shoreland Protection Ordinance,  
38 effective October 19, 2023.

39  
40 BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of  
41 this Ordinance with each of the town clerks within Waukesha County.

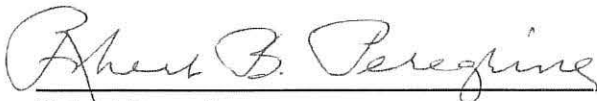
**COMMISSION ACTION**

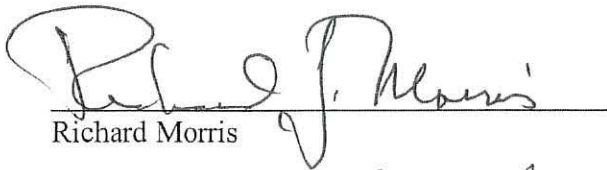
The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Waukesha County Shoreland and Floodland Protection Ordinance, hereby recommends approval of **(RZ124 Waukesha County Park and Planning Commission – SFPO Text Amendments)** in accordance with the attached “Staff Report and Recommendation.”

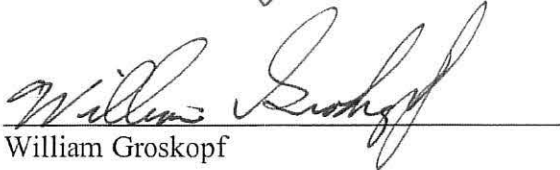
**PARK AND PLANNING COMMISSION**

**July 20, 2023**

  
James Siepmann, Chairperson

  
Robert Peregrine

  
Richard Morris

  
William Groskopf

  
Gary Szpara

**WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE**  
**STAFF REPORT AND RECOMMENDATION**  
**TEXT AMENDMENTS TO THE WAUKESHA COUNTY SHORELAND AND FLOODLAND**  
**PROTECTION ORDINANCE**

**FILE NO.:** RZ124

**DATE:** July 20, 2023

**PETITIONER:** Waukesha County Park and Planning Commission

**REQUEST:**

Amend the text of the Waukesha County Shoreland and Floodland Protection Ordinance (SFPO) to repeal numerous floodplain standards and make minor amendments to shoreland related provisions.

**PUBLIC HEARING DATE:** July 20, 2023

**PUBLIC COMMENT:**

None

**STAFF ANALYSIS:**

The Federal Emergency Management Agency (FEMA) has recently notified Waukesha County that new floodplain mapping for unincorporated Waukesha County has been approved and will become effective on October 19, 2023. FEMA has advised that the county must adopt the new maps by text reference and bring the county's floodplain zoning standards up to date with current state and federal standards by that date. As explained in the companion staff report for RZ 123, the county's floodplain zoning standards are proposed to be consolidated in a new stand-alone floodplain zoning ordinance, which prompts the need for amendments to the SFPO in order to remove the existing floodplain references that will now instead be located within the Waukesha County Floodland Protection Ordinance (FPO). The proposed amendments within the full ordinance text are depicted in "tracked changes" format (See Exhibit A). A summary of the proposed amendments is attached as Exhibit B.

The vast majority of the edits are deletions of floodplain related standards because similar language is instead being inserted into the FPO. The county's shoreland zoning standards will overwhelmingly stay the same. The state's shoreland zoning program has asked that the county incorporate language to reflect a couple of recent minor changes to state law regarding fences between roadways and shorelines and access and viewing corridors. Because floodplain zoning provisions are being removed, the ordinance is proposed to be renamed as the Waukesha County Shoreland Protection Ordinance.

**STAFF RECOMMENDATION:**

It is the opinion of the Planning and Zoning Division Staff that this request be **approved** subject to the following conditions:

1. The effective date of this ordinance shall be October 19, 2023.
2. This approval is subject to the final review of the DNR and Waukesha County Corporation Counsel's office.

As conditioned, the proposed ordinance will become effective on the same day that new FEMA mapping becomes effective. The proposed ordinance removes floodplain zoning provisions that will instead be maintained in a stand-alone floodplain zoning ordinance. This modified Shoreland Protection Ordinance will continue to offer protections to near-shore areas while allowing for reasonable use and development near shorelines with very little practical change to the existing shoreland zoning standards.

Respectfully submitted,

*Jason Fruth*

Jason Fruth  
Planning & Zoning Manager

Enclosures: Exhibit A (see [www.waukeshacounty.gov/planningandzoning](http://www.waukeshacounty.gov/planningandzoning) - at bottom of page, click the blue “Zoning Ordinances” tab and then click “Draft County/Town Ordinances.”)  
Exhibit B: Repeal and Recreate document

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**Proposed Amendments to the**  
**Waukesha County Shoreland and Floodland Protection Ordinance**  
**RZ124**

**REVISED 7/18/23**

*Note: To assist the reader, additions are identified in red and blue print and deletions contain a strike through format.*

**SECTION 1**

**Repeal and Recreate Section 1(b)**

**Purpose and Intent**

Uncontrolled use of shorelands and pollution of navigable waters will 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 Waukesha County, Wisconsin. For the purpose of promoting the public health, safety, convenience and welfare, this Ordinance has been established to:

1. Further the maintenance of safe and healthful conditions and prevent and control water pollution through:
  - A. Limiting structures to those areas where soil and geological conditions will provide a safe foundation.
  - B. Establishing minimum lot sizes to control density and provide suitable area for private sewage disposal facilities.
  - C. Controlling land altering activities to prevent serious soil erosion.
  - D. Limiting impervious surfaces to control runoff which carries pollutants.
2. Protect spawning grounds, fish and aquatic life through:
  - A. Preserving wetlands and other fish and aquatic habitat.
  - B. Regulating pollution sources.
  - C. Controlling shoreline alterations such as dredging and lagooning.
3. Control building sites, placement of structures and land uses through:
  - A. Reducing and eliminating conflicting land uses.
  - B. Prohibiting uses detrimental to the shoreland area.
  - C. Setting minimum lot sizes and widths.
  - D. Regulating building, structural placement and height.

- E. Regulating land and water uses so as to assure a more compatible relationship to the carrying capacity of the land and water.
4. Preserve and restore shore cover and natural scenic beauty through:
- A. Restricting the removal of natural shoreland cover.
  - B. Preventing shoreline encroachment by structures.
  - C. Controlling shoreland excavation and other land altering activities.
  - D. Regulating the use and placement of boathouses and other structures.
- ~~5. Prevent uncontrolled development and use of the floodplains through:~~
- ~~A. Protecting life, health and property;~~
  - ~~B. Minimizing expenditures of public funds for flood control projects;~~
  - ~~C. Minimizing rescue and relief efforts undertaken at the expense of the taxpayers;~~
  - ~~D. Minimizing business interruptions and other economic disruptions;~~
  - ~~E. Minimizing damage to public facilities in the floodplain;~~
  - ~~F. Minimizing the occurrence of future flood blight areas in the floodplain;~~
  - ~~G. Discouraging the victimization of unwary land and home buyers;~~
  - ~~H. Preventing increases in flood heights that could increase flood damage and result in conflicts between property owners, and~~
  - ~~I. Discouraging development in a floodplain if there is any practicable alternative to locate the activity, use or structure outside of the floodplain.~~
65. Provide for adequate light, air, sanitation, drainage, convenience of access, safety from fire, flood hazard and other dangers, promote the safety and efficiency of the public streets and highways, conserving and stabilizing the economic value of the community, preserve and promote the general attractiveness and character of the community environment and guide the proper distribution and location of population and the various land uses.

---

## **SECTION 2**

### **Repeal Section 2(b)2**

~~**A ZONES: Those areas shown on the Official Zoning Map and depicted on the Flood Insurance Rate Map, which would be inundated by the regional flood. These areas may be numbered and studied A Zones, which are reflective of flood profiles, or unnumbered A Zones, which are unstudied or approximate areas and where a flood profile is unavailable.**~~

~~**(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)**~~

~~**(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)**~~



### **Repeal Section 2(b)22**

~~Base Flood: A flood having a one percent chance of being equaled or exceeded in any given year, as published by FEMA as part of a Flood Insurance Study and depicted on a Flood Insurance Rate Map. Base floods are numbered A Zones on the Flood Insurance Rate Map.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)  
(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

### **Repeal Section 2(b)23**

~~Base Flood Elevation (BFE): The elevation of a Base Flood. Commonly referred to as BFE.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)  
(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

### **Repeal and Recreate subsection 2(b)25**

Basement: A level of a building with a height, as measured between the floor and the bottom of the floor joists above that is more than one-half below the finished yard grade on at least one side. If a lateral extension of the basement level does not have a story (as defined in this Ordinance) above it, it is not considered a basement level, and shall be regulated as otherwise required in this Ordinance. ~~For Floodplain purposes only, a basement is any enclosed area of a building having its floor sub-grade, i.e. below ground level, on all sides.~~

(Amended by Enrolled Ordinance 159-70, effective 12-12-2004.)  
(Amended by Enrolled Ordinance 165-69, effective 12-23-2010.)  
(Amended by Enrolled Ordinance 169-54, effective 10-08-2014.)

### **Repeal and Recreate subsection 2(b)35**

Bulkhead Line: A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the WDNR pursuant to s. 30.11, Wisconsin Statutes, and which allows limited filling between the bulkhead line and the original ordinary high water mark, ~~except where such filling is prohibited by the floodway provisions of this Ordinance.~~

(Amended by Enrolled Ordinance 163-55, effective 11-13-2008.)  
(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)

### **Repeal and Recreate subsection 2(b)37**

Camping Unit: Any portable device used as a temporary shelter, including but not limited to a tent, camping trailer, mobile home, bus, van, or pick-up truck that is fully licensed, if required, and ready for highway use. ~~Any such portable device is not defined as a camping unit if it exceeds 400 sq. ft. in area and is located in the Floodplain.~~

(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)  
(Amended by Enrolled Ordinance 169-54, effective 10-08-2014.)

### **Repeal Section 2(b)51**

~~Dryland Access: A vehicular access route which is above the regional flood elevation and which connects land located in the Floodplain to land outside the Floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.~~

~~(Amended by Enrolled Ordinance 163-55, effective 11-13-2008.)  
(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

### **Repeal Section 2(b)73**

~~Flood Frequency: The probability of a flood occurrence, which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average, once in a specified number of years or as a percent (%) chance of occurring in any given year.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)~~

### **Repeal Section 2(b)74**

~~Flood Insurance Rate Map: A map of a community on which the Federal Insurance Administration has delineated both Floodplains and the risk premium zones applicable to the community. Commonly referred to as FIRM. This map can only be amended by the Federal Emergency Management Agency.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)~~

### **Repeal Section 2(b)75**

~~Flood Insurance Study: A technical engineering examination, evaluation, and determination of the local floodplain areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and Base Flood Elevations and may provide floodway lines. The floodplain areas are designated as numbered and unnumbered A Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program. Commonly referred to as FIS.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)  
(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

### **Repeal Section 2(b)76**

~~Flood Profile: A graph or 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.~~

~~(Amended by Enrolled Ordinance 163-55, effective 11-13-2008.)  
(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

### **Repeal Section 2(b)77**

~~Flood Protection Elevation: The elevation corresponding to two (2) feet of freeboard above the Floodplain as defined herein.~~

~~(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

### **Repeal Section 2(b)78**

~~Flood Stage: The elevation of the floodwater surface above an officially established datum plane. In Waukesha County, the datum plane used shall be NAVD88.~~

~~(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

### **Repeal Section 2(b)79**



~~Flood Storage or Flood Storage Capacity: Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)  
(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

#### **Repeal Section 2(b)80**

~~Floodfringe: That portion of the Floodplain, outside of the floodway, which is covered by flood waters during the regional flood and associated with standing water rather than flowing water.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)  
(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

#### **Repeal Section 2(b)83**

~~Floodplain Certificate of Compliance: A certification that the construction and the use of the land or a structure, the elevation of fill, and the lowest floor of a structure are in compliance with all of the floodplain provisions of this Ordinance.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)~~

#### **Repeal Section 2(b)84**

~~Floodplain Encroachment: Any fill, structure, equipment, use or Development in the Floodplain.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)  
(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

#### **Repeal Section 2(b)85**

~~Floodplain Island: A natural geologic land formation within the Floodplain that is surrounded, but not covered, by floodwater during the regional flood.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)~~

#### **Repeal Section 2(b)86**

~~Floodplain Management: Policy and procedures to insure wise use of Floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)  
(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

#### **Repeal Section 2(b)87**

~~Floodproofing: Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities, structures and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage. Such facilities shall be designed to withstand the flood velocities, forces and other factors associated with the regional flood, and which will assure protection of the property to the flood protection elevation.~~

~~(Amended by Enrolled Ordinance 163-55, effective 11-13-2008.)~~

### **Repeal Section 2(b)90**

~~Freeboard: A factor of safety 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, and include, but not are limited to, ice jams, debris accumulation, wave action, obstructed bridge openings and floodways, the effects of urbanization on the hydrology of the watershed, loss of flood-storage areas due to Development and aggregation of the river or stream bed.~~

~~(Amended by Enrolled Ordinance 163-55, effective 11-13-2008.)~~

~~(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

### **Repeal Section 2(b)101**

~~High Flood Damage Potential: Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure and its contents.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)~~

### **Repeal Section 2(b)110**

~~Increase in Regional Flood Height or Elevation: A calculated upward rise in the Regional Flood Elevation, greater than 0.00 foot, based on 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.~~

~~(Amended by Enrolled Ordinance 163-55, effective 11-13-2008.)~~

~~(Amended by Enrolled Ordinance 169-54, effective 10-08-2014.)~~

~~(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

### **Repeal and Recreate Section 2(b)130**

~~Lowest Floor or Level: The lowest floor or level of the enclosed area in a Building, including Basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a Building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of FEMA regulations contained in 44CFR 60.3.~~

~~(Created by Enrolled Ordinance 165-69, effective 12-23-2010.)~~

~~(Created by Enrolled Ordinance 169-54, effective 10-08-2014.)~~

~~(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

### **Repeal Section 2(b)136**

~~Model, Corrected Effective: A hydraulic engineering model that corrects any errors that occur in the Duplicate Effective Model, adds any additional cross sections to the Duplicate Effective Model, or incorporates more detailed topographic information than that used in the current effective model.~~

~~(Created by Enrolled Ordinance 169-54, effective 10-08-2014.)~~

### **Repeal Section 2(b)137**

~~Model, Duplicate Effective: A copy of the hydraulic analysis used in the effective FIS and referred to as the effective model.~~

~~(Created by Enrolled Ordinance 169-54, effective 10-08-2014.)~~



### **Repeal Section 2(b)138**

~~Model, Effective: The hydraulic engineering model that was used to produce the current effective Flood Insurance Study.~~

~~(Created by Enrolled Ordinance 169-54, effective 10-08-2014.)~~

### **Repeal Section 2(b)139**

~~Model, Existing (pre-project): A modification of the Duplicate Effective Model or Corrected Effective Model to reflect any man-made modifications that have occurred within the Floodplain since the date of the effective model but prior to the construction of the project for which the revision is being requested. If no modification has occurred since the date of the effective model, then this model would be identical to the Corrected Effective Model or Duplicate Effective Model.~~

~~(Created by Enrolled Ordinance 169-54, effective 10-08-14.)~~

~~(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

### **Repeal Section 2(b)140**

~~Model, Revised (post-project): A modification of the Existing or Pre-Project Conditions Model, Duplicate Effective Model or Corrected Effective Model to reflect revised or post-project conditions.~~

~~(Created by Enrolled Ordinance 169-54, effective 10-08-2014.)~~

### **Repeal Section 2(b)150**

~~New Floodplain Construction: Structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by Waukesha County and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the "start of floodplain construction" commenced on or after the effective date of an initial Flood Insurance Rate Map or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)~~

### **Repeal Section 2(b)154**

~~Nonflood Disaster: Has the meaning of Chapter 87, Wisconsin Statutes, regarding flood control, specifically a fire or an ice storm, tornado, windstorm, mudslide or other destructive act of nature, but excludes a flood.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)~~

~~(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

### **Repeal Section 2(b)159**

~~Obstruction to Flow: Any Development which blocks the conveyance of floodwaters such that this Development alone or together with any future Development will cause an increase in regional flood elevation.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)~~

~~(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

### **Repeal Section 2(b)189**

~~Reach: A longitudinal segment of a stream generally including those floodlands wherein flood stages are primarily and commonly controlled by the same man-made or natural obstructions to flow.~~

### **Repeal and Recreate Section 2(b)191**

~~Regional Flood: A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year, and if depicted on the Flood Insurance Rate Map, the regional flood elevation is equivalent to the Base Flood Elevation. A regional flood may also be determined by other studies approved by the WDNR.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)  
(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

### **Repeal Section 2(b)192**

~~Regional Flood Elevation: The elevation of the regional flood. Commonly referred to as RFE.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)~~

### **Repeal and Recreate Section 2(b)212**

~~Shoreland/Wetlands: Those wetland areas that lie within the shoreland and floodland jurisdiction of this Ordinance and that have been designated as such on the Final Wisconsin Wetlands Inventory Maps for Waukesha County prepared by the WDNR as depicted on the WDNR Surface Water Data Viewer <https://dnrm.wisconsin.gov/H5/?viewer=SWDV>~~

~~Also, see definition of Wetland.~~

~~(Amended by Enrolled Ordinance 163-55, effective 11-13-2008.)  
(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)  
(Amended by Enrolled Ordinance 175-19, effective 08-12-2020.)~~

### **Repeal Section 2(b)223**

~~Start of Construction: This definition only applies to those structures located in the Floodplain. The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of Accessory Buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a Building, whether or not that alteration affects the external dimensions of the Building.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)  
(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

### **Repeal Section 2(b)238**

~~Substantial Damage: Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the equalized assessed value of the structure before the damage occurred.~~



~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)  
(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

### **Repeal Section 2(b)240**

~~Substantial Improvement: Any repair, reconstruction, rehabilitation, addition or improvement of a Building or structure, the cost of which equals or exceeds 50 percent of the equalized assessed value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered Substantial Improvement regardless of the work performed. The term does not, however, include either any project for the improvement of a Building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions; or any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.~~

~~(Created by Enrolled Ordinance 169-54, effective 10-08-14.)  
(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

### **Repeal Section 2(b)256**

~~Water Surface Profile: A graphical 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.~~

~~(Created by Enrolled Ordinance 163-55, effective 11-13-2008.)  
(Amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

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## **SECTION 3**

### **Repeal and Recreate Section 3(a)**

#### Jurisdiction and Mapping

1. The jurisdiction of this Ordinance shall apply to all structures, land, and water including those lands within the unincorporated ~~Floodland and~~ Shoreland areas, which are those lands within one thousand (1,000) feet from the Ordinary High Water Mark of navigable lakes, ponds or flowages; three hundred (300) feet of the Ordinary High Water Mark of navigable rivers or streams, or to the landward side of the Floodplain (as defined herein), whichever distance is greater, and located within the boundaries of Waukesha County, Wisconsin. Statutory exemptions apply as specified in Section 3(b)~~4-3~~ of this Ordinance. Determinations of navigability and Ordinary High Water Mark location shall initially be made by the Zoning Administrator or WDNR. When questions arise, the Zoning Administrator shall contact the appropriate office of the WDNR for a final determination of navigability or Ordinary High Water Mark. The County may work with surveyors with regard to s. 59.692(1h), Wis. Stats. (2016).

Originally, the Waukesha County Board of Supervisors on June 23, 1970 adopted one (1) inch equals one thousand (1,000) feet individual township Shoreland and Floodland zoning maps as part of this Ordinance. These areas of jurisdiction were redrawn and indicated on four (4) square mile aerial photographs at a scale of one (1) inch equals four hundred (400) feet and were made a part of this Ordinance. As a result of ongoing large scale topographic mapping and survey projects conducted under Section 87.31, Wisconsin Statutes and pursuant to county needs, additional topography maps at a scale of one (1) inch equals two hundred (200) feet with contour intervals of two (2) feet were also made a part of this Ordinance where said maps contained greater detail and information relative to information pertinent to said Shoreland ~~and~~ ~~Floodland~~ areas. Together with the one (1) inch equals four hundred (400) feet aerial photographs referenced



above, these maps amended and replaced the original one (1) inch equals one thousand (1,000) feet township zoning maps previously adopted and referred to above for the specific land areas covered within the area for which the Shoreland and Floodland jurisdiction has been shown thereon.

The county has converted the previously referenced maps into a digital format using the Geographic Information System (GIS) to allow for greater access to the mapping information. Paper copies are on record in the Waukesha County Department of Parks and Land Use-Planning and Zoning Division office. The maps are converted by town area and the Shoreland ~~and Floodland~~ areas are mapped using up-to-date Floodplain, navigability, elevation, Wetland, and parcel information, as well as historical information contained on the aforementioned one (1) inch equals four hundred (400) feet aerial photographs. The scale of the map differs by town, but in general are one (1) inch equals one thousand (1000) feet. These new maps supersede the aforementioned aerial and contour maps as they are completed and approved by the Plan Commission and the County Board.

The boundaries of the ~~Floodplains and~~ Wetlands shall be those areas designated as such on the above-referenced maps and as described in Section 6(b) of this Ordinance. ~~For Floodplain Management purposes, the regulated Floodplain boundary shall be that as set forth in the FEMA Flood Insurance Rate Maps or as depicted as the C-1 Conservancy Overlay or EFD Districts on the official zoning map, whichever boundary designates a greater Floodplain area.~~ Where a stream is subsequently identified or determined to be navigable, and was not previously subject to Shoreland ~~and Floodland~~ Ordinance jurisdiction, said navigable stream and the lands bordering it, which meet the conservancy zoning district standards for mapping, shall immediately be subject to the jurisdiction of this Ordinance, including those requirements such as floodplain and wetland setback requirements and other water quality related issues. Subsequently, upon processing and approval of an amendment to include the entire area along said stream or water course within the Shoreland jurisdiction and the holding of requisite hearings pursuant to the provisions of this Ordinance, all Shoreland areas and provisions attendant thereto shall fall under the jurisdiction of this Ordinance.

2. Where Lots are partially within the jurisdiction of the Waukesha County Shoreland ~~and Floodland~~ Protection Ordinance and partially within the jurisdiction of a town zoning ordinance, the Waukesha County Shoreland ~~and Floodland~~ Protection Ordinance shall regulate as follows:

A. Structures. For any Structure that is located partially or fully within the jurisdiction of the Waukesha County Shoreland ~~and Floodland~~ Protection Ordinance, Waukesha County shall regulate the portion of the Structure that is within the County's jurisdiction, which must comply with all structure location regulations of this Ordinance, with the measurements to be made based upon the full dimensions of the Lot. The height of Structures shall be measured from within the County's jurisdiction. Minimum square footage shall be measured based upon the entire square footage of the Structure that is partially or fully within the County's jurisdiction. Maximum Building Footprint shall be measured based upon the entire Building Footprint of the Structure(s), and as applied to total square footage of the Lot and shall include the square footage of all Structures on the Lot.

B. Uses. Any use that is conducted partially or fully within the Waukesha County Shoreland ~~and Floodland~~ Protection Ordinance jurisdiction must comply with the use regulations of this Ordinance.

C. Lots. Any Lot that is located partially or fully within the jurisdiction of the Waukesha County Shoreland and Floodland Protection Ordinance must comply with the lot area regulations of the Waukesha County Shoreland ~~and Floodland~~ Subdivision Control Ordinance which are cross-referenced within this Ordinance.

D. Other. In order to ensure that the intent of this Code can be preserved within the jurisdiction of the Waukesha County Shoreland ~~and Floodland~~ Protection Ordinance, in situations not specified above, the regulations of this Code shall apply as follows: Where this Ordinance regulates issues based upon the entire dimensions of the Lot, and the owner seeks to make a change on a portion of a Lot that is in the jurisdiction of the Waukesha County Shoreland ~~and Floodland~~ Protection Ordinance, the County shall regulate the matter arising within the Waukesha County Shoreland ~~and Floodland~~ Protection Ordinance jurisdiction based upon the entire dimensions of the Lot and the Structures and uses thereon. Where this Ordinance regulates issues that are not based on the entire dimensions of the Lot, Waukesha County shall regulate solely the activities



conducted within the jurisdiction of the Waukesha County Shoreland ~~and Floodland~~ Protection Ordinance. Activities conducted solely outside of the jurisdiction of the Waukesha County Shoreland ~~and Floodland~~ Protection Ordinance are not regulated by this Ordinance.

### Repeal and Recreate Section 3(b)

#### (b) Compliance

1. No Structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered and no land or water areas shall be hereafter used or altered within the ~~floodland and~~ shoreland areas of Waukesha County without either a zoning or conditional use permit where changes are being proposed and without full compliance with the provisions of this Ordinance and other local, county, state, and federal regulations. Sections 59.692(1k)(a)2, 4, and (b), Wis. Stats. (2016) prohibit counties from requiring any approval, imposing any fee, or requiring Mitigation for the activities specified in Section 3(o)(2)A.i. of this Ordinance. An expansion of a Structure beyond the Building Footprint may be allowed if necessary to comply with applicable state or federal requirements. Other permits or approvals and associated fees may be imposed to enforce all other provisions of this Ordinance and ordinances adopted pursuant to other statutory requirements, such as floodplain zoning, general zoning, sanitary codes, building codes, or even stormwater management.

~~2. Proposed Development sites shall be reasonably safe from Flooding, meaning that any subsurface waters related to the Base Flood will not damage existing or proposed structures and Base Flood waters will not inundate the land or damage structures that are removed from the Floodplain in compliance with the standards of Section 8 Existing Floodplain Overlay Development District. If a proposed Development site is in a flood-prone area, all new Floodplain construction (as defined by this Ordinance) and Substantial Improvements shall be designed and anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads; be constructed with flood-resistant materials; be constructed to minimize flood damages; and to ensure that utility and mechanical equipment is designed and/or located so as to prevent water from entering or accumulating within the equipment during conditions of flooding.~~

~~Subdivisions shall be reviewed for compliance with the above standards. All subdivision proposals, including mobile home parks, shall include Regional Flood Elevation and Floodway data and all Floodplain submittal requirements of Section 3(c)2. Adequate drainage shall be provided to reduce exposure to Flood hazards and all public utilities and facilities, such as sewer, gas, electrical, and water systems shall be located and constructed to minimize or eliminate Flood damages.~~

~~32.~~ No local permit for construction or Development shall be issued within unincorporated Shoreland ~~and Floodland~~ areas of Waukesha County until the county zoning permit has been issued.

~~43.~~ Statutory exemption for farm drainage ditches and artificial waterways: Under Sections 87.30(1m) and 281.31(2m) of the Wisconsin Statutes, this Ordinance does not apply to non-structural uses of lands (i.e., pasture, cultivation) adjacent to farm drainage ditches or artificially constructed drainage ditches, ponds, or Stormwater retention basins if the following situations exist:

- A. Such lands are not located within the Floodplain or adjacent to a natural stream or river.
- B. Those parts of the drainage ditches adjacent to these lands were non-navigable streams before ditching and are maintained in nonstructural agricultural use.
- C. The artificially constructed drainage ditches, ponds or Stormwater retention basins are not hydrologically connected to a natural navigable waterway.

Should a question arise as to the applicability of this Section, an interpretation shall be sought as provided for under Section 42(b) of this Ordinance or by the WDNR. The submission of plans and supporting



documentation shall be required to enable the staff or the WDNR to make a finding to support the claim of exemption. Where farm drainage ditches exist and the Agricultural Uses are terminated, and the lands are changed to urban uses, this exception expires and the subject stream and shoreland ~~and floodland~~ areas shall fall under all provisions and the jurisdiction of this Ordinance.

However, regardless of the Agricultural Use of the land, any Building and Structure is subject to the provision of this Ordinance relative to size, location or other matters relating to Buildings and Structures.

### **Repeal and Recreate Section 3(c)**

#### Zoning, Occupancy and Use Permits

1. Zoning, occupancy and use permits: No Structure, land or water or part thereof located in the unincorporated Shoreland ~~or Floodland~~ areas of Waukesha County shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered until: first, a county sanitary permit has been issued, where applicable, by the County health department unless municipal sewer is available in which case no sanitary permit is required; and second, a county zoning permit has been issued by the county zoning administrator, certifying that such activity complies with the provisions of this Ordinance; and third, a conditional use permit, where applicable, has been issued by the County Zoning Agency certifying that such activity complied with the provisions of this Ordinance. Such permits shall be obtained before any change is made in the type of use or before any Nonconforming Use is resumed, changed, extended or granted Conditional Use status pursuant to Section 3(o) of this Ordinance. 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 unless exempted by Section 13.48(13), Wisconsin Statutes. However, where the substantive terms and objectives of this Ordinance have been addressed and fulfilled by the WDNR where concurrent (WDNR and county) jurisdiction with this Ordinance exists, so as to avoid duplication of effort, the terms of this Ordinance shall not be imposed, ~~unless development activities are proposed within the Floodplain~~. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation is exempt when Section 30.2022, Wisconsin Statutes, applies, ~~however, the State must comply with the National Flood Insurance Program regulations~~.

2. Application: Zoning, occupancy and use permits shall be obtained from the County Zoning Administrator or designated deputy to the County Zoning Administrator as provided by Section 41(b). No application for any permit, Variance, Special Exception, Conditional Use, site plan, plan of operation, rezoning, license or other governmental approval under this Ordinance shall be deemed to be properly filed unless it is signed by the Applicant. The landowner must sign the application or execute the Landowner's Authorized Agent Form, which is available through the Waukesha County Department of Parks and Land Use. Landowners are advised to also contact the town to determine the town's requirements for additional forms or information. Application shall be made on a form required by the Zoning Administrator and made prior to or at the same time as the application for a building permit, and shall be prepared in triplicate and shall include for the purpose of proper enforcement of this Ordinance the following data:

- A. A statement by the Applicant as to the intended use of the premises and of any existing or proposed Structures or Buildings thereon.
- B. An accurate map of the property, in triplicate, drawn to a reasonable scale and properly dimensioned showing:
  - i. The boundaries of the property involved.
  - ii. The location of the centerline of any abutting streets and the location and elevation of existing and future access roads.

- iii. The location on the lot of any existing structures or Buildings, proposed additions, or proposed new structures or Buildings, including the measured distances between such structures or Buildings and from the lot lines and from the centerline of any abutting street to the nearest portion of such structure or Building.
  - iv. The location of any existing structures, septic systems or wells within fifty (50) feet of the boundaries of the property involved.
  - v. The proposed location of private septic systems and private wells in areas not served by public sewage disposal systems and public water supplies and the location and results of soil borings and percolation tests.
  - vi. The proposed first floor elevation of any proposed Buildings in relation to the existing and/or established grades of the lot, any abutting streets and the Ordinary High Water Mark of any abutting stream, river or lake.
  - vii. The Ordinary High Water Mark of any stream, river or lake on which the property abuts.
  - viii. The elevation and location of the Floodplain of any abutting stream, river or lake.
  - ix. The location of Wetlands and Environmental Corridors.
  - x. All existing and proposed Impervious Surfaces on riparian lots and non-riparian lots located entirely within three hundred (300) feet of the Ordinary High Water Mark of a Navigable Waterway.
  - xi. All existing native trees within three hundred (300) feet of the Ordinary High Water Mark of a Navigable Waterway that are identified in Table 3(d)9.B as a priority tree and that are at least twelve (12") inches in Diameter at Breast Height.
- C. Where the use involves human occupancy or use, and where such use is not served by sanitary sewer and water, a county sanitary permit shall be required prior to issuance of the county zoning permit.

~~D. — If the Development, improvements, or construction activities, are located in a Floodplain the following information must be included:~~

~~i. — The location of Floodplain and floodway limits as determined from the official zoning map or the Flood Insurance Rate Maps.~~

~~ii. — Where the Development, improvements or construction activities are located in a Floodplain, where Flood Profiles are not available or where Flood Profiles are available but Floodways have not been determined, the following shall be submitted to the Zoning Administrator and the Zoning Administrator shall submit the same to the WDNR, along with a written request for technical assistance to establish Regional Flood Elevations and, where applicable, Floodway data:~~

~~a. — Two (2) copies of an aerial photograph or a plan, which shows the proposed Development with respect to the Wetland and Floodplain limits, stream channel, and existing Floodplain Developments, along with a legal description of the property, fill limits and elevations, building floor elevations and Floodproofing measures, and the Flood zone as shown on the FIRM.~~

~~b. — Two (2) copies of any of the following information deemed necessary by the WDNR to evaluate the effects of the proposal upon Flood height and Flood flows, Regional Flood Elevation and to determine Floodway boundaries:~~



~~1. — A hydraulic and hydrologic study completed under the direct supervision of a professional engineer registered in the State of Wisconsin. The study contractor shall be responsible for the technical adequacy of the study. All studies shall be reviewed and approved by the WDNR. The study shall comply with the standards of Section 3(e)7.~~

~~2. — A plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout 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. — Specifications for building construction and materials, Floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.~~

~~iii. — The elevation of the lowest floor of proposed structures and any fill using the vertical datum from the adopted study — either National Geodetic Vertical Datum (NGVD) or North American Vertical Datum (NAVD);~~

~~iv. — Data sufficient to determine the regional flood elevation in NGVD or NAVD at the location of the Development and to determine whether or not the requirements of Sections 7 and/or 8 of this Ordinance are met.~~

~~v. — Data to determine if the proposed Development will cause an obstruction to flow or an increase in regional flood elevation or discharge according to Section 3(d)5.A of this Ordinance. This may include any of the information noted in Section 7(c)2 of this Ordinance.~~

~~vi. — For all subdivisions, as defined in Chapter 236 of the Wisconsin Statutes and all other proposed Developments of five (5) acres or more in area, the Applicant shall provide all survey data and computations required to show the effects of the project on flood elevations, velocities and floodplain storage. The Applicant shall provide an analysis of the effect of the Development on the regional flood profile, velocity of flow and floodplain storage capacity; a map showing location and details of vehicular access to lands outside the Floodplain; and a surface drainage plan showing how flood damage will be minimized.~~

~~ED.~~ All necessary permits from federal, state, and local agencies, including, but not limited to those required by the U.S. ACOE under s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. §1344 shall be required prior to issuance of the zoning permit, unless the zoning permit must precede the other applicable permits.

~~FE.~~ A fee, as may be established and periodically modified under Section 41(b)5 shall accompany each application. Such fee shall be paid by cash, check or money order to the Waukesha County Department of Parks and Land Use.

~~GF.~~ Satisfactory evidence that a safe and adequate supply of water is to be provided, and the location of any well for that purpose on the property.

~~HG.~~ An application which is filed and is not complete, as it does not meet all of the requirements in Section 3(c)2(A through ~~DC~~), Section 3(d)(5), or Section 3(d)(9), shall be held for a period not to exceed six months from the date of application and shall then be denied by the Zoning Administrator and no refund of the application fee shall be made.

~~HH.~~ Even when the proposed use of a Structure or Building may not involve human occupancy or habitation, or when there is no principal structure on the property, the use shall receive approval of a preliminary site evaluation as determined to be necessary by the Waukesha County Department of Parks and Land Use – Environmental Health Division.



~~H.~~ Where two or more kitchens are proposed within a Single-family Dwelling, the owner shall file a deed restriction in the Waukesha County Register of Deeds office stating, at a minimum, that the residence is to be used for single-family residential purposes and shall not be used as a multiple family residence.

~~K.J.~~ Where a new residence is proposed, a grading plan prepared by a Registered Architect, Landscape Architect or Engineer and specifying before and after grades, a timetable for completion, the source and type of fill, impacts on Stormwater and drainage, erosion control methods, and complete revegetation methods including seeding mixtures, amount of topsoil and mulch shall be submitted with the zoning permit application.

~~K.~~ *Accommodations for persons with disabilities:* The Zoning Administrator may issue a permit to modify the standards of this Ordinance in order to provide reasonable accommodations as required by provisions of federal and state law. Such modification shall be the minimum necessary to be consistent with federal guidelines for accommodation of persons with disabilities and shall, where practicable, be terminated when the facility is no longer used by the disabled person(s). A person applying for a permit for construction under this section shall establish the nature and extent of the disability and that the modification requested is the minimum necessary to provide reasonable use of the facility. The reasonable accommodations shall be evidenced by an instrument that is reviewed and approved by the Zoning Administrator and recorded in the Office of the Register of Deeds.

3. Issuance: Zoning and occupancy and use permits shall be issued by the zoning administrator after adequate investigation as to compliance or upon recommendation of the deputy where he has made the necessary investigation.

A. Zoning permit: Provided the application is in order and any structure or Building, occupancy, or use as proposed would be in compliance with the provisions of this Ordinance, a zoning permit shall be issued upon such application, and a certification that such permit has been issued shall be posted in a prominent place on the premises during the period of any construction or other activity involved in readying the land or Buildings for use or occupancy.

B. Occupancy and use permit: Within ten (10) days after the notification of the completion of the erection, alteration or relocation of a structure or Building, or of intent to commence a use, the zoning administrator or his deputy shall make an inspection of the premises and any structures or Buildings thereon; and, if such structure or Building, intended use, or proposed occupancy complies with the requirements of this Ordinance, an occupancy and use permit shall be issued.

C. After a permit has been issued by the Zoning Administrator, the Applicant must comply with all terms of the permit. If any changes or deviations are made from the approved application, a new permit is required. Failure to comply with the terms of the permit as issued will be a violation of this Ordinance and may result in the issuance of a cease and desist order, penalties, injunctions or other enforcement actions.

4. ~~Expiration: All permits issued for Development in the Floodplain shall expire no more than one hundred eighty (180) days after issuance. The permit may be extended for a maximum of one hundred eighty (180) days for good and sufficient cause. Unless specifically conditioned otherwise, the following expiration provisions apply to all other permits:~~ If within six (6) months of the date of issuance of a zoning permit, the proposed construction or preparation of land for use has not commenced, or if within eighteen (18) months an occupancy and use permit has not been issued, if required by the Town, or the construction has not been completed, said zoning permit shall expire, except that upon showing of valid cause, the Zoning Administrator may grant an extension of such permit for a period not to exceed six (6) months from the date of the expiration of the zoning permit, and only one such six month extension shall be granted. Said permit extension shall be issued for the full fee and shall comply with the Ordinance in effect at the time the original permit was issued. If the construction has not commenced or is not completed after a total of twenty-four (24) months, and an occupancy permit has not been issued by the Town Building Inspector, the Zoning Administrator shall make an inspection of the subject property to determine if there is a valid reason a new

permit should be issued. If allowed, a new permit must be applied for and issued subject to all fees in effect at the time of such new permit issuance and subject to the Ordinance in effect at the time of such new permit issuance. Previous incomplete work is not entitled to a new permit if the Ordinance no longer permits said use or structure or if changes to the Ordinance have been made subsequent to the original issuance of the permit. If the Zoning Administrator determines a new permit should not be issued, a nuisance determination involving the town, fines, citations, an injunction, or other legal remedies may be used to facilitate the completion of the work, or the removal of the work that has occurred and restoration of the land that has been disturbed. The second and any subsequent permits shall not be eligible for any extensions. Subsequent permits are subject to all fees in effect at the time of permit issuance and are subject to the Ordinance in effect at the time of such subsequent permit issuance.

5. Temporary occupancy and use permit: Pending the issuance of a regular permit, a temporary permit may be issued for a period not exceeding six (6) months during the completion of alterations or during partial occupancy of a Building pending its permanent occupation. Such temporary permit shall not be issued except under such restrictions and provisions as will adequately insure the safety of the occupants. A temporary permit shall be voided if the Building fails to conform to the provisions of this Ordinance to such a degree as to render it unsafe for the occupancy proposed. A minimum requirement shall be the installation of sanitary facilities which have been approved by the county health department.

6. Zoning and Occupancy and Use Permits - Site Plans and Plans of Operation: Certain permitted uses as well as certain Conditional Uses require the submission of a Site Plan and Plan of Operation which provide a detailed description of the proposed use and serve as a basis for consideration prior to approval of the plan commission, and either the zoning agency or zoning administrator. The plan commission can waive its approval authority or assign its approval authority to town staff. The purpose of such a Site Plan and Plan of Operation review is to document the permit file, determine adequacy of the data submitted to describe the permitted and accessory uses and Buildings proposed and document the plan and method of operation to enable a determination of compatibility with the Ordinance and consideration of approval.

If a Site Plan and Plan of Operation is requested in conjunction with a Conditional Use, then the decision should state that all future modifications proposed to the Site Plan and Plan of Operation must be approved by the Zoning Agency, in addition to the Plan Commission, unless the Zoning Agency and Plan Commission waive their approval rights, in which case the Site Plan and Plan of Operation is reviewed and approved by the Zoning Administrator and town staff. A Site Plan and Plan of Operation shall include the following information, as well as any other specific information requested by the plan commission, zoning agency or zoning administrator to review the plans and determine compliance with the regulations of this Ordinance:

A. A Plan of Operation is a statement of operations, signed by the property owner and tenant or operator of the business or use, including a detailed description of the request, number of employees, hours of operation, and types of uses, products or services offered.

B. A Site Plan and/or Plat of Survey of the property (in standard engineering or mapping scale which permits a clear representation of the property to a scale not to exceed two hundred (200) feet to one (1) inch), in quadruplicate, showing the location and dimensions of all existing and proposed Buildings and structures and other attributes on the site, the location, number and arrangement of parking spaces or loading areas, lighting fixtures, easements, dumpsters, signs, landscaping and screening, and any other factors affecting the Development of the site.

C. A stormwater management and erosion control plan consistent with the requirements of the Waukesha County Stormwater Management and Erosion Control Ordinance. A grading plan, where required, shall be submitted in quadruplicate to the same scale as the Site Plan, including existing and proposed contours at a maximum of two (2) foot vertical intervals for slopes less than twelve (12) percent and at no more than five (5) foot intervals for slopes twelve (12) percent or greater, existing and proposed features (i.e. berms, swales, ponds, ditches, storm sewers, inlets, etc.), vegetative plan, timetable for completion, the name of the responsible party and a letter of credit, if deemed necessary. The plan commission, zoning agency or



zoning administrator has the discretion to request a grading plan in a scale different than the Site Plan in order to show with sufficient detail the contours and features of the property.

D. One set of building plans, State approved if required, at a standard architectural scale, including exterior elevation drawings of all sides of all Buildings proposed.

E. A rendering of all signs visible from the exterior, along with the location, dimensions, overall height, illumination and colors of the signs.

F. Lighting or photometric plan, including cut sheets of each type of exterior light fixture proposed or existing.

G. A detailed landscaping plan showing the location, sizes and types of proposed vegetation, including seeding mixtures and the amount of topsoil and mulch, the timetable for completion, and any surfacing plan for parking and loading areas.

~~7. Hydraulic and hydrologic study requirements to analyze Development in the Floodplain:~~

~~A. Zone A Floodplains:~~

~~i. Hydrology: The appropriate method shall be based on the standards in Wis. Admin. Code § NR 116.07(3), Hydrologic Analysis: Determination of Regional Flood Discharge.~~

~~ii. Hydraulic modeling: The Regional Flood Elevation shall be based on the standards in Wis. Admin. Code § NR 116.07(4), Hydraulic Analysis: Determination of Regional Flood Elevation and the following:~~

~~a. Determination of the required limits of the hydraulic model shall be based on detailed study information for downstream structures (dam, bridge, and culvert) to determine adequate starting Water Surface Elevation (WSEL) for the study.~~

~~b. Channel sections must be surveyed.~~

~~c. Minimum four foot contour data in the overbanks shall be used for the Development of cross section overbank and Floodplain mapping.~~

~~d. A maximum distance of five hundred (500) feet between cross sections is allowed in developed areas with additional intermediate cross sections required at transitions in channel bottom slope including a survey of the Channel at each location.~~

~~e. The most current version of Hydrologic Engineering Centers River Analysis System (HEC-RAS) shall be used.~~

~~f. A survey of bridge and culvert openings and the top of road is required at each structure.~~

~~g. Additional cross sections are required at the downstream and upstream limits of the proposed Development and any necessary intermediate locations based on the length of the reach if greater than five hundred (500) feet.~~

~~h. Standard accepted engineering practices shall be used when assigning parameters for the base model such as flow, Manning's N values, expansion and contraction coefficients or effective flow limits. The base model shall be calibrated to past Flooding data such as high water marks to determine the reasonableness of the model results. If no historical data is available, adequate justification shall be provided for any parameters outside standard accepted engineering practices.~~



i. — The model must extend past the upstream limit of the difference in the existing and proposed Flood Profiles in order to provide a tie-in to existing studies. The height difference between the proposed Flood Profile and the existing study profiles shall be no more than 0.00 feet.

iii. — Mapping: A work map of the reach studied shall be provided, showing all cross-section locations, Floodway/Floodplain limits based on best available topographic data, geographic limits of the proposed Development and whether the proposed Development is located in the Floodway.

a. — If the proposed Development is located outside of the Floodway, then it is determined to have no impact on the Regional Flood Elevation.

b. — If any part of the proposed Development is in the Floodway, it must be added to the base model to show the difference between existing and proposed conditions. The study must ensure that all coefficients remain the same as in the existing model, unless adequate justification based on standard accepted engineering practices is provided.

#### B. — Zone AE Floodplains

i. — Hydrology: If the proposed hydrology will change the existing study, the appropriate method to be used shall be based on Wis. Admin. Code § NR 116.07(3), Hydrologic Analysis: Determination of Regional Flood Discharge.

ii. — Hydraulic model: The Regional Flood Elevation shall be based on the standards in Wis. Admin. Code § NR 116.07(4), Hydraulic Analysis: Determination of Regional Flood Elevation and the following:

a. — Duplicate Effective Model: The Effective Model shall be reproduced to ensure correct transference of the model data and to allow integration of the revised data to provide a continuous FIS model upstream and downstream of the revised reach. If data from the effective model is available, models shall be generated that duplicate the FIS profiles and the elevations shown in the Floodway Data Table in the FIS report to within 0.1 foot.

b. — Corrected Effective Model: The Corrected Effective Model shall not include any man-made physical changes since the effective model date, but shall import the model into the most current version of HEC-RAS for WDNR review.

c. — Existing (Pre-Project Conditions) Model: The Existing Model shall be required to support conclusions about the actual impacts of the project associated with the Revised (Post-Project) Model or to establish more up-to-date models on which to base the Revised (Post-Project) Model.

d. — Revised (Post-Project Conditions) Model: The Revised (Post-Project Conditions) Model shall incorporate the Existing Model and any proposed changes to the topography caused by the proposed Development. This model shall reflect proposed conditions.

e. — All changes to the Duplicate Effective Model and subsequent models must be supported by certified topographic information, bridge plans, construction plans and survey notes.

f. — Changes to the hydraulic models shall be limited to the stream reach for which the revision is being requested. Cross sections upstream and downstream of the revised reach shall be identical to those in the Effective Model and result in water surface elevations and topwidths computed by the revised models matching those in the effective models upstream and downstream of the revised reach as required. The Effective Model shall not be truncated.

iii. — Mapping: Maps and associated engineering data shall be submitted to the WDNR — for review which meet the following conditions:



~~a. Consistency between the revised hydraulic models, the revised Floodplain and Floodway delineations, the revised Flood Profiles, topographic work map, annotated FIRMs and/or Flood Boundary Floodway Maps (FBFMs), construction plans, bridge plans.~~

~~b. Certified topographic map of suitable scale, contour interval, and a planimetric map showing the applicable items. If a digital version of the map is available, it may be submitted in order that the FIRM may be more easily revised.~~

~~c. Annotated FIRM panel showing the revised 1% and 0.2% annual chance Floodplains and Floodway boundaries.~~

~~d. If an annotated FIRM and/or FBFM and digital mapping data (GIS or CADD) are used then all supporting documentation or metadata must be included with the data submission along with the Universal Transverse Mercator (UTM) projection and State Plane Coordinate System in accordance with FEMA mapping specifications.~~

~~e. The revised Floodplain boundaries shall tie into the effective Floodplain boundaries.~~

~~f. All cross sections from the Effective Model shall be labeled in accordance with the effective map and a cross section lookup table shall be included to relate to the model input numbering scheme.~~

~~g. Both the current and proposed Floodways shall be shown on the map.~~

~~h. The stream centerline, or profile baseline used to measure stream distances in the model shall be visible on the map.~~

### **Repeal and Recreate Section 3(d)**

#### **(d) Site Regulations**

1. Building must be on a Lot: Every Building hereafter erected, structurally altered or relocated shall be located on a lot as defined herein. Any Building used for the principal use permitted in a particular District shall constitute the Principal Building and there shall be no more than one (1) Principal Building on a Lot unless otherwise stated in this Ordinance. An Accessory Building is considered attached to and part of a Principal Building only if the attachment consists of a Breezeway that is at least a minimum of eight (8) feet in width and a maximum of twenty (20) feet in length and is enclosed on all sides. ~~For Floodplain purposes only, any Structure attached to a principal structure is considered part of the principal structure.~~ No Accessory Building shall be constructed until the Principal Building is under construction or completed, and no Accessory Building shall remain on a Lot once the Principal Building has been removed without a Variance from the Waukesha County Board of Adjustment, unless: (1) a Letter of Credit or some other form of financial assurance acceptable to the Waukesha County Department of Parks and Land Use – Planning and Zoning Division is submitted to the Department in an amount sufficient for the Department to have the Accessory Building removed in the event a principal structure is not constructed on the Lot within two years of the date of issuance of the Zoning Permit for the new Principal Building or the date of removal of the Accessory Building, and (2) a deed restriction is recorded in the Waukesha County Register of Deeds office stating a principal Structure shall be constructed on the Lot within two years of the date of issuance of the Zoning Permit for the new Principal Building or the date of removal of the Accessory Building or the Letter of Credit on file with the Department will be used to have the Accessory Building removed. Once the principal Structure is constructed or the Accessory Building is removed, the Waukesha County Department of Parks and Land Use shall cooperate in the rescission of the deed restriction and the release of the Letter of Credit or other financial assurance.

Where the use of the land is principally for agricultural pursuits and is a parcel thirty five (35) acres or more in size, farm buildings may be allowed without the necessity of having a residence in place or under construction subject to the approval of the plan commission and zoning agency if it is determined that the Building will not be contrary to the spirit and intent of the Ordinance and will not include the operation of a commercial boarding or riding stable for horses or agricultural pursuits specializing in the forced feeding of livestock, and where it is determined that the use of the Building will be accessory to a farming operation which is consistent with the use provisions of the District in which it is located. If the farm building(s) is located in the FLP Farmland Preservation District, the building(s) is permitted by right and plan commission and zoning agency approval is not required.

2. Buildings or Creation of Lots on a Private Street or Way: The intent of this provision is to discourage the creation of lots and placement of structures which do not have adequate access for emergency vehicles and equipment and to provide a right-of-way width which could accommodate a public right-of-way, if necessitated in the future. Subject to the approval of the Plan Commission and the County Zoning Agency, a parcel may be created and a Building may be permitted on a tract of land which does not abut or have direct frontage on a public street or officially approved way (frontage on a controlled access highway or a freeway where vehicular access is prohibited does not constitute access or frontage for the purposes of this provision) provided such tract of land is at least three (3) acres in area and has a minimum average width of two hundred (200) feet, has access by a permanent easement at least thirty-three (33) feet in width to a public street or way, will have a paved or gravel driveway width of at least twelve (12) feet, unless a local ordinance is in effect which requires a greater width, and does not conflict with the plans for the future Development of streets in the area.

Typical or normal lots with lot lines radiating from the terminus or center of a public cul de sac street are not affected by this provision that requires minimum road frontage on a public street. In a situation where more than one (1) principal residence or parcel is proposed, the easement for access shall be at least sixty-six (66) feet in width and the paved or gravel drive shall be sixteen (16) feet in width, unless required to be greater pursuant to a local ordinance. Where such a lot has a narrow strip of land as part of the lot (not as an approved easement) extending to the public road from the main part of the lot where the Building could lawfully be placed (flag lot), such narrow portion shall not constitute frontage or part of the three (3) acre lot size requirement unless that narrow portion of the lot is as wide as the required minimum average width for the District in which it is located. Not more than two (2) such parcels or Buildings shall be permitted unless necessitated by exceptional circumstances.

3. Junk and Undesirable Buildings or Structures

A. Junk, as defined by this Ordinance, shall at all times be stored in an enclosed Building thereby securing it from the view of the public and adjacent property owners.

i. This subsection is not intended to regulate or place limitations on any property properly zoned junk yard, salvage dealer, or other junk, waste disposal or storage activity for which a valid license from the State or Wisconsin or other necessary municipal issuing authority is required and proper permits have been issued and all such licenses and permits are in full force and effect and the operation is in full compliance therewith.

ii. This subsection is not intended to regulate or place limitations on the storage of idle, but operable farm equipment on farms greater than thirty-five (35) contiguous acres or the storage of inoperative or abandoned farm equipment on farms greater than thirty-five (35) contiguous acres if such inoperative or abandoned farm equipment is screened from the view of the public and adjacent property owners by a natural or man-made visual barrier.

iii. This subsection is not intended to regulate or place limitations on the storage of idle but operative snow removal vehicles or equipment, or lawn mowing equipment.

iv. This subsection is not intended to regulate or place limitations on the orderly storage of firewood for fuel.



v. This subsection is not intended to regulate the temporary storage of construction materials which are for use on the site for the project authorized by an active zoning permit and which are stacked, stored and secured on the site in an orderly method.

B. No Building or Structure shall be erected, structurally altered or relocated in a manner which shall be of such character as to adversely affect the nearby properties or general desirability of the neighborhood. The determination by the Plan Commission shall be stated in writing, including the reason for denying a permit or conditions of approval for a permit, and may be based upon considerations that the design or appearance is of such an unorthodox or abnormal character as to have an adverse effect on the nearby properties or general desirability of the neighborhood.

4. Street grade: Every Building hereafter erected, structurally altered, or relocated shall be at a grade approved by the deputy zoning administrator as being in satisfactory relationship with the established street grades, or with the existing street grade where one is established, with particular consideration for proper drainage and safe vehicular access, ~~and flood hazards.~~

5. Preservation of Topography: In order to protect property owners from possible damage due to changes in the existing grade of adjoining lands, minimize erosion, sedimentation, and the impairment of fish and wildlife habitat, and to aid in preserving and protecting the natural scenic beauty and character of the landscape, the following regulations, unless exempted by Wisconsin Statutes or other Sections of this Ordinance shall apply:.

~~A. Within Floodlands:~~

~~i. Permits required:~~

~~a. Onsite sewage disposal facilities are prohibited and not permitted unless authorized specifically by another provision of this Ordinance or other County ordinance.~~

~~b. Dredging and pond construction are Conditional Uses pursuant to Section 4(g)14 of this Ordinance where allowed and in addition, may require permits from the WDNR or the U. S. Army Corps of Engineers.~~

~~c. Any Structure or Building, which is to be erected, constructed, reconstructed, structurally altered or moved into the Floodplain and where the Floodplain has been authorized to be filled, must comply with all provisions of the applicable zoning district in Section 7 or 8 of this Ordinance.~~

~~d. With the exception of the following activities, the placement of fill, excavation, or other land altering activities require a Conditional Use Permit per Section 4(g)14 of this Ordinance and a rezone per Section 39 of this Ordinance. Necessary amendments shall be made to the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with Section 39 of this Ordinance. The exceptions are as follows:~~

~~1. The proposed use is permitted in Section 7, C-1 Conservancy Overlay District or Section 8 Existing Floodplain Development Overlay District.~~

~~2. The fill, excavation, or other land altering activities do not exceed 15 cubic yards of material or three thousand (3,000) square feet of area and the fill, excavation, or other land altering activities are not located in a wetland. In such case, a Minor Grading Permit is required.~~

~~ii. Standards for Development: The following standards must be met for any fill, excavation, or other land altering activities within the Floodplain, unless the provisions of Section 39 are met:~~

~~a. Floodplain Development must not impede drainage.~~



~~b. Floodplain Development must not reduce the Flood water storage capacity of the Floodplain.~~

~~e. Floodplain Development must not result in an increased Regional Flood Elevation of 0.00 ft. due to Floodplain Storage area lost.~~

~~d. Floodplain Development must not obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or with other development.~~

~~e. Compensatory storage is required for all areas of authorized fill on a minimum of a one to one basis, which equals one hundred percent (100%) replacement of any lost Floodplain Storage Capacity. Excavation below the groundwater table is not considered to provide an equal volume of storage. Compensation must be provided in a manner that is not deleterious to other property or the quality of any Wetlands. The area of compensatory Floodplain storage shall be provided in the immediate area of the fill activity and shall not result in an increase in Floodplain elevations on upstream or downstream properties.~~

~~f. If compensatory storage cannot be provided and the area is identified on the WDNR Flood Storage maps, Section 39(f)2.F shall be complied with in addition to the other rezone criteria specified in Section 39.~~

~~BA. Within Shorelands~~ ~~g~~Grading, Clean Fill Disposal Sites, topsoil removal, filling, alteration or enlargement of waterways, removal or placement of stream or lake bed materials, excavation, channel cleaning and clearing, ditching, drain tile laying, dredging, pond construction, lagooning, and soil and water conservation structures are Conditional Uses and must be approved in accordance with Section 4(g)14 of this Ordinance except as may otherwise be permitted in Sections 3(d)5. ~~C and D, EB and C~~, or 7(c)1. In addition, such uses may require a permit from the state agency having jurisdiction pursuant to Chapter 30 of the Wisconsin Statutes and, where applicable, a federal permit from the U.S. Army Corps of Engineers. All such uses and activities shall be consistent with the uses permitted in the C-1 Conservancy Overlay District and EFD Existing Floodplain Development Overlay District, if they occur within said District. If the proposed activity requires a rezoning of the lands, Section 39 of this Ordinance must be complied with.

~~Any alteration or relocation of a watercourse in a mapped Floodplain shall not be approved until the Zoning Administrator has notified in writing all adjacent municipalities, the WDNR and FEMA regional offices and required the Applicant to secure all necessary state and federal permits. The standards of Section 3(d)5.A.ii. must be met and the Flood carrying capacity of any altered or relocated watercourse shall be maintained consistent with preexisting conditions prior to any alterations taking place. As soon as is practicable, but not later than six months after the date of the watercourse alteration or relocation and pursuant to Section 39, the community or Applicant shall apply for a Letter of Map Revision (LOMR) from FEMA. Any such alterations must be reviewed and approved by FEMA and the WDNR through the LOMC process.~~

~~EB.~~ No change in the existing topography or drainage courses on any land shall be allowed which will result in adversely altering the drainage or increasing any portion of the existing slope through fill and/or grading to a ratio greater than three (3) horizontal to one (1) vertical. The construction of a retaining wall (stone, ties, brick or other material) five (5) feet or less from a property line may be specifically authorized by the plan commission and zoning agency and an agreement made between said plan commission and zoning agency and Applicant stating that the method and purpose of construction will not in any way adversely affect drainage or aesthetics of the adjacent lot. A retaining wall five (5) feet or greater from a property line may be allowed pursuant to issuance of a zoning permit as long as said wall will serve to promote the purpose and intent as stated in this Ordinance. All retaining walls shall be set back at least seventy five (75) feet from the Ordinary High Water Mark of a navigable body of water and outside of the conservancy District. Retaining walls cannot be averaged with the setbacks of other Buildings or Structures.

Fill or grading considered by the zoning administrator to be necessary backfill and/or excavation for an otherwise permitted structure may be permitted without the necessity of securing a conditional use permit as



long as said fill or grading is accessory to said construction and does not create slopes greater than three (3) horizontal to one (1) vertical and does not extend to a distance greater than thirty (30) feet from the foundation and does not divert runoff directly onto adjacent property or adversely affect adjoining property. In order to make such a determination, the property owner shall submit a grading plan of existing and proposed grades on the subject lot and adjacent lands where said accessory fill and/or grading is closer than twenty (20) feet to a property line. The fill must be located outside of an area designated as ~~Floodplain or~~ Wetland.

Land altering activities extending greater than thirty (30) feet from the foundation, ~~or not considered by the zoning administrator to be necessary backfill,~~ may be allowed ~~without the benefit of a conditional use permit,~~ subject to issuance of a minor grading permit (zoning permit) ~~as long as the fill, excavation, or other land altering activities do not exceed 15 cubic yards of material or three thousand (3,000) square feet of area and the fill, excavation, or other land altering activities are not located in a wetland as provided for in Section 3(d)5.D without benefit of a conditional use permit unless the quantities and the area of fill and grading exceed those limits defined herein for minor grading, filling and land altering activity.~~ This provision excludes the area normally associated with septic system installation and normal driveway construction.

Further, no fill or alterations on existing topography shall be allowed under any circumstances, which will alter the drainage or topography in a way, which will adversely affect the surrounding lands. In making such a determination, the zoning administrator shall have the authority to determine the affect of the construction or fill on surrounding property and require improvements and/or facilities as may be in the best interest of preserving the topography and drainage system and which will have the effect of lessening the impacts on either upstream, downstream or adjacent properties. In case of a dispute or question arising as to the adversity or affect of the project on either the property owner, adjacent owners or the general public, said question shall be submitted to the Board of Adjustment for resolution to the question. Land altering activities may also be subject to locally adopted or State mandated Erosion and Sediment Control ordinances in addition to the requirements set forth herein.

~~DC.~~ Streambank and Shoreline Stabilization: Streambank and shoreline stabilization structures and minor grading, filling and land altering activities associated with the stabilization structures may be permitted administratively in shoreland areas and without a conditional use permit and in conformance with best management practices promulgated by the Department of Parks and Land Use, Land Resources Division when located outside of conservancy/wetland areas, ~~and within the regional flood and~~ where the site is above the Ordinary High Water Mark, subject to the following:

- i. Said project may be authorized administratively through the granting of a minor grading permit (zoning permit) when the following standards are satisfied:
  - a. Submittal of a complete and accurate set of plans which include a contour map at a scale of not less than 1" = 200' at a contour interval of at least two (2) foot increments, a vegetation plan and schedule, the period of construction activity, the methods used during and after construction to provide protection from the forces of erosion and sedimentation upon adjacent land and waterbody, and how the project will relate to adjoining property.
  - b. An administrative determination that the project has no public impact on or will not adversely affect adjacent or surrounding properties and that the activity will serve to prevent erosion and sedimentation of the surrounding area on the adjacent waterbody.
  - c. The review and written approval, if necessary, of the WDNR ACOE, and FEMA.
  - d. Entering into a stipulated agreement with the County concerning the scope of work, type of material used, method of construction, final grades, re-establishment of vegetative cover, date of completion and any other items deemed appropriate.



- e. The performance of such land altering activity must not impede drainage ~~or, reduce the floodwater storage capacity of the floodland, obstruct flows, or increase the regional flood elevation. If the proposed activity does not meet these standards, the project may be allowed subject to approval pursuant to Section 4(g)14 and rezoning in accordance with Section 39. If the project would result in an increase in flood elevations, compensating flood storage capacity shall be provided on a one to one basis, which equals 100% replacement of any lost floodplain storage capacity.~~
- f. The project must not be located in a wetland.

6. (Reserved)

7. Agricultural Uses: Sod farming, tillage, grazing, livestock watering and feeding and application of fertilizers shall be prohibited unless conducted in accordance with good soil and water conservation practices promulgated by the U.S.D.A. Soil Conservation Service in its technical guide. Crop production on lands with an erosion factor of three (3) or more on the U.S.D.A. Soils Map is prohibited and such lands shall be planted to permanent vegetation. Where Agricultural Uses, including grazing, occurs next to navigable water, in accordance with sound land management practices, a buffer strip of permanent vegetation not less than one (1) rod (16 1/2 feet) wide, should be maintained where possible, to protect the bank of the waters from erosion and the effects of weathering and the water from the effects of sedimentation and pollution.

8. Surface Water Withdrawal: Diversion, or discharge for irrigation, processing, cooling, or other purposes are Conditional Uses requiring review and approval by the zoning agency in accordance with Section 4(g) of this Ordinance. The zoning agency shall then advise the state agency having jurisdiction under Chapters 30 and 281 of the Wisconsin Statutes of its findings prior to the issuance of the required state permits and federal permits as may be required by the U.S. Army Corps of Engineers.

When the substantive terms of this provision are met through the application of the Wisconsin Statutes, Department of Natural Resources Administrative Code or the requirements of the U.S. Army Corps of Engineers, a separate action of the zoning agency pursuant to Section 3(c)1 of this Ordinance is unnecessary.

9. Vegetation Removal: Vegetation removal in Shoreland areas is regulated to promote the preservation and restoration of native vegetation and protect natural scenic beauty, fish and wildlife habitat and water quality. The following standards, together with the standards of Section 3(d)5 and the Waukesha County Stormwater and Erosion Control Ordinance, ensure sound forestry and soil conservation practices and are intended to address the effects of vegetation removal on water quality, including soil erosion and the flow of effluents, sediments and nutrients.

A. *Vegetation Removal within thirty-five (35) feet of the Ordinary High Water Mark:* The area parallel to the Ordinary High Water Mark and extending thirty-five (35) feet inland from all points along the Ordinary High Water Mark of a Navigable Waterway is considered a vegetation buffer zone and the removal of vegetation is prohibited, except as follows provided a permit is obtained in accordance with subsection D:

- i. Routine Maintenance of Vegetation is permitted, as defined in this Ordinance, without a permit.
- ii. Removal of trees and shrubs within the vegetative buffer zone is allowed in order to create an Access and Viewing Corridor. The Access and Viewing Corridor shall not exceed ten (10) feet or thirty-five percent (35%) of the Shoreland frontage of the property, whichever is greater, except that the Access and Viewing Corridor shall never exceed 200 feet, and The Access and Viewing Corridor shall include all improvements, such as Boathouses, boat hoists, and walkways. A property is limited to one (1) Access and Viewing Corridor unless the Zoning Administrator determines that two (2) Access and Viewing Corridors are reasonable due to site conditions such as slope, existing improvements, lake access limitations, or shape of the property.

iii. 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 may be permitted, provided that any vegetation removed shall be replaced by replanting in the same area as soon as practicable.

iv. Removal of trees and shrubs in the vegetative buffer zone on a parcel with ten (10) or more acres of forested land consistent with "Generally Accepted Forestry Management Practices" as defined in s. NR 1.25 (2) (b), Wis. Adm. Code, and described in Department publication "Wisconsin Forest Management Guidelines" (publication FR-226), provided that vegetation removal shall be consistent with these practices.

v. Additional vegetation management activities may be permitted within the vegetative buffer zone to enhance natural plant communities. The permit shall require that all vegetation management activities comply with detailed plans approved by the County. Plans shall be designed and implemented to control erosion and limit sedimentation into the waterbody. Plant communities shall be improved by replanting in the same area that removal occurs. Newly restored areas shall be monitored and maintained over time. An enforceable deed restriction shall be prepared and reviewed and approved by the Zoning Administrator and recorded in the Office of Register of Deeds to ensure preservation of the newly restored area.

*B. Protection of Priority Trees within three hundred (300) feet of the Ordinary High Water Mark:* Healthy native trees that are identified in the Priority Tree Species List contained within Table 3(d)9.B that are twelve inches (12") or more in Diameter at Breast Height and that are located within three hundred (300) feet of the Ordinary High Water Mark of a Navigable Waterway shall be preserved, with the following exceptions:

i. Trees that are dead, diseased, dying, or that create an imminent safety hazard.

ii. Trees that are located within a designated Access and Viewing Corridor, as provided in subsection A above.

iii. Trees that conflict with the placement of permissible Structures, driveways, utilities, or septic systems, including trees located within thirty (30) feet of any of the above planned improvements. The Zoning Administrator may allow for additional tree removal beyond thirty (30) feet of planned improvements to accommodate reasonable grading. Any tree removed as part of this subsection must be replaced with a tree of at least two inches (2") or more Diameter at Breast Height elsewhere on the Lot, within three hundred (300) feet of the Ordinary High Water Mark.

iv. Priority trees, regardless of size, that are located within an area designated as C-1 Conservancy Overlay District or EC Environmental Corridor Overlay District are subject to the standards of Sections 7 and 9, respectively.

*C. Vegetation Removal within an area designated as C-1 Conservancy Overlay District or EC Environmental Corridor Overlay District:* Vegetation removal must comply with the standards specified in the respective Zoning District. Routine Maintenance of Vegetation beyond thirty-five (35) feet from the Ordinary High Water Mark of a Navigable Waterway to the lakeside of a residence is permitted.

*D. Permitting Requirements:* The following permitting requirements apply to vegetation removal permitted within this Section:

i. A Shoreland Cutting Zoning Permit is required for any vegetation removal permitted within this Section, except for routine maintenance allowed under subsection A.i., to ensure compliance with the above provisions.



ii. Tree replacement, as required in subsections A and B above, must be completed at a one-to-one (1:1) ratio. If a tree that is removed is healthy, it shall be replaced with a native tree with a minimum size of two inches (2") Diameter at Breast Height. If the healthy tree is considered a Priority Tree, then the tree must be replaced with a species identified on the Priority Tree List contained within Table 3(d)9.B. If a tree that is removed is dead, diseased, dying, invasive or causes an imminent safety hazard, it shall be replaced with a native tree with a minimum size of one inch (1") Diameter at Breast Height.

iii. Shrubbery and groundcover removal outside of an Access and Viewing Corridor, including invasive species removal, shall be replaced with native shrubbery and groundcover densities specified in the Wisconsin Biology Technical Note 1: Shoreland Habitat. Please see following link: <http://dnr.wi.gov/topic/ShorelandZoning/documents/NRCSBioTechNote.pdf> or a hard copy may be viewed at the Waukesha County Planning and Zoning Division office.

iv. Vegetation replacement standards of subsections ii. and iii. above may be modified if the Zoning Administrator approves a report prepared by a qualified professional and/or if the Zoning Administrator determines that the replacement is not practical due to soil conditions, crowding, or other site specific conditions. A modified replacement plan, prepared by a qualified professional, may be required in order to ensure compliance with the purpose and intent of this Section.

v. A Shoreland Cutting Plan shall be prepared when three (3) or more trees or more than three hundred (300) square feet of groundcover or shrubbery are proposed to be removed or when any native tree or shrubbery is proposed to be removed without replacement, including tree removal within the Access and Viewing Corridor. The following information shall be identified on the Shoreland Cutting Plan:

a. A scaled survey of the property, including all existing and proposed improvements, Wetlands, Floodplain, Environmental Corridors and topography of the land.

b. Location of Access and Viewing Corridor, if applicable.

c. An inventory of existing vegetation within the project area, including location, type, and size of trees and location, type and density of shrubs and groundcover.

d. Identification of proposed vegetation removal and reason for removal. The Zoning Administrator has the authority to request that a certified arborist verify that a tree is diseased, dying, dead or causes harm due to overcrowding.

e. Location, type, and size or density of vegetation replacement, including a three (3)-year performance plan.

f. Timetable for completion and method of erosion control.

vi. *Implementation and Long-Term Maintenance:* In order to ensure that the above standards are implemented and maintained over time, the following standards apply:

a. The Zoning Administrator shall establish a deadline for the replacement of vegetation based on the individual request and site limitations.

b. If a Shoreland Cutting Plan is required for the replacement of vegetation, a financial guarantee may be required for the amount required to have a professional contractor implement the plan to ensure that the plan is properly implemented.

c. The enforceable obligations, including the location of the established Access and Viewing Corridor (if applicable) and long-term maintenance requirements, shall be evidenced by a deed restriction reviewed and approved by the Zoning Administrator and recorded in the Office of the Register of Deeds.

10. Adequate drainage required:

A. In no case may a Principal Building be located in an area zoned conservancy or in an area considered to be one of the eight (8) types of Wetlands (type 1 8) as described in Circular 39 of the Fish and Wildlife Service, U. S. Department of Interior published in 1956, and which are on record on the 1975 aerial maps of the Southeastern Wisconsin Regional Planning Commission. No Principal Building shall be erected, or relocated, and no below grade Structures shall be expanded on newly created or existing Lots that are not in compliance with the site drainage standards contained in the Waukesha County Stormwater Management and Erosion Control Ordinance, including all County technical procedures and forms used to enforce these standards (Chapter 14-342(c)). The lowest floor, including any basement floor, shall not be less than one (1) foot above the highest seasonal ground water level. For the purposes of this Section, the highest seasonal ground water level is defined as the upper limit of the zone of soil saturation caused by underlying ground water at its highest level. Where groundwater limitations exist, subdivision plats and certified survey maps shall state the lowest allowed floor elevation for any proposed principal Structure as needed to ensure compliance with the above noted site drainage standards. All basement elevations must comply with the subdivision plat or certified survey map master grading plan or with the master grading plan referenced on the subdivision plat or certified survey map. The Zoning Administrator and/or building inspector may request at the owner's expense the advice and assistance of a licensed professional engineer specializing in soils engineering or other qualified person in fulfilling their duties pursuant to this provision. Building, drainage, grading or other similar plans may be required to determine compliance with this Section. The town and the County accept no liability for construction activities involving groundwater limitations.

B. In the event the Applicant disputes the necessity for or the adequacy of the site drainage standards noted above, the matter shall be reviewed by the Waukesha County Board of Adjustment pursuant to the appeal provisions of this Ordinance and the Waukesha County Stormwater Management and Erosion Control Ordinance. The Applicant may also request a variance from the 1-foot groundwater separation requirement for Basements, which shall also be reviewed by the Waukesha County Board of Adjustment pursuant to the appeal provisions of this Ordinance and the Waukesha County Stormwater Management and Erosion Control Ordinance.

11. Site Protection: Any property disturbed with land altering activities as may be authorized through the issuance of a zoning permit or a conditional use permit, shall be required to protect the disturbed land surface of the lot or building site that is susceptible to erosion while under construction and which is not occupied with Buildings, dedicated parking areas or other hard surfaced areas with suitable stabilization measures. Said disturbed areas shall be permanently stabilized and continuously maintained with suitable vegetative cover or other approved landscape material and shall be required to conform with the provisions of the Waukesha County Stormwater Management and Erosion Control Ordinance and the Uniform Dwelling Code for one and two family dwellings, when applicable. A Letter of Credit or other forms of financial guarantee to ensure performance may be required by the building inspector, plan commission, the zoning administrator, zoning agency or the Waukesha County Department of Parks and Land Use, Land Resources Division.

**Repeal and Recreate Section 3(g)1**

Compliance: This Ordinance permits specific uses in specific Districts; and these performance standards are designed to limit, restrict, and prohibit the effects of those uses outside their premises or District. All structures, lands and waters shall hereafter, in addition to their use, site, sanitary, ~~floodland~~ and shoreland regulations, comply with the following performance standards.

**Repeal and Recreate Section 3(h)2**

Shore, Floodplain, and Wetland Setback: Every Structure shall have a setback of at least seventy-five (75) feet from the Ordinary High Water Mark of a Navigable Waterway and Wetland. Every Structure shall have a setback of at least thirty-five (35) feet from the regional floodplain if the setback area is located within the



two tenths percent (0.2%) floodplain as designated by FEMA. If the two tenths percent (0.2%) floodplain boundary does not extend thirty-five (35) feet from the regional floodplain, the setback shall be the two tenths percent (0.2%) floodplain boundary. The following exceptions apply: (see also Section 37, Delafield Shoreland Overlay District, for more restrictive shore setback provisions adjacent to Pewaukee Lake):

A. Boathouses may be permitted in accordance with Section 3(s) of this Ordinance.

B. Boat hoists and piers may be erected on the bed of Navigable Waters pursuant to Chapter 30 of the Wisconsin Statutes and Section 3(d)5. ~~E-B~~ of this Ordinance.

C. Under the authority of Section 59.692(1v), Wisconsin Statutes, the Zoning Administrator may grant a special zoning permit for a Structure that extends closer than seventy-five (75) feet to the Ordinary High Water Mark of a navigable body of water if all of the following requirements are met, but in no case is a Structure exempt from the Floodplain or Wetland Setback requirements:

i. The part of the Structure that is nearest to the water is located at least thirty-five (35) feet landward from the Ordinary High Water Mark.

ii. The total Floor Area of all structures in the shore setback area of the property shall not exceed two hundred (200) square feet. In calculating the square footage, Boathouses shall be excluded.

iii. The structure that is subject to the request for special zoning permission has no sides or has open or screened sides.

iv. The Zoning Administrator shall review a plan submitted by the Applicant which shall be subject to the Zoning Administrator's approval and which will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least seventy (70) percent of half of the shore setback area that is nearest to the water. The Zoning Administrator is authorized to require implementation of the vegetative buffer plan prior to the issuance of the zoning permit for the Structure.

D. A Retaining Wall shall be set back at least seventy five (75) feet from the Ordinary High Water Mark of a navigable body of water and outside of the Floodplain and Wetlands. The setback averaging provisions below may not be used to locate a Retaining Wall closer than seventy-five (75) feet from the Ordinary High Water Mark of a navigable body of water or within the Floodplain and Wetlands. A Retaining Wall is not a Structure that can be used in the setback averaging provisions below to reduce the shore or wetland setback requirements for any other Building or Structure, including Retaining Walls themselves.

E. A single stairway, rail system or walkway, determined by the Zoning Administrator, due to steep topography or severe soil limitations, to be necessary for access to a Navigable Waterway, shall be exempt from the shore, floodplain and wetland setback requirements provided the width of the stairway, rail system or walkway does not exceed five (5) feet, subject to the issuance of a Zoning Permit. If the walkway is proposed in an area designated as Wetland, the walkway shall be constructed on pilings. ~~If the walkway is proposed in an area designated as Floodplain, it shall comply with the standards for Floodplain Development in Section 7(c)2 of this Ordinance.~~

F. Patios shall be exempt from floodplain setback requirements.

~~F-G.~~ Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are two (2) meters or less in diameter.

~~G-H.~~ Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with Ch. SPS 383, Wis. Admin. Code, 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 Stormwater runoff from the Structure.

HI. Devices or systems used to treat runoff from Impervious Surfaces.

J. A fence along roadways that meets all of the following:

- i. No taller than fifteen (15) feet.
- ii. Located no less than two (2) feet landward of the ordinary high water mark.
- iii. Located entire outside of a highway right-of-way, no less than ten (10) feet from the edge of the roadway, and no more than forty (40) feet from the edge of a roadway or highway right-of-way, whichever is greater.
- iv. Generally perpendicular to the shoreline.

K. A bridge for which the DNR has issued a permit under s. 30.123, Wisconsin Statutes.

L. Shore Setback Averaging: Where there is a development pattern with principal Structures having Shore Setbacks less than seventy-five (75) feet from the Ordinary High Water Mark of a Navigable Waterway, the setback requirements for principal Structures shall be allowed to be reduced in accordance with the following setback averaging formulas, however, if more restrictive, the setback averaging provisions of the Delafield Shoreland Overlay District shall apply to properties zoned as such, in accordance with Section 37 of this Ordinance:

i. Where there are existing principal Structures in both directions, the Shore Setback shall equal the average of the distances that the two existing principal 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 two hundred fifty (250) feet of the proposed principal Structure and are the closest principal Structures.

c. Both of the existing principal Structures are located less than seventy-five (75) feet from the Ordinary High Water Mark.

d. The average setback shall not be reduced to less than thirty-five (35) feet from the Ordinary High Water Mark of any Navigable Waterway.

ii. Where there is an existing principal Structure in only one direction, the setback shall equal the distance that the existing principal Structure is set back from the Ordinary High Water Mark and the required setback of seventy-five (75) feet 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 two hundred fifty (250) feet of the proposed principal Structure and is the closest Structure.

c. The existing principal Structure is less than seventy-five (75) feet from the Ordinary High Water Mark.

d. The average setback shall not be reduced to less than thirty-five (35) feet from the Ordinary High Water Mark of any Navigable Waterway.

iii. In applying these shore setback averaging formulas to a proposed principal Structure, the shore setback measurements shall be taken from other principal Structures only and the measurements shall not be from any immediately adjacent Structures, such as Decks, patios, Retaining Walls, swimming pools or sports courts.

iv. In applying these shore setback averaging formulas to a proposed functional appurtenance, such as a Deck or patio, which is immediately adjacent to the principal Structure, the shore setback measurements may be taken from other principal Structures.

JM. Wetland Setback Averaging: Where there is a Development pattern with principal Structures having setbacks less than seventy-five (75) feet from the Wetland, the setback requirements for new principal Structures or additions to principal Structures shall be allowed to be reduced in accordance with the following setback averaging formulas but in no case shall the setback be reduced to less than thirty-five (35) feet:

i. Building within Wetland Setback on one side only: If there is a Principal Building that is located less than seventy-five (75) feet from the Wetland with a similar use as the proposed Building and located on an adjacent Lot on one side of the proposed Building and within two hundred fifty (250) feet of the proposed Building, the average of the Wetland Setback of that Building of similar use and the required minimum Wetland Setback shall apply.

ii. Buildings within Wetland Setback on both sides: If there are two Principal Buildings which are located less than seventy-five (75) feet from the wetland with similar uses as the proposed Building and located on adjacent Lots on each side of said Building and within two hundred fifty (250) feet of the proposed Building, the average of the Wetland Setbacks of those Buildings of similar use shall apply.

iii. Addition to an existing Building within Wetland Setback: In the case of a proposed addition to an existing Principal Building which has less than the required Wetland Setback, the Wetland Setback of such existing Building may be used to determine the required Wetland Setback for the proposed addition, as set forth below.

a. If there are no existing Buildings with a similar use as the Building with the proposed addition on either of the adjacent Lots, the average of the Wetland Setback of the existing Building and the required Wetland Setback shall apply to the addition.

b. If there is only one existing Building with a similar use as the Building with the proposed addition on an adjacent Lot, the average of the Wetland Setback of the existing Building and the existing Building on the adjacent Lot shall apply to the addition.

c. If there are existing Buildings with similar uses as the Building with the proposed addition on both adjacent Lots, but one of the adjacent Buildings is located further from the Wetland than the existing Building with the proposed addition, the average of the Wetland Setback of the existing Building and the Building on the adjacent Lot located closest to the Wetland shall apply to the addition.

iv. In applying these wetland setback averaging formulas to a proposed Principal Building or addition to a Principal Building, the wetland setback measurements shall be taken from other Principal Buildings only and the measurements shall not be from any immediately adjacent structures, such as Decks or patios, retaining walls, swimming pools or sports courts.

v. In applying these wetland setback averaging formulas to a proposed Structure, such as a Deck, Patio, or Swimming Pool, which is immediately adjacent to the Principal Building, the wetland setback measurements may be taken from other Principal Buildings or immediately adjacent Structures, such as Decks or patios, but not from Retaining Walls, detached Swimming Pools and sports courts.

**KN.** The effect of the Shore, Floodplain, or Wetland setback regulations in combination with the Road setback regulations shall not reduce the buildable depth of such Lot to less than thirty (30) feet. Where such reduction would result in a depth less than thirty (30) feet after applying the Shore, Floodplain, or Wetland Setback and Road setback averaging formulas, the Zoning Administrator shall have the authority to modify the Road Setback and Floodplain and Wetland Setback provisions to the extent necessary to minimize the encroachment on the Road Setback and Floodplain and Wetland Setback standards while maintaining the thirty (30) foot depth. The Shore Setback shall not be reduced as part of this provision.

**LO.** A Structure, of which any part has been authorized to be located within the Shore Setback area by a Variance granted before July 13, 2015 may be maintained, repaired, replaced, restored, rebuilt, or remodeled if the activity does not expand the Building Footprint of the authorized Structure. Additionally, the Structure may be vertically expanded, provided the Structure does not exceed 35 feet in overall height. An expansion of the Building Footprint may be allowed provided the expansion is necessary to comply with applicable state or federal requirements. This provision only applies if all other Ordinance requirements are met. No permit, fee, or Mitigation is required for compliance with this provision per Wisconsin Statute sections 59.692(1k)(a)2. and (a)4 (2015). A permit and fee will be processed for compliance with all other provisions of this Ordinance.

**MP.** One (1) accessory Structure with a maximum size of two hundred (200) square feet may be located as close as thirty-five (35) feet from the Wetland provided the Structure complies with the Shore Setback and there is no other conforming location available and no other accessory Structures located on the Lot.

**NQ.** If the above exceptions do not apply and an improvement or addition is proposed to an existing Legal, Nonconforming Structure, the provisions of Section 3(o) apply.

#### **Repeal and Recreate Section 3(k)(6)(B)(ii)**

A Recreational Vehicle may not be parked within the C-1 Conservancy Overlay District. ~~A Recreational Vehicle, which is parked in an Existing Floodplain Development Overlay District (EFD), must be fully licensed, operable and ready for highway use.~~ A Recreational Vehicle is ready for highway use when it is on wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.

#### **Repeal and Recreate Section 3(j)(4)(A)(ii)**

On parcels of fifteen (15) acres or more in area, the accessory building footprint may be greater than the two percent (2%) limit when the accessory buildings are used for Agricultural Use and where the accessory buildings will house equipment as regulated in Section 3(k)37.A, and when consistent with the maximum overall Building Footprint requirements of this Ordinance.

#### **Repeal and Recreate Section 3(j)(4)(C)(i)**

On parcels of fifteen (15) acres or more in area and when used for Agricultural Use and where the Accessory Buildings will house equipment as regulated in Section 3(k)37.A, and when consistent with the maximum overall Building Footprint requirements of this Ordinance.

#### **Repeal and Recreate Section 3(m)2**

A permit for one (1) continuous six (6) month period allowing the human habitation of a mobile home or recreational vehicle on lands other than an approved mobile home park may be granted by the town board provided:



A. The habitation is accessory to the current construction of a principal Structure owned by the same person who is Applicant for the permit.

B. The waste disposal facilities and water supply facilities are approved by the Waukesha County Department of Parks and Land Use, Environmental Health Division.

C. This use shall not be allowed in a ~~Floodway or~~ Wetland.

~~D. If located in a Floodplain, the mobile home, trailer, or recreational vehicle shall have the lowest floor elevation to the flood protection elevation, shall be anchored so that it does not float, collapse or move laterally during a flood.~~

~~E. If located in a Floodplain, the mobile home, trailer, or recreational vehicle shall provide continuous Dryland Access as required in Section 8(b)2A.v.~~

### Repeal and Recreate Section 3(o)

1. Existing use permitted: The existing lawful use of a Building or premises at the time of the enactment of this Ordinance or any amendment thereto may be continued although such use does not conform with the provisions of this Ordinance for the District in which it is located, subject to conditions hereinafter stated and subject to conformance with Sections 59.69(10) and (10m), Wisconsin Statutes.

~~2. Existing use and/or Structure located in the Floodplain: Legal Nonconforming Uses or a Legal Nonconforming Structure in a Floodplain are governed by the regulations of Section 8-Existing Floodplain Development Overlay District.~~

~~3.~~ 2. Legal Nonconforming structures, classification and regulation: If a Structure is nonconforming to one (1) or more of the Ordinance requirements as listed in subsections A through H below, the requirements of all applicable subsections must be complied with.

A. *Nonconforming to Shore Setback:*

i. An existing principal or accessory Structure may be replaced, restored, rebuilt, remodeled, maintained and repaired provided the existing footprint of the nonconforming structure is not expanded, unless the expansion is necessary to comply with applicable state and federal requirements. The Structure, unless it is a structure listed under Wisconsin Statutes § 59.692(1n)(d), may be vertically expanded provided the vertical expansion does not exceed thirty-five (35) feet in height and provided the requirements of Section 3(i)2 for accessory Structures are met. Improvements to Structures listed under Wisconsin Statute § 59.692(1n)(d) are limited to the area within the three (3)-dimensional building envelope of the existing structure. No permit, fee or Mitigation is required for compliance with this provision per Wisconsin Statute 59.692(1k)(a)2., 4. and (b). A permit and fee will be processed for compliance with all other provisions of this

Ordinance.

- ii. In addition to the above, an existing principal Structure may be expanded laterally within the Shore Setback, provided all of the following requirements are met:
  - a. The use of the Structure has not been discontinued for a period of twelve (12) months or more if a nonconforming use.
  - b. The existing principal Structure is at least thirty-five (35) feet from the Ordinary High Water Mark.
  - c. Lateral expansions are limited to a maximum of two hundred (200) square feet over the lifetime of the Structure.
  - d. No portion of the expansion may be any closer to the Ordinary High Water Mark than the closest point of the existing principal Structure.
  - e. A permit shall not be issued until such time the mitigation requirements of Section 3(u) are complied with.
  - f. All other provisions of the Ordinance shall be met.
- iii. In addition to subsection A.i above, an existing principal Structure may be expanded laterally beyond the Shore Setback provided the expansion complies with the Shore Setback and all other provisions of the Ordinance.
- iv. An existing principal Structure may be relocated within the Shore Setback, provided all of the following requirements are met:
  - a. The use of the Structure has not been discontinued for a period of twelve (12) months or more if a nonconforming use.
  - b. The existing principal Structure is at least thirty-five (35) feet from the Ordinary High Water Mark.
  - c. No portion of the relocated Structure is located any closer to the Ordinary High Water Mark than the closest point of the existing principal Structure.
  - d. The Zoning Administrator determines that no other location is available on the property to build a principal Structure of a comparable size (same footprint) as the existing Structure proposed for relocation that will result in compliance with the Shore Setback.

- e. A permit shall not be issued until such time the mitigation requirements of Section 3(u) are complied with.
- f. All other provisions of the Ordinance shall be met.

B. *Nonconforming to Floodplain and/or Wetland Setback:*

- i. *Structures within thirty-five (35) feet of a Floodplain and/or Wetland.* An existing principal or accessory Structure may be replaced, restored, rebuilt, remodeled, maintained and repaired provided the existing footprint and three (3) dimensional building envelope of the nonconforming structure are not expanded, unless the expansion is necessary to comply with applicable state and federal requirements.
- ii. *Structures thirty-five (35) feet or greater from the Wetland.*
  - a. In addition to the improvements permitted by subsection i. above, a Structure may be expanded vertically, provided the height requirements of the Ordinance are met.
  - b. A principal Structure may be expanded laterally, provided the lateral expansion does not exceed two hundred (200) square feet over the life of the Structure and provided no portion of the lateral expansion is located no closer to the Wetland than the closest point of the existing Structure.
  - c. Lateral expansions within the Wetland Setback require compliance with the mitigation requirements of Section 3(u) of this Ordinance.
  - d. All other provisions of the Ordinance shall be met.

C. *Nonconforming to Road Setback: (the following provisions do not apply to nonconforming structures located within the DOD Downtown Okauchee District):*

- i. *Structures within twenty (20) feet of a Base Setback Line* (as established in Section 3(h)1.A). An existing principal or accessory Structure may be replaced, restored, rebuilt, remodeled, maintained and repaired provided the existing footprint and three (3) dimensional building envelope of the nonconforming structure are not expanded, unless the expansion is necessary to comply with applicable state and federal requirements.
- ii. *Structures twenty (20) feet to within thirty-five (35) feet of a Base Setback Line* (as established in Section 3(h)1.A).
  - a. In addition to the improvements permitted by subsection i. above, a Structure, may be expanded vertically, provided the height requirements of the Ordinance are met.



- b. A principal Structure may be expanded laterally, provided the lateral expansion does not exceed two hundred (200) square feet over the lifetime of the Structure and provided no portion of the lateral expansion is located any closer to the Base Setback Line than the closest point of the existing Structure.
    - c. All other provisions of the Ordinance shall be met.
  - iii. *Structures thirty-five (35) feet or greater from a Base Setback Line* (as established in Section 3(h)1.A). All standards of subsection ii above apply and shall be complied with, except that lateral expansions of Principal Structures are not limited to two hundred (200) square feet in size over the lifetime of the Structure.
- D. *Nonconforming to Offset: (the following provisions do not apply to Structures located within the DOD Downtown Okauchee District):*
  - i. *Structures within five (5) feet of a side or rear Lot Line.* An existing principal or accessory Structure may be replaced, restored, rebuilt, remodeled, maintained and repaired provided the existing footprint and three (3) dimensional building envelope of the nonconforming structure are not expanded, unless the expansion is necessary to comply with applicable state and federal requirements.
  - ii. *Structures five (5) feet to ten (10) feet of a side or rear Lot Line.*
    - a. In addition to the improvements permitted by subsection i. above, lateral expansions that do not exceed 50% of the footprint of the existing Structure, over the lifetime of the Structure, and vertical expansions require a Special Exception from the Board of Adjustment. Lateral and vertical expansions shall not extend closer to a nonconforming side or rear Lot Line than the closest point of the existing Structure. For the purposes of this section, a lateral expansion is any horizontal expansion of an existing Structure.
    - a. All other provisions of the Ordinance shall be met.
  - iii. *Structures greater than ten (10) feet from a side or rear Lot Line.*
    - a. All standards of subsection ii. above apply and shall be complied with, except that lateral expansions that do not exceed fifty percent (50%) of the Building Footprint of the existing Structure, over the lifetime of the Structure and vertical expansions are permitted by right. Lateral expansions that exceed fifty percent (50%) of the Building Footprint of the existing Structure, over the lifetime of the Structure require a Special Exception from the Board of Adjustment. Lateral and vertical expansions shall not extend closer to a nonconforming side or rear Lot Line than the closest point of the existing Structure. For the purposes of this section, a lateral expansion is any horizontal expansion of an existing Structure.

- b. All other provisions of the Ordinance shall be met.

E. *Nonconforming to Boathouse Standards and/or District Provisions:*

A nonconforming Boathouse may be replaced, restored, rebuilt, remodeled, maintained, and repaired within the three (3) dimensional building envelope of the existing Structure. If a Boathouse is partially or wholly located below the Ordinary High Water Mark of a Navigable Waterway, no permit may be granted until a Chapter 30 DNR Permit has been obtained.

F. *Nonconforming to Building Footprint:*

- i. An existing principal or accessory Structure may be replaced, restored, rebuilt, remodeled, maintained and repaired provided the existing footprint of the nonconforming structure is not expanded, unless the expansion is necessary to comply with applicable state and federal requirements.
- ii. If the Structure, or a combination of Structures, exceeds the maximum allowable Building Footprint, no lateral expansions are permitted.
- iii. If the Structure, or a combination of Structures, exceeds the maximum allowable Building Footprint, vertical expansions are limited to the area of allowable Building Footprint for the Structure(s).

For example, if a Structure has a Building Footprint of three thousand (3,000) square feet, whereas a Building Footprint of two thousand (2,000) square feet is the maximum allowed, the vertical expansion, cumulatively, shall not exceed two thousand (2,000) square feet.

- iv. If the Structure is intended for residential purposes and does not meet the minimum required Building Footprint square footage for a principal Structure, the Structure shall not be reduced in size.
- v. All other provisions of the Ordinance shall be met.

G. *Nonconforming to Height:*

- i. An existing principal or accessory Structure may be replaced, restored, rebuilt, remodeled, maintained and repaired provided the existing footprint of the nonconforming structure is not expanded, unless the expansion is necessary to comply with applicable state and federal requirements.
- ii. Any lateral or vertical expansion to a Structure nonconforming to height shall comply with the height requirements of the Ordinance.

H. *Building Footprint flexibility:* The Zoning Administrator has the authority to administratively approve a Building Footprint not to exceed eleven hundred (1,100) square feet when application of Offsets and setbacks do not otherwise provide a minimum eleven hundred (1,100) square foot Building Footprint. The Zoning

Administrator is limited to providing Road, Floodplain and Wetland Setback relief only. The Building Footprint shall not extend into the established road right-of-way or within the Floodplain or Wetland.

43. Record Keeping: The Zoning Administrator shall keep a record, which lists all known Legal Nonconforming Structures ~~located in the Floodplain~~ and all Structures housing Legal Nonconforming Uses, regardless of their location, their equalized assessed value, the cost of all modifications or additions, which have been permitted, and the percentage of the Structure's total equalized assessed value those modifications represent.

54. Regulation of Legal Nonconforming Use of Structures and lands:

- A. No such use shall be expanded or enlarged.
- B. When any such Legal Nonconforming Use of a Structure or lands is discontinued for twelve (12) consecutive months, any future use of the land or Structure shall conform to the use regulations of the applicable District.
- C. Total structural repairs or alterations to a Structure housing a Legal Nonconforming Use shall not equal or exceed fifty percent (50%) of the equalized assessed value of the Structure obtained from the County Real Property Tax Listing over the lifetime of the Structure. At such time as cumulative structural repairs or alterations to such a structure equal or exceed fifty percent (50%) of the equalized assessed value of the Structure, the use of the Structure shall be converted to conform with the applicable district regulations or the Structure shall be torn down.

65. Regulation of Nonconforming Lots: The size and shape of such Lots shall not be altered in any way which would increase the degree of such nonconformity to the applicable district regulations.

76. Conditional Use status: Subject to the provisions of Section 4, conditional use status may be granted to existing Legal Nonconforming Uses upon petition of the owner where such use is determined to be not adverse to the public health, safety, or welfare, would not conflict with the spirit or intent of the Ordinance or would not be otherwise detrimental to the community and particularly the surrounding neighborhood. Such conditional use status shall be granted only with the approval of the plan commission and County Zoning Agency following a joint public hearing in the manner provided in Section 40(b).



**Repeal and Recreate Section 3(s)1**

Use permitted: Boathouses, as defined by this Ordinance and in Section 30.01(1d) of the Wisconsin Statutes, are permitted in any District abutting a public or private body of water ~~but cannot be located, except~~ within a Floodplain or Wetland and are subject to the terms and the conditions set forth herein and Section 30.121 of the Wisconsin Statutes. Said Boathouse may be used for the storage of watercraft and associated materials used by the occupants of the Lot. Said Boathouse shall be placed on a permanent foundation extending below the frost line or a concrete slab and contain a garage type door.

**Create Section 3(t)3(D)**

Roadways as defined in s. 340.01(54), Wisconsin Statutes and sidewalks as defined in s. 340.01(58), Wisconsin Statutes are excluded from the calculation.

**Repeal and Recreate Section 3(u)1**

1. Applicability: Mitigation is required for the following activities:
  - A. Placement of Impervious Surfaces that exceed specified thresholds as detailed in Section 3(t).
  - B. Lateral expansion of a Structure nonconforming to Shore Setback as detailed in Section 3(o)~~32~~.A.ii.
  - C. Lateral expansion of a Structure nonconforming to Wetland Setback as detailed in Section 3(o)~~32~~.B.ii.
  - D. Relocation of a Structure nonconforming to Shore Setback as detailed in Section 3(o)~~32~~.A.iv.

**Repeal and Recreate Section 3(u)3(C)(xiv)(b)**

Required Standards: The TIS standards of Section 3(t) of the Waukesha County Shoreland ~~and Floodland~~ Protection Ordinance shall be met.

**Repeal and Recreate Section 3(u)3(C)(xvii)(b)**

Required Standards: Applicant must demonstrate a connection between the proposed Mitigation and the intent/purpose of the mitigation requirements of the Waukesha County Shoreland ~~and Floodland~~ Protection Ordinance and this Handbook. For example, an Applicant could provide engineering information showing that the proposal could accomplish the same outcome as one of the mitigation strategies outlined. Points would be awarded in line with the comparable mitigation points.

**Repeal and Recreate Section 3(v)(2)(A)**

The First Amendment and other provisions of the United States Constitution, as interpreted by the United States Supreme Court and other courts, require that Adult-Oriented Establishments, as defined by this Ordinance, are entitled to certain protections, including the opportunity to locate in shorelands ~~and floodlands~~ governed by this Ordinance. Therefore, an Adult-Oriented Establishment shall be an allowed use in the A-B, B-4 and Q-1 zoning districts and shall be a prohibited use in any other zoning district. The Adult-Oriented Establishment may locate in the specified Districts only if an Adult-Oriented Establishment License

has been granted by a town or municipality within the County which is subject to this Ordinance, and all the requirements of this section and the applicable zoning district's regulations are met.

### **Repeal and Recreate Section 3(w)(2)**

#### 2. Purpose and Intent.

The intent of this section is to establish standards for the keeping of chickens for recreational (hobby) use on certain property in the jurisdiction of the Waukesha County Shoreland ~~and Floodland~~ Protection Ordinance. These provisions are intended to prevent nuisances, undesirable odors, and other negative impacts on neighboring properties, protect human and animal health, satisfy the needs of animals for exercise space, and protect water quality and the environment. Further, it is the purpose of this section to:

- A. Provide for affordable, fresh, healthy, nutritious, sustainable, locally grown and raised food sources.
- B. Provide for self-sufficiency and a connection to the environment.
- C. Increase education and knowledge regarding healthy eating and food production.
- D. Provide the public with an interest in animals and a chance to learn how to care for animals.
- E. Continue to provide for and not endanger the health, safety, comfort, peace, quiet, enjoyment, and the general welfare of the public, or otherwise become a nuisance to nearby residents or occupants or a place of business, as well as provide for adequate air and sanitation, and preserve the general attractiveness and character of the community environment.
- F. Minimize conflicting land uses, and regulates coop and pen placement and height.

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## **SECTION 4**

### **Repeal and Recreate Section 4(g)1**

Airports, Landing Fields and Take Off Strips: In all Agricultural, AD 10, RRD 5, HG, ~~and non-wetland C-1 Conservancy Overlay Districts~~, except that in the FLP Farmland Preservation District and the FLC Farmland Conservancy District, the aviation use must be agriculturally or municipally related and shall comply with all provisions of Section 11. All such uses shall be subject to the approval of:

- A. Building and site plans and a plan of operation for the conduct of the use shall be approved by the Plan Commission and County Zoning Agency.
- B. Review and approval by the Federal Aviation Administration and/or the State of Wisconsin Bureau of Aeronautics or a letter waiving their approval or indicating such approval is unnecessary.

### **Repeal and Recreate Section 4(g)(9)(A)**

No such use shall be permitted on a lot less than five (5) acres in area and no such use shall be permitted in a ~~Floodplain and/or~~ Wetland unless the applicable requirements of Section 7 of this Ordinance are met and all State and Federal permits are obtained.

### **Repeal Section 4(g)(18)(C)**



~~Owners or operators of all mobile home parks and camps shall provide adequate surface drainage to minimize flood damage, prepare and secure approval and file an evacuation plan, indicating vehicular access and escape routes, with local emergency management authorities.~~

#### **Repeal Section 4(g)(18)(D)**

~~In existing mobile home parks, all new mobile homes on existing pads, and substantially improved homes shall have the lowest floor elevation to the flood protection elevation, be anchored so they do not float, collapse or move laterally during a flood.~~

#### **Repeal Section 4(g)(18)(E)**

~~New mobile home parks and camps are not allowed in the Floodplain. Replacement, modifications, or additions to modular or manufactured homes shall meet the residential development standards provided in Section 8 Existing Floodplain Development Overlay District.~~

#### **Repeal and Recreate Section 4(g)(22)(B)(iii)**

Lands currently zoned C-1 Conservancy Overlay District and lands within the floodplain may not be used in formulating the density of the project. When lands border a lake or other public body of water, pyramiding as defined herein, may be allowed if the minimum water frontage at the high water mark is one hundred (100) feet for the first dwelling unit and an additional twenty-five (25) feet for each additional dwelling unit thereafter. No more dwelling units may have access to the water body than would result from the application of this provision irrespective of the overall size of the development parcel.

#### **Repeal and Recreate Section 4(g)(22)(B)(iv)**

Public open space or common open space shall be of a size and shape to provide an integrated system of open spaces to the greatest extent possible and to provide protection of environmentally significant lands; they shall not consist of long, narrow bands or corridors, but shall be larger blocks or wide corridors of land, usually not less than one (1) acre in area. Corridors linking large blocks of public open space or common open space shall be not less than fifty (50) feet in width to provide adequate buffers from adjacent residential lots. The size, shape and location of said public open space or common open space shall be subject to review and approval of the Plan Commission and Zoning Administrator in order to qualify the project for consideration as a PUD, public open space or common open space shall be a minimum of forty percent (40%) of the entire Development, while no more than twenty percent (20%) of the entire acreage of the Development included in the required forty percent (40%) Open Space can be Conservancy zoned land or floodplain. In any Development, no more than five percent (5%) of the public open space may be used for public buildings, such as schools, fire stations, municipal buildings, etc.

#### **Repeal and Recreate Section 4(g)25**

Quarrying as defined in this Ordinance: In any District, except EC Environmental Corridor Overlay, AD-10, RRD-5, A-2 Rural Home, A-3 Suburban Estate, A-4 Country Estate, R-1, R-2, R-3, P-I, B-1, B-2, B-3, B-4, BP, DOD, or M-1. Existing quarries may continue to operate in the HG, FLC, ~~EPD~~, and C-1 Conservancy Overlay Districts, subject to compliance with the development standards of 7(c)2. New quarries are prohibited in the HG, FLC, ~~EPD~~, and C-1 Conservancy Overlay Districts. Quarries within the FLP or FLC Districts shall comply with all terms of Section 11. All quarries are subject to the following:

A. *Procedure for application:*

i. Permit: No quarrying operation shall take place in any District until a conditional use permit has been received and approved by the Plan Commission, Town Board and the County Zoning Agency. Except in a quarrying or general industrial district such permit shall be for an initial period as is deemed appropriate



to the specific situation but not exceed five (5) years, and may be renewed thereafter for periods not to exceed three (3) years provided application thereof shall be made at least sixty (60) and no more than one hundred twenty (120) days before expiration of the original permit. Application after such date shall be treated as an original application.

ii. Application: Application for a conditional use permit shall be made on forms supplied by the Waukesha County Department of Parks and Land Use and shall be accompanied by a fee as may be established and periodically modified under Section 41(b)5 of this Ordinance. Such fee shall be paid by cash, check or money order to the Waukesha County Department of Parks and Land Use, and shall be accompanied by:

a. A full and adequate description of all phases of the contemplated operation and the specific mention of type of machinery and equipment which will be or might be necessary to carry on the operation. Where the operation is to include the washing of sand and gravel, the estimated daily quantity of water required, its source and its disposition shall be made part of the description.

b. A legal description of the proposed site with a map showing its location with indications of private access roads, existing or proposed, and of public highways adjacent to the site which will be affected by the operation.

c. A topographic map of the area at a minimum contour interval of five (5) feet extending beyond the site to the nearest public street or highway or to a minimum distance of three hundred (300) feet on all sides.

d. A reclamation plan as required by Section 4(g)25.G and Chapter 14, Article XIV, County Code of Ordinances – Nonmetallic Mining Reclamation Ordinance or any applicable nonmetallic mining reclamation ordinance adopted by the town in which the subject quarrying site is located.

B. *Procedure for action on applications:*

i. Referral to Plan Commission: The application and all data and information pertaining thereto shall be referred to the Plan Commission and the Waukesha Zoning Agency for a joint public hearing and the Plan Commission shall make a report and recommendation to the Town Board within forty-five (45) days after the public hearing.

ii. Public hearing: Within thirty (30) days after an application has been filed, a joint public hearing shall be held at which all interested parties may be heard. In addition to the normal posting and publishing, notices also shall be sent through the mail or otherwise placed in the hands of all land owners within a half mile radius of the approximate center of the proposed quarrying operation. These notices shall be mailed or delivered at least ten (10) days prior to the date of hearing. Substantial compliance with the notice requirements of this section shall be deemed sufficient.

iii. Action by the Town Board: The Town Board shall, within fourteen (14) days after receipt of the recommendation of the Plan Commission, take action to approve or disapprove the application for the proposed quarrying operation and shall be guided by consideration of the public health, safety and welfare, and shall give particular consideration to the following factors in making their decision:

a. The effect of the proposed operation on existing roads and traffic movement in terms of adequacy, safety and efficiency.

b. The effect of the proposed operation on drainage and water supply.

c. The possibility of soil erosion as a result of the proposed operation.

d. The degree and effect of dust and noise as a result of the proposed operation.

- e. The practical possibility of reclamation of the site.
- f. The effect of the proposed operation on the natural beauty, character, tax base, land value, and land uses in the area.
- g. The most suitable land use for the area with particular consideration for future residential value.
- iv. Approval by Zoning Agency: The determination of the Town Board shall be immediately transmitted to the County Zoning Agency which shall within forty-five (45) days approve or disapprove of the determination.
- v. Additional conditions: Any conditions accessory to the granting of a permit shall be in writing and copies made a part of the permit and a part of the records of the Town and of the County Zoning Agency.
- vi. Renewals: The procedure as designated in i, ii, iii, iv and v above shall apply to applications of renewal of a permit. Determination in regard to renewal shall be based particularly on an evaluation of the effect of the continuance of the use with relation to changing conditions in the area. Where renewal is not granted, the reasons for refusal shall be presented to the Applicant in writing and made a part of the records of the Town and of the County Zoning Agency.

C. *General Requirements:*

- i. No part of the quarrying operations shall be permitted closer than one thousand (1,000) feet, nor shall any accessory access road, parking area or office building be permitted closer than five hundred (500) feet to a District zoned A-2, A-3, A-4, R-1, R-2, R-3 at the time of the grant of permit except with the written consent of the owners of all A-2, A-3, A-4, R-1, R-2, R-3 zoned properties within one thousand (1,000) feet, or except in a quarrying or general industrial district, but in no case shall such operation be permitted closer than two hundred (200) feet to any residential district.
- ii. No quarrying operation shall be permitted except in a quarrying or general industrial district if thirty (30) or more families reside within a band one-half mile wide around the perimeter of the proposed operation.

D. *Setback requirements:* No part of the quarrying operation other than access roads shall be located closer than two hundred (200) feet, nor shall any accessory parking area, stock pile, or office building be located closer than one hundred (100) feet to the Base Setback Line along any street or highway.

E. *Offset requirements:* No part of the quarrying operation shall be permitted closer than two hundred (200) feet, nor shall any accessory access road, parking area, or office building be located closer than fifty (50) feet to any property line except with the written consent of the owner of adjoining property, or except where said line is abutting a quarrying or general industrial district, or abutting an existing quarrying operation, but in no case shall such operation be closer than twenty (20) feet to any property line except by agreement between abutting quarrying operations, or be in conflict with the provisions of Section 3(d)5 relating to preservation of topography.

F. *Operational Requirements:*

- i. Fencing or other suitable barrier shall be erected and maintained around the site or around portions of the site where in the determination of the Town Board such fencing or barrier is necessary for the protection of the public, and shall be of a type approved by the Town Board.

- ii. All machinery and equipment used in the quarrying operation shall be constructed, maintained and operated in such a manner as to minimize dust, noise and vibration. Access and haulage roads on the site shall be maintained in a dust-free condition by surfacing or treatment as directed by the Town Engineer.
- iii. The crushing, washing, refining, or other processing other than the initial removal of material, may be permitted as an accessory use only as specifically authorized under the terms of the grant of the permit or as otherwise provided in a quarrying or general industrial district.
- iv. In stone quarries, the production or manufacturing of veneer stone, sills, lintel, cut flagstone, hearthstones, paving stone and similar architectural or structural stone and the storing or stock-piling of such products on the site shall be considered a permissible part of the operation, provided such production does not require the use of crushing or other heavy machinery except as may be otherwise specifically authorized under the terms of the grant of the permit or as otherwise provided in a quarrying or general industrial district.
- v. The manufacture of concrete building blocks or other similar blocks, the production or manufacture of lime products, the production of ready-mixed concrete and any similar production or manufacturing processes which might be related to the quarrying operation shall not be permitted except as otherwise provided in a quarrying or general industrial district.
- vi. The washing of sand and gravel shall be prohibited in any operation where the source of water is of doubtful capacity or where the quantity of water required will, in the opinion of the Town Engineer, seriously affect the water supply of other uses in the area.
- vii. The planting of trees and shrubs and other appropriate landscaping shall be provided where deemed necessary by the Plan Commission to screen the operation so far as practical from normal view, to enhance the general appearance from the public right-of-way, and generally to minimize the damaging effect of the operation on the beauty and character of the surrounding countryside. Such planting shall be started as soon as practicable, but no later than one (1) year after quarrying operations have begun and shall be done according to the recommendations of the Waukesha County Department of Parks and Land Use.
- viii. Except in a quarrying or General Industrial District, quarrying operations shall not begin before the hour of 7:00 a.m. and shall not continue after the hour of 6:00 p.m. and no operation shall take place on Sundays or legal holidays. During periods of national or unusual emergency, times and hours of operation may be altered at the discretion of the Town Board and through the issuance of a special permit which shall be renewable at thirty (30) day intervals.

G. *Reclamation requirements:*

- i. In order to insure that the area of the quarrying operation shall be reclaimed to a condition of practical usefulness and reasonable physical attractiveness, the owner and operator shall, prior to the issuance of a permit, submit to the Town or the Waukesha County Department of Parks and Land Use – Land Resources Division, as applicable, a plan for such reclamation in accordance with Chapter 14, Article XIV, County Code of Ordinances – Nonmetallic Mining Reclamation Ordinance or any applicable nonmetallic mining reclamation ordinance adopted by the town.
- ii. If minor changes are proposed to the adopted reclamation plan, a revised plan shall be submitted to the Town Engineer and the Waukesha County Department of Parks and Land Use – Land Resources Division for review and approval prior to proceeding with reclamation. If major changes are proposed to the adopted reclamation plan, a joint informational public hearing, scheduled by the Waukesha County Department of Parks and Land Use – Land Resources Division with the affected town(s), shall be held to solicit input on the proposed changes. If the changes are approved, a revised reclamation plan shall be submitted to the Town Engineer and the Waukesha County Department of Parks and Land Use – Land Resources Division for



review and approval prior to proceeding with reclamation. If the changes are not approved, reasons for the decision shall be provided, in writing, to the owner and operator.

H. *Exceptions:*

- i. The provisions of this Section, 4(g)25, shall not apply to the removal of sod.
- ii. When the operation is limited to the removal of topsoil, the Plan Commission and the County Zoning Agency may, consistent with the intent of these regulations, modify any or all of the provisions of this Section 4(g)25, provided, however, that in no case shall such operation be permitted closer than ten (10) feet from any property line, or to a depth in excess of eighteen (18) inches or so as to adversely affect the drainage of the area.
- iii. Where the quarrying operation will involve the commercial disposal of the material removed from a quarrying operation, the approval of the Plan Commission and the County Zoning Agency shall be required and such operation shall comply with the provisions of Section 4(g)25 and shall be limited to a maximum period of six (6) months.
- iv. In a quarrying or general industrial district the Plan Commission and County Zoning Agency may, consistent with the intent of these regulations, modify the provisions relative to permitted hours of operation; and where the character of the terrain, of surrounding Development, or other special conditions would justify such modification, may permit a reduction in the required setback or offset; provided, however that in no case shall the setback be less than one hundred (100) feet, or the offset be less than one hundred (100) feet for quarrying operations or twenty (20) feet for any accessory access road, parking area, or office building except as may be otherwise provided by Sections 4(g)25.D and 4(g)25.E.

I. *Application for existing operations:*

- i. Permit: Within sixty (60) days after the adoption of this Ordinance all existing quarrying operations shall be required to register with the town clerk submitting pertinent data relative to the present operation, including the boundaries of the actual operation and of the ownership. A conditional use permit shall be granted to such existing operation subject to compliance with the operational requirements, Section 4(g)25.F, of this Ordinance where they can be reasonably applied under existing circumstances.
- ii. Plan for reclamation: There shall be required within one (1) year after adoption of this Ordinance, the submission of a plan for reclamation of the site of any existing quarrying operation as provided by Section 4(g)25.G. The plan for reclamation in such case shall not, however, impose requirements which are economically or engineeringly unreasonable with respect to conditions resulting from operations prior to enactment of this Ordinance.
- iii. Renewal permit: Within three (3) years after the date of this Ordinance any such existing operation shall be required to make application for a renewal permit the same as for re-application in the case of a new operation under this Ordinance except in a quarrying or general industrial district.

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**SECTION 6**

**Repeal and Recreate Section 6(a)**

**Establishment of Districts**

For the purpose of this Ordinance, the county is hereby divided into zoning districts which shall be designated as follows:

C-1 Conservancy Overlay District

~~EFD Existing Floodplain Development Overlay District~~

EC	Environmental Corridor Overlay District
FLC	Farmland Conservancy District
FLP	Farmland Preservation District
A-T	Agricultural Transition District
A-B	Agricultural Business District
AD-10	Agricultural Density-10 District
RRD-5	Rural Residential Density District
A-5	Mini-Farm District
A-1	Agricultural District
A-2	Rural Home District
A 3	Suburban Estate District
A-4	Country Estate District
HG	High Groundwater District
R-1	Residential District
R-2	Residential District
R-3	Residential District
NLO	North Lake Overlay District
P-I	Public and Institutional District
B-1	Restricted Business District
B-2	Local Business District
B-3	General Business District
B-4	Community Business District
B-P	Mixed Use Business Park District
DOD	Downtown Okauchee District
Q-1	Quarrying District
M-1	Limited Industrial District
M-2	General Industrial District
DSO	Delafield Shoreland Overlay District

**Repeal and Recreate Section 6(b)(1)**

Districts mapped: The boundaries of zoning districts are shown upon maps as referred to in Section 3 of this Ordinance for all of the unincorporated towns of Waukesha County, and entitled Waukesha County Shoreland and Floodland Protection Ordinance Zoning Maps which are made a part of this Ordinance and adopted by reference.

A. *Wetlands:* The Final Wisconsin Wetlands Inventory Maps for Waukesha County, dated September 6, 1984 and subsequently amended, were utilized to assist in the preparation and identification of wetlands identified on the aerial photographs and accordingly are made a part of this Ordinance and are adopted by reference. The review and adoption of amendments to the Wisconsin Wetland Inventory Map shall be completed in accordance with Section NR 115.04(2) Wis. Admin. Code. The Wisconsin Wetland Inventory Maps are also depicted on the Department of Natural Resources Surface Water Data Viewer <https://dnrmaps.wi.gov/H5/?viewer=SWDV> and on the Waukesha County GIS. All the notations, references and other information shown thereon shall be as much a part of this Ordinance as if the matters and information set forth by said maps were all fully described herein. Said maps shall be kept on file in the offices of the County Zoning Agency and are periodically updated as amendments are made, and are for general informational purposes only. For the purpose of local administration, a copy of the appropriate maps shall also be kept on file in the office of each town.

All other wetlands subsequently identified by the Zoning Administrator, County Zoning Agency, SEWRPC, ACOE or the WDNR within the shoreland boundaries but not noted on the Wisconsin Wetland Inventory



Maps, are subject to regulations contained in the C 1 Conservancy Overlay District. Said newly determined areas shall be noted on the Shoreland and Floodland Protection Ordinance Zoning Maps as a C 1 Conservancy Overlay designated area within six (6) months of said determination.

~~B. — Floodplains: The boundaries of the Floodplains shall be those areas designated as A or A-E on the FEMA Flood Insurance Rate Maps based on the Flood Insurance Study, including all areas covered by the Regional or Base Flood; those Floodplains identified as an Official Map below approved by WDNR; or as depicted as C-1 Conservancy Overlay District or EFD Existing Floodplain Development Overlay District on the Waukesha County Shoreland and Floodland Protection Ordinance Zoning Maps referenced in Section 3(a) of this Ordinance, or as subsequently determined by the Zoning Administrator pursuant to Section 6(b)3, whichever boundary designates a greater Floodplain area.~~

~~Base Flood Elevations are derived from the Flood Profiles in the Flood Insurance Study published by FEMA. Areas covered by the Base Flood are identified as AE (numbered A Zones) on the Flood Insurance Rate Map. Other regulatory zones are displayed as A Zones. Regional Flood Elevations may be derived from other studies and are approved by WDNR.~~

~~Any change to the Base Flood Elevations (BFE) or any changes to the boundaries of the Floodplain or Floodway in the Flood Insurance Study or on the Flood Insurance Rate Map must be reviewed and approved by the WDNR and FEMA through the Letter of Map Change process and through Section 39 of this Ordinance before it is effective. No changes to Regional Flood Elevations (RFE's) on non-FEMA maps shall be effective until approved by the WDNR.~~

~~A list of the official Floodplain maps to be used in conjunction with the Waukesha County Shoreland and Floodland Protection Ordinance Zoning Maps is listed as follows. These maps and revisions for unincorporated Waukesha County are on file in the office of the Waukesha County Planning and Zoning Division located in the Waukesha County Administrative Center in Waukesha, Wisconsin. If more than one map or revision is referenced, the most restrictive information shall apply.~~

~~i. — OFFICIAL MAPS: Based on the Flood Insurance Study approved by WDNR and FEMA:~~

~~a. — See Table 6(b)1.B.i.~~

~~b. — Revisions to the Waukesha County Flood Insurance Rate Map (FIRM) panel numbers: See Table 6(b)1.B.i.~~

~~ii. — OFFICIAL MAPS: Based on other studies approved by WDNR. Said maps are more restrictive than those maps based on the Flood Insurance Study.~~

~~The list of official maps based upon other studies to be used in conjunction with the Waukesha County Shoreland and Floodland Protection Ordinance Zoning Maps is as follows: See Table 6(b)1.B.ii.~~

~~Official maps approved by the WDNR and/or FEMA, including Flood Profiles, Floodway data tables, Regional or Base Flood Elevations and other information shall become official maps of this Ordinance and shall be specifically listed herein as adopted by the Waukesha County Board.~~

~~The county shall provide the list of the official maps to the WDNR and FEMA regional offices for unincorporated areas of Waukesha County. Approved studies shall not be considered official maps herein until the land is rezoned according to Section 39 of this Ordinance. Said areas must be rezoned and identified on the official zoning maps within 6 months of WDNR approval.~~

~~C. — The Existing Floodplain Development Overlay District (EFD) is an overlay zoning district established to superimpose upon the conservancy zoning district regulatory standards or special regulations~~



~~which will apply to the underlying zoning district where it is found that such land areas do contain existing Development and are located within the Floodplain as herein defined. The mapping of this District shall be established pursuant to the procedures set forth in Section 39, changes and amendments, of this Ordinance.~~

### **Repeal and Recreate Section 6(b)(3)**

~~Determination of boundaries for C-1 Conservancy Overlay District, EFD Existing Floodplain Development Overlay District, and FLC Farmland Conservancy District: The boundaries of the C-1 Conservancy Overlay District, EFD Existing Floodplain Development Overlay District and FLC Farmland Conservancy District as drawn are intended to represent the edge of marsh lands, swamps, Floodlands, Wetlands or the Ordinary High Water Mark along streams or other watercourses. Where a question arises as to the exact location of those boundaries, they shall be determined by the Zoning Administrator or the County Zoning Agency through the utilization of the best available information such as topographic maps, soil maps, aerial photographs, infield botanical inventories, floodplain studies or other sources of information available which would lend assistance to such a determination and may be finally determined by actual conditions in each specific situation. An appeal to this determination may be made in conformance with Section 38 of this Ordinance. It is generally the intent of this Ordinance to place all wetlands and lands subject to inundation by the regional flood in either the C 1 Conservancy Overlay District or EFD District if the areas are previously developed. Where land may be subject to inundation by the regional flood and a hydraulic and hydrologic analysis has not been prepared and/or the area is not indicated or mapped as Floodplain, a detailed hydraulic and hydrologic analysis shall be prepared and reviewed and found to be adequate by the WDNR or its designated agency, in which case the new floodplain data will be used in the administration of this Ordinance. The Zoning Administrator shall map these floodplain areas in appropriate zoning districts within six (6) months of the time the WDNR has determined the acceptability of the data and said mapping shall be done pursuant to Section 39 of this Ordinance. Any changes or amendments in the mapped Floodplains and made a part of this Ordinance shall be approved by the WDNR in accordance with the procedure set forth in Section 39 of this Ordinance.~~

If an area is found that has not been previously identified or mapped as a Floodplain or a Wetland and not zoned as C 1 Conservancy Overlay or EFD Existing Floodplain Development Overlay, or a determination of navigability is made and a stream is subsequently found to be navigable, said stream and any Shoreland or Wetlands or Floodplains as defined herein, shall immediately become subject to the provisions of this Ordinance. If the Floodplain has not been determined, said area of approximate Floodplain and Wetlands shall be considered to be subject to the C 1 and/or EFD regulations of this Ordinance. New floodplain studies or in-field determination of floodplain boundaries may result in the need to establish or refine Shoreland Zoning Districts. Appropriate procedures to establish Shoreland Zoning districts beyond that which is considered C 1 Conservancy Overlay or EFD Existing Floodplain Development Overlay shall be initiated under the mapping amendment procedure pursuant to Section 39 of this Ordinance and as set forth above. Water quality related standards of the Shoreland and Floodland Protection Ordinance are in effect immediately upon a determination of navigability or identification of a shoreland/Wetland or Floodplain (i.e., setback, grading, and land altering activities, vegetation removal).

### **Repeal and Recreate Section 6(b)(4)**

Discrepancy of Wetland boundaries: In the case of any discrepancy regarding a boundary between any mapped or newly determined Wetland, the Zoning Administrator shall consult with the WDNR and coordinate the appropriate onsite investigation to determine the exact boundary. If the WDNR staff concurs with the Zoning Administrator that a particular area was incorrectly mapped as a wetland, the Zoning Administrator shall have the authority to immediately deny or grant a zoning permit in accordance with the regulations applicable to the correct zoning district designation as it may be modified by such field determination. A notation shall be made on the map indicating that such a change has been made for future reference purposes. Utilizing the procedures above, if an area is found to be inappropriately mapped in a C 1



Conservancy Overlay, ~~EFD Existing Floodplain Development Overlay~~ or FLC Farmland Conservancy District category, the Zoning Administrator shall have the authority to designate a District for the subject area consistent with the upland category which may exist adjacent to the site without necessity of a formal amendment process and shall note said changes on the zoning map within 6 months of said determination.

### **Repeal Section 6(b)(5)**

~~Dispute or discrepancy of Floodplain boundaries: In the case of any dispute or discrepancy regarding a boundary between an official zoning map and actual field conditions locating the Floodplain boundary, the criteria in paragraphs (a) or (b) below shall be used. If a significant difference exists, the map shall be amended according to Section 39 of this Ordinance. The Zoning Administrator can rely on a boundary derived from a Flood Profile elevation to grant or deny a permit, whether or not a map amendment is required. The Zoning Administrator shall be responsible for documenting actual pre-development field conditions and the basis upon which the District boundary was determined and for initiating any map amendments required under this section. Disputes between the Zoning Administrator and an Applicant over the District boundary line shall be settled according to Section 38 of this Ordinance and the criteria in (a) and (b) below. Where the Flood Profiles are based on established Base Flood Elevations from a Flood Insurance Rate Map, FEMA must also approve any map amendment or revision pursuant to Section 39 of this Ordinance.~~

~~A. — If Flood Profiles exist, the map scale and the profile elevations shall determine the District boundary. The Regional or Base Flood Elevations shall govern if there are any discrepancies.~~

~~B. — Where Flood Profiles do not exist for projects, the location of the boundary shall be determined by the map scale.~~

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## **SECTION 7**

### **Repeal and Recreate Section 7(a)**

#### Applicability

This District includes all shoreland areas that are considered Wetlands ~~and/or Floodplains~~ as defined in this Ordinance and as mapped and/or determined as Wetlands ~~and/or Floodplains~~ in Sections 3(a) and 6(b) of this Ordinance. Shoreland/Wetlands designated on the Wisconsin Wetland Inventory Maps prepared by the WDNR as also depicted on the Department of Natural Resources Surface Water Data Viewer are also referred to as being located in the “Shoreland-Wetland Zoning District” as defined in this Ordinance. Said Shoreland/Wetlands are subject to the regulations of this Section.

The underlying base zoning district regulations shall only be applicable if an in-field determination finds that the portion of the property in question within said overlay district is erroneously mapped.

### **Repeal and Recreate Section 7(c)(1)**

Permitted uses ~~(Floodway, Floodfringe, and Wetland)~~: The following uses shall be allowed, subject to compliance with all other provisions of this Ordinance, the provisions of Chapters 3 ~~and~~ 0, 31 ~~and~~ 87 Wisconsin Statutes and § 281.36, Wis. Stats., and the provisions of all other applicable local, state, and federal laws. WDNR and ACOE permits may be required prior to any activities being permitted pursuant to this section. ~~The provisions of Section 7(c)2 must be met for all permitted uses that involve Development in the Floodplain, as defined in this Ordinance.~~

A. Hiking, fishing, trapping, hunting, swimming and boating, 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 and that does not involve filling, flooding, draining, dredging, ditching, tiling, or excavating.



B. Pasturing of livestock and the construction and maintenance of fences, provided no filling, flooding, draining, dredging, ditching, tiling or excavating is done, with the exception of limited excavating and filling necessary for the construction and maintenance of fencing.

C. The practice of silviculture including planting, thinning and harvesting of timber in accordance with Section 3(d)9.A and agricultural cultivation, provided that filling, flooding, draining, dredging, ditching, tiling or excavation is limited to the following associated activities:

i. The installation of 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.

~~ii. The cultivation of cranberries, including flooding, dike and dam construction or ditching necessary for the growing and harvesting of cranberries.~~

~~iii.~~ The construction and maintenance of roads that are necessary to conduct silvicultural activities or agricultural cultivation if the following provisions are met:

a. The road cannot as a practical matter be located outside of the C-1 Conservancy Overlay District;

b. The road is designed and constructed to minimize adverse impacts upon the natural functions of the wetland enumerated in Section 39(e)2;

c. The road is designed 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; and

e. All fill material associated with the construction and maintenance of roads necessary to conduct temporary silvicultural activities must be removed from the conservancy zoned lands after any temporary silvicultural activities are completed.

D. The maintenance and repair of existing agricultural drainage systems, including flooding, draining, ditching, tiling, dredging, excavating and filling necessary to maintain the level of drainage required to continue any existing Agricultural Use. Filling attendant to the disposal of dredged spoil material adjacent to the drainage systems ~~is not permitted within the Floodplain, but~~ may be allowed in the wetland provided that dredged spoil is placed on existing spoil bands where possible or immediately adjacent to the ditches.

E. Functionally water dependent uses, such as docks, piers or wharves, walkways built on pilings, flowage areas, water monitoring devices, culverts, navigational aids and river crossings of transmission lines, and pipelines, including limited excavating and filling necessary for such construction and maintenance. Commercial docks, piers, moorings and wharves are permitted subject to issuance of a Conditional Use Permit under Section 4(g)17 and 23 of this Ordinance.

F. Dam construction and abandonment, provided a Conditional Use Permit is obtained in accordance with Section 4 of this Ordinance and all applicable permits are obtained from the WDNR pursuant to Chapter 31 of the Wisconsin Statutes and from the ACOE pursuant to federal requirements. Maintenance of an existing dam shall comply with the standards of this Ordinance, but shall not require the issuance of a Conditional Use Permit.

G. Maintenance, repair, replacement, reconstruction or new construction of town, county and state streets, highways and bridges, and normal driveway construction and related bridges that are necessary in order to provide access to a property, including limited excavating and filling as necessary, provided such facilities are deemed essential or provided that failure of existing streets, driveways and bridges would endanger public health or safety. ~~Adequate Floodproofing measures shall be provided to the Flood Protection Elevation as identified in Section 8(c) and T~~ the standards of Section 3(d)5-A of this Ordinance shall be met.

H. 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 the following provisions are met:



- i. Any private development shall be used exclusively for the permitted use and the Applicant shall receive a permit or license under Chapter 29, Wisconsin Statutes, where applicable;
- ii. Filling or excavating necessary for the construction or maintenance of public boat launching ramps or attendant access roads is allowed only where such construction or maintenance meets the criteria in Section 7(c)1.C.iii above; and
- iii. 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.

I. The construction and maintenance of electric, gas, telephone, cable, fiber optic, 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:

- i. The transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the C-1 Conservancy Overlay District and provided such facilities are deemed essential or failure of existing facilities would endanger public health or safety. ~~Adequate Floodproofing measures shall be provided to the Flood Protection Elevation and the standards of Section 3(d)5.A of this Ordinance shall be met.~~

- ii. Such construction or maintenance is done in a manner designated to minimize adverse impact upon the natural functions of the Wetland enumerated in Section 39(e)2. Major electrical generative facilities and high voltage transmission lines that have obtained a certificate of public convenience and necessity under Section 196.491, Wisconsin Statutes, are not subject to the requirements of this Ordinance.

J. The construction or maintenance of nonresidential buildings and duck blinds. Nonresidential buildings are permitted only if the following provisions are met:

- i. 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 C-1 Conservancy Overlay District;
- ii. The Building cannot, as a practical matter, be located outside the wetland;
- iii. The Building is not designed for human habitation and shall not exceed five hundred (500) square feet in floor area; and
- iv. Limited filling and excavating necessary to provide structural support for the Building is permitted. Where the use is intended for commercial purposes, said use and Buildings shall be subject to the provisions of Section 4(g)9 ~~and said commercial uses and Buildings are not permitted within the floodway.~~

- K. Existing quarrying operations ~~located within the Floodplain or that may expand the Floodplain via the extraction of sand, gravel, or other materials~~ in compliance with Section 4(g)25. ~~Said activities are prohibited in Wetlands.~~

**Repeal and Repeate Section 7(c)**

- 1. Permitted uses (Floodway, Floodfringe, and Wetland): The following uses shall be allowed, subject to compliance with all other provisions of this Ordinance, the provisions of Chapters 30-, ~~and 31~~ ~~and 87~~ Wisconsin Statutes and § 281.36, Wis. Stats., and the provisions of all

other applicable local, state, and federal laws. WDNR and ACOE permits may be required prior to any activities being permitted pursuant to this section. ~~The provisions of Section 7(e)2 must be met for all permitted uses that involve Development in the Floodplain, as defined in this Ordinance.~~

- A. Hiking, fishing, trapping, hunting, swimming and boating, 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 and that does not involve filling, flooding, draining, dredging, ditching, tiling, or excavating.
- B. Pasturing of livestock and the construction and maintenance of fences, provided no filling, flooding, draining, dredging, ditching, tiling or excavating is done, with the exception of limited excavating and filling necessary for the construction and maintenance of fencing.
- C. The practice of silviculture including planting, thinning and harvesting of timber in accordance with Section 3(d)9.A and agricultural cultivation, provided that filling, flooding, draining, dredging, ditching, tiling or excavation is limited to the following associated activities:
  - i. The installation of 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.
  - ~~ii. The cultivation of cranberries, including flooding, dike and dam construction or ditching necessary for the growing and harvesting of cranberries.~~
  - ~~iii.~~ The construction and maintenance of roads that are necessary to conduct silvicultural activities or agricultural cultivation if the following provisions are met:
    - a. The road cannot as a practical matter be located outside of the C-1 Conservancy Overlay District;
    - b. The road is designed and constructed to minimize adverse impacts upon the natural functions of the wetland enumerated in Section 39(e)2;
    - c. The road is designed 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; and
    - e. All fill material associated with the construction and maintenance of roads necessary to conduct temporary silvicultural activities must be removed from the conservancy zoned lands after any temporary silvicultural activities are completed.
- D. The maintenance and repair of existing agricultural drainage systems, including flooding, draining, ditching, tiling, dredging, excavating and filling necessary to



maintain the level of drainage required to continue any existing Agricultural Use. Filling attendant to the disposal of dredged spoil material adjacent to the drainage systems ~~is not permitted within the Floodplain, but~~ may be allowed in the wetland provided that dredged spoil is placed on existing spoil bands where possible or immediately adjacent to the ditches.

- E. Functionally water-dependent uses, such as docks, piers or wharves, walkways built on pilings, flowage areas, water monitoring devices, culverts, navigational aids and river crossings of transmission lines, and pipelines, including limited excavating and filling necessary for such construction and maintenance. Commercial docks, piers, moorings and wharves are permitted subject to issuance of a Conditional Use Permit under Section 4(g)17 and 23 of this Ordinance.
  
- F. Dam construction and abandonment, provided a Conditional Use Permit is obtained in accordance with Section 4 of this Ordinance and all applicable permits are obtained from the WDNR pursuant to Chapter 31 of the Wisconsin Statutes and from the ACOE pursuant to federal requirements. Maintenance of an existing dam shall comply with the standards of this Ordinance, but shall not require the issuance of a Conditional Use Permit.
  
- G. Maintenance, repair, replacement, reconstruction or new construction of town, county and state streets, highways and bridges, and normal driveway construction and related bridges that are necessary in order to provide access to a property, including limited excavating and filling as necessary, provided such facilities are deemed essential or provided that failure of existing streets, driveways and bridges would endanger public health or safety. ~~Adequate Floodproofing measures shall be provided to the Flood Protection Elevation as identified in Section 8(c) and the~~ The standards of Section 3(d)5-A of this Ordinance shall be met.
  
- H. 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 the following provisions are met:
  - i. Any private development shall be used exclusively for the permitted use and the Applicant shall receive a permit or license under Chapter 29, Wisconsin Statutes, where applicable;
  
  - ii. Filling or excavating necessary for the construction or maintenance of public boat launching ramps or attendant access roads is allowed only where such construction or maintenance meets the criteria in Section 7(c)1.C. ~~iii~~ ii above; and



- iii. 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.
- I. The construction and maintenance of electric, gas, telephone, cable, fiber optic, 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:
- i. The transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the C-1 Conservancy Overlay District and provided such facilities are deemed essential or failure of existing facilities would endanger public health or safety. ~~Adequate Floodproofing measures shall be provided to the Flood Protection Elevation and the standards of Section 3(d)5.A of this Ordinance shall be met.~~
  - ii. Such construction or maintenance is done in a manner designated to minimize adverse impact upon the natural functions of the Wetland enumerated in Section 39(e)2. Major electrical generative facilities and high voltage transmission lines that have obtained a certificate of public convenience and necessity under Section 196.491, Wisconsin Statutes, are not subject to the requirements of this Ordinance.
- J. The construction or maintenance of nonresidential buildings and duck blinds. Nonresidential buildings are permitted only if the following provisions are met:
- i. 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 C-1 Conservancy Overlay District;
  - ii. The Building cannot, as a practical matter, be located outside the wetland;
  - iii. The Building is not designed for human habitation and shall not exceed five hundred (500) square feet in floor area; and
  - iv. Limited filling and excavating necessary to provide structural support for the Building is permitted. Where the use is intended for commercial

purposes, said use and Buildings shall be subject to the provisions of Section 4(g)9 ~~and said commercial uses and Buildings are not permitted within the floodway.~~

- K. Existing quarrying operations ~~located within the Floodplain or that may expand the Floodplain via the extraction of sand, gravel, or other materials~~ in compliance with Section 4(g)25. ~~Said activities are prohibited in Wetlands.~~

~~2. Standards for development in the Floodplain:~~

~~A. General standards of Development for the above permitted uses in the Floodplain:~~

- ~~i. Any Development in the Floodplain shall comply with Section 3(d)5 and shall not have a high flood damage potential, as defined in this Ordinance. If the standards of Section 3(d)5 are not met, the area shall be rezoned in accordance with Section 39.~~
- ~~ii. Applicants shall provide the following data to determine the effects of the proposal according to the standards set forth in Section 3(d)5.A:
  - ~~a. A cross-section elevation view of the proposal, perpendicular to the watercourse, showing if the proposed Development will obstruct flow; or~~
  - ~~b. An analysis calculating the effects of this proposal on regional flood height.~~~~
- ~~iii. Any Development in the Floodplain shall comply with the application requirements of Section 3(e)2.~~
- ~~iv. In addition to the lowest floor elevation and fill requirements of this Ordinance, any structure that is not placed on fill at an elevation above the Base or Regional Flood Elevation must meet the Floodproofing standards in Section 8(e).~~
- ~~v. The Zoning Administrator shall deny the permit application if the project will obstruct flow or cause any increase in the Flood elevations upstream or downstream based on data submitted pursuant to par. ii, iii and iv above. If an increase in the Flood elevation is proposed, the project must be reviewed in accordance with Section 4(g)14 as a Conditional Use and a Rezone must~~

~~be obtained in accordance with Section 39. Compensatory Floodplain storage must be provided as required in Section 3(d)5.A.~~

~~vi. The Applicant shall submit a certification signed by a registered professional engineer, architect or land surveyor that the fill, lowest floor and Floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or architect that the requirements of Section 8(e) are met.~~

~~vii. Floodplain Certificate of Compliance: No land shall be occupied or used, and no Building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a Floodplain Certificate of Compliance is issued by the Zoning Administrator, except where no permit is required, subject to the following provisions:~~

~~a. The Floodplain Certificate of Compliance shall show that the Building or premises or part thereof, and the proposed use, conform to the floodplain provisions of this Ordinance;~~

~~b. If all provisions are met, the Floodplain Certificate of Compliance shall be issued within ten (10) days after written notification that the permitted work completed. The Zoning Administrator shall issue the Floodplain Certificate of Compliance to the Town Building Inspector and a copy of the Floodplain Certificate of Compliance to the Applicant.~~

~~B. Structures accessory to permanent open space uses or functionally dependent on a waterfront location may be allowed by permit if the use is a permitted use in the C-1 Conservancy Overlay District, and the structures comply with the above standards for Development and the following criteria:~~

~~i. The Structure is not designed for human habitation and does not have a high flood damage potential, as defined in this Ordinance;~~

~~ii. The Structure must be anchored to resist flotation, collapse, and lateral movement;~~

~~iii. Mechanical and utility equipment must be elevated or flood proofed to or above the flood protection elevation; and~~



~~iv. The Structure must not obstruct flow of flood waters, cause any increase in flood heights during the occurrence of the regional flood or affect the storage capacity of the Floodplain.~~

~~C. Fill or deposition of materials may be allowed by minor grading or conditional use permit if the use is a permitted use in the C-1 Conservancy Overlay District, and if the activity complies with the above standards of development and the following criteria:~~

~~i. The standards set forth in Section 3(d)5.A are met; and~~

~~ii. No material is deposited in the navigable channel unless a permit is issued by the WDNR pursuant to Chapter 30, Wisconsin Statutes, and a permit pursuant to Section 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344 has been issued, if applicable; and~~

~~iii. The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading, or other approved measures; and~~

~~iv. The fill is not classified as a solid or hazardous material.~~

32. Specific prohibition: Any uses not permitted above are considered to be prohibited, including, but not limited to, the following uses, unless the area is rezoned to another appropriate District in accordance with the provisions of Section 39 of this Ordinance and sec. 59.69(5)(e), Wis. Stats.

A. Habitable structures, including modular homes, mobile homes and recreational vehicles; ~~Structures with high flood damage potential, as defined in this Ordinance;~~ and those Structures not associated with the permitted uses in the C-1 Conservancy Overlay District;

B. Storing materials that are buoyant, flammable, explosive, injurious to property, water quality, or human, animal, plant, fish or other aquatic life;

C. Uses not in harmony with or detrimental to uses permitted in the adjoining Districts;

~~D. Any new or addition to existing private or public sewage systems and permanent or portable toilets in the Floodway, except portable latrines that are removed prior to~~

~~flooding and systems associated with recreational areas and except where an addition to an existing system has been ordered by a government agency to correct a hazard to public health. Any replacement, repair or maintenance of an existing private sewage system in a Floodway shall meet the applicable requirements of other ordinances, the Floodproofing measures of Section 8(e)3, and Chapter SPS 383, Wisconsin Administrative Code;~~

~~ED.~~ Any new public or private wells and appurtenant structures or modifications to an existing well, which are used to obtain potable water, except those that are located to benefit recreational areas. The wells and appurtenant structures shall meet the requirements of other ordinances, ~~the Floodproofing measures of Section 8(e)3,~~ and Chapters NR 811 and NR 812, Wisconsin Administrative Code. ~~Any replacement, repair or maintenance of an existing well in the Floodfringe and Floodway shall also meet the requirements of all other ordinances, the Floodproofing measures of Section 8(e)3 and Chapters NR 811 and NR 812, Wisconsin Administrative Code;~~

~~FE.~~ Any solid or hazardous waste disposal sites;

~~GF.~~ Any wastewater treatment ponds or facilities, except those permitted under Section NR 110.15(3)(b), Wis. Adm. Code; and

~~HG.~~ Any sanitary sewer or water supply lines, except those to service existing or proposed Development located outside of the Floodplain, which complies with the regulations of this Ordinance.

~~43.~~ Area Regulations:

There are no specific minimum lot size requirements although conservancy zoned lands that lie within a larger parcel or tract of land, the remainder of which is zoned in any other District, shall have a minimum area requirement of that non-conservancy district.

~~5. Any Variance granted for structures located in the Floodplain shall meet the minimum Floodplain criteria specified in Section 38 of this Ordinance.~~

(Section 7 was amended by Enrolled Ordinance 163-55, effective 11-13-2008.)

(Section 7 was amended by Enrolled Ordinance 171-36, effective 09-28-2016.)

(Section 7 was retitled from C-1 Conservancy District to C-1 Conservancy Overlay District by Enrolled Ordinance 175-19, effective 08-12-2020.)

(Section 7(a) was amended by Enrolled Ordinance 175-19, effective 08-12-2020.)

(Section 7(c) was amended by Enrolled Ordinance 175-19, effective 08-12-2020.)

(Section 7 (c)1 was amended by Enrolled Ordinance 169-54, effective 10-08-2014.)

(Section 7(c) 1.C, formerly Section 5.03(C), was amended by Enrolled Ordinance 159-10, effective 12-12-2004.)

(Section 7(c) 1.C was amended by Enrolled Ordinance 165-69, effective 12-23-2010.)

(Section 7(c) 1.D, formerly Section 5.03(D), was amended by Enrolled Ordinance 159-10, effective 12-12-2004.)

(Section 7(c) 1.I was amended by Enrolled Ordinance 165-69, effective 12-23-2010.)

(Section 7(c) 2.A.iv was amended by Enrolled Ordinance 169-54, effective 10-08-2014.)

(Section 7(c) 2.A.v was amended by Enrolled Ordinance 169-54, effective 10-08-2014.)

(Section 7(c) 2.A.vi was amended by Enrolled Ordinance 169-54, effective 10-08-2014.)

(Section 7(c) 2.A.vii.b was amended by Enrolled Ordinance 174-07, effective 05-04-2019.)

(Section 7 (c) 3.D was amended by Enrolled Ordinance 169-54, effective 10-08-2014.)

(Section 7 (c) 3.E was amended by Enrolled Ordinance 169-54, effective 10-08-2014.)

(Section 7 (c) 5 was amended by Enrolled Ordinance 169-54, effective 10-08-2014.)

(Section 7.1 Conservancy Overlay District was created by Enrolled Ordinance 170-71, effective 12-31-15.)

(Section 7.1 Conservancy Overlay District was repealed by Enrolled Ordinance 175-19, effective 08-12-2020. See Section 7.)

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## **SECTION 8**

**Reserve section number and repeal all other parts of Section 8**

**RESERVED ~~EFD EXISTING FLOODPLAIN DEVELOPMENT OVERLAY DISTRICT~~**

~~(a) — Purpose and intent~~

~~The purpose and intent of this District is to provide for the continued use of improved properties that lie within the Floodplain and which are considered prohibited structures in Section 7. With the preparation of new floodplain data where such information was previously not available for many reaches of the various waterways in Waukesha County, it is becoming more apparent that small concentrations of Development lie within the Floodplains, which may not have been previously~~



~~recognized as Floodplain. Accordingly, it is recognized that these improvements represent the substance of many landowners' businesses, families' estates, and principal residences. Therefore, the intent of this section is to recognize existing uses and structures and regulate them in accordance with sound Floodplain management practices while protecting the overall water quality of the river system.~~

~~It is further the intent of these provisions to regulate and diminish the proliferation of non-conforming structures and uses in floodplain areas and to regulate said reconstruction, remodeling, conversion and repair with the overall intent of lessening the public responsibilities attendant to the continued and expanded Development of land and structures which are inherently incompatible with natural Floodplains and to lessen the potential danger to life, safety, health and welfare of persons whose lands are subject to the hazards of floods.~~

~~The provisions for this overlay district shall apply to all Floodplains where specifically mapped and where structures are in existence as of the date of this provision (date of adoption December 17, 1981) based upon available flood data. As more detailed hydrologic and flood data becomes available and Floodways and Floodplains are more definitively identified, such portions of land areas where structures exist may be placed into this overlay district subject to the amendment procedures as set forth in Section 39 of this Ordinance.~~

~~The degree of flood protection intended to be provided by this Ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Ordinance does not imply that areas outside the regional Floodplain or land uses permitted within such areas will always be totally free from flooding or flood damages, nor shall this Ordinance create a liability on the part of or a cause of action against the County of Waukesha or any officer or employee thereof for any flood damage that may result from reliance on this Ordinance.~~

~~(b) — Use regulations: Permitted Uses~~

~~1. — Any use as permitted in the C-1 Conservancy Overlay District.~~

~~2. — Structures and uses, including principal as well as accessory uses and structures existing at the time of adoption of this provision, subject to compliance with the following:~~

~~A. — Except as provided in subsection B below, if an existing legal Nonconforming Structure or any structure with a Nonconforming Use is destroyed or substantially damaged, it cannot be maintained, repaired or reconstructed unless the use and the structure meet the current Ordinance requirements. For purposes of this section, a structure is considered substantially damaged if the total cost to repair or reconstruct the structure to its pre-damaged condition equals or exceeds 50% of the structure's present Equalized Assessed Value. For purposes of valuing the cost to repair or reconstruct the Nonconforming Structure, the cost of elevating the lowest floor of a structure to the Flood Protection Elevation and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities shall not be included. Any such structure that is destroyed or substantially damaged must meet the following standards:~~

~~i. — The structure must be located outside of the Floodway.~~

~~ii. — The elevation of the lowest floor of a principal structure including an attached garage, excluding those Basements or Crawlspace that are five (5) feet or less in height, shall be placed at or above the flood protection elevation and reconstruction may only occur on the same foundation or newly constructed foundation which represents no greater an encroachment or extension of the previously existing structure other than vertically. Said foundation shall be Floodproofed and certified as set forth herein. Fill shall be used to elevate the lowest floor, excluding those Basements or~~



~~Crawlspaces, five (5) feet or less in height, so as to meet the above. Basements or Crawlspaces that are five (5) feet or less in height must comply with the provisions of Section 8(b)2A.iii below. The fill surrounding the structure shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation at least fifteen (15) feet beyond the limits of the structure. The fill shall not negatively alter floodwater conveyance or increase flood heights. Where such distance cannot be achieved because of lot lines, elevations of existing streets or sewer lines, flood impacts, or other similar constraints, a Variance is required from the Waukesha County Board of Adjustment and said fill elevation shall extend as far as is practicable resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties. In addition, where the fifteen (15) feet of fill cannot be achieved as set forth above, the structures shall be Floodproofed to the flood protection elevation in accordance with the methods set forth herein and shall be certified as such by an architect or professional engineer registered in the State of Wisconsin and be approved by the WDNR. Other methods may be used, as long as they are certified as set forth above, which are designed to the flood protection elevation for the particular area in question. All Floodproofing measures shall at a minimum provide anchorage to resist flotation and lateral movement, and shall insure that the structural walls and floors are watertight. In order to insure that adequate measures are taken, the Applicant shall submit a plan or document certified, as above, that the Floodproofing measures are adequately designed to protect the property to the flood protection elevation for the subject area. (Cross reference Flood Protection Elevation, defined in Section 2(b).~~

~~iii. — If any such structure has a Basement or Crawlspace which is five (5) feet in height or less and which is not useable as living area, the surface of the floor of the Basement or Crawlspace shall be at or above the regional flood elevation. Heating, ventilation, air conditioning, electrical and gas equipment shall be at or above the flood protection elevation. In any case, the Basement or Crawlspace shall be Floodproofed in accordance with Section 8(c) to the flood protection elevation so that floodwater cannot enter directly over the ground surface into such Basement or Crawlspace.~~

~~iv. — The elevation of the lowest floor of an accessory structure, which is not connected to a principal structure, shall be constructed on fill with its lowest floor a minimum of one (1) foot above the Regional Flood Elevation.~~

~~v. — There shall be contiguous dry land access to all structures and uses affected by these regulations and as determined by the Zoning Administrator, dry land access to be considered a vehicular access route which is above the regional flood elevation and which connects land located in the Floodplain to land outside the Floodplain, such as a road with its surface above the Regional Flood Elevation and wide enough for wheeled rescue and relief vehicles.~~

~~— In Developments where existing street or sewer line elevations make compliance with Section 8(b)2.A.v impractical, a permit may be issued where roads are below the regional flood elevation, if the municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or the municipality has a WDNR approved emergency evacuation plan.~~

~~vi. — All private sewage systems and private wells shall be designed to minimize or eliminate infiltration of flood waters into the system to the Flood Protection Elevation pursuant to Section 8(c) of this Ordinance, comply with the Floodproofing measures of Section 8(c)3 and shall conform with the provisions of the Waukesha County Code of Ordinances and Wisconsin Administrative Codes where applicable to such facilities.~~

~~vii. — A Structure may be reconstructed or rebuilt which has less than the minimum Floor Area requirements of 3(j). If a larger floor area than previously existed is desired or the previous Building Footprint exceeded the applicable District requirements, reconstruction or enlargement (vertically only) may not exceed the Building Footprint requirements set forth in the applicable District. Offset~~



~~and setback requirements of the applicable District shall apply. If an underlying zoning district has not yet been established, the area regulations of R-3 Residential District apply.~~

~~viii. — Where more than one (1) Principal Building, as defined in this Ordinance, exists on a single property and one (1) or more of said Buildings is destroyed or damaged beyond fifty (50) percent of their current equalized assessed value as heretofore set forth, the reconstruction, or repair of only one (1) of such Buildings is allowed, but only if all other Principal Buildings are removed from the property. Where one (1) Principal Building on a property exists, and is destroyed or damaged beyond fifty (50) percent of its current equalized assessed value as heretofore set forth, the reconstruction or repair of that Building would not be allowed unless all other Principal Buildings were removed. The intent of this provision is to allow for the reasonable use of the developed Floodplain lands but not to the degree of intensity which may have existed prior and so that the intensity of use of Floodplain lands will be diminished.~~

~~ix. — The structure will meet all of the minimum requirements under applicable FEMA regulations (44 CFR Part 60), or the regulations promulgated thereunder.~~

~~x. — The development standards of Section 7(e).2.A and C must be complied with.~~

~~B. — If an existing Legal Nonconforming Structure or a Structure with a Legal Nonconforming Use is substantially damaged or destroyed by a nonflood disaster, as defined in this Ordinance, the repair or reconstruction of any such Nonconforming Structure shall be permitted in order to restore it to the size and use in effect prior to the damage event, provided that the minimum federal code requirements below are met and all required permits have been granted prior to the start of construction.~~

~~i. — Residential Structures~~

~~a. — Shall have the lowest floor, including Basement, elevated to or above the Base Flood Elevation using fill, pilings, columns, posts or perimeter walls. Perimeter walls must meet the requirements of Section 8(e)2 of this Ordinance.~~

~~b. — Shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy and shall be constructed with methods and materials resistant to Flood damage.~~

~~c. — Shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.~~

~~d. — In A Zones, obtain, review and utilize any Flood data available from a federal, state or other source.~~

~~ii. — Nonresidential Structures~~

~~a. — Shall meet the requirements of Section 8(b)2.B.i.a and b above.~~

~~b. — Shall either have the lowest floor, including Basement, elevated to or above the Regional Flood Elevation; or, together with attendant utility and sanitary facilities, shall meet the standards in Section 8(e)1 or 2.~~

~~For the purposes of this subsection only, “lowest floor” has the meaning as defined in 44 CFR 59.1, which is “lowest floor of the lowest enclosed area (including Basement). Also for the purposes of this subsection only, an unfinished or Flood resistant enclosure, usable solely for the parking of vehicles,~~



building access or storage in an area other than a Basement area, is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements."

For the purposes of this subsection only, "Basement" has the meaning as defined in 44 CFR 59.1, which is "any area of the building having its floor subgrade (below ground level) on all sides."

If an existing Legal Nonconforming Structure or a structure with a Nonconforming Use is damaged due to a nonflood disaster and the valuation to repair such damage would not exceed fifty percent (50%) of its current Equalized Assessed Value (as computed over the life of the structure and including past improvements) said structure may be restored to its condition before the damage occurred. If modifications or additions are proposed, which are unrelated to restoring the structure's condition before damage, the provisions of Section 8(b)2.C must be met.

C. — Where a Structure, which was not damaged or destroyed, lies within the Floodplain but outside of the Floodway, no modification or addition to such Structure shall be permitted unless it conforms with the following standards. For the purpose of this section, the words "modification" and "addition" shall include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding, replacement or lateral enlargement of any such existing use or Structure, principal or accessory. Maintenance is not considered a modification for the purposes of this section unless, in combination with modifications or additions, the improvements equal or exceed fifty percent (50%) of the present equalized assessed value over the lifetime of the Structure or unless Maintenance, on its own, equals or exceeds fifty percent (50%) of the present equalized assessed value per event basis. Maintenance includes painting, decorating, paneling, and other non-structural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities.

i. — The Structure is not located in a Floodway. Modifications and additions to a structure located in the Floodway are prohibited.

ii. — The modification or addition to a Structure may not decrease floodwater conveyance or storage capacities. Said modification or addition to a Structure shall not extend laterally from the structure so as to extend into the Floodplain but may be allowed to go above existing floors of the structure. One (1) detached garage or shed, not including a Boathouse, may be permitted if all other applicable ordinance requirements are met provided that there is no area outside of the Floodplain to locate said Building and provided that all provisions of this section are met.

iii. — The provisions of subsection 8(b)2.A.ii, iii, iv, v, vii, ix, and x shall be complied with. Only 1 principal structure on a lot will be allowed to be modified or altered in accordance with the intent of subsection A.viii above.

iv. — The provisions of subsection 8(b)2.A.vi shall be complied with. Where a modification or addition requires a larger waste disposal system than what exists (i.e., additional bedrooms), it shall be demonstrated to the Zoning Administrator that a new or expanded waste disposal system can be provided and a county sanitary permit granted, meeting the requirements of the Waukesha County Sanitary Code and the Wisconsin Administrative Code, where applicable, prior to the issuance of a zoning and building permit for such alterations to the Structure. Such new, improved or enlarged waste disposal system shall be required to be installed concurrently with the construction or prior to occupancy of the altered Structure.

The intent of this provision is to allow only those additions and modifications which can be accommodated with an onsite waste disposal system, which will comply with contemporary standards for waste disposal and which will result in improved systems which will be adequately protected from flooding and which will accommodate said Structures and their improvements.



~~D. — Conversion of residences from seasonal use to year round use will not be allowed unless all of the conditions set forth in Section 8(b)2.C above are met. Conversions of this nature will require a zoning permit and inspection to determine conformance with the above-cited subsection.~~

~~E. — A nonconforming historic structure may be altered if the alteration will not preclude the structures continued designation as a historic structure, the alteration will comply with Section 7(c)2.A, flood resistant materials are used, and construction practices and Floodproofing methods that comply with Section 8(e) are used. For the purposes of this section, an alteration is an enhancement, upgrading, or substantial change or modification other than an addition or repair to a structure or to electrical, plumbing, heating, ventilation, air conditioning and other systems within a structure. Repair or rehabilitation of historic structures shall be exempt from the development standards of Sections 7(c)2, 8(b)2.B.1, and 8(e) if it is determined that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure.~~

~~F. — Existing storage yards, surface parking lots and other such uses may remain at an existing elevation which is below the flood protection elevation if an adequate warning system exists to protect life and property and if the storage of materials as identified in Section 8(b)2.H are floodproofed in accordance with Section 8(e).~~

~~G. — A manufacturing or industrial type structure shall have the lowest floor elevated to or above the Flood Protection Elevation or meet the Floodproofing measures in Section 8(e).~~

~~H. — Materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish, or aquatic life shall be stored at or above the flood protection elevation or floodproofed in compliance with Section 8(e). Adequate measures shall be taken to ensure that such materials will not enter the water body during flooding.~~

~~I. — The provisions set forth above and related to reconstruction, modification, remodeling and additions, shall conform with all other requirements and provisions of this Ordinance, except as may be allowed to be modified as set forth in Section 8 of this Ordinance.~~

~~J. — Any repairs, reconstruction, modifications, additions, or lateral extension of structures which may be prohibited above may be allowed only with approval by the Waukesha County Board of Adjustment in accordance with the procedures established in Section 38 of this Ordinance. The Board of Adjustment in granting said variance shall determine whether the spirit and intent of the Ordinance will be upheld by granting said variances from the provisions regulating the continued or intensified use of lands which are located in Floodplains and whether the public health, safety and welfare will be in any way jeopardized through the granting of said variances.~~

~~K. — Any Variance granted for structures located in the Floodplain shall meet the minimum floodplain criteria specified in Section 38 of this Ordinance.~~

~~L. — (Reserved).~~

~~M. — In the administration of the above standards, it is required that various standards set forth above shall be subject to review and approval by the zoning administrator upon submittal of appropriate data and information necessary to determine compliance with the above regulations.~~

~~(c) — Floodproofing standards~~

~~1. — No permit or Variance shall be issued for a non-residential structure designed to be watertight below the Regional Flood Elevation until the Applicant submits a plan certified by a registered~~



~~professional engineer or architect that the Floodproofing measures will protect the Structure or Development to the Flood Protection Elevation and submits a FEMA Floodproofing Certificate.~~

~~2. — For a structure designed to allow the entry of floodwaters, no permit or variance shall be issued until the Applicant submits a plan either;~~

~~A. — Certified by a registered professional engineer or architect; or~~

~~B. — Meets or exceeds the following standards:~~

~~i. — A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;~~

~~ii. — The bottom of all openings shall be no higher than one foot above grade; and~~

~~iii. — Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.~~

~~3. — Floodproofing measures shall be designed, as appropriate, to:~~

~~A. — Withstand flood pressures, depths, velocities, uplift and impact forces and other regional flood factors;~~

~~B. — Protect structures to the flood protection elevation;~~

~~C. — Resist flotation and lateral movement by anchoring structures to foundations;~~

~~D. — Minimize or eliminate infiltration of Flood waters; and~~

~~E. — Minimize or eliminate discharges into Flood waters.~~

~~(Section 8 was amended by Enrolled Ordinance 163-55, effective 11-13-2008.)~~

~~(Section 8 was amended by Enrolled Ordinance 171-36, effective 09-28-2016.)~~

~~(Section 8(b) was amended by Enrolled Ordinance 175-19, effective 08-12-2020.)~~

~~(Section 8(b)1 was amended by Enrolled Ordinance 170-71, effective 12-31-15.)~~

~~(Section 8(b)2.A was amended by enrolled Ordinance 169-54, effective 10-08-2014.)~~

~~(Section 8(b)2.A.viii was amended by Enrolled Ordinance 165-69, effective 12-23-2010.)~~

~~(Section 8(b)2.B was amended by Enrolled Ordinance 165-69, effective 12-23-2010.)~~

~~(Section 8(b)2.B was amended by Enrolled Ordinance 169-54, effective 10-08-2014.)~~

~~(Section 8(b)2.C was amended by Enrolled Ordinance 169-54, effective 10-08-2014.)~~

~~(Section 8(b)2.F, formerly Section 11.02a(1)(B)6, was amended by Enrolled Ordinance 159-70, effective 12-12-2004.)~~

~~(Section 8(b)2.E was amended by Enrolled Ordinance 169-54, effective 10-08-2014.)~~

~~(Section 8(b)2.G was amended by Enrolled Ordinance 169-54, effective 10-08-2014.)~~

~~(Section 8(b)2.K was amended by Enrolled Ordinance 169-54, effective 10-08-2014.)~~

~~— (Section 8(b)2.L was repealed by Enrolled Ordinance 169-54, effective 10-08-2014.)~~

~~(Section 8(e) was repealed by Enrolled Ordinance 169-54, effective 10-08-2014.)~~

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## SECTION 9



## **Repeal and Recreate Section 9(a)**

### **Purpose and Intent**

The EC Environmental Corridor Overlay District, as mapped or intended to be mapped, includes non Wetland/Floodplain Primary and Secondary environmental corridors and Isolated Natural Resource Areas as defined in this Ordinance, and is intended to be used to preserve, protect, enhance, and restore significant woodlands, upland wildlife habitat areas, scenic overlooks, slopes exceeding twelve percent (12%), and upland wooded areas, while also affording an opportunity to use the site for limited residential purposes, in concert with the goal and intent of the Regional Land Use Plan, Comprehensive Development Plan for Waukesha County, or locally adopted plan, which recommends that residential densities in such areas not exceed one unit per five (5) acres for all parcels which lie entirely within the environmental corridor. Where questions arise as to the exact location or boundary of an environmental corridor, the extent and location of such corridors shall be refined and finally determined by infield investigation by the Zoning Administrator or his/her designee, and a notation shall be made on the District Zoning map of the Waukesha County Shoreland and Floodland Protection Ordinance indicating that such a determination has been made for future reference and map amendment purposes.

If an in-field determination finds that all or a portion of a property within said overlay district is erroneously mapped, the field determined boundaries shall immediately become subject to the applicable district regulations. Lands with an underlying zoning designation of FLP Farmland Preservation District shall comply with the more restrictive parameters of the FLP District but shall be allowed limited disturbance within EC areas if authorized in accordance with Section 11(i)(3)~~(+)(D)~~.

## **SECTION 10**

### **Repeal and Recreate Section 10(b)(1)**

Any uses and structures permitted in the C 1 Conservancy Overlay District ~~and if located in a wetland or Floodplain, the provisions of Section 7(c)2 must be met.~~

### **Repeal and Recreate Section 10(b)(2)**

Agricultural Uses, as defined within this Ordinance, except fur and pig farms and poultry and/or egg production which require Conditional Use authorization pursuant to Section 10(c)4. Such uses shall not fill or convert Wetlands ~~or Floodplains~~.

### **Repeal and Recreate Section 10(b)(3)**

Agricultural Accessory Uses including existing Single family Dwellings that existed on January 1, 2014 and shelters for housing animals that comply with Section 2(b)14. of this Ordinance or permitted as an appurtenance to a Farm Residence, except that no structure shall be located in a Floodplain or wetland or upon lands not suited due to soil limitations. ~~Any existing structures within floodlands must conform to Section 8 of this Ordinance.~~

### **Repeal Section 10(b)(7)**

~~Any variance granted for structures located in the Floodplain shall meet the Floodplain criteria specified in Section 38 of this Ordinance.~~

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## **SECTION 18**

### **Repeal and Recreate Section 18(a)(1)**

Any use as permitted in the C-1 Conservancy Overlay District ~~and, if located in a Wetland or Floodplain, the provisions of Section 7(c)2 must be met.~~

### **Repeal Section 18(a)(10)**

~~Any variance granted for structures located in the Floodplain shall meet the floodplain criteria specified in Section 38 of this Ordinance.~~

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## **SECTION 22**

### **Repeal and Recreate Section 22(a)**

#### **Purpose and intent**

This District is intended to apply to those lands that are mapped as having hydric soil conditions (depth to groundwater of one foot or less) according to the Soil Survey of Milwaukee and Waukesha Counties published by the USDA Soil Conservation Service. Many of these lands contain Wetlands ~~and Floodplains~~ and, accordingly, are mapped with a C-1 Conservancy Overlay District designation. Other lands with such soil conditions are presently in Agricultural Use by virtue of either cultivation, pasture or in some other way, and which if they were not being used for agricultural purposes would be classified as conservancy lands due to inherent wet soil characteristics and the presence of natural vegetation indicative of wet soils.

The intent of the District is to preserve and maintain agricultural or open space uses on lands suited for such purposes. These lands are generally poorly suited for urban or suburban Development, while lands outside of wetlands are typically better suited for some type of Agricultural Use. In this District, structures related to farm operations, including existing dwellings, are deemed consistent with the purpose and intent of this section where the location of buildings associated with the permitted agricultural operation are found to conform with health, sanitation and safety provisions of this and any other state regulation or local ordinance. The intent for mapping purposes is that lands within this District shall have exhibited Agricultural Uses in the past. It is not the intent of this section to promote or permit the conversion of wetlands. Lands mapped in this District are typically in the Planned "Other Open Lands to be Preserved" or "Environmental Corridor" Comprehensive Development Plan categories.

### **Repeal and Recreate Section 22(b)(2)**

Accessory uses within buildings normally associated with permitted agricultural operations including existing Single family Dwellings, shelters for housing animals, except that no structure shall be located ~~in a Floodplain or~~ upon lands not suited due to soil limitations. ~~Any existing structures within floodlands must conform to Section 8 of this Ordinance.~~

### **Repeal and Recreate Section 22(g)**

#### **Determination of boundaries**

Where on-site evaluation of soil conditions by a certified soil scientist reveals that soils mapped by the USDA as being hydric are found to be mis-mapped, the lands zoned HG District shall be immediately become subject to the district regulations of the zoning district that is mapped on the balance of the property. If no other zoning district has previously been established on another part of the parcel, the lands shall be zoned as used administratively by the Waukesha County Zoning Administrator. If any such lands are part of an environmental corridor ~~or, Wetland or Floodplain~~, the respective EC Environmental Corridor Overlay District or C-1 Conservancy Overlay District shall continue to apply to said lands.

(Section 22 was created by Enrolled Ordinance 170-71, effective 12-31-2015.)



(Section 22 was amended by Enrolled Ordinance 171-36, effective 09-28-2016.)  
(Section 22(b) was amended by Enrolled Ordinance 175-19, effective 08-12-2020.)  
(Section 22(g) was amended by Enrolled Ordinance 175-19, effective 08-12-2020.)

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### **Repeal and Recreate Section 33(c)**

The Permitted and Conditional Uses provided for in each use zone are identified on the Downtown Okauchee District Use Zone Map illustrated as Map 33(b) and in the Table 33(c), below. All uses, with the exception of single-family residential, are subject to review and approval of a site plan and plan of operation. Any use that legally existed prior to the creation of this District that is not specifically permitted below is considered a Legal Nonconforming Use and is limited to the provisions of Section 3(o) 1-~~and 2~~.

[no changes proposed to Use Table 33(c) ]

## **SECTION 38**

### **Repeal and Recreate Section 38(c)(1)**

Defined: The board of adjustment shall have the following powers as defined by statute:

- A. To 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 Section 59.69 Wisconsin Statutes, or of this Ordinance.

B. To hear and decide disputes concerning the C-1 Conservancy Overlay District ~~or EFD Existing Floodplain Development Overlay District boundaries in regards to Floodplains~~ as shown on the official zoning map.

~~i. If the District boundary is established by approximate or detailed floodplain studies approved by the WDNR or FEMA, the flood elevations or profiles shall prevail in locating the boundary. If none exist, other evidence may be examined.~~

~~ii. The person contesting the District boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the board; and~~

~~iii. If a District boundary is incorrectly mapped, the Board should inform the zoning agency, Zoning Administrator, or the person contesting the district boundary location to petition for a map amendment according to Section 39.~~

C. To hear and decide special exceptions to the terms of this Ordinance upon which such board is required to pass under this Ordinance.

D. To authorize upon appeal in specific cases such variances from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the



provisions of this Ordinance will result in unnecessary hardship, and so that the spirit of this Ordinance shall be observed, and substantial justice done.

A property owner bears the burden of proving "unnecessary hardship," as that term is used in this section, for an Area Variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a Use Variance, by demonstrating that strict compliance with the zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a Variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

- E. To grant special exceptions and variances for renewable energy resource systems if said system cannot meet normal location requirements of this Ordinance for accessory structures. If the board denies an application for a special exception or variance for a renewable energy resource system, the board shall provide a written statement of its reasons for denying the application. In this paragraph, "renewable energy resource systems" means a solar energy system, a waste conversion energy system, a wind energy system or any other energy system which relies on a renewable energy resource.

#### **Repeal and Recreate Section 38(c)(2)**

Additional requirements: In making its determination, the board shall consider whether the proposed Special Exception, Area Variance or Use Variance would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects; and may impose such requirements and conditions with respect to location, construction, maintenance and operation, in addition to any which may be stipulated in this Ordinance, as the board may deem necessary for the protection of adjacent properties and the public interest and welfare.

~~Any Variance granted on a property located in the Floodplain shall meet the following additional criteria:~~

~~A. — Shall not cause any increase in the Regional Flood Elevation.~~

~~B. — Shall not increase the amount of obstruction to flood flows.~~

~~C. — The Variance shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of this Ordinance.~~

~~D. — The board of adjustment shall comply with the Insurance Notice requirement of Section 38(d)5.~~

~~E. — To qualify for a variance from the FEMA regulations, the lot must be less than one-half acre in size and be Contiguous to existing structures constructed below the Regional Flood Elevation.~~

~~F. — In a Floodway, any modification or addition to a Nonconforming Structure or any structure with a Nonconforming Use may only be allowed with approval by the Waukesha County board of adjustment as a Variance and pursuant to the above additional requirements for Variances in the Floodplain. If the board of adjustment grants a Variance, the board of adjustment must require conformance with the above standards~~



~~and an addition to the existing structure must be Floodproofed, pursuant to Section 8(c), by means other than the use of fill, to the Flood Protection Elevation; and~~

~~If any part of the foundation below the Flood Protection Elevation is enclosed, the enclosed structure may only be used for parking, building access, and limited storage. The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade and the parts of the foundation below the Flood Protection Elevation must be constructed of flood-resistant materials. Mechanical and utility equipment must be elevated or Floodproofed to or above the Flood Protection Elevation.~~

~~G. — A nonconforming accessory structure or an accessory structure with a Nonconforming Use located in the Floodfringe may be granted a Variance for modifications or additions which are protected to elevations lower than the Flood Protection Elevation, provided the structure will not be used for human habitation or be associated with a high flood damage potential; human lives will not be endangered; public facilities such as water and sewer shall not be installed; flood depths shall not exceed 2 ft.; flood velocities shall not exceed 2 ft. per second; and the structure shall not be used for the storage of materials as described in Section 8(b)2.H.~~

~~H. — A Variance shall not grant, extend, or increase any use prohibited in the zoning district; be granted for a hardship based solely on an economic gain or loss; be granted for a hardship which is self-created; damage the rights or property values of other persons in the area; allow actions without the appropriate amendments to this Ordinance or map(s); allow any alteration of a historic structure in a Floodplain, including its use, which would preclude its continued designation as a historic structure.~~

#### **Repeal and Recreate Section 38(c)(4)**

Enforcement of decision: In exercising the above mentioned powers, such board may in conformity with the provisions of this Ordinance, grant or deny the variance application, dismiss the appeal for lack of jurisdiction, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken; and may issue or direct the issue of a permit provided that no such action shall have the effect of permitting in any District a use prohibited in that District; of rezoning; of allowing a use or variance which would have the effect of intensifying a use in a manner contrary to what a similarly situated property would be allowed; of permitting, without the approval of the County Zoning Agency, any Building within the base setback area as established by Section 3(h)1 of this Ordinance, or of granting exceptions to chapters SPS 383, ~~or~~ NR115 ~~or~~ NR116 of the Wisconsin Administrative Code, ~~FEMA regulations~~, the Waukesha County Sanitary Ordinance and any other federal, state, or local ordinance.

#### **Repeal and Recreate Section 38(d)**

1. How filed: Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any such decision of the zoning administrator or other Administrative Officer. Such appeal shall be taken within twenty (20) days from the date of the decision of the zoning administrator or other Administrative Officer appealed from by filing with the officer from whom the appeal is taken, and with the board of adjustment, a notice of appeal specifying the grounds thereof and together with the proper fee as established under Section 41(b)5 of this Ordinance. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.



2. Stay: An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whose decision the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.
  
3. Hearing: Each appeal shall be heard within a reasonable time and not to exceed ninety (90) days from the time the appeal was filed with the board. Notice of hearing shall be given by publishing in a newspaper of general circulation in the vicinity of the appeal at least once each week for two (2) consecutive weeks and not less than seven (7) days from the date of hearing. The notice shall be published pursuant to Wisconsin Statutes and shall specify the date, time, place and subject of the hearing. Written notice shall be given to the WDNR not less than ten (10) days prior to the hearing. Written notice shall also be given to the Administrative Officer appealed from and by first class mail to the petitioner, the clerk of the town wherein the affected lands are located, the owners of each parcel of land within one hundred (100) feet of the land in question, and any other specifically interested parties not less than ten (10) days prior to the hearing. At the hearing, any party may appear in person, or by agent or by attorney.
  
4. Decision: The decision on any appeal, variance, special exception or interpretation shall be made within fifteen (15) days after completion of the hearing thereon unless such time is extended with the mutual consent of the board and the petitioner. At such time as a decision is made, the petitioner and the WDNR shall be notified in writing within ten (10) days of the date of the decision. The written decision shall be signed by the chairman or secretary of the board.

~~5. Insurance notice: When a Floodplain variance is granted, the board shall notify the Applicant in writing that it may increase risks to life and property and flood insurance premiums could increase up to \$25.00 per \$100.00 of coverage. A copy of said notification shall be maintained with the variance record.~~

65. The owner or Applicant must exercise any variance or special exception that does not involve a permit within two (2) years of the date of the Board of Adjustment granting the variance or special exception, or the approval shall expire and become null and void, and no refund of any fees shall be made. If the special exception or variance does require a permit, the permit must be obtained within two (2) years of the date of the granting of the variance or special exception, or the approval shall expire and become null and void, and no refund of any fees shall be made. If the permit is not exercised or obtained within the time allowed, the permit or approval shall expire and become null and void, and no refund of any fees shall be made. However, the Board of Adjustment, upon a written request, may grant an extension of the permit or approval without additional fee for good cause as determined by the Board of Adjustment.

## **SECTION 39**

### **Repeal and Recreate Section 39(b)(2)**

Filing of petition: One (1) original and five (5) copies of the amendment shall be submitted directly to the zoning administrator in order that notice of public hearings and other processing may be initiated without unnecessary delay (Waukesha County Board Resolution 9/54). One (1) copy of the petition and the notice of public hearing shall be forwarded to the appropriate regional office of the WDNR not less than ten (10) days prior to the hearing. ~~When the amendment involves a change in zoning of a floodland area, said notice and petition shall also be sent to FEMA. In addition, all requirements set forth in Section 39(f) shall be followed.~~ When the petition involves a change in shoreland wetlands, the additional requirements set forth in Section 39(e) shall be followed.

### **Repeal and Recreate Section 39(b)(6)**

Effectuation: Any such amendatory ordinance when so adopted by the county board, shall become effective after passage by the county board and publication pursuant to Section 59.69, Wisconsin Statutes except as may be modified in Section 39(e) herein. Copies of any decisions made by the county board shall be submitted to the appropriate regional office of the WDNR within ten (10) days of the decision. ~~In the case of Floodplain amendments and adjustments, the amendment shall not become effective until the WDNR approves the amendment after certification that the area has been removed from the Floodplain and until a letter of map amendment is issued by the Federal Insurance Administration of FEMA.~~ Upon receipt of the above cited approvals, the county clerk shall record in the clerk's office the date on which such ordinance is passed by the county board and approved by the other agencies required to approve and shall notify the town clerk of all towns affected by such ordinance of such date that the Ordinance will take effect and also make such report to the county zoning administrator and the county board which report shall be printed in the proceedings of the county board.

### **Repeal and Recreate Section 39(d)(2)**



Continued Effect of Ordinance: This Ordinance is not effective in annexed or incorporated areas. Said areas are subject to Sections 61.353 and 62.233, Wis. Stats.

~~Waukesha County's Floodplain provisions in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements of ch.NR 116, Wisconsin Administrative Code and 44 CFR 59-72, National Flood Insurance Program (NFIP). These annexed lands are described on the village or city's official zoning map. County Floodplain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the village or city zoning administrator. All plats or maps of annexation shall show the regional flood elevation and the Floodway location.~~

In the event an ordinance or annexation is contested in the courts, the county zoning shall prevail and the county shall have jurisdiction over the zoning in the area affected until ultimate determination of the court action.

### **Repeal Section 39(f)**

#### ~~Floodplain rezoning procedure~~

~~1. — The county may change or amend the zoning district boundaries in areas involving Floodplains and this Ordinance in the manner outlined in Section 39(f)2. below. Actions which require an amendment to this Ordinance and/or submittal of a Letter of Map Change (LOMC) include, but are not limited to, the following:~~

~~A. — Any fill or Floodway encroachment that obstructs flow causing any increase in the regional flood height.~~

~~B. — Correction of discrepancies between the water surface profiles and official zoning maps.~~

~~C. — Any fill, excavation, or land altering activities in the Floodplain which are not a permitted use in Section 3(d)5.A., Preservation of Topography in Floodlands; Section 7, C-1 Conservancy Overlay District; Section 8, Existing Floodplain Development Overlay District; or Section 10, Exclusive Agricultural Conservancy District of this Ordinance.~~

~~D. — Any fill 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.~~

~~E. — Any amendment to the text of this Ordinance recommended by the County, required by NR 116.05, Wisconsin Administrative Code, or otherwise required by law.~~

~~F. — Any changes to the maps to alter Floodplains (including channel relocations, Floodway line modifications, or removing an area from the Floodway or Floodfringe) that is based on a Base Flood Elevation from a Flood Insurance Rate Map (requires prior approval by FEMA) or Regional Flood Elevation from any other officially adopted Floodplain map listed in Section 6(b)1.B. of this Ordinance.~~

~~G. — Any change to the Floodplain boundaries and/or watercourse alterations on the Flood Insurance Rate Map.~~

~~2. — The following Floodplain rezoning procedures must be followed:~~



~~A. — Rezone petitions shall include all necessary data required by Section 3(e)2 of this Ordinance.~~

~~B. — Rezone petitions must not adversely impact the purpose and intent of this Ordinance.~~

~~C. — Obstructions or increases in Flood heights may only be permitted if amendments are made to this Ordinance, the official Floodplain zoning maps, Floodway lines and water surface profiles in accordance with this Section.~~

~~D. — In AE Zones with a mapped Floodway, no obstructions or increases shall be permitted unless the Applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this Ordinance, the official Floodplain zoning maps, Floodway lines and water surface profiles, in accordance with this Section. Any such alterations must be reviewed and approved by FEMA and the WDNR.~~

~~E. — In A Zones, increases equal to or greater than 1.0 foot may only be permitted if the Applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this Ordinance, the official Floodplain maps, Floodway lines, and water surface profiles, in accordance with this Section.~~

~~F. — No amendments to rezone areas identified on the WDNR Flood Storage Maps are permissible unless the entire area of the waterway in question is removed from the WDNR Flood Storage Maps, which would require a revision to the Floodplain study and map for the waterway to revert to the higher regional flood discharge calculated without Floodplain storage unless otherwise approved by the WDNR.~~

~~G. — No amendments to rezone areas that involve Floodplains based on a Base Flood Elevation from a Flood Insurance Rate Map shall become effective by the county until approved by FEMA and the WDNR and not until a Letter of Map Revision is issued by FEMA for the proposed changes. No amendments to rezone areas that involve Floodplains based on a Regional Flood Elevation shall become effective until reviewed and approved by the WDNR. Required technical data submitted to the Zoning Administrator shall be sent to the WDNR regional office by the Zoning Administrator. WDNR will review the effect of the proposed amendment on the height of the Regional Flood Elevation, assure no increase in the Regional Flood Elevation will result and assure that the proposed amendments meet the purpose of the Wisconsin Administrative Code.~~

~~H. — If the county amends the zoning district boundary to modify the zoning map, it shall submit these amendments and the plans for fill or alteration of the subject area to WDNR for approval pursuant to Section NR 116. Prior to WDNR approval, the Applicant shall submit a final map to be certified by an engineer, that the fill or alteration as approved by the county has been accomplished to the specifications set forth by the amendment approved by the county.~~

~~I. — For rezones in areas involving the Floodplain with no water surface profiles, the county board shall consider data submitted by the WDNR, the Zoning Administrator's on-site inspections and other available information.~~

~~J. — No area in the Floodplain may be removed from the Floodplain unless it can be shown that the area has been filled to the Flood Protection Elevation and is Contiguous to other lands lying outside the Floodplain.~~



~~K. The effect of rezoning, filling and altering any Floodplain shall be calculated by comparing the Regional Flood profile determined by the hydraulic Floodway lines to the Regional Flood profile determined by assuming that the entire shallow depth flooding area (Regional Flood) is not available to convey flood flows. Calculations shall conform to the standards contained in Section NR116 of the Wisconsin Administrative Code.~~

~~3. Where a Floodplain amendment has been approved as outlined in this section, the jurisdiction and requirements of this Ordinance remain in effect within the subject area, with the exception of the District requirements the lands are being removed from. Floodplain dimensional setbacks shall remain in effect from the newly established floodplain boundary.~~

~~4. All persons petitioning for a map amendment that obstructs flow causing any increase in the Regional Flood height, shall obtain Flooding easements or other appropriate legal arrangements from all adversely affected property owners and notify local units of government before the amendment can be approved by the governing body.~~

~~(Ord. No. 141-44, §§ LXII-LXIV, 7-22-1986)~~

~~(Ord. No. 141-44, § LXVI, 7-22-1986.)~~

(Section 39 was amended by Enrolled Ordinance 171-36, effective 09-28-2016.)

(Section 39(a), formerly Section 18.01, was amended by Enrolled Ordinance 159-70, effective 12-12-2004.)

(Section 39(a) was amended by Enrolled Ordinance 165-69, effective 12-23-2010.)

(Section 39(b) was amended by Enrolled Ordinance 165-69, effective 12-23-2010.)

(Section 39(b)2 was amended by Enrolled Ordinance 163-55, effective 11-13-2008.)

(Section 39(b)9, formerly Section 18.02(9), was amended by Enrolled Ordinance 159-70, effective 12-12-2004.)

(Section 39(b)9 was amended by Enrolled Ordinance 163-55, effective 11-13-2008.)

(Section 39(c)1, formerly Section 18.03(1), was amended by Enrolled Ordinance 159-70, effective 12-12-2004.)

(Section 39(c)2, formerly Section 18.03(2), was amended by Enrolled Ordinance 159-70, effective 12-12-2004.)

(Section 39(d)1, formerly Section 18.04(1), was amended by Enrolled Ordinance 159-70, effective 12-12-2004.)

(Section 39(d)1 was amended by Enrolled Ordinance 165-69, effective 12-23-2010.)

~~(Section 39(d)2 was amended by Enrolled Ordinance 163-55, effective 11-13-2008.)~~

~~(Section 39(d)2 was amended by Enrolled Ordinance 165-69, effective 12-23-2010.)~~

~~(Section 39(d)2 was amended by Enrolled Ordinance 169-54, effective 10-08-2014.)~~

(Section 39(e)1 was amended by Enrolled Ordinance 163-55, effective 11-13-2008.)

(Section 39(e)2 was amended by Enrolled Ordinance 175-19, effective 08-12-2020.)

(Section 39(e)3, formerly Section 18.05(3), was amended by Enrolled Ordinance 159-70, effective 12-12-2004.)

(Section 39(e)3 was amended by Enrolled Ordinance 163-55, effective 11-13-2008.)

(Section 39(e)4 was amended by Enrolled Ordinance 163-55, effective 11-13-2008.)

~~(Section 39(f) was amended by Enrolled Ordinance 163-55, effective 11-13-2008.)~~

~~(Section 39(f) was amended by Enrolled Ordinance 169-54, effective 10-08-2014.)  
(Section 39(f) was amended by Enrolled Ordinance 175-19, effective 08-12-2020.)  
(Section 39(f)4 was amended by Enrolled Ordinance 165-69, effective 12-23-2010.)  
(Section 39(f)5 was repealed by Enrolled Ordinance 165-69, effective 12-23-2010.)~~

## **SECTION 41**

### **Repeal and Recreate Section 41(b)(2)**

Duties: In the administration and enforcement of this Ordinance the zoning administrator shall perform the following duties:

- A. Advise Applicants of the Ordinance provisions, provide permit applications and appeals forms and assure that all necessary information is provided on the application.
- B. Issue the necessary zoning and occupancy and use permits provided the provisions of the Ordinance and of any applicable building code have been complied with. ~~Issue Floodplain certificates of compliance where appropriate.~~
- C. Inspect and assess structures and uses as necessary ~~including the inspection of all damaged Floodplain structures to determine if Substantial damage to the structures has occurred.~~
- D. Keep an accurate record of all zoning and use permits issued, inspections made and work approved; ~~including all required Floodplain data when applicable, such as documentation of certified lowest floor and regional flood elevations for Floodplain development; Floodproofing certificates, records of water surface profiles;~~ a list of Nonconforming Uses and Structures including changes, appeals, variances and amendments; ~~and all Substantial damage assessment reports for Floodplain structures.~~
- E. Keep accurate records and maps of the zoning ordinance and any amendments or changes thereto.
- F. ~~Submit copies of the following items to the WDNR regional office regarding Floodplain matters:~~
  - ~~i. Within 10 days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments;~~
  - ~~ii. Copies of case-by-case Floodplain analyses, and other required information including an annual summary of Floodplain zoning actions taken.~~
  - ~~iii. Copies of Substantial damage assessments performed and all related correspondence concerning the assessments.~~
  - ~~iv. Copies of violation reports.~~
- G. ~~Submit copies of amendments relating to Floodplain matters to the FEMA Regional office.~~
- H. ~~Inspect and process any reported violation of this Ordinance in accordance with Section 41(c) and submit copies of any reports related to Floodplain matters to the WDNR Regional office.~~

Repeal Section 41(b)(6)



~~Public Information: The Zoning Administrator shall provide the following Floodplain information, if available:~~

~~A. — 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.~~

~~B. — All available information in the form of maps, engineering data and regulations shall be readily available and should be widely distributed.~~

~~C. — Real estate transfers should show what Floodplain district any real property is in.~~

## **SECTION 42**

### **Repeal and Recreate Section 42(a)**

#### **Abrogation and greater restrictions**

It is not intended by this Ordinance to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, ordinances, rules, regulations, or permits previously adopted or issued pursuant to law. However, wherever this Ordinance imposes greater restrictions, the provisions of this Ordinance shall govern. ~~This Ordinance, where it relates to floodlands, supersedes all the provisions of any municipal zoning ordinance enacted under Section 59.69, 59.692 or 59.694 for counties; Section 62.23 for cities; Section 61.35 for villages; or Section 87.30, Wisconsin Statutes.~~ 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. The Shoreland ~~and Floodplain~~-protection provisions of this Ordinance required by ~~the National Flood Insurance Program (NFIP) and Ch. NR115 and Ch. NR116~~ Wisconsin Administrative Code, supersede all less restrictive provisions of any other county zoning ordinance.

### **Repeal and Recreate Section 42(b)**

#### **Interpretation**

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 construed to be a limitation or repeal of any other powers granted by the Wisconsin Statutes and those now possessed by Waukesha County. If a provision of this Ordinance, required by statute ~~or~~, ch. NR 115, ~~or ch. NR 116~~, Wisconsin Administrative Code, is unclear, the provision shall be interpreted in light of the 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.

### **Repeal and Recreate Section 42(c)**

#### **Severability and non-liability**

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

~~The Flood Protection standards in this Ordinance are based on engineering experience, research and the best information available. Larger Floods may occur or the Flood height may be increased by man made or natural causes. This Ordinance does not imply or guarantee that non Floodplain areas or permitted Floodplain uses will be free from Flooding and flood damages. Nor does this Ordinance create liability on the part of, or a cause of action against, the county or any officer or employee thereof for any flood damage that may result from reliance on this Ordinance.~~

**Repeal and Recreate Section 42(d)**

**Repeal**

All ordinances or parts of ordinances of the county inconsistent or conflicting with this Ordinance, to the extent of the inconsistency only, are hereby repealed. All other ordinances enacted by the county under Section 59.69 of the Wisconsin Statutes relating to ~~floodlands and~~ shorelands are hereby superseded.

**Repeal and Recreate Section 42(e)**

**Title**

This Ordinance shall be known as, referred to, and cited as the "Shoreland ~~and Floodland~~ Protection Ordinance, Waukesha County, Wisconsin" and is herein referred to as the "Ordinance".

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**Repeal Table 6(b)1.B.i**

**Repeal Table 6(b)1.B.ii**

N:\PRKANDLU\Planning and Zoning\Floodplain\Riskmap FEMA updates\2023 FEMA DNR required text updates\Shoreland only Version Delivered to Corp Counsel\Sections for Repeal and Recreate.docx



1 MODIFY THE 2023 DEPARTMENT OF PUBLIC WORKS, AIRPORT OPERATIONS FUND  
2 BUDGET FOR INCREASED CONTRACTED SNOW REMOVAL EXPENSES AND  
3 IN-HOUSE SNOW REMOVAL OPERATIONS, AND CREATE TWO FTE PARK  
4 MAINTENANCE WORKER POSITIONS  
5

6 WHEREAS, the Airport Operations Fund budget of the Department of Public Works is set up as  
7 an enterprise fund to account for the expenses and revenues associated with providing services  
8 and operating the Waukesha County Airport; and  
9

10 WHEREAS, the Airport Fund is an enterprise fund, funded by airport user fee revenues and is  
11 not supported by tax levy; and  
12

13 WHEREAS, the Airport had been using an external contractor for snow removal services for  
14 Airport roadways, parking lots, taxiways and runways; and  
15

16 WHEREAS, the higher-than-average number of contractor deployments and material costs for  
17 de-icing treatments has resulted in the expense lines for these services being overbudget in 2023;  
18 and  
19

20 WHEREAS, contracted snow removal costs have increased significantly in recent years,  
21 requiring budget modifications in 2021 (enrolled ordinance 176-60) and 2022 (enrolled  
22 ordinances 177-50 and 177-100), and are projected to continue to increase; and  
23

24 WHEREAS, Waukesha County Contract 1909 for Airport Snow Removal was in effect through  
25 April 30, 2024, and Article I afforded Waukesha County the right to renegotiate the contract if  
26 the county notified the vendor of its intention to bring a portion of snow removal services in-  
27 house or to terminate the contract early if snow removal operations are brought entirely in-house;  
28 and  
29

30 WHEREAS, Waukesha County provided the snow removal vendor a notice of intent to terminate  
31 the contract and bring snow removal services in-house unless the contract could be successfully  
32 renegotiated to bring a portion of snow removal services in-house; and  
33

34 WHEREAS, the County was unable to reach an agreement with the vendor on new terms to  
35 bring a portion of snow removal services in-house, and the contract was terminated in July with  
36 the intention bring all snow removal services in-house; and  
37

38 WHEREAS, Airport staff believe in-house snow removal operations will afford the Airport more  
39 cost control for necessary snow removal; and  
40

41 WHEREAS, bringing snow removal in-house will require the creation of two regular full-time  
42 Park Maintenance Worker positions, additional equipment, vehicle fuel and maintenance, and  
43 other related costs; and  
44

45 WHEREAS, department management anticipates that bringing snow removal in-house will cost  
46 less than the current contract and that they will be able to accommodate these costs in 2024 with

47 appropriations previously funding the contract, but 2023 will require additional appropriations  
48 after the snow removal contract exceeded budget for the year.

49  
50 THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS  
51 that the Department of Public Works is authorized to create 2.00 FTE regular, full-time Park  
52 Maintenance Worker positions, Open Range 5 (\$22.81/hour minimum, \$26.50/hour mid-point,  
53 \$30.18/hour maximum) to effectuate bringing airport snow removal services in-house.

54  
55 BE IT FURTHER ORDAINED that the 2023 Airport Operations Fund budget be amended to  
56 increase personnel costs by \$56,000, operating expenses by \$158,000, and interdepartmental  
57 charges by \$62,000 to cover the cost of the current snow removal contract and the costs of  
58 providing in-house snow removal, and increase use of Airport Fund balance by \$276,000.



**FISCAL NOTE**

**MODIFY THE 2023 DEPARTMENT OF PUBLIC WORKS, AIRPORT OPERATIONS FUND BUDGET FOR INCREASED CONTRACTED SNOW REMOVAL EXPENSES AND IN-HOUSE SNOW REMOVAL OPERATIONS, AND CREATE TWO FTE PARK MAINTENANCE WORKER POSITIONS**

This ordinance modifies the 2023 Airport budget by increasing appropriations by \$276,000 for above budget snow removal contract expenses and for a partial year of bringing snow removal in-house. The table below highlights the breakdown of these increased expenses by category. The table includes partial-year 2023 impacts and the estimated annualized cost in 2024. (Budget development is still underway, and the projected 2024 costs are subject to change.) These additional 2023 partial-year expenditures and equipment purchases (discussed below) will be covered with Airport Fund balance, which is currently estimated at about \$850,000. Department management anticipates that bringing snow removal in-house will cost less than the current contract and that they will be able to accommodate these costs in 2024 with appropriations previously funding the contract (budgeted at \$430,000 in 2023), but 2023 will require additional appropriations after the snow removal contract exceeded budget for the year.

**Summary of 2023 Ordinance and Projected 2024 Costs**

Category	Appropriation Unit	2023 Ord.	2024 Proj.	Description
Personnel	Personnel Cost	\$ 56,000	\$ 189,000	2 Park Maintenance Workers, Overtime
Materials	Operating Expenses	\$ 83,000	\$ 118,000	De-Icer, Fuel
Vehicle Costs	Interdepartmental	\$ 62,000	\$ 85,000	Repair/Maintenance, Replacement Charges
Other	Operating Expenses	\$ 25,000	\$ 8,000	Radio Purchases/Maintenance Charges
Contracted Services	Operating Expenses	\$ 50,000		Overbudget Snow Removal Contract
<b>Total</b>		<b>\$ 276,000</b>	<b>\$ 400,000</b>	
Equipment (a)	Fixed Asset	\$160,000	\$50,000	Used Snow Broom, Storage, Loader & Skid Pushers

(a) The 2023 adopted budget included a fixed asset memo item authorizing \$200,000 in fixed asset acquisition, so no budget modification is needed.

Additionally, this ordinance requests the creation of two new Park Maintenance Worker positions, Open Range 5 (\$22.81/hour minimum, \$26.50/hour mid-point, \$30.18/hour maximum). The costs of these positions and estimated overtime are included in the table above. The reasoning behind classifying these positions as Park Maintenance Workers is that these positions will be focused on grounds maintenance and snow removal at the airport, consistent with the job duties outlined for this class specification. Additionally, the Park Maintenance Worker position does not require a Commercial Drivers License (CDL), which is expected to expand the applicant pool while also addressing the unique circumstances of the Airport being private property where a CDL is not necessary for snow removal operations.

Airport management plans to use \$160,000 for one-time equipment purchases in 2023 related to bringing snow removal services in-house. The 2023 adopted budget anticipated this possibility and included \$200,000 in fixed assets, so no further budget modification is needed at this time. The state Bureau of Aeronautics (BOA) has informed Airport management that future snow removal equipment may be eligible for federal and state funding assistance with a 5% county share. The use of these funds would likely start with purchases beginning in late 2024 or early 2025. In the interim, the department plans to purchase less-expensive, used equipment (detailed in the table above) and lease older equipment from the county's Vehicle Replacement Plan to provide service. If the BOA approves new equipment funding, the Airport plans to sell the older equipment to recover some of the upfront cost through auction/sale revenue.

*William Duckwitz*


William Duckwitz  
 Budget Manager  
 8/2/2023  
 WW  
 JE#2023-00008194



WAUKESHA COUNTY  
OFFICE OF THE COUNTY EXECUTIVE

**MEMO:**

---

DATE: July 25, 2023  
TO: Paul Decker, County Board Chairman  
FROM:  Paul Farrow, County Executive  
RE: Re-Appointment of Arnold Moncada to the Ethics Board

I am pleased to submit to the County Board for your consideration of the re-appointment of Arnold "Arnie" Moncada to the Ethics Board as the Waukesha County representative. Mr. Moncada lives at W276 N2177 Spring Creek Drive in Pewaukee. He has served terms since 2019 on this board. If considered, his term will expire April 2026.

Thank you for your consideration.

cc: Deborah Price, Corporation Counsel Office






WAUKESHA COUNTY  
OFFICE OF THE COUNTY EXECUTIVE

**MEMO:**

---

DATE: July 25, 2023  
TO: Chairman Paul Decker  
FROM:  Paul Farrow  
RE: Reappointment of Robert Peregrine to the Park & Planning Commission

I am pleased to submit to the County Board for your consideration for the reappointment of Robert Peregrine, N51 W35576 Bay Ridge Ct., Oconomowoc, to serve as a member on the Waukesha County Park and Planning Commission. He has been on this board since 2008. This will be his 3rd term.

If reappointed, Mr. Peregrine's term will expire in July 2030.

PF:ha

cc: Jason Fruth



WAUKESHA COUNTY  
OFFICE OF THE COUNTY EXECUTIVE

**MEMO:**

---

DATE: July 25, 2023  
TO: Chairman Paul Decker  
FROM: *PA* Paul Farrow  
RE: Reappointment of Robert Hamilton to the Park & Planning Commission

I am pleased to submit to the County Board for your consideration for the reappointment of Robert Hamilton, 3410 Nagawicka Rd., Hartland, to serve as an alternate member on the Waukesha County Park and Planning Commission. He has been on this board since 2014.

If reappointed, Mr. Hamilton's term will expire in July 2026.


PF:ha

cc: Jason Fruth





**Waukesha County**  
*Office of the County Executive*

DATE: July 25, 2023  
TO: Paul Decker, County Board Chairman  
FROM:  Paul Farrow, County Executive  
SUBJECT: Appointment to the Waukesha County Community Development Block Grant Board

I am pleased to submit to the County Board for your consideration the appointment of Chris Lambert to the Community Development Block Grant (CDBG) Board. He will replace Rick Verthein, as a City of Waukesha representative on the Board.

Mr. Lambert is a resident of the City of Waukesha. He is currently employed as the Chief Financial Manager at Dehonians. He has served on the City of Waukesha CDBG Board and is very familiar with this funding source and its rules and restrictions. Mr. Lambert also has experience in the nonprofit sector, as he was formerly employed at Hebron Housing Services.

Mr. Lambert's involvement in and connections to the community make him a great candidate for service on the CDBG Board.

Mr. Lambert's contact information is as follows:


Christopher Lambert  
715 E Newhall Avenue  
Waukesha, WI 53186  
414-745-3861  
[Ch\\_lambert@live.com](mailto:Ch_lambert@live.com)

Thank you for your swift consideration.

cc: Kristin Silva, Community Development Manager  
Dale R. Shaver, Director of Parks and Land Use



**Waukesha County**  
*Office of the County Executive*

DATE: July 25, 2023  
TO: Paul Decker, County Board Chairman  
FROM:  Paul Farrow, County Executive  
SUBJECT: Appointment to the Waukesha County Community Development Block Grant Board

I am pleased to submit to the County Board for your consideration the appointment of Frank Palm to the Community Development Block Grant (CDBG) Board. He will replace Kevin Lahner, as a City of Waukesha representative on the Board.

Mr. Palm is a resident of the City of Waukesha in the Tower Hill neighborhood. He participated in the City of Waukesha's Citizen Academy in 2022 and he has volunteered for many of the non-profit organizations that provide community services in Waukesha County, including Habitat for Humanity, and the Salvation Army.

Mr. Palm's involvement in and connections to the community make him a great candidate for service on the CDBG Board.

Mr. Palm's contact information is as follows:

Frank Palm  
625 Chicago Ave  
Waukesha Wi 53188  
262-424-7748  
[palmfrank63@gmail.com](mailto:palmfrank63@gmail.com)

Thank you for your swift consideration.


cc: Kristin Silva, Community Development Manager  
Dale R. Shaver, Director of Parks and Land Use



**WAUKESHA COUNTY**  
**OFFICE OF THE COUNTY EXECUTIVE**

**MEMO:**

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DATE: July 25, 2023  
TO: Paul Decker, County Board Chairman  
FROM:  Paul Farrow, County Executive  
RE: Re-Appointment of Bob Rohde

I am pleased to submit to the County Board for your consideration of the re-appointment of Bob Rohde to the Community Development Block Grant Board as the Waukesha County representative. Mr. Rohde lives at 766 Glacier Road in Pewaukee. He has served 1 term since 5/2020 on this board. If considered, his term will expire May 2026.

Thank you for your consideration.

cc: Kristin Silva, Community Development Block Grant





**WAUKESHA COUNTY**  
**OFFICE OF THE COUNTY EXECUTIVE**

**MEMO:**

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**DATE:** July 25, 2023  
**TO:** Paul Decker, County Board Chairman  
**FROM:** Paul Farrow, County Executive  
**RE:** Re-Appointment of Joel Gaughan

I am pleased to submit to the County Board for your consideration of the re-appointment of Joel Gaughan to the Community Development Block Grant Board as the Waukesha County Board representative. Mr. Gaughan lives at 13795 W. Pleasant View Dr in New Berlin. He has served 1 year of a 3 year term since 2022 on this board (as a replacement appointment). If considered, his term will expire May 2026.

Thank you for your consideration.

**cc:** Kristin Silva, Community Development Block Grant



**WAUKESHA COUNTY**  
**OFFICE OF THE COUNTY EXECUTIVE**

DATE: July 31, 2023  
TO: Chairman Paul Decker  
FROM: Paul Farrow  
RE: Appointment of Joseph Kershek to the Board of Adjustment

I am pleased to submit to the County Board for your consideration, the appointment of Joseph Kershek to serve on the Waukesha County Board of Adjustment.

Mr. Kershek holds a law degree from Marquette University and has previously served as a prosecuting attorney for the Town of Delafield, Town of Lisbon and the Village of Chenequa as well as a Waukesha County Court Commissioner. In addition, he is a Licensed Wisconsin Real Estate Broker and has served on the Town of Ottawa Plan Commission since 1994.

It is the service on a town plan commission along with his real estate and local municipal experience that will make Mr. Kershek an outstanding addition to the Waukesha County Board of Adjustment.

Mr. Kershek will be replacing Tom Day, since he is no longer interested in serving.

cc: Meg Wartman  
Dale Shaver



**WAUKESHA COUNTY**  
OFFICE OF THE COUNTY EXECUTIVE

**MEMO:**

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DATE: August 1, 2023  
TO: Chairman Paul Decker  
FROM: Paul Farrow  
RE: Reappointment of Business Representative to Waukesha Ozaukee Washington Workforce Development Board

This memo is submitted to recommend Ms. Rebecca Klebsch be reappointed to the Waukesha Ozaukee Washington Workforce Development Board for Waukesha County. Ms. Klebsch would serve an additional three-year term that would expire June 30, 2025. She would be a Waukesha County Representative.

Ms. Klebsch is the Community Service Liaison for AFL-CIO at the Waukesha County Labor Council. Ms. Klebsch has been on the WOW WDB for over three years and brings a wealth of knowledge and perspective to the board.

Thank you for your consideration.

PF:ha

cc: Dawn Schicker, Chair WOW WDB  
Analiese Smith, Director WOW WDB



1           AUTHORIZATION TO ENTER INTO SETTLEMENT AGREEMENT IN THE  
2           CONDEMNATION LAWSUITS AGAINST WAUKESHA COUNTY BROUGHT BY  
3           GREGORY BACKUS, VALERIE ZOREK, JAMIE SHIRLEY AND NICHOLAS BROCK

4           WHEREAS, Waukesha County undertook a highway project (Project ID 2788-00-22)  
5           to reconstruct and improve the West Waukesha Bypass in the City and Town (now Village) of  
6           Waukesha; and

7           WHEREAS, as part of the highway project, the County acquired by eminent domain,  
8           temporary limited easements for construction purposes on lots owned by several adjacent  
9           landowners in the Heritage Hills Subdivision in the City of Waukesha, specifically Gregory  
10          Backus, Valerie Zorek, Jamie Shirley, and Nicholas Brock (hereinafter “the Landowners”); and

11          WHEREAS, pursuant to Chapter 32 of the Wisconsin Statutes, the Landowners have appealed  
12          the Award of Damages to the Circuit Court for a determination of just compensation to be paid for  
13          the taking of the property in corresponding Case Numbers 18-CV-1379, 18-CV-140, 18-CV-  
14          1739 and 18-CV-142; and

15          WHEREAS, the Landowners have each also filed separate lawsuits against Waukesha County  
16          and the State of Wisconsin, Department of Transportation (“DOT”) seeking monetary damages  
17          and other relief for an alleged change of grade and inverse condemnation in corresponding Case  
18          Numbers 21-CV-591, 21-CV-590, 21-CV-594, and 21-CV-592; and

19          WHEREAS, both lawsuits filed by each Landowner have been consolidated under the 2018  
20          Case Numbers (hereinafter “the Litigation”), and pursuant to orders of the court, all parties  
21          have attended mediation sessions, and

22          WHEREAS, through mediation, Waukesha County, DOT and the Landowners have reached a  
23          global, settlement agreement on August 1, 2023, the terms of which are conditioned upon  
24          County Board approval; and

25          WHEREAS, the continuation of the Litigation causes substantial financial risk to the  
26          Landowners, Waukesha County and the DOT; and all parties will incur additional, significant  
27          expenses if a settlement of the Litigation is not reached at this time; and

28          WHEREAS, it has been determined that settlement of the Litigation at this time is in the best  
29          interest of Waukesha County.

30          THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA  
31          ORDAINS that the settlement in the condemnation Litigation against Waukesha County  
32          brought by Gregory Backus, Valerie Zorek, Jamie Shirley and Nicholas Brock, Case Numbers  
33          18-CV-1379, 18-CV-140, 18-CV-1739 and 18-CV-142, respectively, is approved according to  
34          the terms of the settlement agreement, which was previously shared with the County Board in  
35          closed session.

36          BE IT FURTHER ORDAINED that Waukesha County Corporation Counsel, or his designee, is  
37          authorized to negotiate, finalize, and execute a settlement agreement and release necessary to  
38          effectuate the settlement approved by the County Board.