



**AGENDA**  
**Planning Commission**  
**Wednesday, September 28, 2022 - 6:00 PM**  
**Village Hall**  
**300 W. Spring St. Rochester, WI**

A meeting of the Planning Commission will be held Wednesday, September 28, 2022 in the Village Hall commencing at **6:00 PM.**

- |  | Page    |
|--|---------|
| <b>1. Roll Call by Chairperson: Patricia Gerber</b><br>Plan Commissioners: Gary Beck, Ed Chart, Patricia Edwards, Patricia Gerber, George Olen, Mark Tamblyn, Doug Wearing, Marc Morgan (Alternate 1), and VACANT SEAT (Alternate 2).  |         |
| <b>2. Pledge of Allegiance</b>   |         |
| <b>3. Submitted for Review and Approval</b>  |         |
| 3.1. August 24, 2022 Minutes<br><a href="#">Planning Commission - Aug 24 2022 - Minutes - Pdf</a>  | 3 - 10  |
| <b>4. Action Items</b>   |         |
| 4.1. Presented for Review and Discussion: Ordinance No. 2022-6 "An Ordinance to Create Subsection 30-15(C) of the Municipal Code of the Village of Rochester to Clarify the Extraterritorial Jurisdiction between the Village of Rochester and Village of Waterford"<br><a href="#">Agenda Item Report - AIR-22-156 - Pdf</a>  | 11 - 21 |
| 4.2. Presented for Review and Discussion: Ordinance #2022-7 "An Ordinance to Repeal and Recreate Section 36-53 and 36-56 of the Municipal Code of the Village of Rochester to Allow the Village Plan Commission to Grant or Deny Conditional Use Permits in the Shoreland-Wetland and Shoreland Zoning Districts"<br><a href="#">Agenda Item Report - AIR-22-157 - Pdf</a>   | 22 - 37 |
| <b>5. Report from Village Board Liaison</b><br><br>At this September 6th meeting of the Village Board: <ul style="list-style-type: none"><li>• The extraterritorial plat review certified survey map land division for the Kathryn Babcock Shaffer Trust was approved as recommended.</li><li>• The application to the Western Racine County Sewerage District for a boundary adjustment to include 14.82 acres of land east of the Fox River Prairie Subdivision was also approved.</li></ul> |         |
| <b>6. Adjourn</b><br><br>Betty Novy, Village Administrator<br>Posted: September 22, 2022   |         |

It is possible that members and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information; no action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice.

Please note: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, please contact the Village Hall at 262-534-1180.

Next Meeting: October 26, 2022



# MINUTES

## Planning Commission Meeting

6:00 PM - Wednesday, August 24, 2022

Village Hall

The Planning Commission of the Village of Rochester was called to order on Wednesday, August 24, 2022, at 6:00 PM, in the Village Hall:

### 1. ROLL CALL BY CHAIRPERSON: PATRICIA GERBER

**PRESENT:** Gary Beck, Edward Chart, Patricia Edwards, Patricia Gerber, George Olen, Mark Tamblyn, Marc Morgan, and Doug Wearing

**ABSENT:** None.

**STAFF PRESENT:** Betty Novy, Village Administrator and Matt Rademacher, Asst. Village Administrator

### 2. PLEDGE OF ALLEGIANCE

### 3. SUBMITTED FOR REVIEW AND APPROVAL

#### 3.1. JULY 27, 2022 MINUTES

Gary Beck made a motion to approve the July 27, 2022 minutes as printed. Mark Tamblyn seconded the motion. Carried unanimously.

### 4. INFORMATION ITEMS:

#### 4.1. DISCUSS TRANSITION OF ZONING ADMINISTRATION SERVICES FROM RACINE COUNTY TO VILLAGE OF ROCHESTER AND INTRODUCTION OF NEW ASSISTANT VILLAGE ADMINISTRATOR MATT RADEMACHER

Novy reported Racine County will no longer provide zoning administration services to the Village of Rochester effective September 6, 2022. Although Racine County will continue its regulation of private onsite wastewater treatment systems, non-metallic mining sites, and county highways, Village staff members Betty Novy and Matt Rademacher will take over the processing of everyday zoning permits and special land use applications. New staff member Matt Rademacher was introduced to the commissioners.

### 5. ACTION ITEMS

#### 5.1. EXTRATERRITORIAL PLAT REVIEW- CERTIFIED SURVEY MAP FOR PROPOSED LAND DIVISION TO CREATE TWO LOTS FROM AN EXISTING 87.7178 ACRE PARCEL, LOCATED AT THE INTERSECTION OF

**HONEY CREEK RD. AND BELL SCHOOL RD. IN THE TOWN OF SPRING PRAIRIE, WALWORTH COUNTY, WISCONSIN.**

**OWNERS: KATHRYN BABCOCK SHAFFER TRUST, C/O JOHN SCHAFFER.**

**PARCEL ID: P ET3600007**

**[EXHIBIT A - Babcock Shaffer Trust Zoning Analysis](#)**

Rademacher, Asst. Village Administrator, presented the extraterritorial plat review analysis report which is attached to these minutes as EXHIBIT A. Chart stated the Town the property is located in was incorrectly noted on the agenda. The property is actually located in the Town of East Troy. No other concerns were noted.

Mark Tamblyn made a motion to recommend extraterritorial plat approval to the Village Board of the Certified Survey Map to create two lots from an existing 87.7178 acre parcel, located at the intersection of Honey Creek Rd. and Bell School Rd. in the Town of East Troy. George Olen seconded the motion. Carried unanimously.

**5.2. DISCUSS AND POSSIBLY RECOMMEND APPLICATION TO THE WESTERN RACINE COUNTY SEWERAGE DISTRICT TO AMEND THE SEWER DISTRICT BOUNDARY TO INCLUDE 14.82 ACRES OF LAND IMMEDIATELY EAST OF THE FOX RIVER PRAIRIE SUBDIVISION  
PARCEL ID 176031914025020/ RIVER VIEW PARKWAY**

**[EXHIBIT B - Application to Amend Sewer District Boundary](#)**

Plan Commissioners discussed possible development scenarios for the subject parcel.

Mark Tamblyn made a motion to recommend that the Village Board submit a formal request to the Western Racine County Sewerage District to amend the sewer service area to include the 14.82 acre parcel of land found at the termination of River View Parkway, identified as Parcel ID# 176031914025020, and to also have the Board look at all adjacent parcels classified Low Density Residential Gary Beck seconded the motion. Carried unanimously.

**6. REPORT FROM VILLAGE BOARD LIAISON**

**6.1. GARY BECK READ THE FOLLOWING REPORT:**

**AT THE AUGUST MEETINGS OF THE VILLAGE BOARD:**

- **THE SHORELAND-WETLAND CONDITIONAL USE PERMIT FOR THE WESTERN RACINE COUNTY SEWERAGE DISTRICT TO CONSTRUCT A REPLACEMENT LIFT STATION AT 300 N. ROCHESTER STREET WAS APPROVED SUBJECT TO THE RECOMMENDED CONDITIONS OF THE PLAN COMMISSION.**
- **THE TWO-LOT LAND DIVISION BY CERTIFIED SURVEY MAP LOCATED ON N. MAPLE ROAD FOR NICK AND JESSICA HERR WAS APPROVED SUBJECT TO THE RECOMMENDED CONDITIONS OF THE PLAN COMMISSION AND PAYMENT OF ALL OUTSTANDING ENGINEERING AND LEGAL FEES.**
- **THE APPOINTMENT OF PATRICIA EDWARDS TO REGULAR PLAN COMMISSION MEMBER TO FILL THE REMAINDER OF MAUREEN ECKERT'S TERM; AND THE RECOMMENDATION TO SOLICIT**

**APPLICATIONS TO FILL THE ALTERNATE PLAN COMMISSION  
MEMBER POSITION WAS APPROVED.**

**7. ADJOURN**

Gary Beck made a motion to adjourn at 6:36 P.M. Mark Tamblyn seconded the motion. Carried unanimously.

---

Betty Novy, Village Administrator/  
Planning Secretary



## Village of Rochester Planning Memorandum Planning Commission - Aug 24 2022

---

**Prepared For:**

Planning Commission

**Staff Contact:**

Matt Rademacher, Asst. Administrator

---

**Agenda Item:**

Extraterritorial Plat Review- Certified Survey Map for proposed land division to create two lots from an existing 87.7178 acre parcel, located at the intersection of Honey Creek Rd. and Bell School Rd. in the Town of East Troy, Walworth County, Wisconsin.

Owners: KATHRYN BABCOCK SHAFFER TRUST, C/O JOHN SCHAFFER.

Parcel ID: P ET3600007

**Existing Zoning and Land Use Restrictions:**

Chaput Land Surveys, Agent of Kathryn Babcock Shaffer Trust, submitted on July 18, 2022 a request to divide an existing parcel identified as P ET3600007, located within the Town of East Troy in Walworth County, into two lots. The parcel of land proposed to be divided is located within 1.5 miles of the Rochester Village Limits and requires Village of Rochester extraterritorial plat review and approval. Under 30-15, Extraterritorial Plat Approval Jurisdiction, found in Chapter 30, Land Divisions of the Village of Rochester Municipal Code it states,

*Pursuant to Wis. Stat. s. 236.45 (3)*

*"The subdivision ordinances adopted by the Village shall regulate the division or subdivision of land within the extraterritorial plat approval jurisdiction of the Village, as well as, land within the corporate limits of the Village when the Village has the right to approve or object to plats with that are under Wis. Stats. S. 236.10(1)(b)2 and (2)."*

**Planning Analysis:**

Staff has reviewed the attached CSM for creating a 5-acre square-shaped lot from existing parcel P ET3600007 and have determined that there are no plans or amendments in the Village of Rochester Comprehensive Land Use Plan, that would prevent the creation of this new lot. In addition, staff reviewed this request with the Village of Rochester Public Works Manager, and he has indicated there are no drainage concerns that would affect the Village of Rochester. The Extraterritorial Certified Survey Map fee as outlined in the Village of Rochester fee schedule was paid by the property owner's agent on July 18, 2022.

**Suggested Motion of Planning Commission:**

Therefore, it is staff recommendation that the Plan Commission should recommend extraterritorial plat approval to the Rochester Village Board relating to this proposed land division.

**Attachments:**

[Transmittal Letter - Babcock Shaffer CSM](#)

[CSM - Extraterritorial Plat Review - Babcock-Shaffer Trust](#)

[Shaffer Trust Property Information](#)

[Public Works Review](#)

[Shaffer Trust Aerial Overlay](#)

[Shaffer Trust Aerial](#)



## Village of Rochester

# Planning Memorandum

### Planning Commission - Aug 24 2022

---

**Prepared For:**

Planning Commission

**Staff Contact:**

Betty Novy, Village Administrator

---

**Agenda Item:**

Discuss and Possibly Recommend Application to the Western Racine County Sewerage District to Amend the Sewer District Boundary to include 14.82 acres of land immediately east of the Fox River Prairie Subdivision  
Parcel ID 176031914025020/ River View Parkway

**Existing Zoning and Land Use Restrictions:**

A 14.82 acre parcel accessible at the termination of River View Parkway has recently been listed for sale. To date, staff members fielded two inquiries by prospective buyers in regard to what type of development can occur on the property and public sanitary sewer connection requirements. One inquiry involved the purchase and development of the property for construction of one single family residence; and the other involved the purchase and development of the property for a two-lot residential land division. The issues that present themselves in regard to development on this parcel include public street access, public sewage connection requirements, and providing for its development in a way that is consistent with village planning.

**Current Zoning and Public Street Access.** This property is currently zoned A-2 "General Farming and Residential District". Although the property meets minimum lot size and width requirements for the zoning district, Sec. 35-15, Site Restrictions, subsection D. of the Village of Rochester Code of Ordinances states "*No zoning permit shall be issued for a lot which abuts upon the termination of a non-through public street unless such street has been or is to be provided with a permanent cul-de-sac or other type of permanent turnaround as determined by the Plan Commission and the Village Board.*"

**Land Use Plan Designation:** The Rochester Wisconsin Year 2050 Land Use Plan designates this property for "Low Density Residential" development (19,000 square feet to 1.49 acres per dwelling unit). The plan is clear that this property was intended to be developed similar in density to that of the existing subdivision to the west. It is also clear that when the Fox River Prairie subdivision was platted, River View Parkway was platted with the idea that future development of the subdivision would extend into this property.

Sections 30-2. and 30-3. of the Village of Rochester Land Division code establish the purpose and intent of the development of land within the Village. The purpose is "to regulate and control the division of land within the Village to promote the public health, safety, and the general welfare of the Village. The intent of the chapter includes "regulating the division of land to further the orderly



layout and use of land; ...to facilitate adequate provision for water, sewerage and other public requirements; and to provide for proper ingress and egress"... Section 30-3 also specifies that this will be done in such a way, among other things, to permit residential development at appropriate densities for the urban and rural characteristics of the village, a specific objective of which is to guide growth and development consistent with the village's comprehensive land use plan.

**Public Sanitary Sewer System Connection.** This property lies within 45 feet of the public sanitary sewer main located on River View Parkway. Section 10-5.A. of the Village of Rochester Code of Ordinances addresses compulsory connection to the public sewage system as follows:

1. The Owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, including milk houses, situated within the Village of Rochester and abutting on any street, alley, right-of-way or public utility easement in which there is now located or may in the future be located a public sanitary sewer within 300 feet of the premises, is hereby required at the Owner's expense to install suitable toilet facilities therein, and connect such facilities directly to the proper public sewer in accordance with the provisions of this Article within six months after the date of official notice from the Village and/or Approving Authority to do so.

3. When extension of the public sanitary sewer is reasonable, the Village may require such extension to serve new development.

### **Planning Conclusions:**

Prior to any development happening on this property, a permanent cul-de-sac or other approved means of access must be approved by the Plan Commission and the Village Board.

Allowing the construction of only one or two residences on this property is not a benefit to the general welfare of the Village and does not support the intent of the code to guide growth and development consistent with the adopted land use plan.

Development on this property requires connection to the public sanitary sewer. Through communications with the Western Racine County Sewerage District, the property has been identified to exist within the ***Planned*** Sewer Service Areas of both the Village of Rochester and the Western Racine County Sewerage District. However, it is not in the Western Racine County Sewerage District and it is not in the approved Waterford/ Rochester Sanitary Sewer Service Area which is identified in the Southeastern Wisconsin Regional Plan Commission's Regional Water Quality Management Plan.

Several steps must be taken involving the Village of Rochester, the Western Racine County Sewerage District and the Southeastern Wisconsin Regional Planning Commission before municipal sanitary sewer can be extended to this property.

1. The Village of Rochester must request that the Western Racine County Sewerage District serve the property with municipal sewer.
2. If the Western Racine County Sewerage District agrees, they must request that the Southeastern Wisconsin Regional Plan Commission adjust the sewer service area to include the property.
3. If the Southeastern Wisconsin Regional Plan Commission agrees, they amend the Adopted Regional Water Quality Management Plan to include the property in the sewer service area.

4. Once notified of approval, the Western Racine County Sewerage District can follow their internal processes to amend the sewer district boundary to include the property.
5. Once notified of the successful boundary amendment, the Village of Rochester Sewer Utility may then work with a developer to extend municipal sanitary sewer service to the property.

Although there is no specific development plan being considered for the property at this time, the property is for sale making its development more feasible in the near future.

If the Plan Commission would like to facilitate development of this property in a way that is consistent with the adopted land use plan, it would be helpful to address the municipal sanitary sewer service area issue in advance of any specific development proposals.

**Suggested Motion of Planning Commssion:**

to recommend that the Village Board submit a formal request to the Western Racine County Sewerage District to amend the sewer service area to include the 14.82 acre parcel of land found at the termination of River View Parkway, identified as Parcel ID# 176031914025020.

**Attachments:**

[Aerial Exhibit - Kupfer Parcel](#)

[LUP Exhibit - Kupfer Property](#)

[Zoning Exhibit - Fox River Prairie](#)

[Fox River Prairie Sanitary Sewer Proximity Exhibit](#)

[WRCSD Sanitary Sewer Service Area Response](#)



## Village of Rochester

# Agenda Report

Planning Commission - Sep 28 2022

---

**Prepared For:**

Planning Commission

**Staff Contact:**

Betty Novy, Village Administrator

---

**Agenda Item:**

Presented for Review and Discussion: Ordinance No. 2022-6 "An Ordinance to Create Subsection 30-15(C) of the Municipal Code of the Village of Rochester to Clarify the Extraterritorial Jurisdiction between the Village of Rochester and Village of Waterford"

---

**Recommended Action:**

to recommend approval of Ordinance No. 2022-6 "An Ordinance to Create Subsection 30-15(C) of the Municipal Code of the Village of Rochester to Clarify the Extraterritorial Jurisdiction between the Village of Rochester and Village of Waterford"

**Background/Summary:**

Recently, Rochester received a copy of Ordinance #688-050922 amending Chapter 235 of the Village of Waterford's Land Division Code. The amendment established a minimum parcel size of 20 acres for any development within their extraterritorial plat review territory. Extraterritorial plat review powers can be exercised within 1.5 miles of a village boundary.

The Village of Rochester also exercises extraterritorial plat review powers however no minimum lot sizes are established and the Rochester code specifically states the Village may not deny approval of a plat or certified survey map unless the denial is based on a plan or regulations adopted by the Village Board.

The extraterritorial plat review powers of the Village of Rochester and Village of Waterford overlap in three abutting Towns- the Town of Waterford, Town of Norway, and Town of Dover. Wisc. Stats. 66.0105 addresses jurisdiction of overlapping extraterritorial powers as follows: "Wherever these statutory extraterritorial powers overlap, the jurisdiction over the overlapping area shall be divided on a line all points of which are equidistant from the boundaries of each municipality concerned so that no more than one municipality shall exercise power over any area."

The map originally provided with the Village of Waterford ordinance did not display these overlapping areas. The Village Board sent notice of this discrepancy to the Village of Waterford in June. Since then, a map has been created to clarify the parcels subject to each municipality's jurisdiction in accordance with statutory requirements. The map is attached to this meeting report.

The Plat Review section of the Department of Administration was consulted on the process of adopting the map. It was indicated that the extraterritorial zoning map will need to be amended anytime an area is annexed to either of the municipalities. If the villages wish to fix the current line, they would need to do so by boundary agreement. The Village Attorney addresses this issue in the proposed ordinance amendment by incorporating the map by reference and noting it will be kept on file in the office of the Village Clerk. This will allow the village to update the map as needed. The other option would be to pursue a boundary agreement with the Village of Waterford.

A recommendation on adopting the proposed ordinance amendment is required from the Plan Commission before the ordinance can proceed through the rest of the approval process.

### **Legal Implications/Legislative Requirements:**

Wisconsin Statutes provide guidance to municipalities adopting and amending subdivision ordinances. Specifically, Section 236.45(4)"Procedure" states the following:

"Before adoption of a subdivision ordinance or any amendments thereto the governing body shall receive the recommendation of its planning agency and shall hold a public hearing thereon. Notice of the hearing shall be given by publication of a class 2 notice, under ch. 985. Any ordinance adopted shall be published in form suitable for public distribution."

Because the Village is amending its subdivision ordinance to reference the extraterritorial map, the above process must be followed. Therefore, the Village Board must first receive a recommendation regarding the amendment from the Plan Commission, and then hold a public hearing regarding the amendment.

### **Attachments:**

[Ordinance 2022-6 Clarifying Extraterritorial Jurisdiction](#)  
[Waterford-Rochester ETZ Review Map](#)  
[CURRENT Section 30-15 Extraterritorial Plat Approval Jurisdiction](#)  
[Village of Waterford Extraterritorial Plat Review Ordinance](#)  
[62.23 7 Extraterritorial Zoning](#)  
[66.0105 Overlapping Extraterritorial Powers](#)

## ORDINANCE NO. 2022-6

**AN ORDINANCE TO CREATE SUBSECTION 30-15(C) OF THE MUNICIPAL  
CODE OF THE VILLAGE OF ROCHESTER TO CLARIFY THE  
EXTRATERRITORIAL JURISDICTION BETWEEN THE VILLAGE OF  
ROCHESTER AND VILLAGE OF WATERFORD**

WHEREAS, Wisconsin Statutes Section 236.45(3) provides that a municipal subdivision ordinance will apply to lands within the extraterritorial plat approval jurisdiction of the municipality if it has the right to approve or reject that land under Wis. Stats. Section 236.10(1)(b)2 and Section 236.10(2); and

WHEREAS, the Village satisfies the above statutory requirements because it has adopted a subdivision ordinance or official map under Wis. Stats. Section 62.23, and the amendment is being adopted to clarify extraterritorial plat approval jurisdiction; and

WHEREAS, due to Wis. Stats. Section 66.0105 applying to the extraterritorial plat approval jurisdiction, the Village has developed a map that will clarify the extraterritorial jurisdiction for the Village of Rochester and the Village of Waterford in the portions where the extraterritorial powers overlap; and

WHEREAS, Village staff recommended to the Village Plan Commission and Village Board that the Village amend the Village's Subdivision Ordinance to clarify the extraterritorial plat approval powers between the Village of Rochester and Village of Waterford; and

WHEREAS, the procedure outlined in Wis. Stats. Section 236.45(4) must be followed for this Subdivision Ordinance amendment; and

WHEREAS, the Village Plan Commission made a recommendation on \_\_\_\_\_, 2022 to the Village Board to approve the Subdivision Ordinance amendment; and

WHEREAS, upon receiving the Plan Commission's recommendation, the Village Board held a public hearing on \_\_\_\_\_, which was noticed by a Class 2 Public Notice on \_\_\_\_\_, as required by Wis. Stats. Section 236.45(4); and

WHEREAS, the Village Board finds that this Subdivision Ordinance amendment is in the public interest and promotes the health, general welfare, and safety of the Village of Rochester; and

WHEREAS, the Village Board of the Village of Rochester having determined that all procedural requirements and notice requirements have been satisfied, having given the matter due consideration, and having based its determination on the effect of the granting of such amendment on the health, safety and welfare of the community, hereby determine that the amendment will not violate the spirit or intent of the Subdivision Ordinance for the Village of Rochester, will not be contrary to the public health, safety or general welfare of the Village of Rochester, and the amendment is consistent with the Village of Rochester Comprehensive Plan.

NOW, THEREFORE, the Village Board of the Village of Rochester, Racine County, Wisconsin DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 30 of the Village of Rochester Municipal Code entitled "Land Division," Article 1 entitled "General Provisions," Section 30-15 entitled, "Extraterritorial Plat Approval Jurisdiction," Subsection C. is hereby created as follows:

C. In the event the Village's statutory extraterritorial plat approval jurisdiction overlaps with another municipality, the jurisdiction of the overlap will be decided in accordance with Wisconsin Statutes Section 66.0105, which provides:

Wherever these statutory extraterritorial powers overlap, the jurisdiction over the overlapping area shall be divided on a line all points of which are equidistant from the boundaries of each municipality concerned so that not more than one municipality shall exercise power over any area.

The Village shall keep a map on file in the Village Clerk's office which determines the Village's jurisdiction in overlapping areas. This map may be amended from time-to-time as needed due to border adjustments in Rochester or Waterford.

#### SECTION 2: SEVERABILITY

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

#### SECTION 3: EFFECTIVE DATE

This ordinance shall take effect on \_\_\_\_\_, 2022 after passage and posting and/or publication as provided by law.

PASSED AND ADOPTED by the Village Board of the Village of Rochester on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

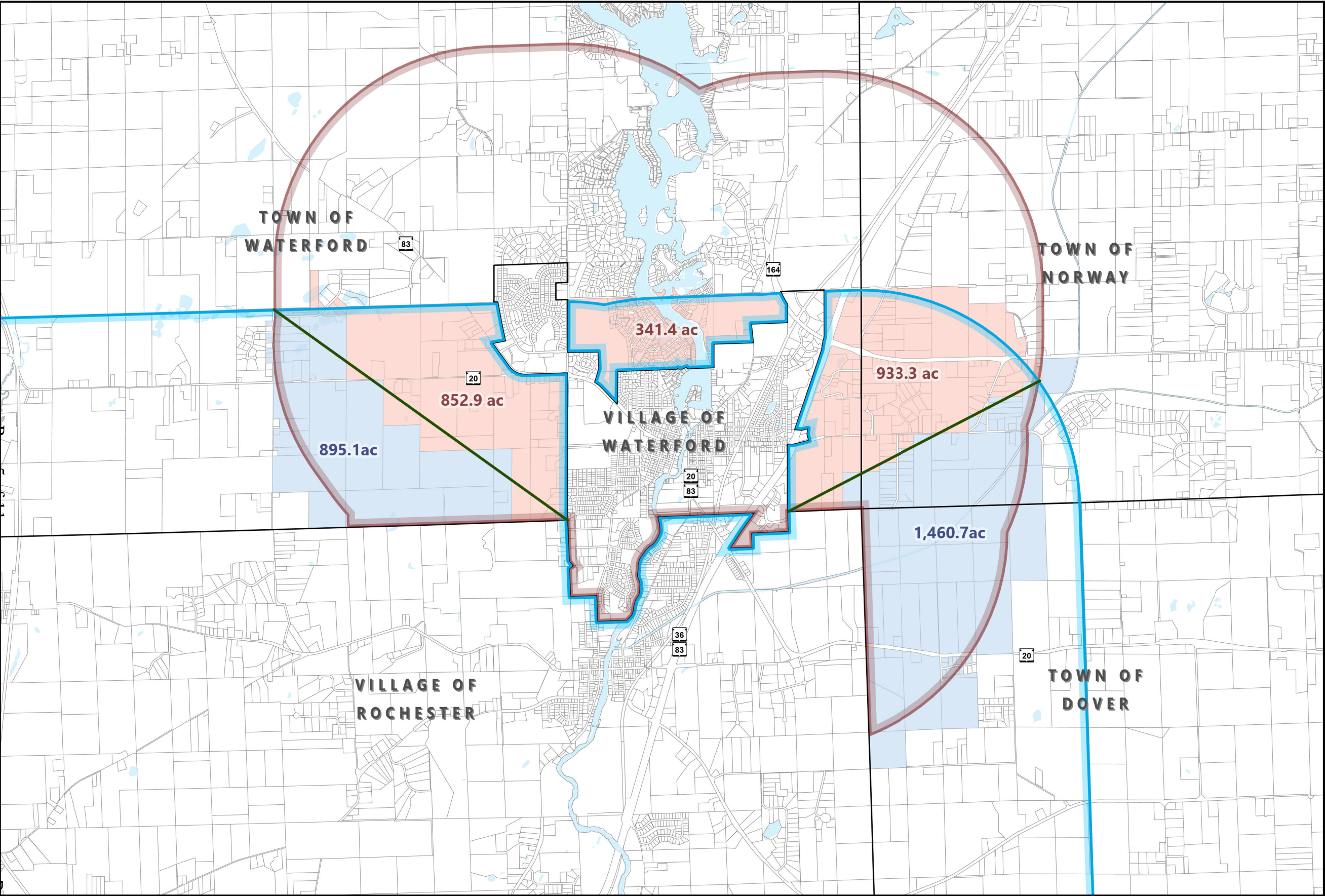
VILLAGE OF ROCHESTER

\_\_\_\_\_  
Edward Chart, Village President

Attest:

\_\_\_\_\_  
Sandra Swan, Village Clerk





- Extraterritorial Boundary - 1.5 mile buffer around Village of Waterford
- Extraterritorial Boundary - 1.5 mile buffer around Village of Rochester
- Equidistant Dividing Line per SS 66.0105
- Village of Waterford ETZ Overlapped Jurisdiction
- Village of Rochester ETZ Overlapped Jurisdiction
- Municipal Boundaries

### **30-15. EXTRATERRITORIAL PLAT APPROVAL JURISDICTION.**

Pursuant to Wis. Stat. s. 236.45(3):

A. The subdivision ordinances adopted by the Village shall regulate the division or subdivision of land within the extraterritorial plat approval jurisdiction of the Village as well as land within the corporate limits of the Village when the Village has the right to approve or object to plats within that area under Wis. Stat. s. 236.10(1)(b)2. and (2).

B. Notwithstanding subsection A. and Wis. Stat. ss. 236.45(1) and (2), the Village may not deny approval of a plat or certified survey map under this section or Wis. Stat. ss. 236.10 or 236.13 on the basis of the proposed use of land within the extraterritorial plat approval jurisdiction of the Village, unless the denial is based on a plan or regulations, or amendments thereto, adopted by the Village Board under Wis. Stat. s. 62.23(7a)(c).



**ORDINANCE NO. 688-050922**

**Amending and Recreating Chapter 235 of the Village of Waterford's  
Code of Ordinances. Subdivision of Land.**

The Village Board of the Village of Waterford, Racine County, Wisconsin, do ordain as follows:

**§235.40. Extraterritorial Plat Review.**

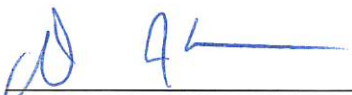
**MINIMUM LOT OR PARCEL SIZE FOR LOTS OR PARCELS IN THE VILLAGE'S  
EXTRATERRITORIAL PLAT APPROVAL JURISDICTION**

- A. General Regulations. It is necessary in the interest of public health, safety and welfare to establish minimum lot or parcel sizes for any lot or parcel in the Village's extraterritorial plat approval jurisdiction provided for in §236.10, Wis. Stats.
- B. Lands Described. Lands included in this regulation are defined as all properties lying within 1.5 miles of the Boundaries of the Village of Waterford as defined in §236.02 (5), Wis. Stats.
- C. Minimum Lot or Parcel Size. The minimum lot or parcel size for a lot or parcel within the Village's 1.5 mile Extraterritorial Plat Review Authority shall be 20 acres.
- D. Previous Agreement. If any contingent municipality has a boundary agreement with the Village, this Ordinance does not apply.

Introduced: May 9, 2022

Passed and Adopted: May 9, 2022

**BY ORDER OF THE VILLAGE BOARD**

  
\_\_\_\_\_  
Don Houston, President

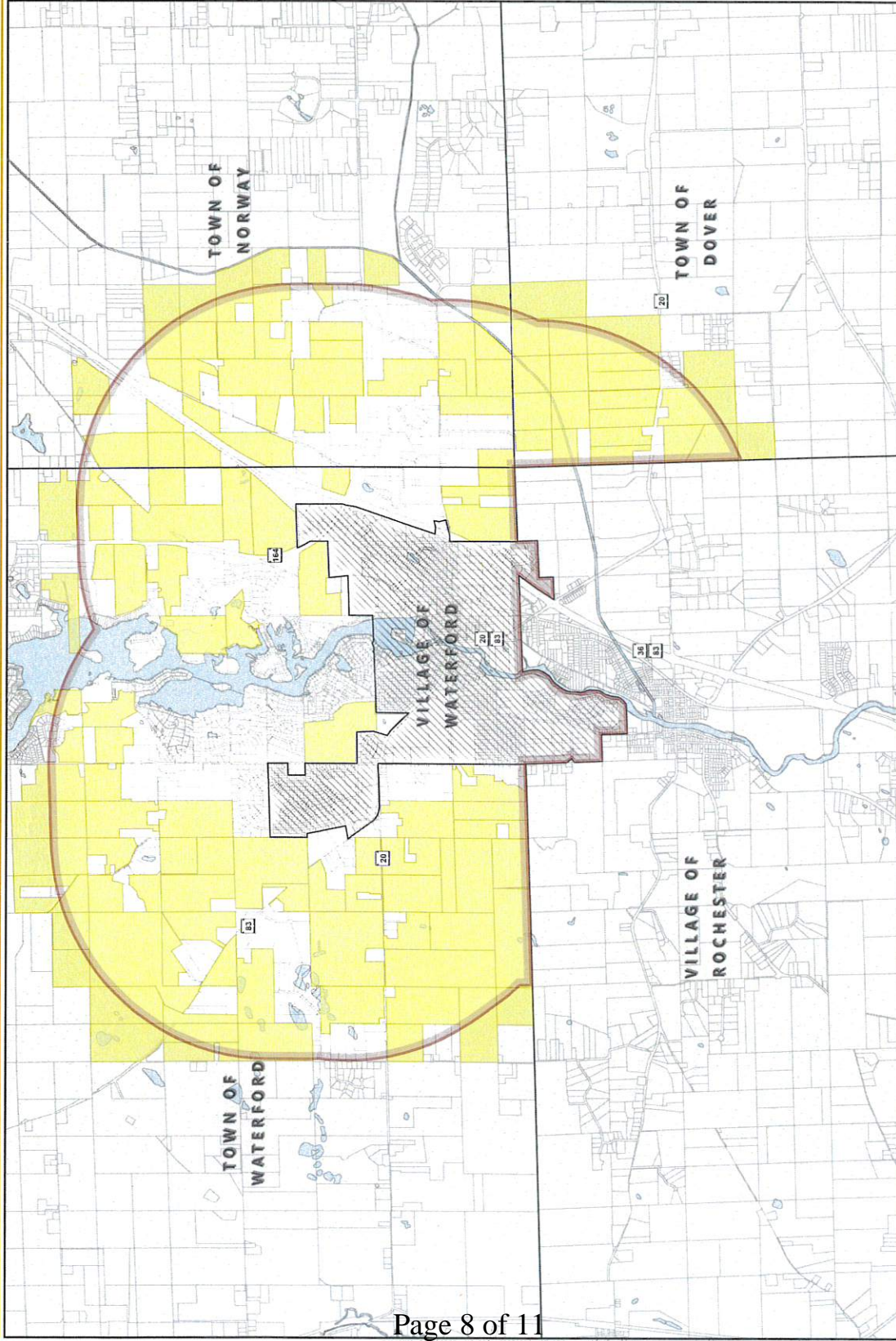
**ATTEST:**

  
\_\_\_\_\_  
Rachel Ladewig, Clerk

Drafted By:  
Zeke Jackson

# EXTRATERRITORIAL PLAT MAP

Village of Waterford, WI



- Extraterritorial Boundary - 1.5 mile buffer around Village of Waterford
- Parcels of 20 acres or more within the Extraterritorial Area
- Municipal Boundaries

**BAXTER & WOODMAN**  
Consulting Engineers



TO WHOM IT MAY CONCERN:

I, Rachel Ladewig, Village Clerk in and for the Village of Waterford, Racine County, State of Wisconsin, do hereby certify that the attached is a true and correct copy of an Ordinance that was adopted by the Village of Waterford Board of Trustees on the 9<sup>th</sup> day of May, 2022. This copy replaces the previous version that was mailed, which was not the correct copy.



Village of Waterford Clerk





7. In this paragraph, “special zoning permission” includes but is not limited to the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.

8. The attorney general shall take all necessary action, upon the request of the department of health services or the department of children and families, to enforce compliance with this paragraph.

9. Not less than 11 months nor more than 13 months after the first licensure of an adult family home under s. 50.033 or of a community living arrangement and every year thereafter, the common council of a city in which a licensed adult family home or a community living arrangement is located may make a determination as to the effect of the adult family home or community living arrangement on the health, safety or welfare of the residents of the city. The determination shall be made according to the procedures provided under subd. 10. If the common council determines that the existence in the city of a licensed adult family home or a community living arrangement poses a threat to the health, safety or welfare of the residents of the city, the common council may order the adult family home or community living arrangement to cease operation unless special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the adult family home or community living arrangement. The adult family home or community living arrangement must cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.

9m. The fact that an individual with acquired immunodeficiency syndrome or a positive HIV test, as defined in s. 252.01 (2m), resides in a community living arrangement with a capacity for 8 or fewer persons may not be used under subd. 9. to assert or prove that the existence of the community living arrangement in the city poses a threat to the health, safety or welfare of the residents of the city.

10. A determination made under subd. 9. shall be made after a hearing before the common council. The city shall provide at least 30 days’ notice to the licensed adult family home or the community living arrangement that such a hearing will be held. At the hearing, the licensed adult family home or the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The common council may call witnesses and may issue subpoenas. All witnesses shall be sworn by the common council. The common council shall take notes of the testimony and shall mark and preserve all exhibits. The common council may, and upon request of the licensed adult family home or the community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the city. Within 20 days after the hearing, the common council shall mail or deliver to the licensed adult family home or the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

**(7a) EXTRATERRITORIAL ZONING.** The governing body of any city which has created a city plan commission under sub. (1) and has adopted a zoning ordinance under sub. (7) may exercise extraterritorial zoning power as set forth in this subsection. Insofar as applicable sub. (7) (am), (b), (c), (ea), (h) and (i) shall apply to extraterritorial zoning ordinances enacted under this subsection. This subsection shall also apply to the governing body of any village.

(a) Extraterritorial zoning jurisdiction means the unincorporated area within 3 miles of the corporate limits of a first, second or third class city, or 1 1/2 miles of a fourth class city or a village. The unincorporated area subject to extraterritorial zoning jurisdiction includes areas that are either surrounding or entirely surrounded by a single city or village. Wherever extraterritorial zoning jurisdictions overlap, the provisions of s. 66.0105 shall apply

and any subsequent alteration of the corporate limits of the city by annexation, detachment or consolidation proceedings shall not affect the dividing line as initially determined under s. 66.0105. The governing body of the city shall specify by resolution the description of the area to be zoned within its extraterritorial zoning jurisdiction sufficiently accurate to determine its location and such area shall be contiguous to the city. The boundary line of such area shall follow government lot or survey section or fractional section lines or public roads, but need not extend to the limits of the extraterritorial zoning jurisdiction. Within 15 days of the adoption of the resolution the governing body shall declare its intention to prepare a comprehensive zoning ordinance for all or part of its extraterritorial zoning jurisdiction by the publication of the resolution in a newspaper having general circulation in the area proposed to be zoned, as a class 1 notice, under ch. 985. The city clerk shall mail a certified copy of the resolution and a scale map reasonably showing the boundaries of the extraterritorial jurisdiction to the clerk of the county in which the extraterritorial jurisdiction area is located and to the town clerk of each town, any part of which is included in such area.

(am) 1. In this paragraph, “primary geographical area” means the area of a city or village that serves as the location of the primary seat of government and all territory that is contiguous to that area.

2. Unless otherwise agreed to by a town, the authority of a city or village to exercise jurisdiction outside of its adjacent outlying waters when acting under s. 30.745 (2), or outside of its boundaries or corporate limits when acting under this subsection or sub. (2), or under s. 66.0415 (1), 236.10 (1) (b) or (2), or 254.57, includes only town territory within the extraterritorial zoning jurisdiction of the city or village surrounding or included entirely within the primary geographical area of the city or village.

(b) The governing body may enact, without referring the matter to the plan commission, an interim zoning ordinance to preserve existing zoning in areas subject to a general zoning ordinance under s. 59.69, 60.61, or 60.62 and to preserve existing uses in areas not subject to a general zoning ordinance in all or part of the extraterritorial zoning jurisdiction while the comprehensive zoning plan is being prepared. Such ordinance may be enacted as is an ordinary ordinance but shall be effective for no longer than 18 months after its enactment, unless extended as provided in this paragraph. Within 15 days of its passage, the governing body of the city shall publish the ordinance in a newspaper having general circulation in the area proposed to be zoned as a class 1 notice, under ch. 985, or as a notice, as described under s. 62.11 (4) (c) 2., and the city clerk shall mail a certified copy of the ordinance to the clerk of the county in which the extraterritorial jurisdiction is located and to the clerk of each town affected by the interim zoning ordinance and shall file a copy of the ordinance with the city plan commission. The governing body of the city may extend the interim zoning ordinance for no longer than one year, upon the recommendation of the joint extraterritorial zoning committee established under par. (c). No other interim zoning ordinance shall be enacted affecting the same area or part thereof until 5 years after the date of the expiration of the interim zoning ordinance or the one year extension thereof. While the interim zoning ordinance is in effect, the governing body of the city may amend the districts and regulations of the ordinance according to the procedure set forth in par. (f).

(c) If the governing body of the city adopts a resolution under par. (a), it shall direct the plan commission to formulate tentative recommendations for the district plan and regulations within all or a part of the extraterritorial zoning jurisdiction as described in the resolution adopted under par. (a). When the plan commission is engaged in the preparation of such district plan and regulations, or amendments thereto, a joint extraterritorial zoning committee shall be established. Such joint committee shall consist of 3 citizen members of the plan commission, or 3 members of the plan commission designated by the mayor if there are no citizen members of the commission, and 3 town members from each town

**5 Updated 19–20 Wis. Stats.****MUNICIPAL LAW**

66.0111

eral department of labor, for the previous year or 2 percent, whichever is greater.

b. The fee is charged at the time that the inspection is actually performed.

3. Charges a fee for a subsequent reinspection of a residential rental property that is more than twice the fee charged for an initial reinspection.

4. Except as provided in this subdivision, requires that a rental property or rental unit be certified, registered, or licensed or requires that a residential rental property owner register or obtain a certification or license related to owning or managing the residential rental property. A city, village, town, or county may require that a rental unit or residential rental property owner be registered if the registration requires only one name of an owner or authorized contact person and an address, telephone number, and, if available, an electronic mail address or other information necessary to receive communications by other electronic means at which the person may be contacted. No city, village, town, or county, except a 1st class city, may charge a fee for registration under this subdivision except a one-time registration fee that reflects the actual costs of operating a registration program, but that does not exceed \$10 per building, and a one-time fee for the registration of a change of ownership or management of a building or change of contact information for a building that reflects the actual and direct costs of registration, but that does not exceed \$10 per building.

(f) No city, village, town, or county may impose an occupancy or transfer of tenancy fee on a rental unit.

(2m) If a city, village, town, or county has in effect an ordinance that authorizes the inspection of a rental property or rental unit upon a complaint from an inspector or other employee or elected official of the city, village, town, or county, the city, village, town, or county shall maintain for each inspection performed upon a complaint from an employee or official a record of the name of the person making the complaint, the nature of the complaint, and any inspection conducted upon the complaint.

(3) (a) If a city, village, town, or county has in effect on December 21, 2011, an ordinance that is inconsistent with sub. (2) (a) or (b), the ordinance does not apply and may not be enforced.

(b) If a city, village, town, or county has in effect on March 1, 2014, an ordinance that is inconsistent with sub. (2) (c) or (d), the ordinance does not apply and may not be enforced.

(c) If a city, village, town, or county has in effect on March 2, 2016, an ordinance that is inconsistent with sub. (2) (e) or (f), the ordinance does not apply and may not be enforced.

**History:** 2011 a. 108; 2013 a. 76; 2015 a. 176; 2017 a. 317.

Sub. (2) (d) 1. a. preempted a provision in an ordinance requiring landlords to notify tenants of city inspections under the city's inspection and registration program; it does not stop local governments from implementing rental housing inspection and registration programs as part of a housing code, let alone preclude other substantive housing code regulations. *Olson v. City of La Crosse*, 2015 WI App 67, 364 Wis. 2d 615, 869 N.W.2d 337, 15–0127.

**66.0105 Jurisdiction of overlapping extraterritorial powers.** The extraterritorial powers granted to cities and villages by statute, including ss. 30.745, 62.23 (2) and (7a), 66.0415, 236.10 and 254.57, may not be exercised within the corporate limits of another city or village. Wherever these statutory extraterritorial powers overlap, the jurisdiction over the overlapping area shall be divided on a line all points of which are equidistant from the boundaries of each municipality concerned so that not more than one municipality shall exercise power over any area.

**History:** 1981 c. 222 s. 2; 1993 a. 27; 1999 a. 150 s. 368; Stats. 1999 s. 66.0105.

**66.0107 Power of municipalities to prohibit criminal conduct.** (1) The board or council of any town, village or city may:

(a) Prohibit all forms of gambling and fraudulent devices and practices.

(b) Seize anything devised solely for gambling or found in actual use for gambling and destroy the device after a judicial

determination that it was used solely for gambling or found in actual use for gambling.

(bm) Enact and enforce an ordinance to prohibit the possession of marijuana, as defined in s. 961.01 (14), subject to the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the ordinance; except that if a complaint is issued regarding an allegation of possession of more than 25 grams of marijuana, or possession of any amount of marijuana following a conviction in this state for possession of marijuana, the subject of the complaint may not be prosecuted under this paragraph for the same action that is the subject of the complaint unless the charges are dismissed or the district attorney declines to prosecute the case.

(bn) Enact and enforce an ordinance to prohibit the possession of a controlled substance specified in s. 961.14 (4) (tb) and provide a forfeiture for a violation of the ordinance, except that if a complaint is issued regarding an allegation of possession of a controlled substance specified in s. 961.14 (4) (tb) following a conviction in this state for possession of a controlled substance, the subject of the complaint may not be prosecuted under this paragraph for the same action that is the subject of the complaint unless the charges are dismissed or the district attorney declines to prosecute the case.

(bp) Enact and enforce an ordinance to prohibit conduct that is the same as that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2) and provide a forfeiture for violation of the ordinance.

(2) Except as provided in sub. (3), nothing in this section may be construed to preclude cities, villages and towns from prohibiting conduct which is the same as or similar to that prohibited by chs. 941 to 948.

(3) The board or council of a city, village or town may not, by ordinance, prohibit conduct which is the same as or similar to conduct prohibited by s. 944.21.

**History:** 1973 c. 198; 1979 c. 131 s. 4; 1987 a. 332 s. 64; 1987 a. 416; 1989 a. 121, 276; 1993 a. 246; 1995 a. 353, 448; 1999 a. 150 ss. 151, 153; Stats. 1999 s. 66.0107; 2005 a. 116, ss. 2 to 4; 2011 a. 31; 2013 a. 293, 351; 2015 a. 195.

**66.0109 Penalties under county and municipal ordinances.** If a statute requires that the penalty under any county or municipal ordinance conform to the penalty provided by statute the ordinance may impose only a forfeiture and may provide for imprisonment if the forfeiture is not paid.

**History:** 1971 c. 278; 1999 a. 150 s. 272; Stats. 1999 s. 66.0109.

**66.0111 Bond or cash deposit under municipal ordinances.** (1) If a person is arrested for the violation of a city, village or town ordinance and the action is to be in circuit court, the chief of police or police officer designated by the chief, marshal or clerk of court may accept from the person a bond, in an amount not to exceed the maximum penalty for the violation, with sufficient sureties, or a cash deposit, for appearance in the court having jurisdiction of the offense. A receipt shall be issued for the bond or cash deposit.

(2) (a) If the person released fails to appear, personally or by an authorized attorney or agent, before the court at the time fixed for hearing the case, the bond and money deposited, or an amount that the court determines to be an adequate penalty, plus costs, including any applicable fees prescribed in ch. 814, may be declared forfeited by the court or may be ordered applied to the payment of any penalty which is imposed after an ex parte hearing, together with the costs. In either event, any surplus shall be refunded to the person who made the deposit.

(b) This subsection does not apply to violations of parking ordinances. Bond or cash deposit given for appearance to answer a charge under any parking ordinance may be forfeited in the manner determined by the governing body.

(3) This section shall not be construed as a limitation upon the general power of cities, villages and towns in all cases of alleged violations of city, village or town ordinances to authorize the acceptance of bonds or cash deposits or upon the general power to accept stipulations for forfeiture of bonds or deposits or pleas



Village of Rochester  
**Agenda Report**  
Planning Commission - Sep 28 2022

---

**Prepared For:**

Planning Commission

**Staff Contact:**

Betty Novy, Village Administrator

---

**Agenda Item:**

Presented for Review and Discussion: Ordinance #2022-7 "An Ordinance to Repeal and Recreate Section 36-53 and 36-56 of the Municipal Code of the Village of Rochester to Allow the Village Plan Commission to Grant or Deny Conditional Use Permits in the Shoreland-Wetland and Shoreland Zoning Districts"

---

**Recommended Action:**

**The Plan Commission may review and discuss proposed changes to the ordinance but should delay its recommendation until the October meeting.**

**Purpose/Nature of the Proposal:**

When Village ordinances were updated to delegate Conditional Use Permit approval authority to the Plan Commission, the shoreland use chapter was overlooked. Shoreland Conditional Use Permits are required for land disturbances within 300 feet of the ordinary high water mark of a navigable waterway when there is either: 1. filling or grading on slopes of more than 20%; 2. Filling or grading of more than 1,000 square feet on slopes of 12% to 20%; or 3. Filling or grading of more than 2,000 square feet on slopes less than 12%

The review and conditions applied to these permits are technical in nature making sure that all erosion control and water protection measures are in place. To be consistent with other practices, the Village Board directed the Village Attorney to draft an ordinance amendment to delegate Shoreland Conditional Use approval authority to the Village Plan Commission at its August 1st meeting. Ordinance 2022-7 is written to that affect.

**Legal Implications/Legislative Requirements:**

Village of Rochester Code Section 35-220 "Changes and Amendments" subsection D. "Recommendations" reads as follows: "The Village Plan Commission shall review all proposed changes and amendments within the corporate limits after signs have been posted and notice has been sent to abutting property owners as set forth in s. 35-240 and the public has been given the opportunity for input, and shall recommend that the petition be granted as requested, modified, or denied. *The recommendation shall be made at a meeting subsequent to the meeting at which the petition is first submitted, and shall be made in writing to the Village Board.*"

Section 35-240B.3. reads "No individual notice to property owners is required when the Village makes text changes to the Planning and Zoning Ordinance without changing the zoning designation of individual parcels. The Village shall provide all notices required by Wisconsin Statutes."

Section 36-58(A) requires that amendments to the Shoreland-Wetland ordinance be submitted to the Department of Natural Resources within five days of submission to the Plan Commission. The proposed ordinance was emailed to Kathleen Kramasz, Water Regulation and Zoning Specialist for the DNR on Thursday, September 22nd, for review and recommendations.

**Attachments:**

[Ordinance 2022-7 Shoreland Conditional Use Approval](#)

[CHAPTER 36 SHORELAND-WETLAND AND SHORELAND ZONING DISTRICTS](#)

ORDINANCE NO. 2022-7

**AN ORDINANCE TO REPEAL AND RECREATE SECTIONS 36-53 AND  
36-56 OF THE MUNICIPAL CODE OF THE VILLAGE OF ROCHESTER  
TO ALLOW THE VILLAGE PLAN COMMISSION TO GRANT OR DENY  
CONDITIONAL USE PERMITS IN THE SHORELAND-WETLAND AND  
SHORELAND ZONING DISTRICTS**

WHEREAS, Wisconsin Statutes Section 62.23(7)(de) allows a municipality to grant conditional use permits upon publishing a Class 2 notice and holding a public hearing on the application; and

WHEREAS, the Village Board of the Village of Rochester has delegated the authority of granting conditional use permits to the Village Plan Commission; and

WHEREAS, upon review of the Village Code by Village staff, Section 36-53 of the Village of Rochester Village Code still requires the Village Board to hold the public hearing and grant or deny conditional use permits in the Shoreland-Wetland and Shoreland Zoning Districts; and

WHEREAS, Village staff recommended updating the Village Code to create uniformity throughout the Code for the hearing and decision on conditional use permit applications; and

WHEREAS, this zoning amendment was initiated pursuant to Section 36-58 of the Village of Rochester Shoreland-Wetland Zoning Code; and

WHEREAS, a copy of the proposed text amendment was submitted to the Wisconsin Department of Natural Resources within five (5) days of the proposed amendment being submitted to the Village Plan Commission, as required by Section 36-58(A) of the Village of Rochester Shoreland-Wetland Zoning Code; and

WHEREAS, the matter was duly referred to the Village of Rochester Plan Commission for report and recommendation pursuant to Section 36-58(B) of the Village of Rochester Shoreland-Wetland Zoning Code, and the Village Plan Commission has reviewed the matter and offered its recommendation to the Village Board; and

WHEREAS, a duly noticed public hearing was conducted by the Village Board of the Village of Rochester on \_\_\_\_\_, 2022 as required by Section 36-58(B) of the Village of Rochester Shoreland-Wetland Zoning Code; and

WHEREAS, the Village Board of the Village of Rochester, upon recommendation from Village staff and Village Plan Commission, finds that updating Section 36-53 of the Village Code to allow the Village Plan Commission to hear and decide upon conditional use permit applications will be a benefit to the Village residents by creating a uniform process for all conditional use permit applications; and

WHEREAS, the Village Board finds that this change to the Village of Rochester Shoreland-Wetland Zoning Code is not a down zoning ordinance because it does not decrease the development density of land and it does not reduce the permitted uses of land, and



therefore the super majority requirement of Section 66.10015, Wisconsin Statutes, does not apply to this ordinance; and

WHEREAS, the Village Board for the Village of Rochester, Racine County, Wisconsin finds that the public necessity, convenience, general welfare and good zoning practice require the amendments to the Village Code described herein; and

WHEREAS, the Village Board of the Village of Rochester having determined that all procedural requirements and notice requirements have been satisfied, having given the matter due consideration, and having based its determination on the effect of the granting of such zoning change on the health, safety and welfare of the community, hereby determine that the procedural zoning change will not violate the spirit or intent of the Shoreland-Wetland Zoning Code for the Village of Rochester, will not be contrary to the public health, safety or general welfare of the Village of Rochester, and will not be hazardous, harmful, noxious, offensive and the change to the Shoreland-Wetland Zoning Code is consistent with the Village of Rochester Comprehensive Plan.

NOW, THEREFORE, the Village Board of the Village of Rochester, Racine County, Wisconsin DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 36 of the Village of Rochester Municipal Code entitled "Shoreland-Wetland and Shoreland Zoning Districts," Article 5 entitled "Administration," Section 36-53 entitled, "Conditional Use Permits," is hereby repealed and re-created as follows:

#### 36-53. CONDITIONAL USE PERMITS

A. Application. Any use listed as a conditional use in this Chapter shall be permitted only after an application has been submitted to the Zoning Administrator and a Conditional Use Permit has been granted by the [Plan Commission Village Board](#) after ~~recommendation received by the Plan Commission~~ following the procedures in this Chapter and in Chapter 35 of this Municipal Code.

B. Conditions. Upon consideration of the permit application and the standards applicable to the conditional uses designated in this Chapter, the [Plan Commission Village Board](#) shall attach such conditions to a Conditional Use Permit, in addition to those required elsewhere in this Chapter, as are necessary to further the purposes of this Chapter as listed in s. 36-2. Such conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; erosion controls; increased setbacks; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking areas and signs; and type of construction. To secure information upon which to base its determination, the Plan Commission ~~and Village Board~~ may require the applicant to furnish, in addition to the information required for a Zoning Permit, other pertinent information which is necessary to determine if the proposed use is consistent with the purpose of this Chapter.

SECTION 2: Chapter 36 of the Village of Rochester Municipal Code entitled "Shoreland-Wetland and Shoreland Zoning Districts," Article 5 entitled "Administration," Section 36-56 entitled "Plan Commission and Village Board" is here repealed, re-created, and re-titled as follows:

### 36-56. PLAN COMMISSION ~~AND VILLAGE BOARD~~

A. The Plan Commission appointed by the Village pursuant to Wis. Stat. s. 62.23(1) shall consider hold hearings, and make decisions on applications for Conditional Use Permits, ~~and forward its recommendations to the Village Board for hearing and decision.~~

#### B. Notice and Public Hearings.

1. Before making a decision on an application for a Conditional Use Permit, the ~~Plan Commission Village Board~~ shall, within a reasonable period of time, hold a public hearing. The ~~Plan Commission Board~~ shall give public notice of the hearing by publishing a class 1 notice under Wis. Stat. ch. 985 specifying the date, time and place of the hearing and the matters to come before the Plan Commission Board. At the public hearing, any party may present testimony in person, by agent or by attorney.
2. A copy of such notice shall be mailed to the parties in interest and the appropriate district office of the Department at least 10 days prior to all public hearings on issues involving Shoreland-Wetland Zoning or Shoreland Zoning.
3. The additional provisions for notice to neighbors set forth in Chapter 35 shall apply.

#### C. Decisions.

1. The final disposition of an application for a Conditional Use Permit before the ~~Village Board~~Plan Commission shall be in the form of a written decision, made within a reasonable time after the public hearing and signed by the ~~Village President~~Chairman of the Plan Commission.
2. Such decision shall state the specific facts which are the basis of the ~~Board~~Plan Commission's determination and shall either grant or deny the Conditional Use Permit.
3. A copy of such decision shall be mailed to the parties in interest and the appropriate district office of the Department within 10 days after the decision is issued.
4. If the ~~Plan Commission Board~~ grants the Conditional Use Permit, it shall direct the Zoning Administrator to issue the Permit, inclusive of the conditions thereto.

### SECTION 3: SEVERABILITY

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

### SECTION 4: CONTINUATION OF EXISTING PROVISIONS

The provisions of this ordinance, to the extent that they are substantively the same as those of the ordinances in force immediately prior to the enactment of this ordinance, are

intended as a continuation of such ordinances and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinances. In addition, the adoption of this ordinance shall not affect any action, prosecution or proceeding brought for the enforcement of any right or liability established, accrued or incurred under any legislative provision prior to the effective date of this ordinance for the time that such provision was in effect, and the repeal of any such provisions is stayed pending the final resolution of such actions, including appeals.

#### SECTION 5: EFFECTIVE DATE

This ordinance shall take effect on \_\_\_\_\_, 2022 after passage and posting and/or publication as provided by law.

PASSED AND ADOPTED by the Village Board of the Village of Rochester on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

VILLAGE OF ROCHESTER

\_\_\_\_\_  
Edward Chart, Village President

Attest:

\_\_\_\_\_  
Sandra Swan, Village Clerk

**ARTICLE 1 GENERAL****36-1. STATUTORY AUTHORIZATION**

This Chapter is adopted pursuant to the authorization in Wis. Stat. ss. 61.35, 61.351, 61.353, 87.30 and 281.31.

**36-2. FINDINGS OF FACT AND PURPOSE**

- A. Uncontrolled use of the shoreland-wetlands, the shorelands, and pollution of the navigable waters of the Village would adversely affect the public health, safety, convenience, and general welfare and impair the tax base.
- B. The Legislature of Wisconsin has delegated responsibility to all municipalities, as to shoreland-wetlands and shorelands, to:
1. Promote the public health, safety, convenience and general welfare;
  2. Maintain the storm and flood water storage capacity of wetlands;
  3. Prevent and control water pollution by preserving wetlands which filter or store sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
  4. Protect fish, their spawning grounds, other aquatic life and wildlife by preserving wetlands and other aquatic habitat;
  5. Prohibit certain uses detrimental to the shoreland-wetland area;
  6. Preserve shore cover and natural beauty by restricting the removal of natural shoreland cover and controlling shoreland-wetland excavation, filling and other earth moving activities;
  7. Further the maintenance of safe and healthful conditions through regulating building setbacks from waterways and preventing shoreline encroachment by structures; and
  8. Allowing Villages to regulate the shorelands through the zoning and subdivision control powers.

**36-3. COMPLIANCE**

- A. The regulations set forth in this Chapter are in addition to, not instead of, the regulations set forth in the other chapters of this Municipal Code. The zoning regulations present in other chapters for the land are referred to as the "underlying zoning" in this Chapter. If a particular zoning procedure is not included in this chapter, the applicable procedures in the other zoning chapters will apply.
- B. Shoreland-Wetland Zoning District. The use of wetlands and the alteration of wetlands within the shoreland area of the Village, the Shoreland-Wetland Zoning District, shall be in full compliance with the terms of this Chapter and other applicable local, state or federal regulations. (See s. 36-42 of this Chapter for the standards applicable to nonconforming uses and structures.) All permitted and conditional uses and development shall require the issuance of a Zoning Permit unless otherwise expressly excluded by a provision of this Chapter.
- C. Shoreland Zoning District. The use of any land or water, the size, shape and placement of lots, the use, size, type and location of structures on lots, the installation and maintenance of water supply and waste disposal facilities, the filling, grading, lagooning, dredging of any lands, the cutting of shoreland vegetation, and the subdivision of lots in the Shoreland District shall be in full compliance with the terms of this Chapter, this Code, and other applicable local, state or federal regulations. (See s. 36-43 for standards applicable to nonconforming uses and structures.) Uses, buildings, signs and other structures require a Zoning Permit, and may require a conditional use permit.
- D. Property owners are responsible for compliance with the terms of this Chapter.

**36-4 MUNICIPALITIES AND STATE AGENCIES REGULATED**

Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this Chapter and obtain all necessary permits. State agencies are required to comply if Wis. Stat. s. 13.48(13) applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when Wis. Stat. s. 30.2022 applies.

**36-5 ABROGATION AND GREATER RESTRICTIONS**

- A. This Chapter supersedes all the provisions of any zoning ordinance enacted under Wis. Stat. ss. 59.692, 61.35, 62.23 or 87.30 which relate to shorelands or shoreland-wetlands, except that where another Village zoning ordinance is more restrictive than this Chapter, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
- B. This Chapter is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this Chapter imposes greater restrictions, the provisions of this Chapter shall prevail.

**36-6. INTERPRETATION**

In their interpretation and application, the provisions of this Chapter shall be held to be minimum requirements and shall be liberally construed in favor of the Village and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this Chapter is required by a standard in Wis. Admin. Code ch. NR 117, and where the Chapter provision is unclear, the provision shall be interpreted in light of the applicable Wisconsin Administrative Code chapter NR 117 standards in effect on the date of the adoption of this Chapter or in effect on the date of the most recent text amendment to this Chapter. Where a provision of this Chapter is required by a standard in Wis. Stat. s. 61.353, and where the Chapter provision is unclear, the provision shall be interpreted in light of the applicable statutory standards in effect on the date of the application for a permit hereunder.

**36-7. SEVERABILITY**

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

**36-8. MAPS ADOPTED**

The following maps are hereby adopted and made part of this Chapter and are on file in the office of the Village Clerk:

- A. Wisconsin Wetland maps shown on the Wisconsin Department of Natural Resources (DNR) Surface Water Data Viewer at <http://dnr.wi.gov/topic/surfacewater/swdv/> (as may be amended from time to time) in effect on the date of the application for a permit under this Chapter.
- B. United States Geological Survey (USGS) 7.5-minute quadrangle maps that cover the Village of Rochester, i.e., Rochester, Burlington, Mukwonago and Waterford, in effect on the date of the application for a permit hereunder. The 2013 maps are on file in the office of the Village Clerk.
- C. Zoning Map titled "Zoning Map Village of Rochester, Wisconsin" in effect on the date of application for a permit hereunder.
- D. All of the Floodplain Maps adopted in Chapter 37, s. 37-1.E.2.

## ARTICLE 2 SHORELAND-WETLAND DISTRICT.

### 36-21. APPLICABILITY OF REGULATIONS

The Shoreland-Wetland Zoning regulations in this Chapter are applicable to the entirety of the Village of Rochester.

### 36-22. SHORELAND-WETLAND DISTRICT BOUNDARIES.

The Shoreland-Wetland Zoning District includes all wetlands and portions of wetlands in the Village which are five acres or more and are shown on the Wisconsin Department of Natural Resources (DNR) Surface Water Data Viewer that has been adopted and made a part of this Chapter and which are:

A. Within 1,000 feet of the ordinary high-water mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in the Village shall be presumed to be navigable if they are shown on the United States Geological Survey quadrangle maps or other zoning base maps that have been incorporated by reference and made a part of this Chapter.

B. Within 300 feet of the ordinary high-water mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey quadrangle maps or other maps which have been incorporated by reference and made a part of this Chapter. Floodplain zoning maps adopted in Chapter 37 shall be used to determine the extent of floodplain areas.

C. Determinations of navigability and ordinary high-water mark location shall initially be made by the land owner. When questions arise, the land owner shall contact the appropriate district office of the DNR for a final determination of navigability or ordinary high-water mark.

D. When an apparent discrepancy exists between the shoreland-wetland district boundary shown on the official maps and actual field conditions, the Zoning Administrator shall contact the appropriate district office of the Department to determine if the shoreland-wetland district boundary, as mapped, is in error. If Department staff concur in writing with the Zoning Administrator that a particular area was incorrectly mapped as a wetland, the Zoning Administrator shall have the authority to immediately grant or deny a Zoning Permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors or acknowledge exempted wetlands designated in subsections E. and F. of this section, the land owner shall be responsible for initiating a map amendment within a reasonable period.

E. Filled Wetlands. Wetlands which were filled prior to July 26, 1988 in a manner which affects their wetland characteristics to the extent that the area can no longer be defined as wetland, are not subject to this Chapter.

F. Wetlands Landward of a Bulkhead Line. Wetlands located between the original ordinary high water mark and a bulkhead line established prior to May 7, 1982 under Wis. Stat. s. 30.11 are not subject to this Chapter.

### 36-23. USES.

A. Permitted Uses. The following uses are permitted in the Shoreland-Wetland District subject to the provisions of Wis. Stat. chs. 30 and 31, and the provisions of other local, state and federal laws, if applicable. These activities and uses do not require the issuance of a Conditional Use Permit, provided that the use is allowed in the underlying zoning district:

1. Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating;
2. The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops and that does not involve filling, flooding, draining, dredging, ditching, tiling or excavating;
3. The practice of silviculture, including the planting, thinning and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done except as required for:
  - a. Temporary water level stabilization measures to alleviate abnormally wet or dry conditions which would have an adverse impact on the conduct of silvicultural activities if not corrected; or
  - b. The construction and maintenance of roads necessary to conduct silvicultural activities, unless allowed as a conditional use under section B.
4. The pasturing of livestock and the construction and maintenance of fences, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done, except limited filling and excavating necessary for the construction and maintenance of fences.
5. The cultivation of agricultural crops if cultivation can be accomplished without filling, flooding, or artificial drainage of the wetland through ditching, tiling, dredging or excavating except for:
  - a. Flooding, dike and dam construction, and ditching for the purpose of growing and harvesting cranberries;
  - b. The maintenance and repair of existing farm drainage ditches, where permissible under Wis. Stat. s. 30.20, or of other existing agricultural drainage systems (such as tiling) to restore the functional drainage of existing agricultural lands, including the minimum amount of filling necessary to dispose of dredged spoil, provided that the filling is permissible under Wis. Stat. ch. 30., and that dredged spoil is placed on existing spoil banks where possible; or
  - c. The construction and maintenance of roads necessary for agricultural cultivation, if permitted as a conditional use under section B.
6. The construction and maintenance of duck blinds provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.
7. The construction and maintenance of piers, docks, walkways, observation decks and trail bridges, provided that no filling, flooding, dredging, draining, ditching, tiling or excavating is done, except limited filling and excavating necessary for the installation of pilings.
8. The installation and maintenance of sealed tiles for the purpose of draining lands outside the shoreland-wetland zoning district provided that such installation or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the shoreland-wetland listed under s. 36-58.C..
9. The maintenance, repair, replacement, and reconstruction of existing county, city and village highways and bridges.
10. Note: Activities affecting certain waters of the state which are carried out under the direction and supervision of the department of transportation in connection with highway and bridge design, location, construction, reconstruction, maintenance and repair are not subject to the prohibitions or approval requirements specified under Wis. Stat. s.61.351 if they are carried out in accordance with interdepartmental liaison procedures established by the department of natural resources and the department of transportation for the purpose of minimizing the adverse environmental impact, if any, of the activity. However, at the earliest practical time prior to the commencement of these activities, the department of transportation is required to notify the department of natural resources of the location, nature and extent of the proposed work that may affect the waters of the state. See Wis. Admin. Code s. NR 117.05(2)(n).

B. Conditional Uses. These uses are allowed upon the issuance of a Conditional Use permit:

1. The construction and maintenance of nonresidential buildings provided that:
  - a. The building is used solely in conjunction with the raising of waterfowl, minnows or other wetland or aquatic animals, or used solely for some other purpose which is compatible with wetland preservation;
  - b. The building cannot as a practical matter be located outside the wetland;

- c. The building does not exceed 500 square feet in size; and
  - d. No filling, flooding, draining, dredging, ditching, tiling or excavating is done, except limited filling and excavating necessary to provide structural support for the building.
2. The establishment and development of public and private parks and recreation areas, outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game farms and wildlife preserves, and public boat launching ramps, provided that:
- a. No filling or excavating is done except for limited filling and excavating necessary for the development of boat launching ramps, swimming beaches or the construction of park shelters or similar structures.
  - b. Any private development allowed under this paragraph shall be used exclusively for the permitted purpose.
  - c. The construction and maintenance of roads necessary for the uses permitted under this paragraph may be permitted if the requirements of section B.4. are met.
  - d. Ditching, excavating, dredging, dike and dam construction may be allowed in game refuges and closed areas, fish and wildlife habitat improvement projects, game farms, and wildlife areas provided that they are done for the purpose of improving wildlife habitat or to otherwise enhance wetland values.
3. The construction and maintenance of electric and telephone transmission lines and water, gas and sewer distribution lines, and related facilities, provided that:
- a. Such lines cannot as a practical matter be located outside the wetland; and
  - b. Any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the wetland listed under section 36-58.C..
  - c. Note: Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under Wis. Stat. s. 196.491 are not subject to the requirements of this Chapter.
4. The construction and maintenance of roads which are necessary for the continuity of the Village street system, necessary for the provision of essential utility and emergency services, or necessary to provide access to uses permitted under sections A. and B., provided that:
- a. The road cannot, as a practical matter, be located outside of the wetland;
  - b. The road is designed and constructed to minimize the adverse impact upon the natural functions of the wetland listed under section 36-58.C.;
  - c. The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;
  - d. Road construction activities are carried out in the immediate area of the roadbed only; and
  - e. Any filling, flooding, draining, dredging, ditching, tiling or excavating that is done must be necessary for the construction or maintenance of the road.
5. The construction and maintenance of railroad lines provided that:
- a. Such lines cannot as a practical matter be located outside the wetland; and
  - b. Any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the wetland listed under s. 36-58.C.
6. The maintenance and repair of existing non-agricultural drainage ditches, where permissible under Wis. Stat. s. 30.20, or of other existing non-agricultural drainage systems (such as tiling) to restore pre-existing levels of drainage, including the minimum amount of filling necessary to dispose of dredged spoil, provided that the filling is permissible under Wis. Stat. ch. 30, and that dredged spoil is placed on existing spoil banks where possible.
- C. Prohibited Uses.
- 1. Any use not listed in this Section is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this Chapter in accordance with section 36-58.
  - 2. The use of a boathouse for human habitation and the construction or placement of a boathouse or fixed houseboat below the ordinary high-water mark of any navigable waters are prohibited.

## **ARTICLE 3 SHORELAND ZONING DISTRICT.**

### **36-31. APPLICABILITY OF SHORELAND DISTRICT REGULATIONS**

The Shoreland Zoning District regulations do not apply to the lands lying within the corporate boundaries of the Village of Rochester as it existed on May 7, 1982 which are excluded from the Shoreland Zoning regulations of this Chapter and are shown in Appendix A to this Chapter. The remainder of the Village is subject to the Shoreland regulations set forth in this Chapter.

### **36-32. DISTRICT BOUNDARIES**

**District Boundaries.** The Shoreland District areas regulated by this ordinance shall include all the lands (referred to herein as shorelands) in the Village of Rochester which are not located in the area of land shown in Appendix A, and legally described as the Corporate Limits of the Village of Rochester as the Village existed on December 12, 1977 on file with the Village Clerk and the State of Wisconsin Secretary of State, and are:

- A. Within 1,000 feet of the ordinary highwater mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources Surface Water Data viewer available on the DNR website, or are shown on United States Geological Survey quadrangle maps or other zoning base maps.
- B. Within 300 feet of the ordinary highwater mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as continuous waterways or intermittent waterways on United States Geological Survey quadrangle maps. Flood hazard boundary maps, flood insurance rate maps, flood boundary-floodway maps, county soil survey maps or other existing county floodplain zoning maps shall be used to delineate floodplain areas.
- C. Determinations of navigability and ordinary highwater mark location shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the appropriate district office of the Department for a final determination of navigability or ordinary highwater mark.
- D. Pursuant to Wis. Stat. s. 61.353(7), this Shoreland Zoning District does not apply to lands adjacent to an artificially constructed drainage ditch, pond, or retention basin if the drainage ditch, pond or retention basin is not hydrologically connected to a natural navigable water body.

### **36-33. EFFECT OF EXISTING LAND DIVISION, SANITARY, ZONING AND OTHER REGULATIONS.**

The lands within the Shoreland Zoning District are subject to all applicable provisions of this Municipal Code. If the provisions of this Chapter are more restrictive than other regulations in the Code, the provisions of this Chapter shall apply. If land subject to this Chapter is also regulated by Chapter 37, Floodplain Zoning, the more restrictive uses, area and other regulations of Chapter 37 apply.

### **36-34. SETBACKS FROM THE WATER; LOT COVERAGE.**



A. Principal Building Setbacks.

1. All principal buildings shall be set back at least 50 feet from the ordinary high-water mark.
2. Adjustment of Shore Yards. A setback less than that required by subsection A.1. may be allowed if all of the following apply:
  - a. The principal building is constructed or placed on a lot or parcel of land that is immediately adjacent on each side to a lot or parcel of land containing a principal building; and
  - b. The principal building is constructed or placed within a distance equal to the average setback of the principal building on the adjacent lots or 35 feet from the ordinary high-water mark, whichever distance is greater.

B. Boathouses. Boathouses accessory to permitted and conditional uses may be located within a shoreyard, but:

1. Boathouses shall not be closer than 20 feet to the average annual high water elevation of a stream, lake, river, pond or wetland; shall not exceed one boathouse per shoreyard lot; shall not exceed 15 feet in height above the ordinary high water mark; shall not exceed 250 square feet in horizontal area covered; and shall not be closer than 15 feet to any side lot line. In no case, however, shall boathouses be allowed to project beyond the shoreline. Boathouses shall be constructed in such a manner as to orient the main opening of the boat house toward the body of water and shall be used strictly for the storage of boats and water-related recreational accessories. The use of a boat house for human habitation is prohibited. No plumbing, heating or cooking facilities may be provided in or for a boathouse.

2. Boathouses shall not be located in the vegetative buffer zone required in s.36-35.

C. Other Accessory Buildings. One accessory building may be placed in each shoreyard, but:

1. Shall not be placed in the vegetative buffer zone required in s.36-35;
2. Shall not be placed closer than 35 feet to the average annual high water mark;
3. Shall be limited in size to 200 square feet or less in area (except uncovered pools), must be at least ten feet from the principal structure, must be at least three feet from any side lot line, may not be used for human habitation or animal shelter, and may not be greater than fifteen feet in height;

D. Accessory structures meeting the size requirements of the underlying zoning district and the provisions for accessory structures in Chapter 35 may be placed in side and street yards provided that the setbacks for those yards are met.

E. Lot Coverage. Lots should be configured to minimize the amount of impervious surfaces. Maximum lot coverage equals 30 percent (includes buildings and other impervious surfaces).

F. Pyramiding. No pyramiding is allowed on any lands fronting a public body of water except as may be specifically permitted accessory to a marina or resort or which may be allowed under the terms of a conditional use permit or which may be approved as part of a subdivisions plat review.

**36-35. VEGETATIVE BUFFER ZONE.**

Pursuant to Wis. Stat. s. 61.353(3), the landowner must maintain a vegetative buffer zone, as follows:

A. A person who owns shoreland property that contains vegetation must maintain that vegetation in a vegetative buffer zone along the entire shoreline of the property and extending 35 feet inland from the ordinary high-water mark of the navigable water, except as provided in subsection B.

B. If the vegetation in a vegetative buffer zone contains invasive species or dead or diseased vegetation, the owner of the shoreland property may remove the vegetation, except that if the owner removes all of the vegetation in the vegetative buffer zone, the owner shall establish a vegetative buffer zone with new vegetation.

C. A person who is required to maintain or establish a vegetative buffer zone under subsection. A. may remove all of the vegetation in a part of that zone in order to establish a viewing or access corridor that is no greater than 30 feet wide for every 100 feet of shoreline frontage.

**36-36. ACTIVITIES AND USES REQUIRING A SHORELAND CONTRACT OR SHORELAND CONDITIONAL USE PERMIT.**

A. Zoning Administrator Review of Application. The uses and/or activities set forth in this section may be conditional uses requiring review, public hearing, and approval by the Plan Commission, or may be permitted by the Zoning Administrator with a Shoreland Contract, subject to the provisions of this section.

1. The Zoning Administrator may approve shoreland conditional use permit applications under this section without a public hearing provided that the applicant agrees to sign a contract setting forth the methods for eliminating erosion, sedimentation, and pollution.
2. The Zoning Administrator may request technical assistance from the Village Engineer, Department of Public Works, or other Village officers, departments, Commissions or Boards in reviewing a shoreland conditional use permit application prior to setting forth the contractual provisions. Such contractual provisions shall be in compliance with the standards set forth in this section.
3. The applicant may request a public hearing if he or she does not agree with the provisions of the contract or feels the public hearing is in the applicant's best interest.
4. The Zoning Administrator may require a formal conditional use public hearing where it is deemed that the subject land may be susceptible to flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, unfavorable topography, low bearing strength, erosion or any other feature likely to be harmful to the sensitive environment of the shoreland areas, or to the public interest of the Village.

B. Earth Moving Activities. Earth movements and soil disturbance activities such as grading, topsoil removal, filling, road cutting, construction, altering, or enlargement of waterways, removal of stream or lakebed material, excavation, channel clearing, ditching, dredging, lagooning, and soil and water conservation structures may be conditional uses requiring review, public hearing and approval by the Plan Commission or may be subject to review and approval by the Zoning Administrator and entry into a Shoreland Contract in accordance with subsection A. of this section in addition to the permit required from the state agency having jurisdiction under Wis. Stat. ch. 30.

1. Only filling, grading, lagooning, dredging, ditching or excavating that is done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat may be permitted in the shoreland area.
2. A state or federal permit may be required, in addition to a permit under this chapter, if state or federal laws are applicable to the filling, grading, lagooning, dredging, ditching or excavating that is proposed.
3. Earth movements such as grading, topsoil removal, stream course changing, road cutting, waterway construction or enlargement, removal of stream or lake bed materials, excavation, channel clearing, ditching, dredging, lagooning, and soil and water conservation structures, may be permitted provided that such uses are so regulated as to prevent erosion and sedimentation and to least disturb the natural fauna, flora, watercourse, water regimen, and topography.
4. The Plan Commission or the Zoning Administrator shall request a review of such earth movement by the state district fish and game managers and a review of each such cutting and clearing from the state district forester and await their recommendations before taking final action, but not to exceed 60 days.
5. A copy of the Plan Commission's or the Zoning Administrator's decision on such application shall be forwarded to the department of natural resources within ten days of such decision.
6. General Standards. Filling, grading, lagooning, dredging, ditching or excavating which does not require a conditional use permit under subsection 7 may be permitted in the shoreland area provided that:

- a. It is done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.
  - b. All applicable federal, state and local authority is obtained in addition to a conditional use permit or contract under this Chapter.
  - c. Any fill placed in the shoreland area is protected against erosion by the use of riprap, vegetative cover or a bulkhead.
7. Conditional use Permit Required. Except as provided in subsection 8, a conditional use permit is required:
- a. For any filling or grading of any area which is within 300 feet landward of the ordinary highwater mark of navigable water and which has surface drainage toward the water and on which there is either:
    - (1) Any filling or grading on slopes of more than 20%.
    - (2) Filling or grading of more than 1,000 sq. ft. on slopes of 12%- 20%.
    - (3) Filling or grading of more than 2,000 sq. ft. on slopes less than 12%.
  - b. For any construction or dredging commenced on any artificial waterway, canal, ditch, lagoon, pond, lake or similar waterway which is within 300 feet landward of the ordinary highwater mark of a navigable body of water or where the purpose is the ultimate connection with a navigable body of water.
8. Soil Conservation Practices and Agricultural Drainage Maintenance.
- a. Soil conservation practices such as tiled terraces, runoff diversions and grassed waterways used for erosion control shall not require a Conditional use Permit under subsection 7. when designed and constructed to Soil Conservation Service technical standards.
  - b. The maintenance of existing agricultural drainage systems shall be permitted in conformity with the following construction standards:
    - 1. The maintenance dredging of farm drainage ditches is limited to reestablishing the original ditch cross section unless a conditional use permit under subsection 7. is obtained.
    - 2. Ditch banks shall be constructed at a slope of 2 horizontal to 1 vertical (50% grade) or flatter.
    - 3. Ditch banks shall be maintained in a sod cover and free of woody vegetation.
    - 4. A ten foot wide buffer strip of untilled, ungrazed sod cover shall be maintained adjacent to the ditch bank.
9. Conditional Use Permit Conditions. In granting a conditional use permit under subsection 7., the Plan Commission shall attach the following conditions, where appropriate, in addition to those provisions specified in other sections.
- a. The smallest amount of bare ground shall be exposed for as short a time as feasible.
  - b. Temporary ground cover (such as mulch or jute netting) shall be used and permanent vegetative cover shall be established.
  - c. Diversion berms or bales, silting basins, terraces, filter fabric fencing, and other methods shall be used to prevent erosion.
  - d. Lagoons shall be constructed to avoid fish trap conditions.
  - e. Fill shall be stabilized according to accepted engineering standards.
  - f. Filling shall comply with Chapter 37, Floodplain Zoning, and shall not restrict a floodway or destroy the flood storage capacity of a floodplain.
  - g. Channels or artificial watercourses shall be constructed with side slopes of two units horizontal distance to one unit vertical or flatter which shall be promptly vegetated, unless bulkheads or riprap are provided.

## **ARTICLE 4 NONCONFORMING USES AND STRUCTURES**

### **36-41. NONCONFORMING USES**

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

- A. If a nonconforming use is discontinued for twelve consecutive months, any future use of the building, structure or property shall conform to this Chapter.
- B. Any legal nonconforming use of property that does not involve the use of a structure which existed at the time of the adoption or subsequent amendment of this Chapter may be continued although such use does not conform with the provisions of the Chapter, however, such nonconforming use may not be extended.
- C. The maintenance and repair of nonconforming boathouses which extend beyond the ordinary high-water mark of any navigable waters shall be required to comply with Wis. Stat. s. 30.121.
- D. Uses which are nuisances shall not be permitted to continue as nonconforming uses.
- E. Except as otherwise set forth by law, as set forth in Wis. Stat. s. 62.23(7)(h), the total structural repairs or alterations in a building, premises, structure, or fixture that does not conform to the use provisions of this Chapter shall not during its life exceed 50 percent of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use. If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to this Chapter.

### **36-42. NONCONFORMING STRUCTURES IN THE SHORELAND-WETLAND DISTRICT.**

Repair and expansion of existing structures are permitted. Notwithstanding Wis. Stat. s. 62.23(7)(h), the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure in existence on the effective date of this Chapter or any environmental control facility in existence on the effective date of this Chapter is permitted. The provisions of Chapter 37, Floodplain Zoning are applicable and additional restrictions may apply.

### **36-43 NONCONFORMING STRUCTURES IN THE SHORELAND DISTRICT.**

- A. Maintenance and Repair.
  - 1. The maintenance and repair of nonconforming boathouses that extend waterward beyond the ordinary highwater mark of any navigable waters shall comply with the requirements of Wis. Stat. s. 30.121
  - 2. Maintenance and repair of nonconforming principal structure. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under s. 36-34 may be maintained and repaired within its existing building envelope. Maintenance and repair includes such activities as interior remodeling, plumbing, insulation, and replacement of windows, doors, siding, or roof.
- B. Vertical expansion of nonconforming principal structure. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under s. 36-34 may be expanded vertically, provided that all of the following requirements are met:
  - 1. The use of the structure is a permitted or conditional use in the underlying district.
  - 2. The existing principal structure is at least 35 feet from the ordinary high-water mark.



3. Vertical expansion is limited to the height of 35 feet, provided that a vertical expansion will not be permitted if it will block sunlight to a neighboring property. See s. 35-3.

C. Expansion of nonconforming principal structure beyond setback. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under s. 36-34 may be expanded horizontally or landward provided that the expanded area meets the building setback requirements in s. 36-34 and that all other provisions of the shoreland requirements ordinance are met

D. Replacement or relocation of nonconforming principal structure. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under s. 36-34 may be replaced or relocated on the property provided all of the following requirements are met:

1. The use of the structure is a permitted or conditional use in the underlying district.
2. The existing principal structure is at least 35 feet from the ordinary high-water mark.
3. No portion of the replaced or relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.
4. The Village determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for replacement or relocation that will result in compliance with the shoreland setback requirement in s. 36-34.

#### **36-44. CERTAIN STRUCTURES MAY BE REPLACED, REPAIRED AND MAINTAINED.**

A. Pursuant to Wis. Stat. s. 62.23(7)(hc), nonconforming structures that are destroyed by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation on or after March 2, 2006 may be restored to the size (or a larger size if necessary to comply with state or federal regulations), location and use that it had immediately before the damage or destruction occurred.

B. Repair and maintenance of certain nonconforming structures.

1. In this paragraph:

"Development regulations" means the part of this chapter that applies to elements including setback, height, lot coverage, and side yard.

"Nonconforming structure" means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in this Chapter.

2. Pursuant to Wis. Stat. s. 62.23(7)(hb), this Chapter does not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.

### **ARTICLE 5 ADMINISTRATION**

#### **36-50. ZONING ADMINISTRATOR**

The appointed Zoning Administrator shall administer and enforce this Chapter. Where a statute or administrative code referenced in this Chapter sets forth duties to be performed by a county, the Village Zoning Administrator shall be responsible for undertaking those duties. The Zoning Administrator shall have the following duties and powers:

- A. Advise applicants as to the provisions of this Chapter and assist them in preparing permit applications and appeal forms.
- B. Issue permits and certificates of compliance and inspect properties for compliance with this Chapter.
- C. Keep records of all permits issued, inspections made, work approved and other official actions. The Zoning Administrator, together with the Village Clerk, shall ensure that there is a record of all proceedings before the Plan Commission and Zoning Board of Appeals, copies of all exhibits, and records of all official actions.
- D. Have access to any structure or premises between the hours of 8 a.m. and 6 p.m. for the purpose of performing the duties set forth in this Chapter.
- E. Together with the Village Clerk, send written notice to the appropriate office of the DNR at least ten days prior to hearings on conditional use permits, variances, appeals for map or text interpretations of the provisions of this Chapter, and map or text amendments to the shoreland- wetland zoning regulations.
- F. Submit copies of decisions on variances, conditional use permits, appeals for a map or text interpretation, and map or text amendments within 10 days after they are granted or denied, to the appropriate district office of the Department.
- G. Together with the Village Engineer and landowner, ensure that zoning district boundary amendments are appropriately mapped.
- H. Investigate and report violations of this Chapter to the Plan Commission, law enforcement agency, and Village attorney.

#### **36-51. ZONING PERMITS.**

A. When Required. Unless another section of this Chapter specifically exempts certain types of development from this requirement, a Zoning Permit shall be obtained from the Zoning Administrator before any new development, as defined in s. 36-60 of this Chapter, or any change in the use of an existing building or structure is initiated. Also see Chapter 35.

B. Application. An application for a Zoning Permit shall be made to the Zoning Administrator upon forms furnished by the Village and shall include, for the purpose of proper enforcement of these regulations, the following information:

1. General Information.
  - a. Name, address, and telephone number of applicant, property owner and contractor, where applicable.
  - b. Legal description of the property and a general description of the proposed use or development.
  - c. Whether or not a private water supply or sewage system is to be installed.
2. Site Development Plan. The site development plan shall be submitted as a part of the permit application and shall contain the following information drawn to scale:
  - a. Dimensions and area of the lot;
  - b. Location of any structures with distances measured from the lot lines and center line of all abutting streets or highways;
  - c. Description of any existing or proposed on-site sewage systems or private water supply systems;
  - d. Location of the ordinary high-water mark of any abutting navigable waterways;
  - e. Boundaries of all wetlands;
  - f. Existing and proposed topographic and drainage features and vegetative cover;
  - g. Location of floodplain and floodway limits on the property as determined from floodplain zoning maps;
  - h. Location of existing or future access roads; and

- i. Specifications and dimensions for areas of proposed wetland alteration.

B. Expiration. All permits issued under the authority of this Chapter shall expire at the same time as the building permit issued by the Building Inspector under Chapter 11. Certificates of Compliance, and Zoning Permits for uses that do not involve building permits, shall not expire but shall be automatically void if a change is made without application for an amended or new Certificate or Zoning Permit.

C. Regular Inspections. The Zoning Administrator shall inspect the permitted work as the work progresses to ensure conformity of the finished building, structure or other development with the terms of this Chapter and the permit issued.

#### **36-52. CERTIFICATES OF COMPLIANCE**

A. Except where no Zoning Permit or Conditional Use Permit is required under this Chapter or any other Chapter of this Municipal Code, no land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, rebuilt or replaced shall be occupied, until a certificate of compliance is issued by the Zoning Administrator subject to the following provisions:

1. The certificate of compliance shall show that the building or premises or part thereof, and the proposed use thereof, conform to the provisions of this Chapter.

2. Application for such certificate shall be concurrent with the application for a zoning or conditional use permit.

3. The certificate of compliance shall be issued within 10 days after notification of the completion of the work specified in the zoning or conditional use permit, providing the building or premises and proposed use thereof conform with all the provisions of this Chapter.

B. The Zoning Administrator may issue a temporary certificate of compliance for a building, premises or part thereof pursuant to rules and regulations established by the Village Board.

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

D. The Zoning Administrator may require the submission of an as-built survey prior to the issuance of the certificate of compliance.

#### **36-53. CONDITIONAL USE PERMITS**

A. Application. Any use listed as a conditional use in this Chapter shall be permitted only after an application has been submitted to the Zoning Administrator and a Conditional Use Permit has been granted by the Village Board after recommendation received by the Plan Commission following the procedures in this Chapter and in Chapter 35 of this Municipal Code.

B. Conditions. Upon consideration of the permit application and the standards applicable to the conditional uses designated in this Chapter, the Village Board shall attach such conditions to a Conditional Use Permit, in addition to those required elsewhere in this Chapter, as are necessary to further the purposes of this Chapter as listed in s. 36-2. Such conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; erosion controls; increased setbacks; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking areas and signs; and type of construction. To secure information upon which to base its determination, the Plan Commission and Village Board may require the applicant to furnish, in addition to the information required for a Zoning Permit, other pertinent information which is necessary to determine if the proposed use is consistent with the purpose of this Chapter.

#### **36-54. FEES**

The Village Board may, by resolution, adopt fees for permits required under this Chapter. See s35-6. All of the fees adopted inChapter 35 shall be applicable hereunder.

#### **36-55. RECORDING**

Where a Zoning Permit or Conditional Use Permit is approved, an appropriate record shall be made by the Zoning Administrator of the land use and structures permitted.

#### **36-56. PLAN COMMISSION AND VILLAGE BOARD**

A. The Plan Commission appointed by the Village pursuant to Wis. Stat. s. 62.23(1) shall consider applications for Conditional Use Permits and forward its recommendations to the Village Board for hearing and decision.

B. Notice and Public Hearings.

1. Before making a decision on an application for a Conditional Use Permit, the Village Board shall, within a reasonable period of time, hold a public hearing. The Board shall give public notice of the hearing by publishing a class 1 notice under Wis. Stat. ch. 985 specifying the date, time and place of the hearing and the matters to come before the Board. At the public hearing, any party may present testimony in person, by agent or by attorney.

2. A copy of such notice shall be mailed to the parties in interest and the appropriate district office of the Department at least 10 days prior to all public hearings on issues involving Shoreland-Wetland Zoning or Shoreland Zoning.

3. The additional provisions for notice to neighbors set forth inChapter 35 shall apply.

C. Decisions.

1. The final disposition of an application for a Conditional Use Permit before the Village Board shall be in the form of a written decision, made within a reasonable time after the public hearing and signed by the Village President.

2. Such decision shall state the specific facts which are the basis of the Board's determination and shall either grant or deny the Conditional Use Permit.

3. A copy of such decision shall be mailed to the parties in interest and the appropriate district office of the Department within 10 days after the decision is issued.

4. If the Board grants the Conditional Use Permit, it shall direct the Zoning Administrator to issue the Permit, inclusive of the conditions thereto.

#### **36-57. BOARD OF APPEALS**

The Zoning Board of Appeals appointed by the Village pursuant to Wis. Stat. s. 62.23(7)(e):

A. Shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this Chapter and may perform any other act authorized under Wis. Stat. s. 62.23(7)(e) pursuant to the provisions of s. 35-210.

B. May authorize upon appeal a variance from the dimensional standards of this Chapter where an applicant convincingly demonstrates:

1. That literal enforcement of the terms of the Chapter will result in unnecessary hardship for the applicant.

2. That the hardship is due to special conditions unique to the property; and is not self- created or based solely on economic gain or loss;

3. That such variance is not contrary to the public interest as expressed by the purpose of this Chapter; and
4. That such variance will not grant or increase any use of property which is prohibited in the zoning district.

C. Appeals to the Board. Appeals to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the community affected by any order, requirement, decision, or determination of the Zoning Administrator or other administrative official. Such appeals shall be taken within a reasonable time, as provided by the rules of the Board by filing with the official whose decision is in question, and with the Board of Appeals, a notice of appeal specifying the reasons for the appeal. The Zoning Administrator or other official whose decision is in question shall transmit to the Board all the papers constituting the record on the matter appealed.

D. Public Hearings.

1. Before making a decision on an appeal, the Board of Appeals shall, within a reasonable period of time, hold a public hearing. The Board shall give public notice of the hearing by publishing a class 2 notice under Wis. Stat. ch. 985 specifying the date, time and place of the hearing and the matters to come before the Board. At the public hearing, any party may present testimony in person, by agent or by attorney.

2. A copy of such notice shall be mailed to the parties in interest and the appropriate district office of the Department at least 10 days prior to all public hearings on issues involving shoreland-wetland zoning.

E. Decisions.

1. The final disposition of an appeal before the Board of Appeals shall be in the form of a written decision, made within a reasonable time after the public hearing and signed by the Board chairperson. Such decision shall state the specific facts which are the basis of the Board's determination and shall either affirm, reverse, or modify the order, requirement, decision or determination appealed, in whole or in part, or dismiss the appeal for lack of jurisdiction or prosecution.

2. A copy of such decision shall be mailed to the parties in interest and the appropriate district office of the Department within 10 days after the decision is issued.

### **36-58. AMENDING SHORELAND-WETLAND ZONING REGULATIONS**

The Village Board may alter, supplement or change the district boundaries and the regulations contained in this Chapter in accordance with the requirements of Wis. Stat. s. 62.23(7)(d)2., Wis. Admin. Code s. NR 117.05(4), and the following

A. A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the Department within five days of the submission of the proposed amendment to the Village Plan Commission;

B. All proposed text and map amendments to the shoreland-wetland zoning regulations shall be referred to the Village Plan Commission, and a public hearing shall be held before the Village Board after class 2 notice as required by Wis. Stat. s. 62.23(7)(d)2. The appropriate district office of the Department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.

C. In order to ensure that this Chapter will remain consistent with the shoreland protection objectives of Wis. Stat. s. 281.31, the Village Board may not rezone a wetland in a shoreland- wetland zoning district, or any portion thereof, where the proposed rezoning may result in a significant adverse impact upon any of the following wetland functions:

1. Storm and floodwater storage capacity;
2. Maintenance of dry season stream flow or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area or the flow of groundwater through a wetland;
3. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
4. Shoreline protection against erosion;
5. Fish spawning, breeding, nursery or feeding grounds;
6. Wildlife habitat; or
7. Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.

D. Where the district office of the Department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in subsection C, the Department shall so notify the Village of its determination either prior to or during the public hearing held on the proposed amendment.

E. The appropriate district office of the Department shall be provided with:

1. A copy of the recommendation and report, if any, of the Plan Commission on a proposed text or map amendment within ten days after the submission of those recommendations to the Village Board.
2. Written notice of the action on the proposed text or map amendment within ten days after the action is taken.

F. If the Department notifies the Plan Commission in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in subsection C, the proposed amendment, if approved by the Village Board, shall not become effective until more than 30 days have elapsed since written notice of the Village approval was mailed to the Department, as required by this Chapter. If within the 30 day period the Department notifies the Village that the Department intends to adopt a superseding shoreland-wetland zoning ordinance for the Village as provided by Wis. Stat. s. 61.351(6), the proposed amendment shall not become effective until the ordinance adoption procedure under Wis. Stat. s. 61.351(6) is completed or otherwise terminated.

## **ARTICLE 6 DEFINITIONS**

### **36-60. DEFINITIONS.**

For the purpose of this Chapter, certain words or phrases shall have meanings that either vary somewhat from their customary dictionary meaning or are intended to be interpreted to have a specific meaning. Words used in the present tense in this Chapter include the future. The word "person" includes a firm, association, partnership, trust, company, or corporation as well as an individual. The word "shall" is mandatory, the word "should" is advisory, and the word "may" is permissive. Any words not defined in this section shall be presumed to have their customary dictionary definitions, or as defined by statute or administrative code. All distances, unless otherwise specified, shall be measured horizontally.

#### **SPECIFIC WORDS AND PHRASES:**

"Accessory Structure or Use" means a detached subordinate structure or a use which is clearly incidental to, and customarily found in connection with, the principal structure or use to which it is related and which is located on the same lot as that of the principal structure or use.

"Boathouse" as defined in Wis. Stat. s. 30.01 means a structure used for the storage of watercraft and associated materials and has one or more walls or sides.

"Class 1 Public Notice" means publication of a public hearing notice under Wis. Stat. ch. 985 in a newspaper of circulation in the affected area. Publication is required at least seven days prior to the hearing.

"Class 2 Public Notice" means publication of a public hearing notice under Wis. Stat. ch. 985 in a newspaper of circulation in the affected area. Publication is

required on two consecutive weeks, the last at least seven days prior to the hearing.

"Conditional use" means a use which is permitted by this Chapter provided that certain conditions specified in the Chapter are met and that a permit is granted by the Plan Commission.

"Department" means the Wisconsin Department of Natural Resources.

"Development" means any man-made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials.

"Drainage system" means one or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.

"Environmental control facility" means any facility, temporary or permanent, which is reasonably expected to abate, reduce or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste and thermal pollution, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.

"Fixed houseboat" as defined in Wis. Stat. s. 30.01 means a structure not actually used for navigation which extends beyond the ordinary high-water mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.

"Navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin, and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under Wis. Stat. s. 281.31(2)(d), not withstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under Wis. Stat. ss. 61.351 do not apply to lands adjacent to farm drainage ditches if;

- A. Such lands are not adjacent to a natural navigable stream or river;
- B. Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
- C. Such lands are maintained in nonstructural agricultural use.

The Wisconsin Supreme Court has declared navigable bodies of water that have a bed differentiated from adjacent uplands and levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis [Muench v. Public Service Commission, 261 Wis. 492 (1952) and DeGaynor and Co., Inc., v. Department of Natural Resources, 70 Wis. 2d 936 (1975)]. For example, a stream which is navigable by skiff or canoe during normal spring high water is navigable, in fact, under the laws of this state though it may be dry during other seasons."

"Ordinary high-water mark" means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

"Plan Commission" means the Village plan commission created under Wis. Stat. s. 62.23(1).

"Principal Building" means the main building or structure on a single lot or parcel of land and includes any attached garage or attached porch.

"Pyramiding" means the act of obtaining or providing access to public bodies of water across private lots or lands in a manner that increases the number of families that have access to that water to a degree greater than what would occur with individual riparian owners having individual lots fronting on the water. The effect of pyramiding is to funnel backlot development from offshore lots or residences via a narrow parcel of land to provide access to the water. Publicly owned access points or publicly owned easements do not fall within this definition.

"Shorelands" means lands within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

"Shoreland-Wetland District" means the zoning district, created in this Chapter, comprised of shorelands that are designated as wetlands on the wetlands inventory maps which have been adopted and made a part of this Chapter.

"Unnecessary hardship" means that circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage height or density unnecessarily burdensome or unreasonable in light of the purposes of this Chapter.

"Variance" means an authorization granted by the Board of Appeals to construct or alter a building or structure in a manner that deviates from the dimensional standards of this Chapter.

"Wetlands" means those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

"Wetland alteration" means any filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.

## ARTICLE 50 ENFORCEMENT

### 36-500. VIOLATIONS AND PENALTIES.

A. Violations. Any development, building or structure or accessory building or structure constructed, altered, added to, modified, rebuilt or replaced or any use or accessory use established after the effective date of this Chapter in violation of the provisions of this Chapter, by any person, including building contractors or their agents, shall be deemed a violation.

B. Enforcement. The Zoning Administrator shall enforce the provisions of this Chapter pursuant to the provisions of s35-10 of this Municipal Code. The Village Attorney shall prosecute such violations.

C. Penalties.

1. Citations. Any person failing to comply with this Chapter shall be subject to a penalty as provided in Chapter 50 of this Municipal Code. Each day of continued violation shall constitute a separate offense.

2. Double Fees, Injunctions and Suspension or Revocation. In addition to the penalties set forth in subsection 1., the penalties for commencing work without a permit, for violation of this Chapter or the violation of a Zoning Permit or Conditional Use Permit set forth in s. 35-100.I. of this Municipal Code shall apply, including double fees, injunctions and suspension or revocation of zoning and conditional use permits.

D. Every violation of this Chapter is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated by action at suit of the Village, the state, or any citizen thereof pursuant to Wis. Stat. s. 87.30(2).

E. Adjacent or neighboring property owners who would be specially damaged by a violation of this Chapter may enforce this Chapter by the use of injunctions to prevent or abate violations, as provided in Wis. Stat. s. 62.23(7)(f)2.

### Chapter 36 - Appendix A

Chapter 36 - Appendix A  
Lands Subject to Shoreland Zoning District Regulations

