

CHAPTER 18
SHORELAND-WETLAND AND FLOODPLAIN ZONING CODE

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18.01 GENERAL PROVISIONS. (1) **STATUTORY AUTHORIZATION.** This chapter is adopted pursuant to the authorization in §§62.23, 62.231, 87.30 and 144.26, Wis. Stats.

(2) **FINDINGS OF FACT.** Uncontrolled use of the shoreland-wetlands, floodplains, rivers and streams, and the pollution of the navigable waters of the City would adversely affect the public health, safety, convenience and general welfare and impair the tax base. The Wisconsin Legislature has delegated responsibility to all municipalities to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; and preserve shore cover and natural beauty.

(3) **PURPOSE.** To promote the public health, safety, convenience and general welfare, and protect life, health and property, this chapter has been established to:

- (a) Maintain the storm and floodwater storage capacity of wetlands.
- (b) 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.
- (c) Protect fish spawning grounds, fish, aquatic life and wildlife by preserving wetlands and other fish and aquatic habitat.
- (d) Prohibit certain uses detrimental to the shoreland-wetland area.
- (e) Preserve shore cover and natural beauty by restricting shoreland-wetland excavation, filling and other earth-moving activities.
- (f) Minimize expenditures of public monies for costly flood control projects.
- (g) Reduce rescue and relief efforts, generally under-taken at the expense of the tax paying public.
- (h) Prevent business interruptions which usually result in the loss of local incomes.
- (i) Reduce damage to public facilities such as utilities, municipal buildings, streets and bridges which may be located in the floodplains.
- (j) Prevent the occurrence of future flood blight areas on floodplains.

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(k) Discourage the victimization of unwary land and homebuyers.

(l) Prevent increases in regional flood heights which could increase damage during floods and which may result in conflicts or litigation between property owners.

(4) **TITLE.** This chapter shall be known as the Shoreland-Wetland and Floodplain Zoning Code for the City of Black River Falls, Wisconsin.

(5) **COMPLIANCE; OTHER PERMITS.** Any development, as defined in sec. 18.02 of this chapter, in floodplains and shoreland-wetlands shall be in full compliance with the terms of this chapter. It is the responsibility of the applicant to secure all other necessary permits from appropriate Federal, State and local agencies, including those required by the U.S. Army Corps of Engineers under Sec. 404 of the Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1334.

(6) **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 §13.48(13), **Wis. Stats.**, applies. The construction, reconstruction, maintenance and repair of State highways and bridges by the Wisconsin Department of Transportation are exempt when §30.12(4)(a), **Wis. Stats.**, applies.

(7) **ABROGATION AND GREATER RESTRICTIONS.** (a) This chapter supersedes all the provisions of any municipal zoning ordinance enacted under §§62.23 and 62.231, **Wis. Stats.**, for cities or §§61.35 and 61.351, **Wis. Stats.**, for villages or §87.30, **Wis. Stats.**, which relate to floodplains and shoreland-wetlands, except that where another municipal zoning ordinance is more restrictive than the provisions contained in this chapter, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise. The more restrictive of either the shoreland-wetland district or the floodplain district regulations shall apply when a property is located in both zoning districts.

(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.

(8) **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 City and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision

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of this chapter is required by a standard in Wis. Adm. Code NR 116 or 117, and where the chapter provision is unclear, the provision shall be interpreted in light of the Wis. Adm. Code NR 116 or 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.

(9) **WARNING AND DISCLAIMER OF LIABILITY.** The degree of flood protection provided by this chapter is considered reasonable for regulatory purposes and is based on engineering experience and scientific methods of study. Larger floods may occur or the flood height may be increased by man-made or natural causes such as ice jams or bridge openings restricted by debris. Therefore, this chapter does not imply that areas outside of the delineated flood-plain or permitted land uses within the floodplain will be totally free from flooding and associated flood damages; nor does this chapter create liability on the part of, or a cause of action against, the City or any officer or employee thereof for any flood damage that may result from reliance on this chapter.

(10) **ZONING MAPS.** The maps designated below are hereby adopted and made part of this chapter. They are on file in the office of the City Clerk.

- (a) United States Geological Survey Quadrangle Maps revised of most recent date.
- (b) Wisconsin Wetland Inventory Maps stamped "FINAL" and dated February 7, 1994.
- (c) Floodplain zoning maps title City of Black River Falls and dated February 4, 1981.
- (d) Zoning map titled "City of Black River Falls Zoning Map" dated 1968.

(11) **ANNEXED AREAS.** The zoning of annexed lands shall comply with the provisions of §§59.97(7) and 59.971(7), Wis. Stats. Annexed lands are designated on the City's official zoning map. The County shoreland and floodplain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the City Clerk.

(a) Annexed Floodplains. The County floodplain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the City for all areas annexed by the City until the City adopts and enforces an ordinance which meets the requirements of Wis. Adm. Code NR 116.

(b) Annexed Shorelands. The County shoreland zoning provisions in effect on the date of annexation remain in effect administered by the City for all shoreland areas annexed by the City after May 7, 1982.

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18.02 DEFINITIONS. The terms or words used in this chapter shall be interpreted as follows:

(1) **A--ZONES.** Those areas shown on the City's Official Floodplain Zoning Map, as defined in sub. (36) below, which would be inundated by the base flood or "regional flood" as defined herein. These areas may be numbered or unnumbered A-Zones. The A--Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.

(2) **ACCESSORY STRUCTURE OR USE.** A detached subordinate structure or a use which is clearly incidental to, and customarily found with, the principal structure or use to which it is related and which is located on the same lot as that of the principal structure or use.

(3) **BOATHOUSE.** As defined in §30.121(1), Wis. Stats., means a permanent structure used for the storage of watercraft and associated materials and includes all such structures which are totally enclosed, have roofs or walls **or** any combination of structural parts.

(4) **BULKHEAD LINE.** A geographic line along a reach of navigable water that has been specified by adoption of a municipal ordinance and approved by the Department of Natural Resources pursuant to §30.11, Wis. Stats., and which allows limited filling between the bulkhead line and the original ordinary high-water mark, except where such filling **is** prohibited by the floodway pro-visions of this chapter.

(5) **CERTIFICATE OF COMPLIANCE.** A certification issued by the Zoning Administrator stating that any construction and use of land **or** a building, the elevation of fill or the first floor of a structure is in compliance with all of the provisions of this chapter.

(6) **CHANNEL.** A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.

(7) **CONDITIONAL USE.** 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 Board of Zoning Appeals or, where designated, the Plan Commission.

(8) **DEPARTMENT.** The Wisconsin Department of Natural Resources.

(9) **DEVELOPMENT.** Any new use, change of use and any change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; any placement of mobile homes; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching,

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lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials, public or private sewage disposal systems or water supply facilities.

(10) **DRAINAGE SYSTEM.** One or more artificial ditches, tile drains or similar devices which collect surface runoff or ground water and convey it to a point of discharge.

(11) **DRYLAND ACCESS.** A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land which is outside the floodplain such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.

(12) **ENCROACHMENT.** Any fill, structure, building, use or development in the floodway.

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

(14) **EXISTING MOBILE HOME PARK OR MOBILE HOME SUBDIVISION.** A parcel, or contiguous parcels, of land divided into 2 or more mobile home lots for rent or sale on which the construction of facilities for servicing the lots, including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets, is completed before the effective date of this chapter.

(15) **FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA).** The Federal agency that administers the National Flood Insurance Program.

(16) **FIXED HOUSEBOAT.** As defined in §30.121(1), Wis. Stats., means a structure not actually used for navigation which extends beyond the ordinary high-water mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.

(17) **FLOOD OR FLOODING.** A general and temporary condition of partial or complete inundation of normally dry land areas caused by:

- (a) The overflow or rise of inland waters.

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(b) The rapid accumulation or runoff of surface waters from any source.

(c) The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior.

(d) The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as a seiche, or by some similarly unusual event.

(18) **FLOOD FRINGE.** That portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood; it is generally associated with standing water rather than rapidly flowing water.

(19) **FLOOD HAZARD BOUNDARY MAP.** A map prepared for the City by FEMA designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A - Z o n e s and do not contain floodway lines or regional flood elevations. These maps form the basis for both the regulatory and insurance aspects of the National Flood Insurance Program.

(20) **FLOOD INSURANCE STUDY.** A technical engineering examination, evaluation and determination of flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and regional flood elevations as well as floodway lines. The flood hazard areas are designated as numbered or unnumbered A-Zones. Flood insurance study maps form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.

(21) **FLOODPLAIN.** That land which has been or may be hereafter covered by floodwater during the regional flood. The flood-plain is comprised of the floodway and the flood fringe and general floodplain areas.

(22) **FLOODPLAIN ISLAND.** A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.

(23) **FLOOD PROFILE.** A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.

(24) **FLOODPROOFING.** Any combination of structural and non-structural additions, changes or adjustments which reduce or eliminate flood damage to unimproved or improved real estate, water and sanitary facilities, structures and their contents.

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(25) **FLOOD PROTECTION ELEVATION.** An elevation that corresponds to a point 2 feet of freeboard above the water surface profile associated with the regional flood. See also **FREEBOARD**.

(26) **FLOODWAY.** The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.

(27) **FLOODWAY ENCROACHMENT LINES.** Represent the limits of obstruction to flood flows. These lines are designated on both sides of, and generally parallel to, the channel of a river or stream. They are established by assuming that the area landward, or outside of the encroachment lines, will ultimately be developed in such a way that it will not convey flood flows, but the development will not cause an increase to regional flood elevations upstream. It is assumed that any development riverward of these lines will cause an obstruction and will require a detailed analysis to determine its effect on the regional flood elevations upstream.

(28) **FREEBOARD.** Represents a factor of safety usually expressed in terms of a certain amount of feet above a calculated flood level. Freeboard compensates for the many unknown factors that contribute to flood heights greater than the height calculated. These unknown factors include, but are not limited to, ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of urbanization on the hydrology of the watershed, loss of flood storage areas due to development and the sedimentation of a river or stream bed.

(29) {28) **HEARING NOTICE.** Publication or posting meeting the requirements of Ch. 985, Wis. Stats. Class 1 notice is required at a minimum for appeals; published once at least one week (7 days) before the hearing. Class 2 notice is required at a minimum for all zoning ordinances and amendments, including map amendments; published twice, once each week consecutively, the last publication at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice exceeding these minimums.

(30) **HIGH FLOOD DAMAGE POTENTIAL.** Any danger to human life or public health or the potential for any significant economic loss to a structure or its contents.

(30a) **HISTORIC STRUCTURE** (Fed. rule dated Oct. 1990). Any structure that is:

(a) Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; or

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(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or

(c) Individually listed on a State inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior, or directly by the Secretary of the Interior in states without approved programs.

(31) INCREASE IN REGIONAL FLOOD HEIGHT. A calculated upward rise in the regional flood elevation, equal to or greater than 0.01 foot, resulting from a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain, but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.

(32) LAND USE. Any nonstructural use made of unimproved or improved real estate. See also DEVELOPMENT.

(33) MOBILE HOME or MANUFACTURED HOME. A structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. For the purpose of this chapter, it does not include recreational vehicles or travel trailers which remain licensed and ready for highway use and remain on-site less than 180 days (Rev. Fed. rule dated Oct. 1990).

(34) NAVIGABLE WATERS. Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin, and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this State, including the Wisconsin portion of boundary waters, which are navigable under the laws of this State. The Wisconsin Supreme Court has declared navigable bodies of water with a bed differentiated from adjacent uplands and with levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis. [Muench v. Public Service Commission, 261 Wis. 492 (1952) and DeGayner and Co., Inc. v. Department of Natural Resources, 70 Wis. 2d 936 (1975)]

(34a) NATIONAL GEODETIC VERTICAL DATUM (NGVD). Elevations referenced to mean sea level datum, 1929 adjustment.

(35) OBSTRUCTION TO FLOW. Any development which physically blocks the conveyance of flood waters such that this development by itself or in conjunction with any future similar development will cause an increase in regional flood height.

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(36) **OFFICIAL FLOODPLAIN ZONING MAP.** That map, adopted and made part of this chapter, as described in sec. 18.01(10) of this chapter, which has been approved by the Department and FEMA.

(37) **OPEN SPACE USE.** Those uses having a relatively low flood damage potential and not involving structures.

(38) **ORDINARY HIGH-WATER MARK.** The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

(39) **PERSON.** An individual, or group of individuals, corporation, partnership, association, municipality or State agency.

(40) **PLAN COMMISSION.** The City Plan Commission, created under §62.23(1), Wis. Stats., which acts on matters pertaining to planning and zoning.

(41) **{41} REGIONAL FLOOD.** A flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics. The flood frequency of the regional flood is once in every 100 years. This means that in any given year, there is a 1% chance that the regional flood may occur or be exceeded. During a typical 30 year mortgage period, the regional flood has a 26% chance of occurrence. The regional flood is based upon a statistical analysis of stream flow records available for the watershed or an analysis of rainfall and runoff characteristics in the general watershed region or both. FEMA uses the term "base flood" which means the regional flood.

(42) **SHORELANDS.** 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.

(43) **SHORELAND-WETLAND DISTRICT.** 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.

(44) **STORAGE CAPACITY OF A FLOODPLAIN.** The volume of space above an area of floodplain land that can be occupied by flood water of a given stage at a given time, regardless of whether the water is moving.

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(45) **UNNECESSARY HARDSHIP.** That circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with the restrictions governing dimensional standards, such as area, setbacks, frontage or height, unnecessarily burdensome **or** unreasonable in light of the purpose of this chapter. Unnecessary hardship is present only where, in the absence of a variance, no feasible use can be made of the property.

(46) **VARIANCE.** An authorization granted by the Board of Zoning Appeals to construct, alter or use a building or structure in a manner that deviates from the dimensional standards of this chapter. A variance may not permit a use of property that is otherwise prohibited by this chapter, or allow construction not protected to the flood protection elevation.

(47) **WATER SURFACE PROFILE.** A graphic representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.

(48) **WETLANDS.** Those areas where water **is** at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

(49) **WETLAND ALTERATION.** Any construction, filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.

18.03 SHORELAND-WETLAND ZONING DISTRICT (1) DISTRICT BOUNDARIES OF SHORELAND-WETLANDS. (a) The Shoreland-Wetland District includes all wetlands in the City which are 5 acres or more in size and are shown on the final Wetland Inventory Map that has been adopted and made a part of this chapter in sec. 18.01(10) and which are:

1. Within 1,000 feet of the ordinary high-water mark of navigable lakes, ponds or flowages. Lakes, ponds or flow-ages in the City shall be presumed to be navigable if they are listed in the Department publication "Surface Water Resources of Jackson County" or are shown on the United States Geological Survey quadrangle maps or other zoning base maps which have been made a part of this chapter in sec. 18.01(10).

2. 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 zoning base maps which have

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been incorporated by reference and made a part of this chapter in sec. 18.01(10). Floodplain zoning maps adopted in sec. 18.01(10) of this chapter shall be used to determine the extent of floodplain areas.

(b) Determinations of navigability and ordinary high-water mark location shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall con-tact the appropriate district office of the Department for a final determination of navigability or ordinary high-water mark.

(c) When an apparent discrepancy exists between the Shoreland-Wetland District boundary shown on the Official Zoning Maps and the actual field conditions at the time the maps were adopted, the Zoning Administrator shall contact the appropriate district office of the Department to determine if the Shoreland-Wetland District boundary, as mapped, is in error. If Department staff concur with the Administrator that a particular area was incorrectly mapped as a wetland, the Administrator shall have the authority to immediately grant or deny a land use or building permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors shown on the Official Zoning Maps, the Administrator shall be responsible for initiating a map amendment within a reasonable period.

(d) Under §144.26(2m), Wis. Stats., notwithstanding any other provision of law or administrative rule, wetland zoning ordinances required under §62.231, Wis. Stats., and Wis. Adm. Code NR 117 do not apply to lands adjacent to farm drainage ditches if:

1. Such lands are not adjacent to a natural navigable stream or river.
2. Those parts of the drainage ditches adjacent to such lands were not navigable streams before ditching.
3. Such lands are maintained in nonstructural agricultural use.

(2) PERMITTED USES IN SHORELAND-WETLANDS. The following uses are permitted subject to the provisions of Ch. 30 and 31, Wis. Stats., and the provisions of other local, State and Federal laws, if applicable:

(a) Activities and uses which do not require the issuance of a zoning permit, provided that no wetland alteration occurs:

1. Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating.
2. The harvesting of wild crops such as marsh hay,

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ferns, moss, wild rice, berries, tree fruits and tree seeds in a manner that is not injurious to the natural reproduction of such crops.

3. The practice of silviculture, including the planting, thinning and harvesting of timber.
4. The pasturing of livestock.
5. The cultivation of agricultural crops.
6. The construction and maintenance of duck blinds.

(b) Uses which do not require the issuance of a zoning permit and which may involve wetland alterations only to the extent specifically provided below:

1. The practice of silviculture, including limited temporary water level stabilization measures which are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silvicultural activities if not corrected.
2. The cultivation of cranberries, including limited wetland alterations necessary for the purpose of growing and harvesting cranberries.
3. The maintenance and repair of existing drainage systems, where permissible under §30.20, Wis. Stats., 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 Ch. 30, Wis. Stats., and that dredged spoil is placed on existing spoil banks where possible.
4. The construction and maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance.
5. The construction and maintenance of piers, docks and walkways, observation decks and trail bridges built on pilings, including limited excavating and filling necessary for such construction or maintenance.
6. The installation and maintenance of sealed tiles for the purpose of draining lands outside the Shoreland-Wetland District provided that such installation or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the shoreland-wetland listed in sub. (4)(a) below.
7. The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavation and filling necessary for such maintenance, repair, replacement or reconstruction.

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(c) Uses which are allowed upon the issuance of a conditional use permit and which may include wetland alterations only to the extent specifically provided below:

1. The construction and maintenance of roads which are necessary for the continuity of the City street system, the provision of essential utility and emergency services or to provide access to uses permitted under this subsection, provided that:

a. The road cannot, as a practical matter, be located outside the wetland.

b. The road is designed and constructed to minimize the adverse impact upon the natural functions of the wet-land listed in sub. (4)(a) below.

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.

e. Any wetland alteration must be necessary for the construction or maintenance of the road.

2. The construction and maintenance of nonresidential buildings, provided that:

a. The building is used solely in conjunction with a use permitted in the Shoreland-Wetland District or for the raising of waterfowl, minnows or other wetland or aquatic animals.

b. The building cannot, as a practical matter, be located outside the wetland.

c. The building does not exceed 500 square feet in floor area.

d. Only limited filling and excavating necessary to provide structural support for the building is allowed.

3. The establishment and development of public and private parks and recreation areas; outdoor education areas; historic, natural and scientific areas; game refuges and closed areas; fish and wildlife habitat improvement projects; game bird and animal farms; wildlife preserves and public boat launching ramps, provided that:

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a. Any private development allowed under this subparagraph shall be used exclusively for the permitted purpose.

b. Only limited filling and excavating necessary for *the* development of public boat launching ramps, swimming beaches or the construction of park shelters or similar structures is allowed.

c. The construction and maintenance of roads necessary for the uses permitted under this subparagraph are allowed only where such construction and maintenance meets the criteria in par. (c)l. above.

d. Wetland alterations in game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms and wildlife preserves shall be for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

4. The construction and maintenance of electric and telephone transmission lines and water, gas and sewer lines, and related facilities and the construction and maintenance of railroad lines provided that:

a. The transmission and distribution lines and related facilities and railroad lines cannot, as a practical matter, be located outside the wetland.

b. Only limited filling or excavating necessary for such construction or maintenance is allowed.

c. Such construction or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the wetland listed in sub. (4)(a) below.

(3) PROHIBITED USES IN SHORELAND-WETLANDS. (a) Any use not listed in sub. (2) above is prohibited unless the wetland or a portion of the wetland has been rezoned by amendment of this chapter in accordance with sub. (4) below and sec. 18.07 of this chapter.

(b) 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.

(4) REZONING SHORELAND-WETLANDS. (a) Rezoning of a shoreland-wetland shall require amendment of the Final Wisconsin Wet-land Inventory Map, adopted in sec. 18.01(10) of this chapter pursuant to procedures established in sec. 18.07 of this chapter. In order to insure that any amendment will be consistent with the shoreland protection objectives of §144.26, Wis. Stats., the City

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shall not rezone a wetland in a shoreland-wetland zoning district, or any portion thereof, where the proposed rezoning may result in a significant adverse impact upon any of the following:

1. Storm and flood water 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 soil 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.

(a) Upon notification of a proposed amendment as required by sec. 18.07 of this chapter, if the district office of the Department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in par. (a) above, the Department shall so notify the City of its determination either prior to or during the public hearing held on the proposed amendment.

(b) 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 par. (a) above that pro-posed amendment, if approved by the City, shall not become effective until more than 30 days have elapsed since written notice of the Council approval was mailed to the Department, as required by sec. 18.07 of this chapter. If within the 30 day period, the Department notifies the Council that the Department intends to adopt a superseding shoreland-wetland zoning ordinance for the City under §61.351(6), Wis. Stats., the proposed amendment shall not become effective until that ordinance adoption procedure is completed or otherwise terminated. The record of the decision on the proposed amendment shall advise the petitioner of the provisions of this subsection.

SHORELAND-WETLAND AND FLOODPLAIN ZONING CODE 18.04

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1.0 STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE, TITLE AND GENERAL PROVISIONS

1.1 STATUTORY AUTHORIZATION

This ordinance is adopted pursuant to the authorization in ss. 61.35 and 62.23, for villages and cities and the requirements in s. 87.30, Stats.

1.2 FINDING OF FACT

Uncontrolled development and use of the floodplains and rivers of this municipality would impair the public health, safety, convenience, general welfare and tax base.

1.3 STATEMENT OF PURPOSE

This ordinance is intended to regulate floodplain development to:

- (1) Protect life, health and property;
- (2) Minimize expenditures of public funds for flood control projects;
- (3) Minimize rescue and relief efforts undertaken at the expense of the taxpayers;
- (4) Minimize business interruptions and other economic disruptions;
- (5) Minimize damage to public facilities in the floodplain;
- (6) Minimize the occurrence of future flood blight areas in the floodplain;
- (7) Discourage the victimization of unwary land and homebuyers;
- (8) Prevent increases in flood heights that could increase flood damage and result in conflicts between property owners; and
- (9) Discourage development in a floodplain if there is any practicable alternative to locate the activity, use or structure outside of the floodplain.

1.4 TITLE

This ordinance shall be known as the Floodplain Zoning Ordinance for Black River Falls, Wisconsin.

1.5 GENERAL PROVISIONS

(1) AREAS TO BE REGULATED

This ordinance regulates all areas that would be covered by the regional flood or base flood as shown on the Flood Insurance Rate Map (FIRM) or other maps approved by DNR. Base flood elevations are derived from the flood profiles in the Flood Insurance Study (FIS) and are shown as AE, A1-30, and AH Zones on the FIRM. Other regulatory zones are displayed as A and AO zones. Regional Flood Elevations (RFE) may be derived from other studies. If more than one

map or revision is referenced, the most restrictive information shall apply.

(2) OFFICIAL MAPS & REVISIONS

The boundaries of all floodplain districts are designated as A, AE, AH, AO or A1-30 on the maps based on the Flood Insurance Study (FIS) listed below. Any change to the base flood elevations (BFE) or any changes to the boundaries of the floodplain or floodway in the FIS or on the Flood Insurance Rate Map (FIRM) must be reviewed and approved by the DNR and FEMA through the Letter of Map Change process (see s. 8.0 *Amendments*) before it is effective. No changes to RFE's on non-FEMA maps shall be effective until approved by the DNR. These maps and revisions are on file in the office of the City Administrator, City of Black River Falls. If more than one map or revision is referenced, the most restrictive information shall apply.

(a) OFFICIAL MAPS : Based on the FIS:

1. Flood Insurance Rate Map (FIRM), panel number **55053C0379C, 55053C0387C, 55053C0389C, 55053C0395C, dated September 28, 2012 and panel number 55053C0386D dated September 29, 2017; with corresponding profiles that are based on the Flood Insurance Study (FIS) dated September 29, 2017, Volume 55053CV000B;**

Approved by: The DNR and FEMA

(b) OFFICIAL MAPS: Based on other studies. Any maps referenced in this section must be approved by the DNR and be more restrictive than those based on the FIS at the site of the proposed development.

(3) ESTABLISHMENT OF FLOODPLAIN ZONING DISTRICTS

The regional floodplain areas are divided into three districts as follows:

- (a) The Floodway District (FW), is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters and are contained within AE Zones as shown on the FIRM.
- (b) The Floodfringe District (FF) is that portion between the regional flood limits and the floodway and displayed as AE Zones on the FIRM.
- (c) The General Floodplain District (GFP) is those areas that may be covered by floodwater during the regional flood and does not have a BFE or floodway boundary determined, including A, AH and AO zones on the FIRM.

(4) LOCATING FLOODPLAIN BOUNDARIES

Discrepancies between boundaries on the official floodplain zoning map and actual field conditions shall be resolved using the criteria in subd (a) or (b) below. If a significant difference exists, the map shall be amended according to s.

8.0 *Amendments*. The zoning administrator can rely on a boundary derived from a profile elevation to grant or deny a land use permit, whether or not a map amendment is required. The zoning administrator shall be responsible for documenting actual pre-development field conditions and the basis upon which the district boundary was determined and for initiating any map amendments required under this section. Disputes between the zoning administrator and an applicant over the district boundary line shall be settled according to s. 7.3(3) and the criteria in (a) and (b) below. Where the flood profiles are based on established base flood elevations from a FIRM, FEMA must approve any map amendment or revision pursuant to s. 8.0 *Amendments*.

(a) If flood profiles exist, the map scale and the profile elevations shall determine the district boundary. The regional or base flood elevations shall govern if there are any discrepancies.

(b) Where flood profiles do not exist for projects, the location of the boundary shall be determined by the map scale.

(5) REMOVAL OF LANDS FROM FLOODPLAIN

Compliance with the provisions of this ordinance shall not be grounds for removing land from the floodplain unless it is filled at least two feet above the regional or base flood elevation, the fill is contiguous to land outside the floodplain, and the map is amended pursuant to s. 8.0 *Amendments*.

(6) COMPLIANCE

Any development or use within the areas regulated by this ordinance shall be in compliance with the terms of this ordinance, and other applicable local, state, and federal regulations.

(7) MUNICIPALITIES AND STATE AGENCIES REGULATED

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

(8) ABROGATION AND GREATER RESTRICTIONS

(a) This ordinance supersedes all the provisions of any municipal zoning ordinance enacted under s. 62.23 for cities, which relate to floodplains. A more restrictive ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

(b) This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. If this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

(9) INTERPRETATION

In their interpretation and application, the provisions of this ordinance are the minimum requirements liberally construed in favor of the governing body and are not a limitation on or repeal of any other powers granted by the Wisconsin Statutes. If a provision of this ordinance, required by ch. NR 116, Wis. Adm. Code, is unclear, the provision shall be interpreted in light of the standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

(10) WARNING AND DISCLAIMER OF LIABILITY

The flood protection standards in this ordinance are based on engineering experience and research. Larger floods may occur or the flood height may be increased by man-made or natural causes. This ordinance does not imply or guarantee that non-floodplain areas or permitted floodplain uses will be free from flooding and flood damages. This ordinance does not create liability on the part of, or a cause of action against, the municipality or any officer or employee thereof for any flood damage that may result from reliance on this ordinance.

(11) SEVERABILITY

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

(12) ANNEXED AREAS FOR CITIES AND VILLAGES

The Jackson County floodplain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements of ch. NR 116, Wis. Adm. Code and 44 CFR 59-72, *National Flood Insurance Program* (NFIP). These annexed lands are described on the municipality's official zoning map. County floodplain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the municipal zoning administrator. All plats or maps of annexation shall show the regional flood elevation and the floodway location.

2.0 GENERAL STANDARDS APPLICABLE TO ALL FLOODPLAIN DISTRICTS

The community shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall be designed and anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads; be constructed with flood-resistant materials; be constructed to minimize flood damages and to ensure that utility and mechanical equipment is designed and/or located so as to prevent water from entering or accumulating within the equipment during conditions of flooding.

Subdivisions shall be reviewed for compliance with the above standards. All subdivision

proposals (including manufactured home parks) shall include regional flood elevation and floodway data for any development that meets the subdivision definition of this ordinance and all other requirements in s. 7.1(2). Adequate drainage shall be provided to reduce exposure to flood hazards and all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damages.

2.1 HYDRAULIC AND HYDROLOGIC ANALYSES

(1) No floodplain development shall:

(a) Obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or with other development, causing any increase in the regional flood height; or

(b) Cause any increase in the regional flood height due to floodplain storage area lost.

(2) The zoning administrator shall deny permits if it is determined the proposed development will obstruct flow or cause any increase in the regional flood height, based on the officially adopted FIRM or other adopted map, unless the provisions of s. 8.0 *Amendments* are met.

2.2 WATERCOURSE ALTERATIONS

No land use permit to alter or relocate a watercourse in a mapped floodplain shall be issued until the local official has notified in writing all adjacent municipalities, the Department and FEMA regional offices, and required the applicant to secure all necessary state and federal permits. The standards of s. 2.1 must be met and the flood carrying capacity of any altered or relocated watercourse shall be maintained.

As soon as is practicable, but not later than six months after the date of the watercourse alteration or relocation and pursuant to s. 8.0 *Amendments*, the community shall apply for a Letter of Map Revision (LOMR) from FEMA. Any such alterations must be reviewed and approved by FEMA and the DNR through the LOMC process.

2.3 CHAPTER 30, 31, WIS. STATS., DEVELOPMENT

Development which requires a permit from the Department, under chs. 30 and 31, Stats., such as docks, piers, wharves, bridges, culverts, dams and navigational aids, may be allowed if the necessary permits are obtained and amendments to the floodplain zoning ordinance are made according to s. 8.0 *Amendments*.

2.4 PUBLIC OR PRIVATE CAMPGROUNDS

Public or private campgrounds shall have a low flood damage potential and shall meet the following provisions:

(1) The campground is approved by the Department of Health Services;

- (2) A land use permit for the campground is issued by the zoning administrator;
- (3) The character of the river system and the campground elevation are such that a 72-hour warning of an impending flood can be given to all campground occupants;
- (4) There is an adequate flood warning procedure for the campground that offers the minimum notice required under this section to all persons in the campground. This procedure shall include a written agreement between the campground owner, the municipal emergency government coordinator and the chief law enforcement official which specifies the flood elevation at which evacuation shall occur, personnel responsible for monitoring flood elevations, types of warning systems to be used and the procedures for notifying at-risk parties, and the methods and personnel responsible for conducting the evacuation;
- (5) This agreement shall be for no more than one calendar year, at which time the agreement shall be reviewed and updated - by the officials identified in sub. (4) - to remain in compliance with all applicable regulations, including those of the state Department of Health Services and all other applicable regulations;
- (6) Only camping units that are fully licensed, if required, and ready for highway use are allowed;
- (7) The camping units shall not occupy any site in the campground for more than 180 consecutive days, at which time the camping unit must be removed from the floodplain for a minimum of 24 hours;
- (8) All camping units that remain on site for more than 30 days shall be issued a limited authorization by the campground operator, a written copy of which is kept on file at the campground. Such authorization shall allow placement of a camping unit for a period not to exceed 180 days and shall ensure compliance with all the provisions of this section;
- (9) The municipality shall monitor the limited authorizations issued by the campground operator to assure compliance with the terms of this section;
- (10) All camping units that remain in place for more than 180 consecutive days must meet the applicable requirements in either s. 3.0, 4.0 or 5.0 for the floodplain district in which the structure is located;
- (11) The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when a flood warning is issued; and
- (12) All service facilities, including but not limited to refuse collection, electrical service, gas lines, propane tanks, sewage systems and wells shall be properly anchored and placed at or floodproofed to the flood protection elevation.

3.0 FLOODWAY DISTRICT (FW)

3.1 APPLICABILITY

This section applies to all floodway areas on the floodplain zoning maps and those identified pursuant to s. 5.4.

3.2 PERMITTED USES

The following open space uses are allowed in the Floodway District and the floodway areas of the General Floodplain District, if:

- they are not prohibited by any other ordinance;
 - they meet the standards in s. 3.3 and 3.4; and
 - all permits or certificates have been issued according to s. 7.1.
- (1) Agricultural uses, such as: farming, outdoor plant nurseries, horticulture, viticulture and wild crop harvesting.
 - (2) Nonstructural industrial and commercial uses, such as loading areas, parking areas and airport landing strips.
 - (3) Nonstructural recreational uses, such as golf courses, tennis courts, archery ranges, picnic grounds, boat ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting, trap and skeet activities, hunting and fishing areas and hiking and horseback riding trails, subject to the fill limitations of s. 3.3(4).
 - (4) Uses or structures accessory to open space uses, or classified as historic structures that comply with ss. 3.3 and 3.4.
 - (5) Extraction of sand, gravel or other materials that comply with s. 3.3(4).
 - (6) Functionally water-dependent uses, such as docks, piers or wharves, dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines that comply with chs. 30 and 31, Stats.
 - (7) Public utilities, streets and bridges that comply with s. 3.3(3).

3.3 STANDARDS FOR DEVELOPMENTS IN THE FLOODWAY

(1) GENERAL

- (a) Any development in the floodway shall comply with s. 2.0 and have a low flood damage potential.
- (b) Applicants shall provide the following data to determine the effects of the proposal according to s. 2.1 and 7.1(2)(c):
 1. A cross-section elevation view of the proposal, perpendicular to the

watercourse, showing if the proposed development will obstruct flow; or

2. An analysis calculating the effects of this proposal on regional flood height.

- (c) The zoning administrator shall deny the permit application if the project will cause any increase in the flood elevations upstream or downstream, based on the data submitted for subd. (b) above.

(2) STRUCTURES

Structures accessory to permanent open space uses or functionally dependent on a waterfront location may be allowed by permit if the structures comply with the following criteria:

- (a) Not designed for human habitation, does not have a high flood damage potential and is constructed to minimize flood damage;
- (b) Shall have a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such openings being no higher than one foot above grade. The openings shall be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (c) Must be anchored to resist flotation, collapse, and lateral movement;
- (d) Mechanical and utility equipment must be elevated or flood proofed to or above the flood protection elevation; and
- (e) It must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood.

(3) PUBLIC UTILITIES, STREETS AND BRIDGES

Public utilities, streets and bridges may be allowed by permit, if:

- (a) Adequate floodproofing measures are provided to the flood protection elevation; and
- (b) Construction meets the development standards of s. 2.1.

(4) **FILLS OR DEPOSITION OF MATERIALS**

Fills or deposition of materials may be allowed by permit, if:

- (a) The requirements of s. 2.1 are met;
- (b) No material is deposited in navigable waters unless a permit is issued by the Department pursuant to ch. 30, Stats., and a permit pursuant to s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344 has been issued, if applicable, and all other requirements have been met;
- (c) The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading; and
- (d) The fill is not classified as a solid or hazardous material.

3.4 PROHIBITED USES

All uses not listed as permitted uses in s. 3.2 are prohibited, including the following uses:

- (1) Habitable structures, structures with high flood damage potential, or those not associated with permanent open-space uses;
- (2) Storing materials that are buoyant, flammable, explosive, injurious to property, water quality, or human, animal, plant, fish or other aquatic life;
- (3) Uses not in harmony with or detrimental to uses permitted in the adjoining districts;
- (4) Any private or public sewage systems, except portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of local ordinances and ch. SPS 383, Wis. Adm. Code;
- (5) Any public or private wells which are used to obtain potable water, except those for recreational areas that meet the requirements of local ordinances and chs. NR 811 and NR 812, Wis. Adm. Code;
- (6) Any solid or hazardous waste disposal sites;
- (7) Any wastewater treatment ponds or facilities, except those permitted under s. NR 110.15(3)(b), Wis. Adm. Code; and
- (8) Any sanitary sewer or water supply lines, except those to service existing or proposed development located outside the floodway which complies with the regulations for the floodplain area occupied.

4.0 FLOODFRINGE DISTRICT (FF)

4.1 APPLICABILITY

This section applies to all floodfringe areas shown on the floodplain zoning maps and those identified pursuant to s. 5.4.

4.2 PERMITTED USES

Any structure, land use, or development is allowed in the Floodfringe District if the standards in s. 4.3 are met, the use is not prohibited by this or any other ordinance or regulation and all permits or certificates specified in s. 7.1 have been issued.

4.3 STANDARDS FOR DEVELOPMENT IN THE FLOODFRINGE

S. 2.1 shall apply in addition to the following requirements according to the use requested. Any existing structure in the floodfringe must meet the requirements of s. 6.0 *Nonconforming Uses*;

(1) RESIDENTIAL USES

Any structure, including a manufactured home, which is to be newly constructed or moved into the floodfringe, shall meet or exceed the following standards. Any existing structure in the floodfringe must meet the requirements of s. 6.0 *Nonconforming Uses*;

- (a) The elevation of the lowest floor shall be at or above the flood protection elevation on fill unless the requirements of s 4.3 (1)(b) can be met. The fill shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure.
- (b) The basement or crawlway floor may be placed at the regional flood elevation if it is dry floodproofed to the flood protection elevation. No basement or crawlway floor is allowed below the regional flood elevation;
- (c) Contiguous dryland access shall be provided from a structure to land outside of the floodplain, except as provided in subd. (d).
- (d) In developments where existing street or sewer line elevations make compliance with subd. (c) impractical, the municipality may permit new development and substantial improvements where roads are below the regional flood elevation, if:
 1. The municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or
 2. The municipality has a DNR-approved emergency evacuation plan.

(2) ACCESSORY STRUCTURES OR USES

Accessory structures shall be constructed on fill with the lowest floor at or above the regional flood elevation.

(3) COMMERCIAL USES

Any commercial structure which is erected, altered or moved into the floodfringe shall meet the requirements of s. 4.3(1). Subject to the requirements of s. 4.3(5), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

(4) MANUFACTURING AND INDUSTRIAL USES

Any manufacturing or industrial structure which is erected, altered or moved into the floodfringe shall have the lowest floor elevated to or above the flood protection elevation or meet the floodproofing standards in s 7.5. Subject to the requirements of s. 4.3(5), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

(5) STORAGE OF MATERIALS

Materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life shall be stored at or above the flood protection elevation or floodproofed in compliance with s. 7.5. Adequate measures shall be taken to ensure that such materials will not enter the water body during flooding.

(6) PUBLIC UTILITIES, STREETS AND BRIDGES

All utilities, streets and bridges shall be designed to be compatible with comprehensive floodplain development plans; and

(a) When failure of public utilities, streets and bridges would endanger public health or safety, or where such facilities are deemed essential, construction or repair of such facilities shall only be permitted if they are designed to comply with s. 7.5.

(b) Minor roads or non-essential utilities may be constructed at lower elevations if they are designed to withstand flood forces to the regional flood elevation.

(7) SEWAGE SYSTEMS

All sewage disposal systems shall be designed to minimize or eliminate infiltration of flood water into the system, pursuant to s. 7.5(3), to the flood protection elevation and meet the provisions of all local ordinances and ch. SPS 383, Wis. Adm. Code.

(8) WELLS

All wells shall be designed to minimize or eliminate infiltration of flood waters into the system, pursuant to s. 7.5(3), to the flood protection elevation and shall meet the provisions of chs. NR 811 and NR 812, Wis. Adm. Code.

(9) SOLID WASTE DISPOSAL SITES

Disposal of solid or hazardous waste is prohibited in floodfringe areas.

(10) DEPOSITION OF MATERIALS

Any deposited material must meet all the provisions of this ordinance.

(11) MANUFACTURED HOMES

- (a) Owners or operators of all manufactured home parks and subdivisions shall provide adequate surface drainage to minimize flood damage, and prepare, secure approval and file an evacuation plan, indicating vehicular access and escape routes, with local emergency management authorities.
- (b) In existing manufactured home parks, all new homes, replacement homes on existing pads, and substantially improved homes shall:
 - 1. have the lowest floor elevated to the flood protection elevation; and
 - 2. be anchored so they do not float, collapse or move laterally during a flood
- (c) Outside of existing manufactured home parks, including new manufactured home parks and all single units outside of existing parks, all new, replacement and substantially improved manufactured homes shall meet the residential development standards for the floodfringe in s. 4.3(1).

(12) MOBILE RECREATIONAL VEHICLES

All mobile recreational vehicles that are on site for 180 consecutive days or more or are not fully licensed and ready for highway use shall meet the elevation and anchoring requirements in s. 4.3 (11)(b) and (c). A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.

5.0 GENERAL FLOODPLAIN DISTRICT (GFP)

5.1 APPLICABILITY

The provisions for this district shall apply to all floodplains mapped as A, AO or AH zones.

5.2 PERMITTED USES

Pursuant to s. 5.4, it shall be determined whether the proposed use is located within the floodway or floodfringe.

Those uses permitted in the Floodway (s. 3.2) and Floodfringe (s. 4.2) Districts are allowed within the General Floodplain District, according to the standards of s. 5.3, provided that all permits or certificates required under s. 7.1 have been issued.

5.3 STANDARDS FOR DEVELOPMENT IN THE GENERAL FLOODPLAIN DISTRICT

S. 3.0 applies to floodway areas, s. 4.0 applies to floodfringe areas. The rest of this ordinance applies to either district.

- (1) In AO/AH Zones the structure's lowest floor must meet one of the conditions listed below whichever is higher:
 - (a) at or above the flood protection elevation; or
 - (b) two (2) feet above the highest adjacent grade around the structure; or
 - (c) the depth as shown on the FIRM
- (2) In AO/AH zones, provide plans showing adequate drainage paths to guide floodwaters around structures.

5.4 DETERMINING FLOODWAY AND FLOODFRINGE LIMITS

Upon receiving an application for development within the general floodplain district, the zoning administrator shall:

- (1) Require the applicant to submit two copies of an aerial photograph or a plan which shows the proposed development with respect to the general floodplain district limits, stream channel, and existing floodplain developments, along with a legal description of the property, fill limits and elevations, building floor elevations and flood proofing measures; and the flood zone as shown on the FIRM.
- (2) Require the applicant to furnish any of the following information deemed necessary by the Department to evaluate the effects of the proposal upon flood height and flood flows, regional flood elevation and to determine floodway boundaries.
 - (a) A Hydrologic and Hydraulic Study as specified in s. 7.1(2)(c).
 - (b) Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information;
 - (c) Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.

6.0 NONCONFORMING USES

6.1 GENERAL

(1) APPLICABILITY

If these standards conform with s. 87.30 Stats., ch. NR 116, Wis. Adm. Code and 44 CFR 59-72, they shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this ordinance or any amendment thereto.

(2) The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this ordinance may continue subject to the following conditions:

(a) No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this ordinance. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Maintenance is not considered a modification; this includes painting, decorating, paneling and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Any costs associated with the repair of a damaged structure are not considered maintenance.

The construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.

(b) If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this ordinance;

(c) The municipality shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent;

(d) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with s. 4.3(1). The costs of elevating the lowest floor of a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this paragraph;

(e) No maintenance to any nonconforming structure or any structure with a nonconforming use, the cost of which would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with s. 4.3(1).

- (f) If on a per event basis the total value of the work being done under (d) and (e) equals or exceeds 50% of the present equalized assessed value the work shall not be permitted unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with s. 4.3(1).
- (g) Except as provided in subd. (h), if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition equals or exceeds 50% of the structure's present equalized assessed value.
- (h) For nonconforming buildings that are substantially damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building shall be permitted in order to restore it to the size and use in effect prior to the damage event, provided that the minimum federal code requirements below are met and all required permits have been granted prior to the start of construction.

1. Residential Structures

- a. Shall have the lowest floor, including basement, elevated to or above the base flood elevation using fill, pilings, columns, posts or perimeter walls. Perimeter walls must meet the requirements of s. 7.5(2).
- b. Shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy and shall be constructed with methods and materials resistant to flood damage.
- c. Shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.
- d. In A Zones, obtain, review and utilize any flood data available from a federal, state or other source.
- e. In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in s. 5.3(1).
- f. in AO Zones, shall have adequate drainage paths around structures on slopes to guide floodwaters around and away from the structure.

2. Nonresidential Structures

a. Shall meet the requirements of s. 6.1(2)(h)1a-f.

b. Shall either have the lowest floor, including basement, elevated to or above the regional flood elevation; or, together with attendant utility and sanitary facilities, shall meet the standards in s. 7.5(1) or (2).

c. In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in s. 5.3(1).

(3) A nonconforming historic structure may be altered if the alteration will not preclude the structure's continued designation as a historic structure, the alteration will comply with s. 3.3(1), flood resistant materials are used, and construction practices and floodproofing methods that comply with s. 7.5 are used. Repair or rehabilitation of historic structures shall be exempt from the development standards of s. 6.1(2)(h)1 if it is determined that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure.

6.2 FLOODWAY DISTRICT

(1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in the Floodway District, unless such modification or addition:

(a) Has been granted a permit or variance which meets all ordinance requirements;

(b) Meets the requirements of s. 6.1;

(c) Shall not increase the obstruction to flood flows or regional flood height;

(d) Any addition to the existing structure shall be floodproofed, pursuant to s. 7.5, by means other than the use of fill, to the flood protection elevation; and

(e) If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:

1. The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade;

2. The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;

3. Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and
 4. The use must be limited to parking, building access or limited storage.
- (2) No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in the Floodway District. Any replacement, repair or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all municipal ordinances, s. 7.5(3) and ch. SPS 383, Wis. Adm. Code.
 - (3) No new well or modification to an existing well used to obtain potable water shall be allowed in the Floodway District. Any replacement, repair or maintenance of an existing well in the Floodway District shall meet the applicable requirements of all municipal ordinances, s. 7.5(3) and chs. NR 811 and NR 812, Wis. Adm. Code.

6.3 FLOODFRINGE DISTRICT

- (1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the municipality, and meets the requirements of s. 4.3 except where s. 6.3(2) is applicable.
- (2) Where compliance with the provisions of subd. (1) would result in unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Board of Adjustment/Appeals, using the procedures established in s. 7.3, may grant a variance from those provisions of subd. (1) for modifications or additions using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if:
 - (a) No floor is allowed below the regional flood elevation for residential or commercial structures;
 - (b) Human lives are not endangered;
 - (c) Public facilities, such as water or sewer, shall not be installed;
 - (d) Flood depths shall not exceed two feet;
 - (e) Flood velocities shall not exceed two feet per second; and
 - (f) The structure shall not be used for storage of materials as described in s. 4.3(5).
- (3) All new private sewage disposal systems, or addition to, replacement, repair or

maintenance of a private sewage disposal system shall meet all the applicable provisions of all local ordinances, 7.5(3) and ch. SPS 383, Wis. Adm. Code.

- (4) All new wells, or addition to, replacement, repair or maintenance of a well shall meet the applicable provisions of this ordinance, s. 7.5(3) and ch. NR 811 and NR 812, Wis. Adm. Code.

7.0 ADMINISTRATION

Where a zoning administrator, planning agency or a board of adjustment/appeals has already been appointed to administer a zoning ordinance adopted under ss. 59.69, 59.692 or 62.23(7), Stats., these officials shall also administer this ordinance.

7.1 ZONING ADMINISTRATOR

(1) DUTIES AND POWERS

The zoning administrator is authorized to administer this ordinance and shall have the following duties and powers:

- (a) Advise applicants of the ordinance provisions, assist in preparing permit applications and appeals, and assure that the regional flood elevation for the proposed development is shown on all permit applications.
- (b) Issue permits and inspect properties for compliance with provisions of this ordinance and issue certificates of compliance where appropriate.
- (c) Inspect and assess all damaged floodplain structures to determine if substantial damage to the structures has occurred.
- (d) Keep records of all official actions such as:
 - 1. All permits issued, inspections made, and work approved;
 - 2. Documentation of certified lowest floor and regional flood elevations;
 - 3. Floodproofing certificates.
 - 4. Water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures including changes, appeals, variances and amendments.
 - 5. All substantial damage assessment reports for floodplain structures.
 - 6. List of nonconforming structures and uses.
- (e) Submit copies of the following items to the Department Regional office:
 - 1. Within 10 days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments;
 - 2. Copies of case-by-case analyses and other required information including an annual summary of floodplain zoning actions taken.
 - 3. Copies of substantial damage assessments performed and all related

correspondence concerning the assessments.

(f) Investigate, prepare reports, and report violations of this ordinance to the municipal zoning agency and attorney for prosecution. Copies of the reports shall also be sent to the Department Regional office.

(g) Submit copies of amendments to the FEMA Regional office.

(2) LAND USE PERMIT

A land use permit shall be obtained before any new development; repair, modification or addition to an existing structure; or change in the use of a building or structure, including sewer and water facilities, may be initiated. Application to the zoning administrator shall include:

(a) GENERAL INFORMATION

1. Name and address of the applicant, property owner and contractor;
2. Legal description, proposed use, and whether it is new construction or a modification;

(b) SITE DEVELOPMENT PLAN

A site plan drawn to scale shall be submitted with the permit application form and shall contain:

1. Location, dimensions, area and elevation of the lot;
2. Location of the ordinary highwater mark of any abutting navigable waterways;
3. Location of any structures with distances measured from the lot lines and street center lines;
4. Location of any existing or proposed on-site sewage systems or private water supply systems;
5. Location and elevation of existing or future access roads;
6. Location of floodplain and floodway limits as determined from the official floodplain zoning maps;
7. The elevation of the lowest floor of proposed buildings and any fill using the vertical datum from the adopted study – either National Geodetic Vertical Datum (NGVD) or North American Vertical Datum (NAVD);
8. Data sufficient to determine the regional flood elevation in NGVD or NAVD at the location of the development and to determine whether or not the

requirements of s. 3.0 or 4.0 are met; and

9. Data to determine if the proposed development will cause an obstruction to flow or an increase in regional flood height or discharge according to s. 2.1. This may include any of the information noted in s. 3.3(1).

(c) HYDRAULIC AND HYDROLOGIC STUDIES TO ANALYZE DEVELOPMENT

All hydraulic and hydrologic studies shall be completed under the direct supervision of a professional engineer registered in the State. The study contractor shall be responsible for the technical adequacy of the study. All studies shall be reviewed and approved by the Department.

1. Zone A floodplains:

a. Hydrology

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

b. Hydraulic modeling

The regional flood elevation shall be based on the standards in ch. NR 116.07(4), Wis. Admin. Code, *Hydraulic Analysis: Determination of Regional Flood Elevation* and the following:

- i. determination of the required limits of the hydraulic model shall be based on detailed study information for downstream structures (dam, bridge, culvert) to determine adequate starting WSEL for the study.
- ii. channel sections must be surveyed.
- iii. minimum four foot contour data in the overbanks shall be used for the development of cross section overbank and floodplain mapping.
- iv. a maximum distance of 500 feet between cross sections is allowed in developed areas with additional intermediate cross sections required at transitions in channel bottom slope including a survey of the channel at each location.
- v. the most current version of HEC_RAS shall be used.
- vi. a survey of bridge and culvert openings and the top of road is required at each structure.
- vii. additional cross sections are required at the downstream and upstream limits of the proposed development and any necessary intermediate locations based on the length of the reach if greater than 500 feet.

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

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

c. Mapping

A work map of the reach studied shall be provided, showing all cross section locations, floodway/floodplain limits based on best available topographic data, geographic limits of the proposed development and whether the proposed development is located in the floodway.

i. If the proposed development is located outside of the floodway, then it is determined to have no impact on the regional flood elevation.

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

2. Zone AE Floodplains

a. Hydrology

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

b. Hydraulic model

The regional flood elevation shall be based on the standards in ch. NR 116.07(4), Wis. Admin. Code, *Hydraulic Analysis: Determination of Regional Flood Elevation* and the following:

i. Duplicate Effective Model

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

Table in the FIS report to within 0.1 foot.

ii. Corrected Effective Model.

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

iii. Existing (Pre-Project Conditions) Model.

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

iv. Revised (Post-Project Conditions) Model.

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

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

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

c. Mapping

Maps and associated engineering data shall be submitted to the Department for review which meet the following conditions:

i. Consistency between the revised hydraulic models, the revised floodplain and floodway delineations, the revised flood profiles, topographic work map, annotated FIRMs and/or Flood Boundary Floodway Maps (FBFMs), construction plans, bridge plans.

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

iii. Annotated FIRM panel showing the revised 1% and 0.2% annual chance floodplains and floodway boundaries.

- iv. If an annotated FIRM and/or FBFM and digital mapping data (GIS or CADD) are used then all supporting documentation or metadata must be included with the data submission along with the Universal Transverse Mercator (UTM) projection and State Plane Coordinate System in accordance with FEMA mapping specifications.
- v. The revised floodplain boundaries shall tie into the effective floodplain boundaries.
- vi. All cross sections from the effective model shall be labeled in accordance with the effective map and a cross section lookup table shall be included to relate to the model input numbering scheme.
- vii. Both the current and proposed floodways shall be shown on the map.
- viii. The stream centerline, or profile baseline used to measure stream distances in the model shall be visible on the map.

(d) EXPIRATION

All permits issued under the authority of this ordinance shall expire no more than 180 days after issuance. The permit may be extended for a maximum of 180 days for good and sufficient cause.

(3) CERTIFICATE OF COMPLIANCE

No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a certificate of compliance is issued by the zoning administrator, except where no permit is required, subject to the following provisions:

- (a) The certificate of compliance shall show that the building or premises or part thereof, and the proposed use, conform to the provisions of this ordinance;
- (b) Application for such certificate shall be concurrent with the application for a permit;
- (c) If all ordinance provisions are met, the certificate of compliance shall be issued within 10 days after written notification that the permitted work is completed;
- (d) The applicant shall submit a certification signed by a registered professional engineer, architect or land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or architect that the requirements of s. 7.5 are met.

(4) OTHER PERMITS

Prior to obtaining a floodplain development permit the applicant must secure all necessary permits from federal, state, and local agencies, including but not limited to those required by the U.S. Army Corps of Engineers under s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344.

7.2 ZONING AGENCY

(1) The City of Black River Falls Plan Commission shall:

- (a) oversee the functions of the office of the zoning administrator; and
- (b) review and advise the governing body on all proposed amendments to this ordinance, maps and text.

(2) The City of Black River Falls Plan Commission shall not:

- (a) grant variances to the terms of the ordinance in place of action by the Board of Adjustment/Appeals; or
- (b) amend the text or zoning maps in place of official action by the governing body.

7.3 BOARD OF APPEALS

The Board of Appeals, created s. 62.23(7)(e), Stats., for cities or villages, is hereby authorized or shall be appointed to act for the purposes of this ordinance. The Board shall exercise the powers conferred by Wisconsin Statutes and adopt rules for the conduct of business. The zoning administrator shall not be the secretary of the Board.

(1) POWERS AND DUTIES

The Board of Appeals shall:

- (a) Appeals - Hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this ordinance;
- (b) Boundary Disputes - Hear and decide disputes concerning the district boundaries shown on the official floodplain zoning map; and
- (c) Variances - Hear and decide, upon appeal, variances from the ordinance standards.

(2) APPEALS TO THE BOARD

- (a) Appeals to the board may be taken by any person aggrieved, or by any officer or department of the municipality affected by any decision of the zoning administrator or other administrative officer. Such appeal shall be taken within 30 days unless otherwise provided by the rules of the board, by filing with the official

whose decision is in question, and with the board, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the board all records regarding the matter appealed.

(b) NOTICE AND HEARING FOR APPEALS INCLUDING VARIANCES

1. Notice - The board shall:

- a. Fix a reasonable time for the hearing;
- b. Publish adequate notice pursuant to Wisconsin Statutes, specifying the date, time, place and subject of the hearing; and
- c. Assure that notice shall be mailed to the parties in interest and the Department Regional office at least 10 days in advance of the hearing.

2. Hearing - Any party may appear in person or by agent. The board shall:

- a. Resolve boundary disputes according to s. 7.3(3);
- b. Decide variance applications according to s. 7.3(4); and
- c. Decide appeals of permit denials according to s. 7.4.

(c) DECISION: The final decision regarding the appeal or variance application shall:

1. Be made within a reasonable time;
2. Be sent to the Department Regional office within 10 days of the decision;
3. Be a written determination signed by the chairman or secretary of the Board;
4. State the specific facts which are the basis for the Board's decision;
5. Either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or grant or deny the variance application; and
6. Include the reasons for granting an appeal, describing the hardship demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the Board proceedings.

(3) BOUNDARY DISPUTES

The following procedure shall be used by the Board in hearing disputes concerning floodplain district boundaries:

- (a) If a floodplain district boundary is established by approximate or detailed floodplain studies, the flood elevations or profiles shall prevail in locating the boundary. If none exist, other evidence may be examined;

- (b) The person contesting the boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the Board; and
 - (c) If the boundary is incorrectly mapped, the Board should inform the zoning committee or the person contesting the boundary location to petition the governing body for a map amendment according to s. 8.0 *Amendments*.
- (4) VARIANCE
- (a) The Board may, upon appeal, grant a variance from the standards of this ordinance if an applicant convincingly demonstrates that:
 1. Literal enforcement of the ordinance will cause unnecessary hardship;
 2. The hardship is due to adoption of the floodplain ordinance and unique property conditions, not common to adjacent lots or premises. In such case the ordinance or map must be amended;
 3. The variance is not contrary to the public interest; and
 4. The variance is consistent with the purpose of this ordinance in s. 1.3.
 - (b) In addition to the criteria in subd. (a), to qualify for a variance under FEMA regulations, the following criteria must be met:
 1. The variance shall not cause any increase in the regional flood elevation;
 2. Variances can only be granted for lots that are less than one-half acre and are contiguous to existing structures constructed below the RFE; and
 3. Variances shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the ordinance.
 - (c) A variance shall not:
 1. Grant, extend or increase any use prohibited in the zoning district;
 2. Be granted for a hardship based solely on an economic gain or loss;
 3. Be granted for a hardship which is self-created.
 4. Damage the rights or property values of other persons in the area;
 5. Allow actions without the amendments to this ordinance or map(s) required in s. 8.0 *Amendments*; and

6. Allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.

(d) When a floodplain variance is granted the Board shall notify the applicant in writing that it may increase risks to life and property and flood insurance premiums could increase up to \$25.00 per \$100.00 of coverage. A copy shall be maintained with the variance record.

7.4 TO REVIEW APPEALS OF PERMIT DENIALS

(1) The Zoning Agency (s. 7.2) or Board shall review all data related to the appeal. This may include:

(a) Permit application data listed in s. 7.1(2);

(b) Floodway/floodfringe determination data in s. 5.4;

(c) Data listed in s. 3.3(1)(b) where the applicant has not submitted this information to the zoning administrator; and

(d) Other data submitted with the application, or submitted to the Board with the appeal.

(2) For appeals of all denied permits the Board shall:

(a) Follow the procedures of s. 7.3;

(b) Consider zoning agency recommendations; and

(c) Either uphold the denial or grant the appeal.

(3) For appeals concerning increases in regional flood elevation the Board shall:

(a) Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases may only be allowed after amending the flood profile and map and all appropriate legal arrangements are made with all adversely affected property owners as per the requirements of s. 8.0 *Amendments*; and

(b) Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase provided no other reasons for denial exist.

7.5 FLOODPROOFING STANDARDS FOR NONCOMFORMING STRUCTURES OR USES

- (1) No permit or variance shall be issued for a non-residential structure designed to be watertight below the regional flood elevation until the applicant submits a plan certified by a registered professional engineer or architect that the floodproofing measures will protect the structure or development to the flood protection elevation and submits a FEMA Floodproofing Certificate.
- (2) For a structure designed to allow the entry of floodwaters, no permit or variance shall be issued until the applicant submits a plan either:
 - (a) certified by a registered professional engineer or architect; or
 - (b) meets or exceeds the following standards:
 1. a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 2. the bottom of all openings shall be no higher than one foot above grade; and
 3. openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (3) Floodproofing measures shall be designed, as appropriate, to:
 - (a) Withstand flood pressures, depths, velocities, uplift and impact forces and other regional flood factors;
 - (b) Protect structures to the flood protection elevation;
 - (c) Anchor structures to foundations to resist flotation and lateral movement;
 - (d) Minimize or eliminate infiltration of flood waters; and
 - (e) Minimize or eliminate discharges into flood waters.

7.6 PUBLIC INFORMATION

- (1) Place marks on structures to show the depth of inundation during the regional flood.
- (2) All maps, engineering data and regulations shall be available and widely distributed.
- (3) Real estate transfers should show what floodplain district any real property is in.

8.0 AMENDMENTS

Obstructions or increases may only be permitted if amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in

accordance with s. 8.1.

- (1) In AE Zones with a mapped floodway, no obstructions or increases shall be permitted unless the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with s. 8.1. Any such alterations must be reviewed and approved by FEMA and the DNR.
- (2) In A Zones increases equal to or greater than 1.0 foot may only be permitted if the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this ordinance, the official floodplain maps, floodway lines, and water surface profiles, in accordance with s. 8.1.

8.1 GENERAL

The governing body shall change or supplement the floodplain zoning district boundaries and this ordinance in the manner outlined in s. 8.2 below. Actions which require an amendment to the ordinance and/ or submittal of a Letter of Map Change (LOMC) include, but are not limited to, the following:

- (1) Any fill or floodway encroachment that obstructs flow causing any increase in the regional flood height;
- (2) Any change to the floodplain boundaries and/or watercourse alterations on the FIRM;
- (3) Any changes to any other officially adopted floodplain maps listed in 1.5 (2)(b);
- (4) Any floodplain fill which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain;
- (5) Correction of discrepancies between the water surface profiles and floodplain maps;
- (6) Any upgrade to a floodplain zoning ordinance text required by s. NR 116.05, Wis. Adm. Code, or otherwise required by law, or for changes by the municipality; and
- (7) All channel relocations and changes to the maps to alter floodway lines or to remove an area from the floodway or the floodfringe that is based on a base flood elevation from a FIRM requires prior approval by FEMA.

8.2 PROCEDURES

Ordinance amendments may be made upon petition of any party according to the provisions of s. 62.23, Stats., for cities and villages, or 59.69, Stats., for counties. The petitions shall include all data required by ss. 5.4 and 7.1(2). The Land Use Permit shall not be issued until a Letter of Map Revision is issued by FEMA for the proposed changes.

- (1) The proposed amendment shall be referred to the zoning agency for a public hearing and recommendation to the governing body. The amendment and notice of public

hearing shall be submitted to the Department Regional office for review prior to the hearing. The amendment procedure shall comply with the provisions of s. 62.23, Stats., for cities and villages or s. 59.69, Stats., for counties.

- (2) No amendments shall become effective until reviewed and approved by the Department.
- (3) All persons petitioning for a map amendment that obstructs flow causing any increase in the regional flood height, shall obtain flooding easements or other appropriate legal arrangements from all adversely affected property owners and notify local units of government before the amendment can be approved by the governing body.

9.0 ENFORCEMENT AND PENALTIES

Any violation of the provisions of this ordinance by any person shall be unlawful and shall be referred to the municipal attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the municipality a penalty of not less than \$ 25.00 and not more than \$50.00 (fifty dollars), together with a taxable cost of such action. Each day of continued violation shall constitute a separate offense. Every violation of this ordinance is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of the municipality, the state, or any citizen thereof pursuant to s. 87.30, Stats.

10.0 DEFINITIONS

Unless specifically defined, words and phrases in this ordinance shall have their common law meaning and shall be applied in accordance with their common usage. Words used in the present tense include the future, the singular number includes the plural and the plural number includes the singular. The word "may" is permissive, "shall" is mandatory and is not discretionary.

1. A ZONES – Those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.
2. AH ZONE – See “AREA OF SHALLOW FLOODING”.
3. AO ZONE – See “AREA OF SHALLOW FLOODING”.
4. ACCESSORY STRUCTURE OR USE – A facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building.
5. ALTERATION – An enhancement, upgrading or substantial change or modifications other than an addition or repair to a dwelling or to electrical, plumbing, heating, ventilating, air conditioning and other systems within a structure.
6. AREA OF SHALLOW FLOODING – A designated AO, AH, AR/AO, AR/AH, or VO zone

on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flood may be evident. Such flooding is characterized by ponding or sheet flow.

7. **BASE FLOOD** – Means the flood having a one percent chance of being equaled or exceeded in any given year, as published by FEMA as part of a FIS and depicted on a FIRM.
8. **BASEMENT** – Any enclosed area of a building having its floor sub-grade, i.e., below ground level, on all sides.
9. **BUILDING** – See **STRUCTURE**.
10. **BULKHEAD LINE** – A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department pursuant to s. 30.11, Stats., and which allows limited filling between this bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this ordinance.
11. **CAMPGROUND** – Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by 4 or more camping units, or which is advertised or represented as a camping area.
12. **CAMPING UNIT** – Any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, or tent that is fully licensed, if required, and ready for highway use.
13. **CERTIFICATE OF COMPLIANCE** – A certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this ordinance.
14. **CHANNEL** – A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.
15. **CRAWLWAYS** or **CRAWL SPACE** – An enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.
16. **DECK** – An unenclosed exterior structure that has no roof or sides, but has a permeable floor which allows the infiltration of precipitation.
17. **DEPARTMENT** – The Wisconsin Department of Natural Resources.
18. **DEVELOPMENT** – Any artificial 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 alterations to buildings, structures or accessory structures; the

repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

19. **DRYLAND ACCESS** – A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.
20. **ENCROACHMENT** – Any fill, structure, equipment, use or development in the floodway.
21. **FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)** – The federal agency that administers the National Flood Insurance Program.
22. **FLOOD INSURANCE RATE MAP (FIRM)** – A map of a community on which the Federal Insurance Administration has delineated both the floodplain and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.
23. **FLOOD or FLOODING** – A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:
 - The overflow or rise of inland waters;
 - The rapid accumulation or runoff of surface waters from any source;
 - The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; or
 - The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.
24. **FLOOD FREQUENCY** – The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average once in a specified number of years or as a percent (%) chance of occurring in any given year.
25. **FLOODFRINGE** – That portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood and associated with standing water rather than flowing water.
26. **FLOOD HAZARD BOUNDARY MAP** – A map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A-Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.

27. **FLOOD INSURANCE STUDY** – A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A-Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.
28. **FLOODPLAIN** – Land which has been or may be covered by flood water during the regional flood. It includes the floodway and the floodfringe, and may include other designated floodplain areas for regulatory purposes.
29. **FLOODPLAIN ISLAND** – A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.
30. **FLOODPLAIN MANAGEMENT** – Policy and procedures to insure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.
31. **FLOOD PROFILE** – A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.
32. **FLOODPROOFING** – Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.
33. **FLOOD PROTECTION ELEVATION** – An elevation of two feet of freeboard above the water surface profile elevation designated for the regional flood. (Also see: **FREEBOARD**.)
34. **FLOOD STORAGE** – Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.
35. **FLOODWAY** – The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.
36. **FREEBOARD** – A safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for any factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development and aggregation of the river or stream bed.

37. **HABITABLE STRUCTURE** – Any structure or portion thereof used or designed for human habitation.
38. **HEARING NOTICE** – Publication or posting meeting the requirements of Ch. 985, Stats. For appeals, a Class 1 notice, published once at least one week (7 days) before the hearing, is required. For all zoning ordinances and amendments, a Class 2 notice, published twice, once each week consecutively, the last at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice, exceeding these minimums.
39. **HIGH FLOOD DAMAGE POTENTIAL** – Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.
40. **HIGHEST ADJACENT GRADE** – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
41. **HISTORIC STRUCTURE** – Any structure that is either:
- Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 - Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior; or by the Secretary of the Interior in states without approved programs.
42. **INCREASE IN REGIONAL FLOOD HEIGHT** – A calculated upward rise in the regional flood elevation greater than 0.00 foot, based on a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.
43. **LAND USE** – Any nonstructural use made of unimproved or improved real estate. (Also see DEVELOPMENT.)
44. **LOWEST ADJACENT GRADE** – Elevation of the lowest ground surface that touches any of the exterior walls of a building.
45. **LOWEST FLOOR** – The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the

applicable non-elevation design requirements of 44 CFR 60.3.

46. MAINTENANCE – The act or process of restoring to original soundness, including redecorating, refinishing, non structural repairs, or the replacement of existing fixtures, systems or equipment with equivalent fixtures, systems or structures.
47. MANUFACTURED HOME – A structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. The term "manufactured home" includes a mobile home but does not include a "mobile recreational vehicle."
48. MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION – A parcel (or contiguous parcels) of land, divided into two or more manufactured home lots for rent or sale.
49. MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION, EXISTING – A parcel of land, divided into two or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this ordinance. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.
50. MOBILE/MANUFACTURED HOME PARK, EXPANSION TO EXISTING – The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading, or the pouring of concrete pads.
51. MOBILE RECREATIONAL VEHICLE – A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicles."
52. MODEL, CORRECTED EFFECTIVE – A hydraulic engineering model that corrects any errors that occur in the Duplicate Effective Model, adds any additional cross sections to the Duplicate Effective Model, or incorporates more detailed topographic information than that used in the current effective model.
53. MODEL, DUPLICATE EFFECTIVE – A copy of the hydraulic analysis used in the effective FIS and referred to as the effective model.
54. MODEL, EFFECTIVE – The hydraulic engineering model that was used to produce the current effective Flood Insurance Study.

55. MODEL, EXISTING (PRE-PROJECT) – A modification of the Duplicate Effective Model or Corrected Effective Model to reflect any man made modifications that have occurred within the floodplain since the date of the effective model but prior to the construction of the project for which the revision is being requested. If no modification has occurred since the date of the effective model, then this model would be identical to the Corrected Effective Model or Duplicate Effective Model.
56. MODEL, REVISED (POST-PROJECT) – A modification of the Existing or Pre-Project Conditions Model, Duplicate Effective Model or Corrected Effective Model to reflect revised or post-project conditions.
57. MUNICIPALITY or MUNICIPAL – The county, city or village governmental units enacting, administering and enforcing this zoning ordinance.
58. NAVD or NORTH AMERICAN VERTICAL DATUM – Elevations referenced to mean sea level datum, 1988 adjustment.
59. NGVD or NATIONAL GEODETIC VERTICAL DATUM – Elevations referenced to mean sea level datum, 1929 adjustment.
60. NEW CONSTRUCTION – For floodplain management purposes, "new construction" means structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by this community and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.
61. NONCONFORMING STRUCTURE – An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this ordinance for the area of the floodplain which it occupies. (For example, an existing residential structure in the floodfringe district is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.)
62. NONCONFORMING USE – An existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this ordinance for the area of the floodplain which it occupies. (Such as a residence in the floodway.)
63. OBSTRUCTION TO FLOW – Any development which blocks the conveyance of floodwaters such that this development alone or together with any future development will cause an increase in regional flood height.
64. OFFICIAL FLOODPLAIN ZONING MAP – That map, adopted and made part of this ordinance, as described in s. 1.5(2), which has been approved by the Department and FEMA.
65. OPEN SPACE USE – Those uses having a relatively low flood damage potential and not

involving structures.

66. **ORDINARY HIGHWATER MARK** – The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.
67. **PERSON** – An individual, or group of individuals, corporation, partnership, association, municipality or state agency.
68. **PRIVATE SEWAGE SYSTEM** – A sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Safety and Professional Services, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.
69. **PUBLIC UTILITIES** – Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.
70. **REASONABLY SAFE FROM FLOODING** – Means base flood waters will not inundate the land or damage structures to be removed from the floodplain and that any subsurface waters related to the base flood will not damage existing or proposed buildings.
71. **REGIONAL FLOOD** – A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year, and if depicted on the FIRM, the RFE is equivalent to the BFE.
72. **START OF CONSTRUCTION** – The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
73. **STRUCTURE** – Any manmade object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed,

including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.

74. **SUBDIVISION** – Has the meaning given in s. 236.02(12), Wis. Stats.
75. **SUBSTANTIAL DAMAGE** – Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the equalized assessed value of the structure before the damage occurred.
76. **SUBSTANTIAL IMPROVEMENT** – Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the equalized assessed value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the work performed. The term does not, however, include either any project for the improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions; or any alteration of a historic structure provided that the alteration will not preclude the structure’s continued designation as a historic structure.
77. **UNNECESSARY HARDSHIP** – Where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the ordinance.
78. **VARIANCE** – An authorization by the board of adjustment or appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance.
79. **VIOLATION** – The failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.
80. **WATERSHED** – The entire region contributing runoff or surface water to a watercourse or body of water.
81. **WATER SURFACE PROFILE** – A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.

82. WELL – means an excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.

18.05 NONCONFORMING STRUCTURES AND USES. (1) GENERAL PROVISIONS. 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 this chapter, including the routine maintenance of such a building or structure, may be continued, subject to the following conditions:

(a) If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, any future use of the building, structure or property shall conform to the appropriate provisions of this chapter.

(b) Any legal nonconforming use of property which does not involve the use of a structure and which existed at the time of the adoption or subsequent amendment of this chapter adopted under §61.351, Wis. Stats., may be continued although such use does not conform with the provisions of this chapter. However, such nonconforming use may not be extended or increased.

(c) The maintenance and repair of nonconforming boat-houses which are located below the ordinary high-water mark of any navigable waters shall comply with the requirements of §30.121, Wis. Stats.

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(d) Uses which are nuisances under common law shall not be permitted to continue as nonconforming uses.

(2) **SHORELAND-WETLANDS.** Notwithstanding §62.23(7)(h), Wis. Stats., the repair, reconstruction, renovation, remodeling or expansion of a legal nonconforming structure in existence at the time of adoption or subsequent amendment of this chapter adopted under §61.351, Wis. Stats., or of an environmental control facility in existence on May 7, 1982, related to that structure, is permitted under §61.351(5), Wis. Stats. Section 62.23(7)(h), Wis. Stats., applies to any environmental control facility that was not in existence on May 7, 1982, but was in existence on the effective date of this chapter or amendment.

(3) **FLOODPLAINS, GENERAL PROVISIONS.** (a) No modifications or additions to a nonconforming use or a nonconforming structure shall be permitted unless they are made in conformity with the provisions of this chapter for the area of the floodplain it occupies. For the purpose of this subsection, the words "modification" and "addition" shall include, but not be limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Ordinary maintenance repairs are not considered modifications or additions; such ordinary maintenance repairs include internal and external painting, decorating, paneling and the replacement of doors, windows and other nonstructural components; and the maintenance, repair or replacement of existing private sewage or water supply systems, or connections to public utilities.

(b) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would exceed 50% of its present assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this chapter and contiguous dry land access is provided in compliance with sec. 18.04(3)(c)1. of this chapter.

(c) As requests are received for modifications or additions to nonconforming uses or nonconforming structures in the floodplain, a record shall be kept which lists the nonconforming uses and nonconforming structures, their present assessed value, and the cost of those additions or modifications which have been permitted.

(d) If any nonconforming structure or any structure with a nonconforming use is destroyed or is so badly damaged that it cannot be practically restored, it cannot be replaced, reconstructed or rebuilt unless the provisions of sec. 18.04(2) are met. For the purpose of this subsection, restoration is deemed impractical where the total cost of such restoration would exceed 50% of the present assessed value of the structure.

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(4) FLOODWAY AREAS. (a) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a floodway area unless such modification or addition:

1. Has been granted a permit or variance.
2. Meets criteria of sub. (3) above.
3. Will not increase the amount of obstruction to flood flows as provided in sec. 18.04(1)(e) of this chapter.
4. Any addition to an existing structure shall be floodproofed, pursuant to sec. 18.04(1)(i) of this chapter, by means other than the use of fill, to the flood protection elevation.

(b) No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all local ordinances and Wis. Adm. Code COMM 83.

(c) No new well or modification to an existing well, used to obtain water for ultimate human consumption, shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing well in a floodway area shall meet the applicable requirements of this chapter and Wis. Adm. Code NR 111 and 112.

(5) FLOOD FRINGE AREAS. (a) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in the flood fringe area unless such modification or addition has been granted a permit or variance and, except where par. (b) below is applicable, the modification or addition is placed on fill or is floodproofed to the flood protection elevation in compliance with the applicable regulations for that particular use in a flood fringe area in sec. 18.04(3) of this chapter.

(b) Where compliance with the provisions of par. (a) above would result in unnecessary hardship, and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Board of Zoning Appeals, using the procedures established in secs. 18.06(5) and (6) of this chapter may grant a variance from those provisions, using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted provided:

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1. No floor is below regional flood elevation.
2. Human lives are not endangered.
3. Public facilities such as water or sewer are not to be installed.
4. Flood depths will not exceed 2 feet.
5. Flood velocities will not exceed 2 feet per second.
6. The structure will not be used for storage of materials that are buoyant, flammable, explosive or injurious to human, animal, plant, fish or other aquatic life.

(c) An addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in a flood fringe area on a one-time basis only if the addition:

1. Has been granted by permit or variance.
2. Does not exceed 60 square feet in area.
3. In combination with other modifications or additions to the building, does not exceed 50% of the present assessed value of the building.

(d) All new on-site sewage disposal systems, or addition to, replacement, repair or maintenance of an on-site sewage disposal system in a flood fringe area shall meet all the applicable provisions of all local ordinances and Wis. Adm. Code COMM 83.

(e) All new wells, or addition to, replacement, repair or maintenance of a well in a flood fringe area shall meet the applicable provisions of this chapter and Wis. Adm. Code NR 111 and 112.

18.06 ADMINISTRATION. (1) ZONING ADMINISTRATOR. The Zoning Administrator shall have the following duties and powers:

(b) Advise applicants as to the provisions of this chapter, assist them in preparing permit applications and appeal forms, and insure that the regional flood elevation is shown on permit applications where appropriate.

(c) Issue permits and certificates of compliance and inspect properties for compliance with this chapter.

(d) Keep records of all official actions such as:

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1. All permits issued.
2. Inspections made.
3. Work approved.
4. Documentation of certified lowest floor and regional flood elevations for floodplain development.
5. Records of water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures, including changes, appeals, variances and amendments.

(d) Have access to any structure or premises between the hours of 8:00 A.M. and 6:00 P.M. for the purpose of performing these duties.

(e) Submit copies of decisions on variances, condition-al 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.

(f) Investigate and report violations of this chapter to the Plan Commission and the District Attorney, Corporation Counsel or City Attorney.

(g) Submit copies of floodplain text amendments and biennial reports to the regional FEMA office.

(2) BUILDING/ZONING PERMITS. (a) When Required. Unless another section of this chapter specifically exempts certain types of development from this requirement, a building or zoning permit shall be obtained from the Zoning Administrator before any development, as defined in sec. 18.02 of this chapter, including any change in the use of an existing building or structure, is initiated.

(b) Application. An application for a permit shall be made to the zoning Administrator upon forms furnished and shall include the following information for the purpose of proper enforcement of these regulations:

1. General Information. a. Name, address and telephone number of property owner and contractor.

b. Legal description of the property and a general description of the proposed use or development indicating new construction or modification to existing structures.

2. Site Development Plan. A development plan shall be drawn to scale and submitted as a part of the permit application form and shall contain the following information:

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- a. Location, dimensions, area and elevation of the lot noted on a copy of the Wetland Inventory Map, if applicable.
- b. Location and boundaries of wetlands.
- c. Specifications and dimensions for areas of proposed wetland alteration.
- d. Location of the ordinary high-water mark of any abutting navigable waterways.
- e. Existing and proposed topographic and drainage features and vegetative cover.
- f. Location of any structures with distances measured from the lot lines and center line of all abutting streets or highways.
- g. Location of any existing or proposed on-site sewage systems or private water supply systems.
- h. Location and elevation of existing or future access roads.
- i. Location of floodplain and floodway limits on the property as determined from floodplain zoning maps used to delineate floodplain areas.
- j. The elevation of the lowest floor of pro-posed buildings using National Geodetic and Vertical Datum (NGVD).
- k. Data sufficient to determine the regional flood elevation at the location of the development and to deter-mine whether or not the requirements of sec. 18.04(1) of this chapter are met. This may include any of the information noted in sec. 18.04(4)(d) of this chapter.

3. Data Requirements to Analyze Developments. a. The applicant shall provide all computations required to show the effects of the project on flood heights, velocities and flood-plain storage, for all subdivision proposals, as "subdivision" is defined in §236.02(8), Wis. Stats., and other proposed developments exceeding 5 acres in area or where the estimated cost exceeds \$125,000. The applicant shall provide the following:

- i. Regional flood elevation data.
- ii. Vehicular access to lands outside the floodplain.
- iii. Adequate surface drainage to minimize flood damage.

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

b. The Department shall determine elevations and evaluate the proposal where the applicant is not required to provide computations as above and inadequate data exists. The City may transmit additional information such as the data in sec. 18.04(4)(d) of this chapter, where appropriate, to the Department with the request for analysis.

(c) Expiration. All permits issued under the authority of this chapter shall expire one year from the date of issuance.

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

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

2. Application for such certificate shall be concurrent with the application for a permit.

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

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

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

(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 adoption of this chapter, 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.

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(4) FEES. The Council may, by resolution, adopt fees for the following:

- (a) Building/zoning permits.
- (b) Certificates of compliance.
- (c) Public hearings.
- (d) Legal notice publications.
- (e) Conditional use permits.

(5) BOARD OF ZONING APPEALS. (a) Membership. See ch. 1 of this Code.

(b) Powers and Duties. The Board of Zoning Appeals shall:

1. Appeals. 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.

2. Conditional Uses. Hear and decide applications for any conditional use permits required by this chapter.

3. Variances. May grant, upon appeal, a variance from the dimensional standards of this chapter, pursuant to sub. (6) below.

(c) Appeals to the Board. Appeals to the Board of Zoning Appeals may be taken by any person aggrieved or by an officer, department, board or bureau of the community affected by any order, requirement decision, or determination of the official whose decision is in question. 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 a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the Board all the documents constituting the record concerning the matter appealed.

(d) Hearing Appeals and Applications for Variances and Conditional Use Permits. 1. Notice and Hearing. The Board of Zoning Appeals shall fix a reasonable time for a hearing on the appeal or application. The Board shall give public notice by publishing a Class 1 notice under Ch. 985, Wis. Stats., specifying the date, time and place of the hearing and the matters to come before the Board. Notice shall be mailed to the parties in interest. Written notice shall be given to the appropriate district office of the Department at least 10 days prior to hearings on

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proposed variances, conditional uses and appeals for map or text interpretations. At the public hearing, any party may appear in person or by agent or attorney.

2. Decision. A decision regarding the appeal or application shall be made as soon as practical. Copies of all decisions on variances, conditional uses and appeals for map or text interpretations shall be submitted to the appropriate district office of the Department within 10 days after they are granted or denied. The final disposition of an appeal or application to the Board of Zoning Appeals shall be in the form of a written resolution or order signed by the Chairperson and Secretary of the Board. Such resolution shall state the specific facts which are the basis of the Board's determination and shall either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or prosecution or grant the application.

(e) Boundary Disputes. The following procedure shall be used by the Board of Zoning Appeals in hearing disputes concerning the district boundaries shown on the Official Floodplain Zoning Map:

1. Where a floodplain district boundary is established by approximate or detailed floodplain studies, the regional flood elevations or profiles for the point in question shall be the governing factor in locating the district boundary. If no regional flood elevations or profiles are available to the Board, other available evidence may be examined.

2. In all cases, the person contesting the location of the district boundary shall be given a reasonable opportunity to present arguments and technical evidence to the Board.

3. Where it is determined that the district boundary is incorrectly mapped, the Board should either inform the Plan Commission to petition the City or inform the person contesting the location of the boundary to petition the City for a map amendment.

(6) VARIANCES. (a) The Board of Zoning Appeals may, upon appeal, grant a variance from the dimensional standards of this chapter where an applicant convincingly demonstrates that:

1. Literal enforcement of the provisions of the chapter will result in unnecessary hardship on the applicant.

2. The hardship is due to special conditions unique to the property, and not common to a group of adjacent lots or premises, in which case this chapter or the Zoning Map must be amended.

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3. Such variance is not contrary to the public interest.

(b) A variance shall not:

1. Allow development below the regional flood elevation.
2. Grant or increase any use of property prohibited in the zoning district.
3. Be granted for a hardship based solely on an economic gain or loss.
4. Be granted for a hardship that is self-created.
5. Damage the rights or property values of other persons in the area.

6. Permit a lower degree of flood protection in a floodway area than the flood protection elevation. In the flood fringe area, a lower degree of flood protection than the flood protection elevation may only be allowed pursuant to sec. 18.05(5)(b) of this chapter.

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

(7) **CONDITIONAL USE PERMITS.** (a) 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 Board of Zoning Appeals, following the procedures in sub. (5)(d) above. To secure information upon which to base its determination, the Board may require the applicant to furnish, in addition to the information required for a building/zoning permit, other pertinent information which is necessary to determine if the proposed use is consistent with the purpose of this chapter.

(b) Conditions. Upon consideration of the permit application and the standards applicable to the permitted uses in this chapter, the Board of Zoning Appeals shall attach such conditions to a conditional use permit, in addition to those required elsewhere in this chapter, as are necessary to further the purposes of this chapter as listed in sec. 18.01(3) of this chapter. Such conditions may include specifications for, without limitation because of specific enumeration; type of shore cover; erosion protection measures; increased side yard setbacks; specific sewage disposal and water supply facilities; landscaping

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and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking areas and signs; and type of construction.

(8) REVIEW OF APPEALS OF PERMIT DENIALS. (a) The Board of Zoning Appeals shall review all data constituting the basis for the appeal of permit denial. This data may include, where appropriate:

1. Permit application data listed in sub. (2)(b) above.
2. Floodway/flood fringe determination data in sec. 18.04(4)(d) of this chapter.
3. Data listed in sec. 18.04(2)(c)l. of this chapter where the applicant has not submitted this information to the Zoning Administrator.
4. Other data submitted to the Zoning Administrator with the permit application, or submitted to the Board with the appeal.

(b) For appeals of all denied permits, the Board shall:

1. Follow the procedures of sub. (5) above.
2. Consider any zoning agency recommendations.
3. Either uphold the denial or grant the appeal.

(c) For appeals concerning increases in regional flood elevation, the Board shall:

1. Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases equal to or greater than 0.01 foot may only be allowed after amending the flood profile and map and any appropriate legal arrangements are made with all adversely affected property owners.
2. Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase equal to or greater than 0.01 foot provided no other reasons for denial exist.

(9) PUBLIC INFORMATION. (a) Where useful, marks on bridges or buildings or other markers may be set to show the depth of inundation during the regional flood at appropriate locations within the floodplain.

(b) All available information in the form of maps, engineering data and regulations shall be readily available and should be widely distributed.

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(c) All legal descriptions of property in the floodplain should include information designating the floodplain zoning classification when such property is transferred.

18.07 AMENDING FLOODPLAIN AND SHORELAND-WETLAND ZONING REGULATIONS, PROCEDURES. The Council may supplement or change the district boundaries and the regulations contained in this chapter according to §62.23(7)(d)2., Wis. Stats., Wis. Adm. Code NR 116 and 117 and the following:

(1) The Shoreland-Wetland District amendment provisions of sec. 18.03(4) of this chapter and the floodplain district amendment provisions of sec. 18.04(1) of this chapter shall apply.

(2) A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the Department within 5 days of the submission of the proposed amendment to the Plan Commission.

(3) All proposed text and map amendments shall be referred to the Plan Commission and a public hearing shall be held as required by §62.23(7)(d)2., Wis. Stats., following publication of a Class 2 notice as defined in sec. 18.02 of this chapter. The appropriate district office of the Department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.

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

18.08 ENFORCEMENT AND PENALTIES. Any development, as defined in sec. 18.02 of this chapter, or use established after the effective date of this chapter in violation of this chapter by any person shall be deemed a violation. The Zoning Administrator shall refer violations to the Plan Commission and the City Attorney who shall prosecute such violations. Any person who violates or refuses to comply with any of the provisions of this chapter shall be subject to a forfeiture of not less than \$25 nor more than \$200 per offense, together with the taxable costs of such action. Each day of continued violation shall constitute a separate offense. Every violation of this chapter is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated at suit of the City, the State or any citizen thereof, pursuant to §87.30(2), Wis. Stats.