

CHAPTER 18

THE SHORELAND-WETLAND ZONING ORDINANCE

VILLAGE OF LAC LA BELLE

WAUKESHA COUNTY

WISCONSIN

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

(1) STATUTORY AUTHORIZATION

This ordinance is adopted pursuant to the authorization in sections 61.35, 61.351, 87.30 and 144.26, Wis. Stats.

(2) PURPOSE AND INTENT

For the purpose of promoting the public health, safety, convenience and welfare, this ordinance has been established to:

- (A) Further the maintenance of safe and healthful conditions and prevent and control water pollution through:
 - 1 Limiting structures to those areas where soil and geological conditions will provide a safe foundation.
 - 2 The control of filling and grading to prevent serious soil erosion.
- (B) Protect spawning grounds, fish and aquatic life through:
 - 1 Preserving wetlands and other fish and aquatic habitat.
 - 2 Regulating pollution sources.
 - 3 Controlling shoreline alterations such as dredging, lagooning and the construction of seawalls.
- (C) Control building sites, placement of structures and land uses through:
 - 1 Reduction and elimination of conflicting land uses.
 - 2 Prohibiting uses detrimental to the shoreland area.
 - 3 Regulating building and structural placement.
 - 4 Regulating land and water uses so as to assure a more compatible relationship to the carrying capacity of the land and water.
- (D) Preserve shore cover and natural beauty through:
 - 1 Restricting the removal of natural shoreland cover.
 - 2 Preventing shoreland encroachment by structures.
 - 3 Controlling shoreland excavation and other earth moving activities.
 - 4 Regulating the use and placement of boathouses and other structures.

- (E) Provide for adequate light, air, sanitation, drainage, convenience of access, safety from fire, flood hazard and other dangers, promote the safety and efficiency of the public streets and highways, conserve and stabilize the economic value of the community, preserve and promote the general attractiveness and character of the community environment and guide the proper distribution and location of population and the various land uses.
- (F) Prevent the exploitation, direct or indirect, of lands set aside for the common good as conservancy districts; prevent flooding; prevent pollution of streams, lakes and other bodies of water; and prevent indiscriminate crowding of streams, lakes and other bodies of water.

18.02 GENERAL PROVISIONS

(1) COMPLIANCE

The use of wetlands and the alteration of wetlands (including wetlands within the shoreland area of the municipality) and of lands within the buffer zone designated by this ordinance shall be in full compliance with the terms of this ordinance and other applicable local, state or federal regulations. All permitted development shall require the issuance of a conditional use permit unless otherwise expressly excluded by a provision of this ordinance.

(2) MUNICIPALITIES AND STATE AGENCIES REGULATED

Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply if section 13.48(13), Wis. Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when section 30.12(4)(a), Wis. Stats., applies.

(3) ABROGATION AND GREATER RESTRICTIONS

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

where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

(4) INTERPRETATION

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the municipality and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this ordinance is required by a standard in Chapter NR 117, Wis. Adm. Code, and where the ordinance provision is unclear, the provision shall be interpreted in light of the chapter NR 117 standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

(5) SEVERABILITY

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

(6) ANNEXED AREAS

The Waukesha County shoreland zoning provisions in effect on the date of annexation remain in effect administered by the municipality for all areas annexed by the municipality after May 7, 1982. These annexed lands are described on the municipality's official zoning map. The Waukesha County shoreland 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.

18.03 SHORELAND-WETLAND ZONING DISTRICT

(1) SHORELAND-WETLAND ZONING MAPS

The following maps are hereby adopted and made part of this ordinance and are on file in the office of the municipal Clerk: Wisconsin Wetland Boundary Map dated 1992.

(2) DISTRICT BOUNDARIES

- (A) The following maps are hereby adopted and made part of this ordinance and are on file in the office of the municipal clerk: Lac La Belle Wetland Boundary Map dated 1992.

- (B) The C-W – Conservancy-Wetland Zoning District includes all wetlands mapped as such on the Village of Lac La Belle Wetland Boundary Map dated 1992, as described in § 3.1 of this ordinance. Additional areas of wetland may be included in the C-W – Conservancy-Wetland Zoning District only upon proving that said additional wetland satisfied all the necessary criteria for wetland as of November 3, 1988 (the date of Village receipt of the Wisconsin Wetland Inventory Maps stamped "FINAL" for the Village of Lac La Belle), and said additional wetlands were omitted from the wetland district shown on the wetland map adopted by § 3.1 of this ordinance in error. Lands which did not meet all of the criteria for wetlands on November 1, 1988, but subsequently met all of the criteria will not be included in the C-W – Conservancy-Wetland Zoning District unless and until an amendment to the Lac La Belle Wetland Boundary Map adopted pursuant to § 3.1 of this Ordinance is adopted pursuant to § 7 of this Ordinance.
- (C) The Shoreland Overlay District includes all areas within the Village which are:
- 1 Within one thousand (1,000) feet of the ordinary high-water mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in the municipality shall be presumed to be navigable if they are shown on the, United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this ordinance.
 - 2 Within three hundred (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 been incorporated by reference and made a part of this ordinance.
- (D) Determinations of navigability and ordinary high-water mark location shall initially be made by the zoning administrator. When questions arise, the zoning administrator shall contact the appropriate district office of the Department for a final determination of navigability or ordinary high-water mark.
- (E) In the event that an error in the wetland boundary established by the map adopted by § 3.1 of this ordinance becomes apparent such that either land that met all of the criteria for wetland on November 3, 1988, was erroneously excluded from the C-W – Conservancy-

Wetland Zoning District or land included in said district failed to meet all of the criteria of wetland as of November 3, 1988, the Plan Commission shall contact the appropriate district office of the Department to determine if the wetland district boundary, as mapped, is in error. If Department staff concur with the Plan Commission that a particular area was incorrectly mapped as a wetland, the Plan Commission shall have the authority to immediately grant or deny a conditional use permit in accordance with the regulations applicable to the correct zoning district. If Department staff concur with the Plan Commission that a particular area was incorrectly excluded from the wetland district, the Plan Commission shall make a recommendation for the amendment of the wetland district map adopted by § 3.1 of this Ordinance to the Board of Trustees, and such amendment shall be acted' upon pursuant to § 7 of this Ordinance. In order to correct wetland mapping errors or acknowledge exempted wetlands designated in § 3.25 and 3.26, the Plan Commission shall be responsible for initiating a map amendment within a reasonable period.

(3) FILLED WETLANDS

Wetlands which are filled prior to November 3, 1988, the date on which the municipality received final wetland inventory maps, in a manner which affects their wetland characteristics to the extent that the area can no longer be defined as wetland, are not subject to this ordinance.

(4) WETLANDS LANDWARD OF A BULKHEAD LINE

Wetlands located between the original ordinary high water mark and a bulkhead line established prior to May 7, 1982, under s. 30.11, Stats., are not subject to this ordinance.

18.04 The C-W Conservancy Wetland District and C-W Buffer District Regulations

(1) Permitted Uses

The following uses are permitted within the C-W Conservancy - Wetland District and the C-W Buffer District subject to the provisions of chapters 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 conditional use permit, provided that no wetland alteration occurs:
 - 1 Hiking, fishing, trapping with live traps only (not by bold or Conobear traps), swimming, snowmobiling and boating;

- 2 The harvesting of wild crops, such as marsh bay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops.
- (B) Uses which do not require the issuance of a conditional use permit and which may involve wetland alterations only to the extent specifically provided below:
- 1 The maintenance and repair of existing drainage systems to restore pre-existing levels of drainage, including the minimum amount of filling necessary to dispose of dredged spoil, provided that the filling is otherwise permissible and that dredged spoil is placed on existing spoil banks where possible;
 - 2 The construction and maintenance of walkways, observation decks and trail bridges built on pilings, including limited excavating and filling necessary for such construction or maintenance;
 - 3 The installation and maintenance of sealed tiles for the purpose of draining lands outside the shoreland-wetland zoning district provided that such installation or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the shoreland-wetland listed in section 18.07(4) of this ordinance; and
 - 4 The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.
- (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 municipal street system, the provision of essential utility and emergency services or to provide access to uses permitted under section 18.04(1), of this ordinance, provided that:
 - a. The road cannot, as a practical matter, be located outside the wetland;
 - b. The road is designed and constructed to minimize adverse impacts upon the natural functions of the wetland listed in section 18.07(4) of this ordinance;
 - c. The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;
 - d. Road construction activities are carried out in the immediate area of the roadbed only; and

- e. Any wetland alteration must be necessary for the construction or maintenance of the road.
- 2 The establishment and development of public and private parks and recreation areas, outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms and wildlife preserves, provided that:
- a. Any private development allowed under this paragraph shall be used exclusively for the permitted purpose;
 - b. The construction and maintenance of roads necessary for the uses permitted under this paragraph are allowed only where such construction and maintenance meets the criteria in section 18.04(C)1 of this ordinance; and
 - c. Wetland alterations in game refuges and closed areas, fish and wildlife habitat improvement projects, and wildlife preserves, shall be for the purpose of improving wildlife habitat or to otherwise enhance wetland values.
- 3 The construction and maintenance of electric and telephone transmission lines, water and gas distribution lines and sewage collection lines and related facilities and the construction and maintenance of railroad lines provided that:
- a. The utility transmission and distribution 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 and said activities comply with section 18.04(B)(B)3 of this ordinance; and
 - c. Such construction or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the wetland listed in section 18.07(4) of this ordinance.

(2) PROHIBITED USES

Any use not listed in section 18.04(1) of this ordinance is prohibited within the C-W – Conservancy-Wetland District and the C-W Buffer District, unless the wetland or a portion of the wetland has been re-zoned by amendment of this ordinance in accordance with section 18.07 of this ordinance.

(3) NON-CONFORMING STRUCTURES AND USES

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

- (A) The provisions of this ordinance shall not limit the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure or of any environmental control facility related to such a structure in existence on the effective date of the wetland provisions.
- (B) If a nonconforming use is discontinued for twelve (12) consecutive months, any future use of the building, structure or property shall conform to this ordinance.
- (C) Any legal nonconforming use of property which does not involve the use of a structure and which existed at the time of the adoption or subsequent amendment of this ordinance may be continued. However, such nonconforming use may not be extended.
- (D) The maintenance and repair of nonconforming boathouses which are located below the ordinary high-water mark of any navigable waters shall comply with the requirements of section 30.121, Wis. Stats.
- (E) Uses which are nuisances under common law shall not be permitted to continue as nonconforming uses.

18.05 SHORELAND OVERLAY DISTRICT

This Section applies to all areas within the Shoreland Overlay District as defined in Section 18.03(C) of this chapter of the Village of Lac La Belle Code of Ordinances.

(1) PERMITTED USES

- (A) Any uses permitted by right in underlying zoning district unless prohibited by this section.
- (B) Subject to section 18.05(3)(1)(B), minor grading, filling and land altering activities as defined in section 18.09 including patio construction, may be permitted without the benefit of a Conditional Use Permit outside of the C-W Conservancy - Wetland District and

the 100 year floodplain and above the ordinary high water marks subject to the projects being authorized through administrative procedures and granted a Zoning Permit by meeting the following standards:

- 1 An administrative determination that the project has no public impact on or will not adversely affect adjacent or surrounding property.
- 2 The review and approval, if necessary, by the Department of Natural Resources of the project.
- 3 Willingness to enter into a stipulated agreement with the Village, if necessary, concerning the scope of work, type of material used, method of construction, final grades, re-establishment of vegetative cover, date of completion and any other items deemed appropriate by the Village. Method and materials for sea wall construction shall be per the latest recommendations of Department of Natural Resources.
- 4 Submittal of complete and accurate set of plans sufficient to determine the above parameters including contour maps and cross-sections, vegetative seeding schedules, the period of construction activity, method of protection of surrounding land and water areas from erosion and sedimentation and method of construction and how project will relate to adjoining property.
- 5 Decks as defined herein shall meet the shore setback provisions of the underlying zoning district.

(2) PROHIBITED USES

- (A) Marinas.
- (B) Pyramiding.
- (C) Boathouses.

(3) CONDITIONAL USES

- (A) Grading, clean fill disposal sites, topsoil removal, filling, alteration or enlargement of waterways, removal of stream or lakebed materials, excavation, channel cleaning and clearing, ditching, draining, drain tile layering, dredging, lagooning and soil and water conservation structures, all require conditional use permits in accordance with section 18.04. In addition, such uses may require a permit from the state agency having jurisdiction pursuant to Chapter 30 of the Wisconsin Statutes and, where applicable, a Federal Permit from the U.S. Army Corps of Engineers,
- (B) The construction of walls (stone, ties, brick or other material) 5' or less from a property line must be specifically authorized through

the issuance of a Conditional Use Permit. A wall greater than 5' from a property line, may be allowed pursuant to the minor grading provisions of section 18.05(B). Fill or grading considered by the Zoning Administrator to be necessary backfill and/or excavation for an otherwise permitted structure, may be permitted without the necessity of securing a Conditional Use Permit or a Minor Grading Permit as long as said fill or grading is accessory to said construction and does not extend to a distance greater than 20' from the foundation and does not divert runoff directly onto adjacent property or adversely affect adjoining property. In order to make such determination, the property owner shall submit a grading plan of existing and proposed grades on the subject lot and adjacent lands where said accessory fill and/or grading is closer than 20' to a property line. Land altering activities to an amount greater than this amount shall not be allowed pursuant to Section 18.05(B) without the benefit of a Conditional Use Permit. Further, no fill or alterations on the existing topography shall be allowed under any circumstances which will alter the drainage or topography in a way which will adversely affect the surrounding lands. In making such a determination, the zoning administrator shall have the authority to determine the effect of the construction or fill on surrounding property and require improvements and/or facilities as may be in the best interest of preserving topography and drainage systems which will have the effect of lessening the impact on either upstream, downstream or adjacent properties.

- (C) In the case of a dispute or question arising as to the adversity or effect of the project on either the property owner, adjacent owners or the general public, said questions shall be submitted to the Village plan commission for resolution to the question.
- (D) Section 18.04(3) providing protection for pre-existing non-conforming uses shall also apply to the restrictions contained in Section 18.05.

(4) PRESERVATION OF TOPOGRAPHY

- (A) In order to protect property owners from possible damage due to changes in the existing grade of adjoining lands and to aid in preserving and protecting the natural beauty and character of the landscape, the following regulations will apply to all areas within the Shoreland District including floodplain and wetlands.
- (B) No change in the existing topography or drainage courses on any land in the Shoreland District which is not C-W-Conservancy-Wetland or C-W Buffer Zone, shall be allowed

which would result in adversely altering the drainage or increasing any portion of existing slopes through fill and/or grading to a ratio greater than 3 horizontal to 1 vertical within 20' of a lot line.

(5) TREE AND SHRUBBERY CUTTING

- (A) **PURPOSE** The purpose of tree and shrubbery cutting regulations applicable to the Shoreland District is to protect scenic beauty, control erosion and reduce effluent and nutrient flow from the shoreland. The provisions shall not apply to the removal of dead, diseased or dying trees or shrubbery at the discretion of the landowner.

- (B) **SHORELINE CUTTING** Tree and shrubbery cutting in an area parallel to the ordinary high water mark, and extending thirty-five (35) feet inland from all points along the ordinary high water mark, shall be limited in accordance with the following provisions:
 - 1 No more than thirty (30) feet in any one hundred (100) feet, as measured along the ordinary high water mark, may be clear cut to the depth of the thirty-five-foot area.
 - 2 Natural shrubbery shall be preserved as far as practicable and, where removed, it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.

- (C) **PATHS** Any path, road or passage within the thirty-five-foot area shall be constructed and surfaced so as to effectively control erosion.

- (D) **CUTTING PLAN** As an alternative to subsection (A) above, a special cutting plan allowing greater cutting may be permitted by the board of appeals by issuance of a special exception as defined herein. An application for such a permit shall include a sketch of the lot providing the following information: location of parking, topography of the land, existing vegetation, proposed cutting, and proposed replanting. The board may grant such a permit only if it finds that such special cutting plan:
 - 1 Will not cause undue erosion or destruction of scenic beauty, and
 - 2 Will provide substantial visual screening from the water of dwellings, accessory structures and parking areas. Where the plan calls for replacement plantings, the board may require the submission of a bond which guarantees the performance

of the planned tree or shrubbery replacement by the lot owner.

- (E) **CUTTING MORE THAN THIRTY-FIVE (35) FEET INLAND**
From the inland edge of the thirty-five-foot area to the outer limits of the Shoreland District, the cutting of trees and shrubbery shall only be allowed when accomplished using accepted forest management and soil conservation practices which protect water quality.

Section .01

18.06 ADMINISTRATIVE PROVISIONS

(1) ZONING ADMINISTRATOR

- (A) After October 1, 2009, the Village Administrator is appointed zoning administrator for the purpose of administering and enforcing this ordinance.
- (B) The zoning administrator shall have the following duties and powers:
 - 1 Advise applicants as to the provisions of this ordinance and assist them in preparing permit applications and appeal forms.
 - 2 Issue permits and certificates of compliance and inspect properties for compliance with this ordinance.
 - 3 Keep records of all permits issued, inspections made, work approved and other official actions.
 - 4 Have access to any structure or premises between the hours of 8 a.m. and 6 p.m. for the purpose of performing these duties.
 - 5 Submit copies of decisions on variances, conditional use permits, zoning permits, appeals of 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 DNR and to the plan commission.
 - 6 Investigate and report violations of this ordinance to the Plan Commission and the Village attorney.

(2) ZONING PERMITS

- (A) **WHEN REQUIRED**
Unless another section of this ordinance specifically exempts certain types of development from this requirement or requires a conditional use permit instead, a zoning permit shall be obtained from the zoning administrator before any new development, as

defined in section 18.09, or any change in the use of an existing building or structure is initiated.

(B) APPLICATION

An application for a zoning permit shall be made to the zoning administrator upon forms furnished by the Village and shall include, for the purpose of proper enforcement of these regulations, the following information:

1 GENERAL INFORMATION

- a. Name, address, and telephone number of applicant, property owner and contractor, where applicable.
- b. Legal description of the property and a general description of the proposed use or development.
- c. Whether or not a private water supply or sewage system is to be installed.
- d. Such other information as the zoning administrator deems necessary.

2 SITE DEVELOPMENT PLAN

The site development plan shall be submitted as a part of the permit application and shall contain the following information drawn to scale:

- a. Dimensions and area of the lot;
- b. Location of any structures with distances measured from the lot lines and center line of all abutting streets or highways;
- c. Description of any existing or proposed on-site sewage systems or private water supply systems;
- d. Location of the ordinary high-water mark of any abutting navigable waterways;
- e. Boundaries of all wetlands;
- f. Existing and proposed topographic and drainage features and vegetative cover;
- g. Location of floodplain and floodway limits on the property as determined from floodplain zoning maps;
- h. Location of existing or future access roads; and
- i. Specifications and dimensions for areas of proposed wetland alteration.

(C) EXPIRATION

All permits issued under the authority of this ordinance shall expire 12 months from the date of issuance.

(3) CERTIFICATES OF COMPLIANCE

- (A) Except where no zoning permit 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 thereof, conform to the provisions of this ordinance.
 - 2 Application for such certificate shall be concurrent with the application for a zoning or conditional use permit.
 - 3 The certificate of compliance shall be issued within 10 days after notification of the completion of the work specified in the zoning or conditional use permit, providing the building or premises and proposed use thereof conform with all the provisions of this ordinance.
- (B) The zoning administrator may issue a temporary certificate of compliance for a building, premises or part thereof pursuant to rules and regulations established by the municipal governing body.
- (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 ordinance adoption, certifying after inspection, the extent and type of use made of the building or premises and whether or not such use conforms to the provisions of this ordinance.

(4) CONDITIONAL USE PERMITS

- (A) Approval Required: Certain uses and situations which are of such a special nature, or are so dependent upon actual contemporary circumstances, as to make impractical the predetermination of permissibility, or the detailing in this Ordinance of specific standards, regulations, or conditions which would permit such determination in each individual situation, may be permitted as Conditional Uses. The fact that a Conditional Use may be permitted should not infer any right thereto. Conditional Uses may be denied by the Plan Commission so long as such action is not discriminatory or unreasonable.
- (B) Any use listed as a conditional use in this ordinance shall be permitted only after an application has been submitted to the zoning administrator and a conditional use permit has been granted

by the Plan Commission following the procedures in section 8.20 of the Village Zoning Ordinance.

(5) FEES

The applicant for a zoning permit, certificate of compliance, conditional use permit or rezoning under this ordinance shall pay all filing fees and costs set out in Section 8.28 of the Code of Ordinances of the Village of Lac La Belle.

(6) RECORDING

- (A) Where a zoning permit or conditional use permit is approved, an appropriate record shall be made by the zoning administrator of the land use and structures permitted.
- (B) If a conditional use permit is granted, a deed restriction must be filed with the register of deeds prior to the issuance of a zoning or building permit.

(7) REVOCATION

Where the conditions of a zoning permit or conditional use permit are violated, the permit shall be revoked by the Plan Commission.

(8) BOARD OF APPEALS

The Board of Appeals created by section 8.19 of the Code of Ordinances of the Village of Lac La Belle shall have the powers and duties specified in section 8.19 with respect to the administration of the Shoreland-Wetland Zoning Ordinance, Decisions of the Board of Appeals concerning the Shoreland-Wetland Zoning Ordinance shall be filed with the district office of the DNR within ten (10) days after the decision is issued.

18.07 AMENDING SHORELAND-WETLAND ZONING REGULATIONS

- (1) The board of trustees may alter, supplement or change the district boundaries and the regulations contained in this ordinance in accordance with the requirements of section 62.23(7)(d)2., Wis. Stats., NR 117, Wis. Adm. Code, and the following:
- (2) A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the DNR within 5 days of the submission of the proposed amendment to the Village plan commission;
- (3) All proposed text and map amendments to the shoreland-wetland zoning regulations shall be referred to the Village plan commission, and a public

hearing shall be held after class 2 notice as required by section 62.23(7)(d)2., Wis. Stats. 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) In order to ensure that this ordinance will remain consistent with the shoreland protection objectives of section 144.26, Wis. Stats., the Village Board of Trustees may not rezone a wetland in a shoreland-wetland zoning district, or any portion thereof, where the proposed rezoning may result in a significant adverse impact upon any of the following wetland functions:
 - (A) Storm and flood water storage capacity;
 - (B) Maintenance of dry season stream flow or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area or the flow of groundwater through a wetland;
 - (C) Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
 - (D) Shoreline protection against erosion;
 - (E) Fish spawning, breeding, nursery or feeding grounds;
 - (F) Wildlife habitat; or
 - (G) Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.
- (5) Where the district office of the DNR determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in section 18.07(4) of this ordinance, the DNR shall so notify the municipality of its determination either prior to or during the public hearing held on the proposed amendment.
- (6) The appropriate district office of the DNR shall be provided with:
 - (A) A copy of the recommendation and report, if any, of the Village plan commission on a proposed text or map amendment, within 10 days after the submission of those recommendations to the Village Board of Trustees.
 - (B) Written notice of the action on the proposed text or map amendment within 10 days after the action is taken.
- (7) If the DNR notifies the Village plan commission in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in section 18.07(4) of this ordinance, that proposed amendment, if approved by the Village Board of Trustees, shall not become effective until more than 31 days have elapsed since written notice of the Village approval was mailed to the DNR, as required by section 18.07(6)(B) of this ordinance. If, within the 30-day period, the DNR notifies the Village that the DNR

intends to adopt a superseding shoreland-wetland zoning ordinance for the Village as provided by sections 62.231(6) and 61.351(6), Wis. Stats., the proposed amendment shall not become effective until the ordinance adoption procedure under section 62.231(6) or 61.351(6), Wis. Stats., is completed or otherwise terminated.

- (8) If the change involves the alteration of the floodplain, F.E.M.A. must be notified.

18.08 ENFORCEMENT AND PENALTIES

Any development, building or structure or accessory building or structure constructed, altered, added to, modified, rebuilt or replaced or any use or accessory use established after the effective date of this ordinance in violation of the provisions of this ordinance, by any person, firm, association, corporation (including building contractors or their agents) shall be deemed a violation. The zoning administrator shall refer violations to the Village plan commission and the Village attorney for prosecution of such violations. Any person, firm, association, or corporation who violates or refuses to comply with any of the provisions of this ordinance shall be subject to a forfeiture of this ordinance of not less than \$20.00 nor more than \$500.00 per offense, together with the taxable costs of such action. Each day of continued violation shall constitute a separate offense. Every violation of this ordinance is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated by action at suit of the Village, the state, or any citizen thereof pursuant to section 87.30(2), Wis. Stats.

18.09 DEFINITIONS

- (1) For the purpose of this ordinance, and when not inconsistent with the context, words used herein in the present tense include the future, words in the singular number include the plural, and words in the plural number include the singular; the word "structure" includes buildings; the word "occupied" includes designed or intended to be occupied; the word "inhabit" includes intended to be inhabited; the word "shall" is always mandatory and not merely permissive; "zoning administrator" refers to the Village Building Inspector; "plan commission" refers to the Village plan commission; and reference to any officer such as "clerk," "building inspector," "engineer" or "attorney," means that officer appointed or otherwise officially designated by the Village in such capacity, unless otherwise specifically designated.

- (2) The following terms used in this ordinance mean:

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

- (B) "Boathouse" as defined in section 30.121(l), Wis. Stats., means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of structural parts.
- (C) "Bulkhead line" means a boundary line established along any section of the shore of any navigable waters by a municipal ordinance approved by the department of natural resources pursuant to section 30.11 of the Wisconsin Statutes.
- (D) "Channel" means those floodlands normally occupied by a stream of water under average annual high-water conditions while confined within generally well-established banks.
- (E) "Class 2 public notice" means class 2 notice as defined in chapter 985, Wis. Stats.
- (F) "Conditional use" means a use which is permitted by this ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the Plan Commission.
- (G) "Deck" means a structure characterized by a flat open horizontal surface or platform suspended above the grade of the land it covers and which may be supported by posts, beams, cantilever and/or by other methods. "Deck" does not include piers and a deck may not be used for the loading or unloading of boats.
- (H) "Department" or "DNR" means the Wisconsin Department of Natural Resources.
- (I) "Development" means any man-made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials.
- (J) "Drainage system" means one or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.
- (K) "Environmental control facility" means any facility, temporary or permanent, which is reasonably expected to abate, reduce or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste and thermal pollution, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.

- (L) "Fixed houseboat" as defined in section 30.121(l), 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.
- (M) "Marina" means a tract of land contiguous to a body of water and including any piers, wharves or docks extending into the water and below the ordinary high water mark and/or any structure upon that tract of land where the commercial mooring at docks or buoys (dry or wet), maintenance, repair, refueling or selling of boats and/or accessories for boats take place.
- (N) "Minor grading, filling and land altering activities" means those land altering activities or projects that do not exceed land disturbance greater than three thousand (3,000) square feet in area and/or fifteen (15) cubic yards in aggregate.
- (O) "Navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin, and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under section 144.26(2)(d), Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under sections 61.351 or 62.221, Wis. Stats., and chapter NR 117, Wis. Admin. Code, 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 such drainage ditches adjacent to such lands were not navigable streams before ditching; and
 - 3 Such lands are maintained in nonstructural agricultural use.
- [Wisconsin's Supreme Court has declared navigable bodies of water that have a bed differentiated from adjacent uplands and levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis [Muench v. Public Service Commission, 261 Wis. 492 (1952) and DeGaynor and Co., Inc., v. Department of Natural Resources, 70 Wis. 2d 936 (1975)]. For example, a stream which is navigable by skiff or canoe during normal spring high water is navigable, in fact, under the laws of this state though it may be dry during other seasons.]*
- (P) "Ordinary high-water mark" means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

- (Q) "Patio" means a flat open horizontal surface or platform located on the grade of the land and not considered to be a structure as defined and regulated herein.
- (R) "Pierhead line" means a boundary line established along any section of the shore of any navigable waters by a municipal ordinance approved by the state department of natural resources, pursuant to section 30.13 of the Wisconsin Statutes. Piers and wharves are only permitted to the landward side of such pierhead lines unless a permit has been obtained pursuant to section 30.12(2) of the Wisconsin Statutes.
- (S) "Planning agency" means the Village plan commission created under section 62.23(l), Wis. Stats.
- (T) "Pyramiding" means the act of obtaining or providing access to public bodies of water across private lots or lands in a manner which increases the number of families which have access to that water to a degree greater than what would occur with individual riparian owners having individual lots fronting on the water. The effect of pyramiding is to funnel backlot development from offshore lots or residences via a narrow parcel of land to provide access to the water. Publicly owned access points shall not fall within this definition.
- (U) "Shore setback" means the horizontal distance between the ordinary high water mark of navigable waters and the closest point of a principal or accessory structure as defined herein.
- (V) "Shorelands" means lands within the following distances from the ordinary high-water mark of navigable waters; 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.
- (W) "Wetland district" means the C-W – Conservancy-Wetland zoning district, created in this wetland zoning ordinance.
- (X) "Shorelines" means the intersection of the land surfaces abutting lakes, ponds, streams, flowages, and wetlands with the average annual high water elevation.
- (Y) "Unnecessary hardship" means that circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage height or density unnecessarily burdensome or unreasonable in light of the purposes of this ordinance.
- (Z) "Variance" means an authorization granted by the Board of Appeals to construct or alter a building or structure in a manner that deviates from the dimensional standards of this ordinance.
- (AA) "Wetlands" means those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.
- (BB) "Wetland alteration" means any filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level

stabilization measures or dike and dam construction in a wetland area.

Date of Adoption: October 21, 1991.
Renumbered as Chapter 18: 2005