

Chapter 20

SHORELANDS-WETLANDS

Article I. In General

- Sec. 20-01. Statutory authorization, findings of fact and statement of purpose.
- Sec. 20-02. Definitions.
- Sec. 20-03. General provisions.
- Sec. 20-04. Nonconforming structures and uses.
- Sec. 20-05. Amending shoreland-wetland zoning regulations.
- Secs. 20-6--20-30. Reserved.

Article II. Administration and Enforcement

- Sec. 20-31. Administrative provisions.
- Sec. 20-32. Enforcement and penalties.
- Sec. 20-33. Board of appeals.
- Secs. 20-34--20-60. Reserved.

Article III. District

- Sec. 20-61. Shoreland-wetland zoning district.

Article I. In General

Sec. 20-01. Statutory authorization, findings of fact and statement of purpose.

(1) Statutory authorization. This chapter has been adopted pursuant to the authorization of §§ 62.23 and 62.231 Wis. Stats. and NR 117.01 et seq. Wis. Admin. Code.

(2) Findings of fact and purpose. Uncontrolled use of the shorelands-wetlands and 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 legislature of Wisconsin has delegated responsibility to all municipalities to:

- (a) Promote the public health, safety, convenience and general welfare;
- (b) Maintain the stormwater and floodwater storage capacity of wetlands;
- (c) 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;
- (d) Protect fish, their spawning grounds, other aquatic life and wildlife by preserving wetlands and other aquatic habitat;
- (e) Prohibit certain uses detrimental to the shoreland-wetland area; and
- (f) Preserve shore cover and natural beauty by restricting the removal of natural shoreland cover and controlling shoreland-wetland excavation, filling and other earth-moving activities.

(Code 1982, § 27.01(1)(a))

Sec. 20-02. Definitions.

(1) For the purpose of administering and enforcing this chapter, the terms or words used in this chapter shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; words in the plural number include the singular number. The word "shall" is mandatory, not permissive. All distances, unless otherwise specified, shall be measured horizontally.

(2) The following terms used in this chapter mean:

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

Class 2 public notice means publication of a public hearing notice under ch. 985 Wis. Stats. in a newspaper of circulation in the affected area. Publication is required on two consecutive weeks, the last at least seven days prior to the hearing.

Conditional use means a use which is permitted by this chapter provided that certain conditions specified in the chapter are met and that a permit is granted by the planning commission.

Department means the Wisconsin Department of Natural Resources.

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

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

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

Navigable waters means all streams, sloughs, flowages and other waters within the territorial limits of this state which are navigable under the laws of this state. Under § 281.31(2)(d) Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland chapters required under § 62.231 Wis. Stats. and chapter NR 117, Wis. Admin. Code do not apply to lands adjacent to farm drainage ditches if:

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

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.

Planning agency means the city plan commission created under § 62.23(1) Wis. Stats., a board of public land commissioners or a committee of the city's governing body which acts on matters pertaining to planning and zoning.

Shoreland-wetland district means the zoning district, created in this shoreland-wetland zoning 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.

Shorelands means lands 1,000 feet from a lake, pond or flowage. If the navigable water is a glacial pothole lake, this distance shall be measured from the high-water mark of the lake.

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

Variance means an authorization granted by the board of appeals to construct or alter a building or structure in a manner that deviates from the dimensional standards of this chapter.

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.

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.

(Code 1982, § 27.01(8))

Sec. 20-03. General provisions.

(1) *Compliance.* The use of wetlands and the alteration of wetlands within the shoreland area of the city shall be in full compliance with the terms of this chapter and other applicable local, state or federal regulations. (However, see section 20-04 of this chapter, for the standards applicable to nonconforming uses.) All permitted development shall require the issuance of a zoning permit unless otherwise expressly excluded by a provision of this chapter.

(2) *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.

(3) *Abrogation and greater restrictions.*

(a) This chapter supersedes all the provisions of any municipal zoning chapter enacted under § 62.23 or § 87.30 Wis. Stats., which relate to floodplains and shorelandswetlands, except that where another municipal zoning chapter is more restrictive than this chapter, that chapter shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

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

(4) *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 of this chapter is required by a standard in chapter NR 117, Wis. Admin. Code, the provision shall be interpreted in light of the chapter NR 117 standards in effect on the date of the adoption of the ordinance from which this chapter derives or in effect on the date of the most recent text amendment to this chapter.

(5) *Severability*. Should any portion of this chapter be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter shall not be affected.

(6) *Annexed areas*. The Wood County/Marathon County shoreland zoning provisions in effect on the date of annexation shall remain in effect and shall be administered by the city for all areas annexed by the city after May 7, 1982. These annexed lands shall be described on the city's official zoning map. The Wood County/Marathon County shoreland zoning provisions are incorporated by reference for the purpose of administering this section and shall be kept on file in the office of the zoning administrator.

(Code 1982, § 27.01(2))

Sec. 20-04. Nonconforming structures and uses.

(1) The lawful use of a building, structure or property which existed at the time the ordinance from which this chapter derives, 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 conditions in this section.

(2) The shoreland-wetland provisions of this chapter authorized by § 62.231 Wis. Stats. shall not limit the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure in existence on the effective date of the shoreland-wetland provisions, or of any environmental control facility in existence on May 7, 1982 related to such a structure. All other modifications to nonconforming structures are subject to § 62.23(7)(h) Wis. Stats. which limits total lifetime structural repairs and alterations to 50 percent of current fair market value.

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

(4) Any legal nonconforming use of property which does not involve the use of a structure and which existed at the time of the adoption of the ordinance from which this chapter derives or subsequent amendment of this chapter adopted under § 62.231 Wis. Stats. may be continued although such use does not conform with the provisions of the chapter. However, such nonconforming use may not be extended.

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

(Code 1982, § 27.01(4))

Sec. 20-05. Amending shoreland-wetland zoning regulations.

(1) The council may alter, supplement or change the district boundaries and the regulations contained in this chapter in accordance with the requirements of § 62.23(7)(d)2 Wis. Stats. and NR 117 Wis. Admin. Code and the provisions of this section.

(2) A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the department within five days of the submission of proposed amendment to the plan commission.

(3) All proposed text and map amendments to the shoreland-wetland zoning regulations shall be referred to the plan commission, and a public hearing shall be held after class 2 notice as required by § 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 ten days prior to such hearing.

(4) In order to ensure that this chapter will remain consistent with the shoreland protection objectives of § 281.31 Wis. Stats., the council 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) Stormwater and floodwater 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 department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in subsection (4) of this section, the department shall so notify the city of its determination either prior to or during the public hearing held on the proposed amendment.

(6) The appropriate district office of the department shall be provided with:

- (a) A copy of the recommendation and report, if any, of the plan commission on a proposed text or map amendment, within ten days after the submission of those recommendations to the council.

- (b) Written notice of the action on the proposed text or map amendment within ten days after the action is taken.

(7) If the department notifies the plan commission in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in subsection (4) of this section, that proposed amendment, if approved by the council, shall not become effective until more than 30 days have elapsed since written notice of the city approval was mailed to the department, as required by subsection (6)(a) of this section. If within the 30-day period the department notifies the city that the department intends to adopt a superseding shorelandwetland zoning chapter for the city as provided by § 62.231(6) Wis. Stats., the proposed amendment shall not become effective until the chapter adoption procedure under § 62.231(6) Wis. Stats. is completed or otherwise terminated.

(Code 1982, § 27.01(6))

Secs. 20-6—20-30. Reserved.

Article II. Administration and Enforcement

Sec. 20-31. Administrative provisions.

(1) *Zoning administrator.* The City of Marshfield Zoning Administrator is appointed zoning administrator for the purpose of administering and enforcing this chapter. The zoning administrator shall have the following duties and powers, in addition to those powers and duties provided at section 18-31 of this Code:

- (a) Advise applicants as to the provisions of this chapter and assist them in preparing permit applications and appeal forms.
- (b) Issue permits and certificates of compliance and inspect properties for compliance with this chapter.
- (c) Keep records of all permits issued, inspections made, work approved and other official actions.
- (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, conditional use permits, appeals for a map or text interpretation, and map or text amendments within ten 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 or city attorney.

(2) *Zoning permits.* Zoning permits are required and shall be submitted in accordance with the following:

- (a) When required. Unless another section of this chapter specifically exempts certain types of development from this requirement, a zoning permit shall be obtained from the

zoning administrator before any new development, as defined in section 20-02(2) of this chapter, 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 city and shall include, for the purpose of proper enforcement of these regulations, the following information:

1. *General information.* General information as follows:
 - a. Names, addresses, and telephone numbers of the 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 sewer system is to be installed.
2. *Site development plan.* The site development plan shall be submitted as a part of the permit application and shall contain the following information drawn to scale:
 - a. Dimensions and area of the lot;
 - b. Location of any structures with distances measured from the lot lines and centerline of all abutting streets or highways;
 - c. Description of any existing or proposed on-site sewer 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;
 - i. Specifications and dimensions for areas of proposed wetland alteration.

- (c) *Expiration.* All permits under the authority of this chapter shall expire 12 months from the date of issuance.

(3) *Certificates of compliance.* Certificates of compliance shall be obtained in accordance with the following:

- (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 chapter.
2. Application for such certificate shall be concurrent with the application for a zoning or conditional use permit.
3. The certificate of compliance shall be issued within ten days after notification of the completion of the work specified in the zoning or conditional use permit, providing the building or premises and proposed use thereof conform with all the provisions of this chapter.

- (b) The zoning administrator may issue a temporary certificate of compliance for a building, premises or part thereof pursuant to rules and regulations established by the council.
- (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 the ordinance from which this chapter derives, 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.

(4) *Conditional use permits.* Conditional use permits shall be obtained in accordance with the following:

- (a) Application for conditional use permits shall be subject to the standards and procedures provided at section 18-32 of this Code.
- (b) Fees for conditional use applications and permits shall be as provided at section 18-31 (4) of this Code.

(5) *Recording.* Where a zoning permit or conditional use permit is approved, an appropriate record shall be made by the zoning administrator of the land use and structures permitted.

(6) *Revocation.* Where the conditions of a zoning permit or conditional use permit are violated, the permit shall be revoked by the zoning administrator.

(Code 1982, § 27.01(5))

Sec. 20-32. 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 the ordinance from which this chapter derives in violation of the provisions of this chapter, by any person (including building contractors or their agents) shall be deemed a violation. The zoning administrator shall refer violations to the plan commission and the district attorney, corporation counsel or 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 as outlined in section 1-05 of this Code. 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 by action at suit of the city, the state, or any

citizen thereof pursuant to § 87.30(2) Wis. Stats.

(Code 1982, § 27.01(7))

Sec. 20-33. Board of appeals.

(1) Appeals from any order, requirement, decision or determination pursuant to this chapter shall be subject to the board of appeals procedure provided at section 18-34 of this Code.

(2) The board of appeals may grant variances to the provisions of this chapter, pursuant to section 18-35 of this Code.

(Code 1982, § 27.01(5)(h))

Secs. 20-34—20-60. Reserved.

Article III. District

Sec. 20-61. Shoreland-wetland zoning district.

(1) Shoreland-wetland zoning maps. The following maps are hereby adopted and made a part of this chapter and are on file in the office of the city clerk:

- (a) Wisconsin Wetland Inventory Maps stamped "final revised" on December 22, 1992.
- (b) Department of Housing and Urban Development, Federal Insurance Administration, Flood Hazard Boundary Maps.

(2) District boundaries. Boundaries of the shoreland-wetland zoning district shall be as follows:

- (a) The shoreland-wetland zoning district includes all wetlands in the city which are five acres or more and are shown on the final wetland inventory map that has been adopted and made a part of this chapter and which are: 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 which have been incorporated by reference and made a part of this chapter. Floodplain zoning maps adopted at subsection (1)(a) of this section 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 contact the appropriate district office of the department for 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 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 zoning administrator that a particular area was incorrectly mapped as a wetland, the zoning administrator shall have the authority to immediately grant or deny a zoning permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors or acknowledge exempted wetlands designated in subsection (1) of this section, the zoning administrator shall be responsible for initiating a map amendment within a reasonable period.

- (d) Filled wetlands. Wetlands which are filled prior to September 29, 1988, the date on which the city 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 chapter.

(3) Permitted uses. The following uses are permitted subject to the provisions of chs. 30 and 31 Wis. Stats. and the provisions of other local, state and federal laws, if applicable:

- (a) (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, 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; and
 - 5. The cultivation of agricultural crops.
- (b) Uses which do not require the issuance of a zoning permit and which may involve wetland alterations only to the extent specifically provided as follows:
 - 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 maintenance and repair of existing drainage systems to restore preexisting 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;
 - 3. The construction and maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance;

4. 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;
5. 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 20-05(4) of this chapter; and
6. The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.

(4) Conditional uses. Conditional uses are uses which are allowed upon the issuance of a conditional use permit and which may include wetland alterations only to the extent specifically provided as follows:

- (a) The construction and maintenance of roads which are necessary for the continuity of the municipal street system, the provision of essential utility and emergency services or to provide access to uses permitted under subsection (3) of this section, provided that:
 1. The road cannot, as a practical matter, be located outside the wetland;
 2. The road is designed and constructed to minimize adverse impacts upon the natural functions of the wetland listed in section 20-05(4) of this chapter;
 3. The road is designed and constructed with the minimum cross sectional area practical to serve the intended use;
 4. Road construction activities are carried out in the immediate area of the roadbed only; and
 5. Any wetland alteration must be necessary for the construction or maintenance of the road.
- (b) The construction and maintenance of nonresidential buildings provided that:
 1. The building is used solely in conjunction with a use permitted in the shorelandwetland district or for the raising of waterfowl, minnows or other wetland or aquatic animals;
 2. The building cannot, as a practical matter, be located outside the wetland;
 3. The building does not exceed 500 square feet in floor area; and
 4. Only limited filling and excavating necessary to provide structural support for the building is allowed.
- (c) The establishment and development of public and private parks and recreation areas; outdoor education areas; historic, natural and scientific areas; game refuges and closed areas; fish and wildlife habitat improvement projects; game bird and animal farms; and

wildlife preserves, provided that:

1. Any private development allowed under this subsection shall be used exclusively for the permitted purpose;
 2. Only limited filling and excavating necessary for the development of the construction of park shelters or similar structures is allowed;
 3. The construction and maintenance of roads necessary for the uses permitted under this subsection are allowed only where such construction and maintenance meets the criteria of subsection (4)(a) of this section; and
 4. Wetland alterations in game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms and wildlife preserves shall be for the purpose of improving wildlife habitat or to otherwise enhance wetland values.
- (d) The construction and maintenance of electric and telephone transmission lines, water and gas distribution lines and sewage collection lines and related facilities and the construction and maintenance of railroad lines provided that:
1. The utility transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland;
 2. Only limited filling or excavating necessary for such construction or maintenance is allowed; and
 3. Such construction or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the wetland listed in section 20-05(4) of this chapter.

(5) Prohibited uses. Any use not listed in subsections (3) and (4) of this section is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this chapter in accordance with section 20-05 of this chapter.

(Code 1982, § 27.01(3))