

## **PORTAGE COUNTY CODE OF ORDINANCES**

### **Chapter 7 PORTAGE COUNTY ZONING ORDINANCES**

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#### **7.1 PORTAGE COUNTY ZONING ORDINANCE**

AN ORDINANCE TO PROMOTE THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE, TO DETERMINE, ESTABLISH, REGULATE AND RESTRICT THE AREAS WITHIN WHICH AGRICULTURE, FORESTRY, INDUSTRY, TRADES, BUSINESSES AND RECREATION AND RESIDENTIAL USES MAY BE CONDUCTED; THE AREAS IN AND ALONG NATURAL WATER COURSES, CHANNELS, STREAMS AND CREEKS IN WHICH TRADES OR INDUSTRIES, FILLING OR DUMPING, ERECTION OF STRUCTURES AND LOCATION OF BUILDINGS, MAY BE PROHIBITED OR RESTRICTED; CERTAIN AREAS, USES OR PURPOSES WHICH MAY BE SUBJECTED TO SPECIAL REGULATION AND BUILDING SETBACK LINES AND SUCH OTHER USES AUTHORIZED PURSUANT TO SECTION 59.69, 59.692, 59.694 AND 87.30, WISCONSIN STATUTES.

THE COUNTY BOARD OF SUPERVISORS OF PORTAGE COUNTY DOES ORDAIN AS FOLLOWS:

#### **SECTION I - DISTRICT AND DISTRICT MAPS**

For the purpose of promoting the public health, safety and general welfare and determining, establishing, regulating and restricting the areas within the County outside the limits of incorporated cities and villages, within which agriculture, forestry, industry, trades, business, recreation and residential uses may be conducted, to establish districts of such number, shape and area, to adopt such regulations for each such district as the County Board has determined to be necessary in order to carry out the purposes of this Ordinance, in accordance with the provisions of Sections 59.69, 59.692, 59.694, 59.696, 59.697, 59.698, 87.30, and 281.31 of the Wisconsin Statutes, including within the following towns: Alban, Almond, Amherst, Belmont, Buena Vista, Carson, Dewey, Eau Pleine, Hull, Lanark, Linwood, New Hope, Plover, Sharon and Stockton are hereby divided into 18 use districts, namely:

- |                 |  |
|-----------------|--|
| Section 7.1.2.1 | R2 Single Family Residence District          |
| Section 7.1.2.2 | R4 Multiple Family Residence District        |
| Section 7.1.2.3 | R1 Rural and Urban Fringe Residence District |
| Section 7.1.2.4 | R3 One and Two Family Residence District     |
| Section 7.1.2.5 | R5 Waterfront Residence District             |
| Section 7.1.3.1 | A4 General Agricultural District             |

Section 7.1.3.2	CON Conservancy District
Section 7.1.3.3	REC Recreational District
Section 7.1.3.4	A1 Exclusive Agricultural District
Section 7.1.3.5	A2 Agricultural Transition District
Section 7.1.3.6	A3 Low Density Agricultural District
Section 7.1.3.7	A20 Primary Agricultural District
Section 7.1.3.8	RL Rural Limited District
Section 7.1.4.1	C2 Marina District
Section 7.1.4.2	C3 Commercial District
Section 7.1.4.3	C4 Highway Commercial District
Section 7.1.4.4	C1 Neighborhood Commercial District
Section 7.1.4.5	Planned Development District
Section 7.1.5.1	IND Industrial District

The boundaries of the use districts are shown upon the maps of the towns of Portage County, being designated as the "Zoning Maps of Portage County, Wisconsin", as such maps are prepared and adopted by the County Board and, in the cases of areas outside protected shoreland areas, the towns coming under this Ordinance - such maps thereby becoming a part of this Ordinance. All notations, references and other information shown upon the said zoning maps of the towns shall be as much a part of this Ordinance as if the matter and things set forth by the said maps were fully described herein.

## **SECTION II - RESIDENCE DISTRICTS**

### **7.1.2.1 SINGLE FAMILY RESIDENCE DISTRICT (R2)**

**(A) INTENT.** This District is intended to provide for high density, unsewered, single family residential development. The application of this District, for new development, should be limited to areas where connection to municipal sewage treatment facilities is feasible at the time of construction or in the near future. This District is intended to promote a residential atmosphere and to protect residential property values by prohibiting uses which are incompatible with homes.

**(B) USES.** The following uses are permitted:

(1) Single family dwellings, defined for purposes of this subsection only, as detached buildings being a minimum width of 20 feet designed for and occupied exclusively by one family.

(2) Municipal buildings, except sewage disposal plants, garbage incinerators and buildings for the repair or storage of road building or maintenance machinery.

(3) Parks and playgrounds.

(4) Accessory buildings, including private garages and buildings clearly incidental to the residential use of the property, provided, however, that no accessory building may be used as a separate dwelling unit. Calculation of square footage of accessory buildings for each site will include the TOTAL of all detached garage space and similar detached structures. This calculation will be measured based on outside dimensions.

(a) The maximum cumulative square footage shall be allowed as follows:

i. Lots smaller than two (2) acres – 2,800 sq.ft.

ii. Lots two (2) acres or larger – 3,200 sq.ft.

(b) Any single accessory building or cumulative total exceeding 2,000 square feet will require submittal of a stormwater control plan to the Planning and Zoning Department for review and approval before a Zoning Permit is issued.

(c) The Planning and Zoning Department may require increased screening and/or increased setbacks for individual accessory buildings exceeding 2,000 square feet in size.

(d) An accessory structure shall be designed such that its length does not exceed two times its width, its maximum height at roof peak shall be not greater than 20 feet.

(e) The design and color of the accessory structure shall complement the residence.

(f) There shall not be any commercial activity conducted out of an accessory building.

(5) Gardening and greenhouses to be used for private use only. A detached greenhouse will count towards accessory building square footage.

(6) Home occupations, when such occupation is incidental to the residential use of the premises and does not involve any external alterations; that not more than 50% of only one floor of the dwelling shall be devoted to such operation, provided further that no article is sold or offered for sale that is not produced in such home occupation, that no stock-in-trade is kept or sold and that no person other than a member of the resident family is employed on the premises.

(7) Professional offices, when such office is conducted solely by a member or members of the resident family, entirely within the residence and incidental to the residential use of the premises; provided further that there shall be no external alterations, that not more than 50% of only one floor of the dwelling shall be devoted to such offices and that no more than two persons not members of the resident family may be employed in nonprofessional capacities in any such office.

(8) Signs, as follows:

(a) Not more than two directory signs, which must be placed in relation to the right-of-way line as shown in Subparagraph 7.1.6.1(A)(10).

(b) One sign per parcel to advertise a customary home occupation or professional office, provided that such sign may be placed at the right-of-way line, shall not exceed six square feet in gross area, and may be illuminated; but flashing or intermittent lighting is prohibited. Signs cannot exceed eight feet in height.

(c) To advertise the sale, rent, lease, or trade of the property on which the sign is placed; provided that such sign shall not exceed six square feet in gross area, except in subdivisions or unplatted lands newly opened for sale, or subdivisions or unplatted land where the density of construction does not exceed an average of one building for each 200 square feet of frontage, such latter sign shall not exceed 100 square feet in gross area. Also, not more than two "for sale", "rent", "lease", or trade" signs may be erected within one mile of such new subdivisions; each such sign shall not exceed 100 square feet in gross area, which sign must be placed in relation to the right-of-way line as shown in Subparagraph 7.1.6.1(A)(10).

(d) To advertise that the site, on which the sign is placed, is the location of a future church, school, library, or club, which must be placed at least 20 feet outside the right-of-way line of the highway and shall not exceed 20 square feet in area.

(e) Tablet, inscription, emblem or bulletin board for churches, schools, clubs, hospital, religious or charitable institutions, not over 20 square feet in area, which must be placed at least 5 feet outside the right-of-way line of the highway.

(9) Egg laying chickens / ducks provided that section 7.1.6.1(A)(19) of this Ordinance is followed. The uses described in this subsection (9) are permitted uses only in R1, R2, and R5 residential zoning districts.

(10) Short-term rentals.

(a) Some or all of the site plan review standards of 7.1.6.1 (A) (9) may apply.

(b) Occupancy of a short term rental may be limited by the private onsite wastewater treatment system.

(11) Bed and breakfast establishment.

(a) Some or all of the site plan review standards of 7.1.6.1 (A) (9) may apply.

(b) Occupancy of a bed and breakfast may be limited by the private onsite wastewater treatment system.

(C) SPECIAL EXCEPTION USES. The following uses are permitted upon proper application as provided in this Ordinance particularly items (a) and (b) of Subparagraph 7.1.6.2(A)(2) only after such use shall have been approved in writing by the Board of Adjustment, after public hearing. Such approval shall be consistent with the general purpose and intent of this Ordinance and shall be based upon such evidence as may be presented at such public hearing, tending to show the desirability of specific uses from the standpoint of the public interest because of such factors as (without limitation because of enumeration) smoke, dust, noxious or toxic gases and odors, noise, glare, vibration, operation of heavy machinery, heavy vehicular traffic, increased traffic on streets and other safety and health factors; such uses shall be required to conform with the plan approved by the Board of Adjustment and shall meet the specific conditions attached below and such other conditions as the Board of Adjustment deems necessary in furthering the purpose of this Ordinance.

(1) Accessory building(s) exceeding the maximum square footage set forth in section 7.1.2.1.(B) (4).

(2) Accessory building(s) not meeting the provisions set forth in section 7.1.2.1(B)(4).

(3) Schools, churches and cemeteries.

(D) HEIGHT, YARDS, AREA AND OTHER REQUIREMENTS.

(1) Height. Except as otherwise provided in this Ordinance, no building shall exceed a height of 35 feet. See Paragraph 7.1.6.1(C).

(2) Floor Area. Buildings used in whole or in part for residential purposes which are hereafter erected, moved or structurally altered shall have a floor area of not less than 720 square feet. See Subsection 7.1.6.10 "Floor Area".

(3) Lot Area. Minimum lot area in this District for newly created lots shall be 20,000 square feet, exclusive of road right-of-way. Land in Conservancy Zoning District can be utilized in the creation of a new lot as long as the minimum lot area is non-Conservancy Zoned.

- (4) Lot Width. Minimum lot width shall be 100 feet at the building line.
- (5) Side Yards. There shall be a 10 foot minimum setback from each side yard.
- (6) Rear Yard. There shall be a 25 foot minimum setback from the rear yard.
- (7) Setback Lines. See Subsection 7.1.6.6 and 7.1.6.1(D)(6).
- (8) Off-Street Parking. See Paragraph 7.1.6.1(E).

#### **7.1.2.2 MULTIPLE FAMILY RESIDENCE DISTRICT (R4)**

**(A) INTENT.** This District is intended to provide for multiple family residences or apartments, to serve as a transition between the One and Two Family Residence District and higher intensity uses, such as commercial activities. This District should be applied, in the case of new development, only where connection to municipal sewage treatment facilities will be provided at the time of construction.

**(B) USE.** The following uses are permitted:

- (1) Any use permitted in the Single Family Residence District.
- (2) Multiple family dwellings; four or less.
- (3) Lodging and boarding houses.

**(C) SPECIAL EXCEPTION USES.** The following uses are permitted upon proper application as provided in this Ordinance particularly items (a) and (b) of Subparagraph 7.1.6.2(A)(2) only after such use shall have been approved in writing by the Board of Adjustment, after public hearing. Such approval shall be consistent with the general purpose and intent of this Ordinance and shall be based upon such evidence as may be presented at such public hearing, tending to show the desirability of specific uses from the standpoint of the public interest because of such factors as (without limitation because of enumeration) smoke, dust, noxious gases and odors, noise, glare, vibration, operation of heavy machinery, heavy vehicular traffic, increased traffic on streets and other safety and health factors; such uses shall be required to conform with the plan approved by the Board of Adjustment and shall meet the specific conditions attached below and such other conditions as the Board of Adjustment deems necessary in furthering the purpose of this Ordinance.

- (1) Any use listed as a special exception in the Single Family Residence District.
- (2) Mobile home parks, when each such park shall have been approved in writing by the Board of Adjustment, after public hearing. In addition, such mobile home parks shall meet the following requirements;
  - (a) Every mobile home park and mobile home within the park shall be located on a well-drained area and shall be properly graded to prevent the accumulation of storm or other waters.
  - (b) Each site shall be clearly delineated on plans submitted to the department or its agent for approval.

(c) The basic unit shall be so located on a site that there is at least a 10 foot side yard clearance from other basic units and a 10 foot rear yard clearance between basic units. The clearance requirements shall be exclusive of a parking area.

(d) No basic unit may be located closer than 10 feet to:

(1) Any buildings such as a pump house, the office building for the park, a laundry building or a recreational building, except a garage or accessory structure belonging to the site or occupant;

(2) Any property line of the park; or

(3) The right-of-way line of a street within the park.

(e) Parking spaces in a ratio of 1½ for each site shall be provided and maintained in good condition.

(f) For a two-way street within the park, the width shall be at least 32 feet if parking is permitted on both sides of the street; 24 feet if parking is permitted on one side of the street and 18 feet if parking on the street is prohibited. A one-way street shall be at least 24 feet wide if parking is permitted on both sides; 18 feet wide if parking is permitted on one side; and 14 feet wide if parking on the street is prohibited. Streets shall be graveled or paved, maintained in good condition, have natural drainage, and be adequately lighted at night.

(g) Each mobile home park shall be completely surrounded, except for permitted entrances and exits, by a yard, in addition to all other required yards and open spaces, which shall not be less than 25 feet wide. Within such yard there shall be established, within six months after issuance of the permit for the location of such park, the following plantings;

(1) A temporary planting of fast-growing material, capable of reaching a height of 15 feet or more, as recommended by the County Conservationist, Department of Natural Resources Forester or private consultant, and;

(2) A permanent evergreen planting, the individual trees to be of such number and so arranged that they will have formed a visual screen of 90% as recommended by the County Conservationist, Department of Natural Resources Forester or private consultant, and;

(3) The plantings listed in (1) and (2) be established and maintained per "Central Wisconsin Partnership Windbreak Standards".

(h) It shall be conditions of the granting of a permit for the establishment of any such mobile home park, and a continuing of conditions for the operation of the same that:

(1) All parking spaces, walks and driveways be constructed and maintained so as to prevent the accumulation of surface water and the formation of substantial muddy areas.

(2) That sanitary facilities as approved by the State of Wisconsin be established and maintained.

(3) Private clubs and fraternities not part of mobile home parks.

(3) Multiple family dwellings; five or more.

**(D) HEIGHT, YARDS, AREA AND OTHER REQUIREMENTS.**

(1) Height. Except as otherwise provided in this Ordinance, no building shall exceed a height of 35 feet. See Paragraph 7.1.6.1(C).

(2) Lot Area and Floor Area. The lot area, lot width and floor area requirements for buildings used in whole or in part for dwelling purposes which are hereafter erected, moved or structurally altered shall provide a lot area and floor area as required by the following table:

<u>No. of Families</u>	<u>Lot Area</u>	<u>Floor Area (see 7.1.6.10)</u>
1	20,000 square feet	550 square feet
2 (on 2 floors)	20,000 square feet	1,100 square feet
2 (on 1 floor)	20,000 square feet	1,200 square feet
3	24,000 square feet	1,500 square feet
4	28,000 square feet	1,900 square feet

Each additional lot and floor area to be determined by the Board of Adjustment, family over four with the Board of Adjustment to consider as guidelines, 4,000 square feet of additional lot area and 400 square feet additional floor area for each additional family over four, unless other factors, such as soil, flow of underground water, neighboring developments, etc. make greater or lesser areas for each such family more reasonable, provided that when the regulations of the appropriate Wisconsin Administrative Code, require a larger lot area than any of the above, such regulations shall govern for both platted and unplatted areas and lots. Lot area shall exclude road right-of-way.

(3) Lot Width. The minimum lot width shall be 100 feet at the building line.

(4) Side Yards. There shall be a 10 foot minimum setback from each side yard.

(5) Rear Yard. There shall be a 25 foot minimum setback from the rear yard.

(6) Setback Lines. See Subsection 7.1.6.6 and 7.1.6.1(D)(6).

(7) Off-Street Parking. See Paragraph 7.1.6.1(E).

**7.1.2.3 RURAL AND URBAN FRINGE RESIDENCE DISTRICT (R1)**

**(A) INTENT.** This District is intended to provide urban-fringe and rural area landowners/residents with greater flexibility in land usage than is afforded by traditional residential zoning, while providing greater protection from conflicting land uses than is afforded by traditional agricultural zoning. Single family residential development is consistent with this District, as well as other nonintensive uses typically associated with the rural residential life-style. Low development densities should be maintained to prevent degradation of groundwater from on-site waste disposal systems.

**(B) USES.** The following uses are permitted:

(1) Any use permitted in the R2 Single Family Residence District.

(2) Ponds and/or excavations incidental to the residential use, not exceeding 10,000 square feet total area (e.g. one 10,000 sq.ft. pond and/or excavation, or two 5,000 sq.ft. ponds and / or excavations, etc.). Excavated materials must remain on the property unless a plan for their removal is approved by the Planning and Zoning Staff.

(C) SPECIAL EXCEPTION USES. The following uses are permitted upon proper application as provided in this Ordinance particularly items (a) and (b) of Subparagraph 7.1.6.2(A)(2) only after such use shall have been approved in writing by the Board of Adjustment, after public hearing. Such approval shall be consistent with the general purpose and intent of this Ordinance and shall be based upon such evidence as may be presented at such public hearing, tending to show the desirability of specific uses from the standpoint of the public interest because of such factors as (without limitation because of enumeration) smoke, dust, noxious gases and odors, noise, glare, vibration, operation of heavy machinery, heavy vehicular traffic, increased traffic on streets and other safety and health factors; such uses shall be required to conform with the plan approved by the Board of Adjustment and shall meet the specific conditions attached below and such other conditions as the Board of Adjustment deems necessary in furthering the purpose of this Ordinance.

- (1) Any use listed as a special exception in the Single Family Residence District.
- (2) Ponds and/or excavations incidental to uses in this district exceeding 10,000 square feet of total area.
- (3) Temporary, movable roadside vegetable/produce stands for the sale of products grown on the same premises.
- (4) Utilities, communication lines, towers and related structures.
- (5) Single family homes less than 20 feet wide.
- (6) Home occupations when such occupations may be conducted anywhere on the premises for retail uses and manufacturing, assembly and artisan. If conducted out of the residence, not more than 25% of only one floor of the dwelling shall be used, there shall be no external alterations that would effect a substantial change in the residential character of the building, and no more than 2 persons not members of the resident family may be employed in such occupations.
- (7) Keeping, raising, or housing of horses, provided such activity is not of a commercial nature. Such activity shall require a minimum lot size of five acres and shall not exceed a density of one horse per 1.5 acres.

(D) HEIGHT, YARDS, AREAS AND OTHER REQUIREMENTS.

- (1) Height. Except as otherwise provided in this Ordinance, no building shall exceed a height of 35 feet. See Paragraph 7.1.6.1(C).
- (2) Floor Area. Buildings used in whole or in part for residential purposes which are hereafter erected, moved or structurally altered shall have a floor area as follows:
  - (a) If occupied or to be occupied for six months or longer in any one calendar year (year-round occupancy), the floor area shall not be less than 720 square feet.
  - (b) If occupied or to be occupied for less than six months in any one calendar year (seasonal occupancy), the floor area shall not be less than 400 square feet. See Subsection 7.1.6.10, Floor Area.



(3) Lot Area. Minimum lot area in this District for newly created lots shall be two acres, inclusive of road right-of-way. Land in Conservancy Zoned District can be utilized in the creation of a new lot as long as the minimum lot area is non-Conservancy Zoned.

(4) Lot Width. Minimum lot width shall be 200 feet at the building line.

(5) Side Yards. There shall be a 25 foot minimum setback from each side yard except for lots of record, on which structures shall as nearly as possible meet this requirement, but not less than the side yard setbacks prior to rezoning.

(6) Rear Yard. There shall be a 25 foot minimum setback from the rear yard.

(7) Setback Lines. See Subsection 7.1.6.6 and 7.1.6.1(D)(6).

(8) Off-Street Parking. See Paragraph 7.1.6.1(E).

#### **7.1.2.4 ONE AND TWO FAMILY RESIDENCE DISTRICT (R3)**

**(A) INTENT.** This District is intended to provide for two-family residences or duplexes, to serve as a transition between the Single Family Residence District and higher intensity uses, such as commercial activities. The application of this District, for new development, should be limited to areas where connection to municipal sewage treatment facilities is feasible at the time of construction or in the near future.

**(B) USES.** The following uses are permitted:

(1) Any use permitted in the R2 Single Family Residence District.

(2) Two family dwellings.

**(C) SPECIAL EXCEPTION USES.** The following uses are permitted upon proper application as provided in this Ordinance particularly items (a) and (b) of Subparagraph 7.1.6.2(A)(2) only after such use shall have been approved in writing by the Board of Adjustment, after public hearing. Such approval shall be consistent with the general purpose and intent of this Ordinance and shall be based upon such evidence as may be presented at such public hearing, tending to show the desirability of specific uses from the standpoint of the public interest because of such factors as (without limitation because of enumeration) smoke, dust, noxious gases and odors, noise, glare, vibration, operation of heavy machinery, heavy vehicular traffic, increased traffic on streets and other safety and health factors; such uses shall be required to conform with the plan approved by the Board of Adjustment and shall meet the specific conditions attached below and such other conditions as the Board of Adjustment deems necessary in furthering the purpose of this Ordinance.

(1) Any use listed as a special exception in the Single Family Residential Zoning District.

#### **(D) HEIGHTS, YARDS, AREA AND OTHER REQUIREMENTS.**

(1) Height. Except as otherwise provided in this Ordinance, no building shall exceed a height of 35 feet. See Paragraph 7.1.6.1(C).

(2) Lot Area and Floor Area. The minimum lot area exclusive of road right-of-way, lot width and floor area requirements for buildings used in whole or in part for dwelling purposes which are hereafter erected, moved or structurally altered shall provide a lot area, width and floor area as required by the following table:

<u>No. of Units</u>	<u>Lot Area</u>	<u>Floor Area</u>
1	30,000 sq ft	700 sq ft
2	30,000 sq ft	1,100 sq ft

(3) Lot Width. The minimum lot width shall be 100 feet at the building line.

(4) Side Yard. There shall be a 10 foot minimum setback from each side yard.

(5) Rear Yard. There shall be a 25 foot minimum setback from the rear yard.

(6) Setback Lines. See Subsection 7.1.6.6 and 7.1.6.1(D)(6).

(7) Off-Street Parking. See Paragraph 7.1.6.1(E).

#### **7.1.2.5 WATERFRONT RESIDENCE DISTRICT (R5)**

**(A) INTENT.** It is the intent of this District to allow single family residences and customary accessory uses, at an intermediate density, on suitable sites in waterfront areas. It is further intended that this District be applied in such locations and in such manner as to ensure a proper balance between residential development needs, aesthetic values and visual qualities of the natural environment, and the carrying capacity of the water. This District is to be applied only in waterfront areas or in areas in immediate proximity to water and in conformance with adopted Town and County Comprehensive Plans.

**(B) USES.** The following uses are permitted:

(1) Any use permitted in the R2 Single Family Residence District.

**(C) SPECIAL EXCEPTION USES.** The following uses are permitted upon proper application as provided in this Ordinance particularly items (a) and (b) of Subparagraph 7.1.6.2(A)(2) only after such use shall have been approved in writing by the Board of Adjustment, after public hearing. Such approval shall be consistent with the general purpose and intent of this Ordinance and shall be based upon such evidence as may be presented at such public hearing, tending to show the desirability of specific uses from the standpoint of the public interest because of such factors as (without limitation because of enumeration) smoke, dust, noxious gases and odors, noise, glare, vibration, operation of heavy machinery, heavy vehicular traffic, increased traffic on streets and other safety and health factors; such uses shall be required to conform with the plan approved by the Board of Adjustment and shall meet the specific conditions attached below and such other conditions as the Board of Adjustment deems necessary in furthering the purpose of this Ordinance.

(1) Any use listed as a special exception in the Single Family Residence District.

**(D) HEIGHT, YARDS, AREA AND OTHER REQUIREMENTS.**

(1) Height. Except as otherwise provided in this Ordinance, no building shall exceed a height of 35 feet. See Paragraph 7.1.6.1(C).

(2) Floor Area. Buildings used in whole or in part for residential purposes which are hereafter erected, moved, or structurally altered shall have a floor area of not less than 720 square feet. See Subsection 7.1.6.10 Floor Area.

(3) Lot Area. Minimum lot area in this District for newly created lots shall be one acre, exclusive of road right-of-way. Land in Conservancy Zoning District can be utilized in the creation of a new lot as long as the minimum lot area is non-Conservancy Zoned.

(4) Lot Width. Minimum lot width shall be 150 feet at the building line, provided no lot may be less than 100 feet wide at the ordinary high water mark.

(5) Side Yards. There shall be a 15 foot minimum setback from each side yard.

(6) Rear Yard. There shall be a 25 foot minimum setback from the rear yard.

(7) Setback Lines. See Subsection 7.1.6.6 and 7.1.6.1(D)(6).

(8) Off-Street Parking. See Subsection 7.1.6.1(E)

### **SECTION III – RURAL DISTRICTS**

#### **7.1.3.1 GENERAL AGRICULTURAL DISTRICT (A4)**

**(A) INTENT.** This District is intended to provide for a broad range of rural oriented land uses including agriculture and related structures/residences, as well as forestry, and open space. This District is also intended to provide areas for nonfarm, single-family residential development in appropriate locations, consistent with the provisions of this Ordinance, the Portage County Subdivision Ordinance, and locally adopted Comprehensive Plans.

**(B) USES.** The following uses are permitted:

(1) Single Family dwelling, provided that the creation of five or more residential lots within a 5 year period shall be reviewed by the Planning and Zoning Committee. Single width manufactured homes and/or mobile homes 20 feet wide or less, whether for replacement of an existing dwelling or a new placement, shall not be greater than ten years old unless approved in writing by the Town Board.

(2) Uses in this District include dairying, vegetable and crop production, livestock, meat production, beekeeping, hobby farms, egg production, aquaculture, and other general agricultural uses. Agricultural activities within this District (e.g. manure storage, grazing, feed storage, etc.) may also require operational plans to be approved by the Portage County Land Conservation Division prior to issuance of a Zoning Permit.

(3) Vegetable warehouses.

(4) Greenhouses and plant nurseries.

(5) Roadside produce stands for sale of produce grown on the premises and excluding on-street parking.

(6) Ponds, excavations, and/or extractions (P/E/E)

- (a) Any P/E/E 10,000 square feet or less in total area, shall be allowed through issuance of a Zoning Permit.
  - (b) Any P/E/E exceeding 10,000 square feet and less than one (1) acre of total area shall be allowed through issuance of a Zoning Permit after approval of a detailed site/ grading plan to be submitted to the Portage County Land Conservation Division.
  - (c) Any P/E/E exceeding one (1) acre or larger in total area shall be allowed through issuance of a Zoning Permit, after approval of a detailed site/grading plan to be submitted to the Portage County Land Conservation Division.
  - (d) The applicant shall contact the US Army Corps of Engineers (US-ACOE) and/or the Wisconsin DNR for project approval if P/E/E is located near wetlands and/or shorelands. The applicant shall contact the Portage County Drainage District Commission for project approval if P/E/E is located within the Portage County Drainage District. These approvals will need to be on file with the Planning and Zoning Department before a Zoning Permit can be issued.
  - (e) If material related to the P/E/E leaves the site, a letter from the Town Board and/or County Highway Department approving driveway access must be on file with the Planning and Zoning Department before a Zoning Permit can be issued.
- (7) Forest management, pine plantations, Christmas tree farms, and sales.
- (8) Fish and game management, including fish and game farms.
- (9) Temporary sawmills for a period of less than 12 months in any one calendar year.
- (10) Noncommercial stables and riding arenas.
- (11) Home occupations and professional offices as specified in Subsection 7.1.2.1(B)6) and (7).
- (12) Utilities and communication lines and towers and related structures.
- (13) Municipal buildings, including administrative buildings, town halls, police stations, fire stations, and buildings for the repair or storage of machinery for road construction or maintenance.
- (14) Parks and playgrounds as specified in Subsection 7.1.2.1(B)(3).
- (15) Signs as follows:
- (a) One sign per parcel used exclusively to advertise sale of agricultural products produced on the premises; signs giving the name of the farm owner; rural directory signs when all such signs are established in accordance with the provisions of Subparagraph 7.1.6.1(A)(10).
  - (b) Directory signs, to cities and villages, when such signs are established in accordance with the provisions of Subparagraph 7.1.6.1(A)(10).

(c) Not more than two directory signs, which must be placed in relation to the right-of-way line as shown in Subparagraph 7.1.6.1(A)(10).

(d) To advertise that the site, on which the sign is placed, is the location of a future church, school, library, or club, which must be placed at least 20 feet outside the right-of-way line of the highway and shall not exceed 20 square feet in area.

(e) To advertise the sale, rent, lease or trade of the property on which the sign is placed; provided that such sign shall not exceed six square feet in gross area, except in subdivisions or unplatted lands newly opened for sale, or subdivisions or unplatted land where the density of construction does not exceed an average of one building for each 200 feet of frontage, such latter sign shall not exceed 100 square feet in gross area. Also, not more than two "for sale", "rent", "lease," or "trade" signs may be erected within one mile of such new subdivisions; each such sign shall not exceed 100 square feet in gross area, which sign must be placed in relation to the right-of-way line as shown in Subparagraph 7.1.6.1(A)(10).

(f) Tablet, inscription, emblem or bulletin board for churches, schools, clubs, hospitals, religious or charitable institutions, not over 20 square feet in area, which must be placed at least five feet outside the right-of-way line of the highway.

(g) One sign per parcel to advertise a customary home occupation or professional office, provided that such sign may be placed at the right-of-way line, shall not exceed six square feet in gross area, and may be illuminated; but flashing or intermittent lighting is prohibited. (See 7.1.6.1 (10)(b)(1))

(16) Accessory buildings and uses.

(17) One semi-tractor/trailer or commercial vehicles per parcel.

(18) Second farm residence located anywhere on the parent parcel does not require a lot split.

(19) Wind Electrical Generation Tower (WEGT), private. Any WEGT used, intended to be used or designed to provide electricity to a structure at the site of generation. Any WEGT shall be setback from the nearest property line a distance no less than its total height, unless appropriate easements are secured from properties within the fall zone. The height of a WEGT is measured from the ground to the tip of the blade when the blade is at its highest point. A WEGT shall be constructed in a self support fashion (lattice/mono pole). A detailed site analysis must be completed by a wind site assessor prior to the issuance of a Zoning Permit. The Town Board of the Town in which the WEGT is located shall be given the opportunity to review the site analysis prior to the issuance of a Zoning Permit. Site analysis shall include, but not be limited to, setbacks, location to residences, location to public and private airport/landing strips, other WEGTs, and Town recommendations.

(20) Short-term rental.

(a) Some or all of the site plan review standards of 7.1.6.1 (A) (9) may apply.

(b) Occupancy of a short term rental may be limited by the private onsite wastewater treatment system.

(21) Bed and breakfast establishment.

(a) Some or all of the site plan review standards of 7.1.6.1 (A) (9) may apply.

(b) Occupancy of a bed and breakfast may be limited by the private onsite wastewater treatment system.

(C) SPECIAL EXCEPTION USES. The following uses are permitted upon proper application as provided in this Ordinance particularly items (a) and (b) of Subparagraph 7.1.6.2(A)(2) only after such use shall have been approved in writing by the Board of Adjustment, after public hearing. Such approval shall be consistent with the general purpose and intent of this Ordinance and shall be based upon such evidence as may be presented at such public hearing, tending to show the desirability of specific uses from the standpoint of the public interest because of such factors as (without limitation because of enumeration) smoke, dust, noxious gases and odors, noise, glare, vibration, operation of heavy machinery, heavy vehicular traffic, increased traffic on streets and other safety and health factors; such uses shall be required to conform with the plan approved by the Board of Adjustment and shall meet the specific conditions attached below and such other conditions as the Board of Adjustment deems necessary in furthering the purpose of this Ordinance.

(1) Aircraft landing fields, basins, and hangers.

(2) Contractor's storage yards.

(3) Kennels, when located not less than 1,000 feet from any residential building other than that of the owner of such kennels, his agent, or employee.

(4) Medical, correctional, or charitable institutions, when any building devoted wholly or partly to such uses or accessory thereto shall be distant not less than 100 feet from any residential building not on the same premises.

(5) Migrant labor camps which meet the standards of local and state codes.

(6) Mobile home parks, under the provisions established for mobile home parks in Subsection 7.1.2.2.

(7) Solid waste disposal sites, not including toxic or hazardous waste sites.

(8) Shooting ranges (archery, rifle, pistol, skeet, trap, sporting clay and other firearms), provided as follows:

(a) All premises used for shooting ranges shall be completely fenced with a legal fence, except for one point of entrance no more than 12 feet wide. Each such range shall be posted with warning signs, not more than 100 feet apart and fastened at the level of the top of such fence, but not more than 6 feet above the ground. Such warning sign shall be not less than two square feet in area and shall contain the words "Danger Shooting Range" in red on white background, the letters of such words to be not less than four inches high and maintained in legible condition at all times.

(b) Ranges for skeet and trap shooting shall be restricted to the use of shot ammunition, unless such skeet and trap range is provided with screening and a barrier as required for rifle and pistol ranges.

(c) Shooting stands on any shooting range shall be located not less than 1,000 feet from any residential building other than that of the owner of the premises, his agent or employee, and not less than 400 feet from any property line of such premises other than that line or those lines directly opposite to the direction of normal shooting shall be a planting screen equivalent to that required for mobile home parks in 7.1.2.2(C)(2)(g) within the fence required

above. Such planting screen shall extend at least from a point in line which the shooting stands to a point in line with the base of the barrier required by (e) below. If such barrier does not extend across the full width of the premises, the planting screen shall be extended, parallel to the base of the barrier, until a point is reached at which the height of the barrier and the ultimate required height of the planting screen are equal.

(d) Ranges for rifle and pistol shooting with ball ammunition shall be so arranged as to provide a sod-faced barrier of earth or sand impenetrable by any missiles to be fired on such ranges. Such barrier shall be not less than 50 feet in height, measured from the base of the targets, and shall extend not less than 200 feet horizontally on either side of such targets. The Board of Adjustment may make exceptions to the specifications for the barrier based on a submitted plan and on their inspection of the site.

(e) Every permit issued by the Board of Adjustment for a shooting range shall be a conditional permit. It shall be conditional for the granting of such permit and conditional for the continued operation of the shooting range to which it pertains that:

(1) Required fences shall meet legal standards at all times.

(2) Required signs shall comply with all regulations of this paragraph and shall be clearly legible at all times.

(3) Required plantings shall be established, grown and maintained as specified in this paragraph.

(4) Required barriers shall be maintained as specified in this paragraph.

(5) Shooting and the handling of firearms on the premises shall be conducted in a safe and Orderly manner, so as not to constitute an undue hazard to persons either on or off the premises.

(6) If, upon inspection, the Zoning Administrator determines that any of the above requirements are not being met at any time, he shall give notice to the owner or operator of the premises of a temporary suspension of operations for not more than 14 days, specifying in writing the grounds for such suspension. If such grounds for suspension have not been removed at the end of such period of 14 days or less, the Zoning Administrator may give notice of any indefinite suspension, and thereafter operations shall not be resumed except by permit from the Board of Adjustment, to be secured as if for a new operation.

(9) Slaughterhouses, when located not less than 1,000 feet from any residential building other than that of the owner of the premises, his agent, or employee.

(10) Automobile wrecking yards, recycling yards, and salvage yards.

(11) Nonmetallic mining as defined in the Portage County Nonmetallic Mining Reclamation Ordinance.

(12) Home occupations when such occupations may be conducted anywhere on the premises for retail and/or and wholesale uses. If conducted out of the residence, not more than 50% of only one floor of the residence shall be used, there shall be no external alterations that would effect a substantial change in the residential character of the building, no more than two persons not members of the resident family residing on the premise, may be employed in such occupation.

(13) Dairies.

- (14) Commercial fertilizer and/or chemical mixing plants.
- (15) Sawmills.
- (16) Asphalt and cement mixing plants.
- (17) Dams, power plants and flowage areas.
- (18) Two or more semi-tractors/trailers or commercial vehicles per parcel.
- (19) Campgrounds.
- (20) Schools, churches and cemeteries.
- (21) Signs greater than six square feet.
- (22) Zoological centers, zoos, housing of exotic animals.
- (23) Wildlife and nature centers and associated buildings and uses.
- (24) Private motorized vehicle(s) on established tracks/trails (e.g. moto-cross).
- (25) Commercial stables and riding arenas.
- (26) Recreational/educational camps.
- (27) Wind Electrical Generation Tower (WEGT), Commercial. Any WEGT to be primarily used to produce electricity that will ultimately be sold and/or used not at the site of generation.
- (28) Commercial recreational establishment.
- (29) Agricultural event centers.

(D) HEIGHT, YARDS, AREA, AND OTHER REQUIREMENTS.

(1) Height. Except as otherwise provided in this Ordinance, no building shall exceed a height of 35 feet. See Paragraph 7.1.6.1(C).

(2) Lot Area. Minimum lot area in this District for newly created lots shall be two acres, inclusive of road right-of-way. Land in Conservancy Zoning District can be utilized in the creation of a new lot as long as the minimum lot area is non-Conservancy Zoned.

(3) Floor Area. Buildings used in whole or in part for residential purposes which are hereafter erected, moved or structurally altered shall have a floor area as follows:

(a) If occupied or to be occupied for six months or longer in any one calendar year (year-round occupancy), the floor area shall not be less than 720 square feet.



(b) If occupied or to be occupied for less than six months in any one calendar year (seasonal occupancy), the floor area shall not be less than 400 square feet. See Subsection 7.1.6.10, "Floor Area".

(4) Lot Width. Minimum lot width shall be 200 feet at the building line.

(5) Side Yards. There shall be a 10 foot minimum setback from each side yard.

(6) Rear Yard. There shall be a 25 foot minimum setback from the rear yard.

(7) Setback Lines. See Subsection 7.1.6.6 and 7.1.6.1(D)(6).

(8) Off-Street Parking. See Subparagraph 7.1.6.1(E).

### **7.1.3.2 CONSERVANCY DISTRICT (CON)**

**(A) INTENT.** This District is intended to identify, protect, and preserve lands that are environmentally unique, fragile, or important. Areas where this District is intended to be applied include, but are not limited to, wetlands and hydric soils, floodways as determined on the FEMA Flood Insurance Rate Maps, shorelines, natural drainage ways, steep slopes greater than 12% where appropriate, certain forested lands as designated by adopted Town Comprehensive Plan and Zoning maps, and certain parks and other publicly owned lands providing opportunities for recreation and management of wildlife habitat.

**(B) USE.** The following uses are permitted:

(1) The harvesting of wild crops, including the collection of sap.

(2) Wildlife/nature centers, resource protection management practices and scientific research stations.

(3) Utility and communication lines, towers, and related structures.

(4) Public lands when owned by Federal or State government agencies, Portage County or municipality within the County, operated for the convenience and recreation of the public.

(5) Noncommercial recreation trails.

(6) The maintenance and repair of existing drainage systems, if part of a drainage district or approved by U.S. Natural Resources Conservation Service (NRCS), Wisconsin Department of Natural Resources (WDNR), or the Portage County Land Conservation Division.

(7) Forestry management and silviculture including, but not limited to, timber harvesting, including pulpwood, selective cutting, cutting of firewood, tree plantations, Christmas tree farms, and removal of dead, dying, and diseased trees.

(8) Ponds, excavations, and/or extractions (P/E/E); (Does not allow for nonmetallic mining)

(a) Any P/E/E 10,000 square feet or less in total area, shall be allowed through issuance of a Zoning Permit.

(b) Any P/E/E exceeding 10,000 square feet and less than one (1) acre of total area shall be allowed through issuance of a Zoning Permit after approval of a detailed site/ grading plan to be submitted to the Portage County Land Conservation Division.

(c) Any P/E/E one acre or larger in total area shall be allowed through issuance of a Zoning Permit, after approval of a detailed site/grading plan to be submitted to the Portage County Land Conservation Division.

(d) The applicant shall contact the US Army Corps of Engineers (US-ACOE) and/or the Wisconsin DNR for project approval if P/E/E is located near wetlands and/or shorelands. The applicant shall contact the Portage County Drainage District Commission for project approval if P/E/E is located within the Portage County Drainage District. These approvals will need to be on file with the Planning and Zoning Department before a Zoning Permit can be issued.

(e) If material related to the P/E/E leaves the site, a letter from the Town Board and/or County Highway Department approving driveway access must be on file with the Planning and Zoning Department before a Zoning Permit can be issued.

(9) Grazing, subject to a plan of operations approved and on file with the Portage County Land Conservation Division.

(C) SPECIAL EXCEPTION USES. The following uses are permitted upon proper application as provided in this Ordinance, particularly items (a) and (b) of Subparagraph 7.1.6.2(A)(2), only after such use shall have been approved in writing by the Board of Adjustment, after public hearing. Such approval shall be consistent with the general purpose and intent of this Ordinance and shall be based upon such evidence as may be presented at such public hearing, tending to show the desirability of specific uses from the standpoint of the public interest because of such factors as (without limitation because of enumeration) smoke, dust, noxious gases and odors, noise, glare, vibration, operation of heavy machinery, heavy vehicular traffic, increased traffic on streets and other safety and health factors; such uses shall be required to conform with the plan approved by the Board of Adjustment and shall meet the specific conditions attached below and such other conditions as the Board of Adjustment deems necessary in furthering the purpose of this Ordinance.

(1) Public recreational facilities such as fixed structures, athletic fields, trails, natural areas and associated infrastructure operated by the Portage County Parks Department or local entity.

(2) Nonresidential buildings and structures used in conjunction with the raising of wildlife and fish, and the practice of forestry, including buildings and structures used for research in or the rehabilitation of natural resources.

(3) Boat landings.

(4) Temporary sawmills for a period of less than 12 months in any one calendar year.

(5) Hydro-electric power stations, dams and other structures for the use or control of flowing water.

(D) HEIGHT, YARDS, AREA, AND OTHER REQUIREMENTS.

(1) Height. Except as otherwise provided in this Ordinance, no building shall exceed a height of 35 feet. See Paragraph 7.1.6.1(C).

(2) Lot Area. There is no minimum district size due to the application of this zoning district to land features independent of lot lines. The minimum lot area in this District shall be two acres exclusive of road right-of-way for the purposes of lot creation or conveyance.

(3) Side Yards. There shall be a 25 foot minimum setback from each side yard.

(4) Rear Yard. There shall be a 25 foot minimum setback from the rear yard.

(5) Setback Lines. See Subsection 7.1.6.6 and 7.1.6.1(D)(6).

(6) Off-Street Parking. See Paragraph 7.1.6.1(E).

### **7.1.3.3 RECREATIONAL DISTRICT (REC)**

**(A) INTENT.** This District is intended to provide for a combination of residential and recreational development of a seasonal and year-round nature. It is the County's policy to no longer utilize the Recreational District for new development and it has been retained in this Ordinance only to accommodate older, preexisting uses remaining with this District.

**(B) USES.** The following uses are permitted:

(1) Any uses allowed in the R2 Single Family Residence District.

(2) Seasonal Single Family Dwelling.

**(C) SPECIAL EXCEPTION USES.** The following uses are permitted upon proper application as provided in this Ordinance particularly items (a) and (b) of Subparagraph 7.1.6.2(A)(2) only after such use shall have been approved in writing by the Board of Adjustment, after public hearing. Such approval shall be consistent with the general purpose and intent of this Ordinance and shall be based upon such evidence as may be presented at such public hearing, tending to show the desirability of specific uses from the standpoint of the public interest because of such factors as (without limitation because of enumeration) smoke, dust, noxious gases and odors, noise, glare, vibration, operation of heavy machinery, heavy vehicular traffic, increased traffic on streets and other safety and health factors; such uses shall be required to conform with the plan approved by the Board of Adjustment and shall meet the specific conditions attached below and such other conditions as the Board of Adjustment deems necessary in furthering the purpose of this Ordinance.

(1) Accessory building(s) exceeding the maximum square footage, (see section 7.1.2.1(B)(4)).

(2) Accessory building(s) exceeding the maximum height at roof peak and maximum side wall height set forth in section 7.1.2.1(B)(4).

(3) Recreation camps, when each such camp shall have been approved in writing by the Board of Adjustment, after public hearing. Such camps shall meet the following requirements:

(a) There shall be a yard on each side of any such recreation camp, except that no such yard shall be required along that part of a camp which fronts on a lake or stream; provided that the highway and water line setbacks established by the regulations of Subsection 7.1.6.6 shall be observed by all buildings and structures to which such

setbacks apply. Each such yard shall be not less than 50 feet wide, provided that all camping units or fraction thereof by which such recreation yard may be reduced half the width of any street upon which such yard abuts but in no case to less than 25 feet. It shall be a condition of the granting of the permit for any such recreation camp, and a continuing condition for the same, that the natural vegetation of the area, including grasses, flowers, shrubs and trees, but not including noxious plants, or that vegetation of equivalent density to be planted therein, so as to provide a natural screen between such camp and neighboring residential areas and so that required yards shall be unused and unusable for the general purposes of such camps.

(b) Off-street parking shall be provided on the premises of each such recreation camp, but not in any required yard, equal to not less than one parking space for each camping unit, plus one additional parking space for each motor vehicle operated in connection with such camp.

(4) Schools, churches and cemeteries.

(D) HEIGHT, YARDS, AREA, AND OTHER REQUIREMENTS.

(1) Height. Except as otherwise provided in this Ordinance, no building shall exceed the height of 35 feet. See Paragraph 7.1.6.1(C).

(2) Floor Area. Building used in whole or in part for residential purposes which are hereafter erected, moved or structurally altered shall have a floor area as follows:

(a) If occupied or to be occupied for six months or more in any one calendar year (year-round occupancy), the floor area shall be not less than 720 square feet.

(b) If occupied or to be occupied for less than six months in any one calendar year (seasonal occupancy), the floor area may be not less than 400 square feet. See Subsection 7.1.6.10, "Floor Area"

(3) Lot Area. Buildings used in whole or in part for single family dwelling purposes shall have a lot area and width as required by the regulations of Subsection 7.1.2.1(D)(3).

(4) Lot Width. Minimum lot width shall be 100 feet at the building line.

(5) Side Yards. There shall be a 10 foot minimum setback from the side yard.

(6) Rear Yards. There shall be a 25 foot minimum setback from the rear yard.

(7) Setback Lines. See subsection 7.1.6.6 and 7.1.6.1(D)(6).

(8) Off-Street Parking. See Paragraph 7.1.6.1(E).

**7.1.3.4 EXCLUSIVE AGRICULTURAL DISTRICT (A1)**

(A) INTENT. It is the intent of this District to:

(1) Preserve productive farmlands, particularly where such lands exist in large blocks, including nonproductive lands, where necessary to maintain this strategy.

- (2) Maintain agriculture as a major component of the County's economy.
- (3) Minimize conflicts between farm and nonfarm activities.
- (4) Avoid urban sprawl and the associated public costs.
- (5) Allow farmers to participate in the Working Lands Initiative.
- (6) Allow farm related housing and limited nonfarm housing, in appropriate locations, at very low densities.
- (7) Compliance with Chapter 91 of the Wisconsin State Statutes.

(B) USES. The following uses are permitted:

- (1) Beekeeping.
- (2) Cranberry production.
- (3) Dairy farming.
- (4) Floriculture.
- (5) Feedlots.
- (6) Poultry raising and/or egg production.
- (7) Livestock raising and pasture lands (including but not limited to beef, swine, sheep, goats, etc.).
- (8) Orchards.
- (9) Noncommercial stables, equestrian trails and paddocks (small field where horses are exercised).
- (10) Plant nurseries.
- (11) Raising of tree fruits, nuts, and berries.
- (12) Raising of grain, grasses, mint, and seed crops.
- (13) Sod farming.
- (14) Vegetable raising.
- (15) Viticulture (vineyards).
- (16) Forest products and tree farms.
- (17) Roadside stands not exceeding one per farm.

(18) Ponds, excavations, and/or extractions (P/E/E), [See 7.1.3.1(B)(6)]. Incidental to the agricultural uses provided in this section. (Does not allow for nonmetallic mining)

(19) Temporary sawmills for a period of less than 12 months in any calendar year.

(20) Lands not being actively farmed which have prime agricultural potential and which comply with the intent and use provisions of this section.

(21) Agriculturally related residences.

(a) The only residences allowed as permitted uses are those which are to be occupied by a person who, or a family at least one member of which, earns a majority of his or her livelihood from the farm operation. No lot split shall be required for a second farm residence located anywhere on any operating farm subject to setback, height, and other dimensional requirements. Permitted residences shall also include those of parents or children of the farm family whether such parents or children are engaged in farming or not. Such residences shall be located on a separate parcel which meets the minimum lot area width requirement of the general Agricultural District.

(b) Preexisting. Those residences preexisting on the effective date of this section may be continued in residential use and shall not be considered nonconforming uses per 59.69(10) of the Wisconsin State Statutes. Such preexisting residences may be altered, repaired or rebuilt, but are subject to the setback, height and other dimensional requirements. Such residences may be occupied by any person for farm or nonfarm residential purposes, provided that the dwelling remain in single family residential use.

(22) Accessory buildings and uses.

(23) Signs as specified in 7.1.3.1(B)(15).

(24) Home occupations and professional offices as specified in 7.1.2.1(6) and (7).

(25) One semi-tractor/trailer or commercial vehicle per parcel.

(26) Game farms, fish farms, and associated uses.

(27) Single family residences on preexisting parcels less than 20 acres.

(28) Wind Electrical Generation Towers (WEGT), private. Any WEGT used, intended to be used or designed to provide electricity to a structure at the site of generation. [See 7.1.3.1(B)(19)]

(29) Short-term rental.

(a) Some or all of the site plan review standards of 7.1.6.1 (A) (9) may apply.

(b) Occupancy of a short term rental may be limited by the private onsite wastewater treatment system.

(30) Bed and breakfast establishment.

(a) Some or all of the site plan review standards of 7.1.6.1 (A) (9) may apply.

(b) Occupancy of a bed and breakfast may be limited by the private onsite wastewater treatment system.

(C) SPECIAL EXCEPTION USES. The following uses are permitted upon proper application as provided in this Ordinance particularly items (a) and (b) of Subparagraph 7.1.6.2(A)(2) only after such use shall have been approved in writing by the Board of Adjustment, after public hearing. Such approval shall be consistent with the general purpose and intent of this Ordinance and shall be based upon such evidence as may be presented at such public hearing, tending to show the desirability of specific uses from the standpoint of the public interest because of such factors as (without limitation because of enumeration) smoke, dust, noxious gases and odors, noise, glare, vibration, operation of heavy machinery, heavy vehicular traffic, increased traffic on streets and other safety and health factors; such uses shall be required to conform with the plan approved by the Board of Adjustment and shall meet the specific conditions attached below and such other conditions as the Board of Adjustment deems necessary in furthering the purpose of this Ordinance.

(1) Non-farm residences created as the result of farm consolidation.

(2) Housing for farm laborers not permitted in the principal use section.

(3) Migrant labor camps which meet the standards of local and state codes.

(4) Livestock sales facilities.

(5) Veterinary services for farm animals.

(6) Commercial fish and fur farming.

(7) Dairies.

(8) Commercial fertilizer and/or chemical mixing plants.

(9) Greenhouses.

(10) Land restoration.

(11) Sewage disposal plants.

(12) Aircraft landing fields, basins, and hangers for agricultural purposes and for personal uses.

(13) Utility and communication lines and towers including related structures.

(14) Home occupations when such occupations may be conducted anywhere on the premises for retail uses and manufacturing, assembly and artisan. If conducted out of the residence, not more than 25% of only one floor of the dwelling shall be used, there shall be no external alterations that would effect a substantial change in the residential character of the building, and that no more than two persons not members of the resident family may be employed in such occupations.

- (15) Two or more semi-tractors trailers or commercial vehicles per parcel.
- (16) One residence per 35 acres except as provided in 7.1.3.4(B)(21)(a).
- (17) Farm related buildings or uses on parcels less than 35 acres.
- (18) Signs greater than six square feet.
- (19) Wind Electrical Generation Tower (WEGT), Commercial. Any WEGT to be primarily used to produce electricity that will ultimately be sold and/or used not at the site of generation.
- (20) Contractor Storage Yards.

**(D) HEIGHT, YARDS, AREAS, AND OTHER REQUIREMENTS.**

- (1) Height. Except as otherwise provided in this Ordinance, no building shall exceed a height of 35 feet. See Paragraph 7.1.6.1(C).
- (2) Lot Area (farm site). Buildings used in whole or in part for dwellings shall be located on a lot having a minimum of 35 acres.
- (3) Floor Area. Buildings used in whole or in part for residential purposes which are hereafter erected, moved or structurally altered shall have a floor area of 720 square feet. See Subsection 7.1.6.10, "Floor Area".
- (4) Lot Width. Minimum lot width shall be 200 feet at the building line.
- (5) Side Yard. There shall be a 25 foot minimum side setback from each side yard.
- (6) Rear Yard. There shall be a 25 foot minimum setback from the rear yard
- (7) Setback Lines. See Subparagraph 7.1.6.6 and 7.1.6.1(D)(6).
- (8) Off-Street Parking. See Subparagraph 7.1.6.1(E).

**7.1.3.5 AGRICULTURAL TRANSITION DISTRICT (A2)**

**(A) INTENT.** This District is intended to provide for a broad range of rural oriented land uses including agriculture, forestry and open space. It is further intended that this District be used to preserve the rural character of certain outlying areas of Portage County, where only large lot residential development is desirable, particularly where identified in locally adopted Comprehensive Plans.

**(B) USES.** The following uses are permitted:

- (1) Any use allowed in the A4 General Agricultural District.



(C) SPECIAL EXCEPTION USES. The following uses are permitted upon proper application as provided in this Ordinance particularly items (a) and (b) of Subparagraph 7.1.6.2(A)(2) only after such use shall have been approved in writing by the Board of Adjustment, after public hearing. Such approval shall be consistent with the general purpose and intent of this Ordinance and shall be based upon such evidence as may be presented at such public hearing, tending to show the desirability of specific uses from the standpoint of the public interest because of such factors as (without limitation because of enumeration) smoke, dust, noxious gases and odors, noise, glare, vibration, operation of heavy machinery, heavy vehicular traffic, increased traffic on streets and other safety and health factors; such uses shall be required to conform with the plan approved by the Board of Adjustment and shall meet the specific conditions attached below and such other conditions as the Board of Adjustment deems necessary in furthering the purpose of this Ordinance.

(1) Any use listed as a special exception in the A4 General Agricultural District.

(D) HEIGHTS, YARDS, AREA AND OTHER REQUIREMENTS.

(1) Height. Except as otherwise provided in this Ordinance, no building shall exceed a height of 35 feet. See Paragraph 7.1.6.1(C).

(2) Lot Area. Minimum lot area in this District shall be 10 acres for newly created lots. For this District only, road rights-of-way may be included in the lot area calculation. In lieu of the required minimum acreage (including contiguous land under same ownership), exceptions will be permitted in order to allow one remnant lot of substandard size per quarter-quarter section or government lot; however, in no case shall such remnant lot be created which is less than seven acres in size, including road rights-of-way. Land in Conservancy Zoning District can be utilized in the creation of a new lot as long as two acres is non-Conservancy Zoned.

(a) Open Space Option. For developments which use the Open Space Design Option of the Portage County Subdivision Ordinance, minimum lot area shall be two (2) acres, provided the provisions of Section 7.4, Portage County Subdivision Ordinance are followed.

(b) Lot Averaging Option. See Section 7.4 of the Subdivision Ordinance.

(3) Floor Area. See A4 General Agricultural District.

(4) Lot Width. Minimum lot width shall be 200 feet wide at the building line.

(5) Side Yards. There shall be a 25 foot minimum setback from each side yard.

(6) Rear Yards. There shall be a 25 foot minimum setback from the rear yard.

(7) Setback Lines. See Subparagraph 7.1.6.6 and 7.1.6.1(D)(6).

(8) Off-Street Parking. See Paragraph 7.1.6.1(E).

**7.1.3.6 LOW DENSITY AGRICULTURAL DISTRICT (A3)**

(A) INTENT. This District is intended to provide for a broad range of rural-oriented land uses including agriculture, forestry and open space. It is further intended that this District be used to preserve the rural character of certain outlying areas of Portage County, where only large lot residential development is desirable, particularly where identified in locally adopted Comprehensive Plans.

(B) USES. The following uses are permitted:

(1) Any use allowed in the A4 General Agricultural District.

(C) SPECIAL EXCEPTION USES. The following uses are permitted upon proper application as provided in this Ordinance particularly items (a) and (b) of Subparagraph 7.1.6.2(A)(2) only after such use shall have been approved in writing by the Board of Adjustment, after public hearing. Such approval shall be consistent with the general purpose and intent of this Ordinance and shall be based upon such evidence as may be presented at such public hearing, tending to show the desirability of specific uses from the standpoint of the public interest because of such factors as (without limitation because of enumeration) smoke, dust, noxious gases and odors, noise, glare, vibration, operation of heavy machinery, heavy vehicular traffic, increased traffic on streets and other safety and health factors; such uses shall be required to conform with the plan approved by the Board of Adjustment and shall meet the specific conditions attached below and such other conditions as the Board of Adjustment deems necessary in furthering the purpose of this Ordinance.

(1) Any uses listed as special exception in the A4 General Agricultural District.

(D) HEIGHTS, YARDS, AREA AND OTHER REQUIREMENTS.

(1) Height. Except as otherwise provided in this Ordinance, no building shall exceed a height of 35 feet. See Subsection 7.1.6.1(C).

(2) Lot Area. Minimum lot area in the District shall be five acres for newly created lots, inclusive of road right-of-way. The five acres may not include any right-of-way dedicated and owned by the Federal, State, County, or local government as part of their road system. Land in Conservancy Zoning District can be utilized in the creation of a new lot as long as two acres is non-Conservancy Zoned.

(a) Open Space Design Option. For developments which use the section 7.5 Open Space Design Option of the Portage County Code of Ordinances, minimum lot area shall be two (2) acres, provided the provisions of Section 7.4 of the Portage County Subdivision Ordinance are followed.

(b) Lot Averaging Option. See Section 7.4 of the Subdivision Ordinance.

(3) Floor Area. See A4 General Agricultural District.

(4) Lot Width. Minimum lot width shall be 200 feet at the building line.

(5) Side Yards. There shall be a 25 foot minimum setback from each side yard except for existing lots of record, on which structures shall as nearly as possible meet this requirement, but not less than the side yard setbacks prior to rezoning.

(6) Rear Yards. There shall be a 25 foot minimum setback from the rear yard.

(7) Setback Lines. See Subsection 7.1.6.6 and 7.1.6.1(D)(6).

(8) Off-Street Parking. See Subsection 7.1.6.1(E).

### **7.1.3.7 PRIMARY AGRICULTURAL DISTRICT (A20)**

**(A) INTENT.** This district is intended to preserve the integrity of agriculture in Portage County. This district applies to agricultural lands that have long-term significance for the production of food or other agricultural products, but would not be considered prime agricultural land and thus not qualified for A1, Exclusive Agricultural District designation. This district should encompass concentrated farming regions, to promote long-term viability of Agricultural operations and support services. Permanent new construction within this district should not conflict with farming and should have a scale compatible with an active farming district.

**(B) USES.** The following uses are permitted:

(1) Agriculturally related residences.

(a) Residences occupied by a person who, or a family where at least one member of which, earns a majority of his or her livelihood from the farm operation the residence is located on. No lot split shall be required for a second farm residence located anywhere on any operating farm subject to setback, height, and other dimensional requirements.

(b) Single width manufactured homes and/or mobile homes 20 feet wide or less shall not be greater than ten years old unless approved by the Town Board.

(2) Non-Agriculturally related residences, provided that;

(a) Each application includes a scaled drawing indicating the location of the proposed dwelling to the surrounding farms;

(b) The dwelling is sited on that portion of the lot which separates it as much as possible from adjacent farming, including minimizing the length of property lines shared by the residential lot and actively farmed lands;

(c) The dwelling and its lot are located on the least productive farmland wherever practical;

(d) The dwelling is sited on the smallest practical area to satisfy the requirements of this Ordinance and on-site sewage disposal regulations.

(e) Single width manufactured homes and/or mobile homes 20 feet wide or less shall not be greater than ten years old unless approved by the Town Board.

(3) Preexisting residences. Those residences preexisting on the effective date of this section may be continued in residential use and shall not be considered nonconforming uses per 59.69(10) of the Wisconsin State Statutes. Such preexisting residences may be altered, repaired or rebuilt, but are subject to the setback, height and other dimensional requirements. Such residences may be occupied by any person for farm or nonfarm residential purposes, provided that the dwelling remain in single family residential use.

(4) Beekeeping.

(5) Cranberry production.

(6) Dairy farming.

- (7) Floriculture.
- (8) Fish and game management, including fish and game farms.
- (9) Greenhouses and plant nurseries.
- (10) Poultry raising and/or egg production.
- (11) Livestock raising and pasture lands (including but not limited to beef, swine, sheep, goats, etc.).
- (12) Orchards.
- (13) Noncommercial stables, riding arenas, equestrian trails and paddocks (small field where horses are exercised).
- (14) Plant nurseries.
- (15) Raising of tree fruits, nuts, and berries.
- (16) Raising of grain, grasses, mint, and seed crops.
- (17) Sod farming.
- (18) Vegetable raising.
- (19) Vegetable warehouses.
- (20) Viticulture (vineyards).
- (21) Forest management, Christmas tree farms and sales.
- (22) Roadside stands not exceeding one per farm.
- (23) Ponds, excavations, and/or extractions (P/E/E), [See 7.1.3.1(B)(6)]. Incidental to the agricultural uses provided in this section. (Does not allow for nonmetallic mining)
- (24) Temporary sawmills for a period of less than 12 months in any calendar year.
- (25) Accessory buildings and uses.
- (26) Signs as specified in 7.1.3.1(B)(16).
- (27) Home occupations and professional offices as specified in 7.1.2.1(B) (6) and (7).
- (28) One semi-tractor/trailer or commercial vehicle per parcel.

(29) Wind Electrical Generation Tower (WEGT), private. Any WEGT used, intended to be used or designed to provide electricity to a structure at the site of generation. [See 7.1.3.1(B)(19)]

(30) Short-term rental.

(a) Some or all of the site plan review standards of 7.1.6.1 (A) (9) may apply.

(b) Occupancy of a short term rental may be limited by the private onsite wastewater treatment system.

(31) Bed and breakfast establishment.

(a) Some or all of the site plan review standards of 7.1.6.1 (A) (9) may apply.

(b) Occupancy of a bed and breakfast may be limited by the private onsite wastewater treatment system.

(C) SPECIAL EXCEPTION USES. The following uses are permitted upon proper application as provided in this Ordinance particularly items (a) and (b) of Subparagraph 7.1.6.2(A)(2) only after such use shall have been approved in writing by the Board of Adjustment, after public hearing. Such approval shall be consistent with the general purpose and intent of this Ordinance and shall be based upon such evidence as may be presented at such public hearing, tending to show the desirability of specific uses from the standpoint of the public interest because of such factors as (without limitation because of enumeration) smoke, dust, noxious gases and odors, noise, glare, vibration, operation of heavy machinery, heavy vehicular traffic, increased traffic on streets and other safety and health factors; such uses shall be required to conform with the plan approved by the Board of Adjustment and shall meet the specific conditions attached below and such other conditions as the Board of Adjustment deems necessary in furthering the purpose of this Ordinance.

(1) Non-farm residences created as the result of farm consolidation, where lot density is greater than allowed by 7.1.3.7 (D)(3).

(2) Housing for farm laborers not permitted in the principal use section.

(3) Migrant labor camps which meet the standards of local and state codes.

(4) Livestock sales facilities.

(5) Veterinary services for farm animals.

(6) Commercial fish and fur farming.

(7) Dairies.

(8) Feedlots.

(9) Commercial fertilizer and/or chemical mixing plants.

(10) Greenhouses.

- (11) Land restoration.
- (12) Sewage disposal plants.
- (13) Landing fields for agricultural purposes and for personal uses.
- (14) Utility and communication lines and towers including related structures.
- (15) Home occupations when such occupations may be conducted anywhere on the premises for retail uses and manufacturing, assembly and artisan. If conducted out of the residence, not more than 25% of only one floor of the dwelling shall be used, there shall be no external alterations that would effect a substantial change in the residential character of the building, and that no more than two persons not members of the resident family may be employed in such occupations.
- (16) Two or more semi-tractors/trailers or commercial vehicles per parcel.
- (17) Kennels, when located not less than 1,000 feet from any residential building other than that of the owner of such kennels, his agent, or employee.
- (18) Slaughterhouses, when located not less than 1,000 feet from any residential building other than that of the owner of the premises, his agent, or employee.
- (19) Sawmills.
- (20) Dams, power plants and flowage areas.
- (21) Signs greater than six square feet.
- (22) Commercial stables and riding arenas.
- (23) Wind Electrical Generation Tower (WEGT), Commercial. Any WEGT to be primarily used to produce electricity that will ultimately be sold and/or used not at the site of generation.
- (24) Contractor Storage Yards.

(D) HEIGHT, YARDS AND OTHER REQUIREMENTS.

- (1) Height. Except as otherwise provided in this Ordinance, no building shall exceed a height of 35 feet. See Paragraph 7.1.6.1(C).
- (2) Lot Area. Minimum lot area in this District shall be twenty (20) acres for newly created lots. For this District only, road rights-of-way may be included in the lot area calculation. In lieu of the required minimum acreage (including contiguous land under same ownership), exceptions will be permitted in order to allow one remnant lot of substandard size per quarter-quarter section or government lot, however, in no case shall such remnant lot be created which is less than seventeen 17 acres in size, including road rights-of-way. Land in the Conservancy Zoning District can be utilized in the creation of a new lot as long as two acres is non-Conservancy Zoned.

(a) Open Space Design Option. For developments which use section 7.5 Open Space Design Option of the Portage County Code of Ordinances, minimum lot area shall be two (2) acres, provided the provisions of Section 7.4 of the Portage County Subdivision Ordinance are followed.

(b) Lot Averaging Option. See Section 7.4 of the Subdivision Ordinance.

(3) Floor Area. Buildings used in whole or in part for residential purposes which are hereafter erected, moved or structurally altered shall have a floor area of 720 square feet. See Subsection 7.1.6.10, "Floor Area".

(4) Lot Width. Minimum lot width shall be 200 feet at the building line.

(5) Side Yard. There shall be a 25 foot minimum side setback from each side yard.

(6) Rear Yard. There shall be a 25 foot minimum setback from the rear yard.

(7) Setback Lines. See Subparagraph 7.1.6.6 and 7.1.6.1(D)(6).

(8) Off-Street Parking. See Subparagraph 7.1.6.1(E).

#### **7.1.3.8 RURAL LIMITED DISTRICT (RL)**

**(A) INTENT.** To guide the use of rural lands that are not primarily agricultural or residential in nature, and to promote forestry uses, protect environmentally sensitive land, and to provide guidelines for development. Lands with a land use classification of "Natural Areas – Limited" are often, but not exclusively, assigned this zoning district.

These guidelines are intended to safeguard sensitive lands and open space goals while allowing limited development. The district shall be utilized to:

- (1) Maintain large contiguous tracts of forested lands.
- (2) Allow limited non-agricultural development.
- (3) Buffer unique ecological, geological, scenic, and other areas or features of interest worthy of preservation.
- (4) Provide public or private recreational opportunities for enjoyment of natural areas.
- (5) Protect threatened and endangered species, locally rare or vanishing species of plant and animal life, and to allow for research and study of unique ecological communities and the natural environment.
- (6) Provide a connection, where appropriate, between Conservancy Zoning Districts to create wildlife corridors by using limited areas of land to protect wildlife movement between natural areas, even if the land is not completely natural or undisturbed.
- (7) Improve water quality protection.

**(B) USES.** The following uses are permitted:

- (1) Private noncommercial recreational uses and facilities including, but not limited to, fixed structures, athletic fields, trails, camping, natural areas and associated infrastructure operated by a private entity or individual for the convenience and recreation of the public.

- (2) Public recreational uses and facilities including, but not limited to, fixed structures, athletic fields, trails, camping, natural areas and associated infrastructure operated by Federal or State governmental agencies, Portage County, or local governmental entities within the County.
- (3) Forestry management and silviculture including, but not limited to, the production of dimensioned lumber, the harvesting of timber and pulpwood, selective cutting, cutting of firewood, tree plantations, Christmas tree farms, and removal of dead dying, and diseased trees.
- (4) Non-commercial stables, equestrian trails and paddocks (small fields where horses are exercised).
- (5) Fruit, nuts, berries, and bough production and sales.
- (6) Maple syrup production and sales.
- (7) Orchards and vineyards.
- (8) Private greenhouses and plant nurseries.
- (9) Preexisting agricultural uses prior to adoption of this ordinance.
- (10) Roadside stands not exceeding one per ownership.
- (11) Single-family dwellings, defined for purposes of this subsection only, as detached buildings being a minimum width of 20 feet designed for and occupied exclusively by one family, provided the creation of five or more residential lots within a 5 year period shall be reviewed by the Planning and Zoning Committee.
- (12) Fish and wildlife management.
- (13) Accessory buildings and uses.
- (14) Home occupations and professional offices within a residence, as specified in 7.1.2.1.(B)(6) and (7).
- (15) One sign to advertise products produced or services provided on the premises, consistent with the specifications in 7.1.3.1(B)(15).
- (16) One semi-tractor/trailer or commercial vehicle per parcel.
- (17) Wind Electrical Generation Tower (WEGT), Private. Any WEGT to be primarily used to provide electricity to a structure at the site of generation.
- (18) Camping units (see General Provisions and Exceptions Sections 7.1.6.1(13), (16), and (17)).
- (19) Ponds, excavations, and/or extractions (P/E/E) [See 7.1.3.1(B)(6)] (Does not allow for nonmetallic mining).
- (20) Short-term rental.
- (a) Some or all of the site plan review standards of 7.1.6.1 (A) (9) may apply.



(b) Occupancy of a short term rental may be limited by the private onsite wastewater treatment system.

(21) Bed and breakfast establishment.

(a) Some or all of the site plan review standards of 7.1.6.1 (A) (9) may apply.

(b) Occupancy of a bed and breakfast may be limited by the private onsite wastewater treatment system.

(C) SPECIAL EXCEPTION USES. The following uses are permitted upon proper application as provided in this Ordinance particularly items (a) and (b) of Subparagraph 7.1.6.2(A)(2) only after such use shall have been approved in writing by the Board of Adjustment, after public hearing. Such approval shall be consistent with the general purpose and intent of this Ordinance and shall be based upon such evidence as may be presented at such public hearing, tending to show the desirability of specific uses from the standpoint of the public interest because of such factors including without limitation because of enumeration: smoke, dust, noxious gases and odors, noise, glare, vibration, operation of heavy machinery, heavy vehicular traffic, increased traffic on streets, and other safety and health factors; such uses shall be required to conform with the plan approved by the Board of Adjustment and shall meet the specific conditions attached below and such other conditions as the Board of Adjustment deems necessary in furthering the purpose of this Ordinance.

(1) New and/or expanded general agriculture, including, but not limited to, dairying, vegetable production, livestock, and poultry raising, hobby farms and other agriculturally oriented enterprises or uses. No greenhouses or buildings for the housing of livestock, poultry, fowl, rabbits, swine, horses, and/or other ungulates, shall be located within 100 feet of any boundary of a residential lot other than that of the owner or lessee of such greenhouse or building containing such livestock or poultry.

(2) Boat landings.

(3) Sawmills.

(4) Commercial yardage and storage of forest products from multiple landowners for wholesale.

(5) Dry sail marina.

(6) Home occupations where such occupations may be conducted anywhere on the premises for retail uses and manufacturing, assembly, and artisan. If conducted inside of the residence, not more than 25% of only one floor of the dwelling shall be used. There shall be no external alterations that would affect a substantial change in the residential character of the building, and no more than two persons, not members of the family, may be employed in such occupations.

(7) Single width manufactured homes and/or mobile homes less than 20 feet wide and less than 10 years of age unless approved in writing by the Town Board.

(8) Retail sales of nursery stock/seed.

(9) Commercial game, fish, or fur operations.

- (10) Commercial recreation.
- (11) Commercial riding stables and riding arenas.
- (12) Two or more semi-tractors/trailers or commercial vehicles per parcel.
- (13) Wind Electrical Generation Tower (WEGT), Commercial. Any WEGT to be primarily used to provide electricity that will be sold and/or used off site.
- (14) Utilities and communication lines and towers and related structures.
- (15) Hydroelectric power stations, dams, and other structures for the use or control of flowing water.

(D) HEIGHT, YARDS, AREAS, AND OTHER REQUIREMENTS.

- (1) Height. Except as otherwise provided in this Ordinance, no building shall exceed a height of 35 feet. See Paragraph 7.1.6.1(C).
- (2) Lot Area. There is no minimum district size due to possible application of this District as a buffer to land features independent of lot lines. The minimum lot area will reflect Town policy as stated in the Town Comprehensive Plan when a clear and expressly stated minimum lot area has been established for the Zoning District specifically associated with the Natural Areas – Limited land use category. The default minimum for Towns not having a stated minimum lot area for this District shall be 10 acres, inclusive of right-of-way.
  - (a) The alternate Town minimum lot area must be the same as one of the accepted Portage County Zoning District minimum lot areas of 2, 5, 10, 20, or 35 acres. Land in the Conservancy Zoning District can be utilized in the creation of a new lot as long as two acres is non-Conservancy Zoned.
  - (b) The Lot Averaging Option of the Portage County Subdivision Ordinance, if authorized for use by the Town Board governing the land in question, may allow for the creation of a smaller lot size, provided the provisions of Section 7.4 Portage County Subdivision Ordinance are followed.
- (3) Floor Area. Buildings used in whole or in part for residential purposes which are hereafter erected, moved or structurally altered shall have a floor area as follows:
  - (a) If occupied or to be occupied for six months or longer in any one calendar year (year-round occupancy), the floor area shall not be less than 720 square feet.
  - (b) If occupied or to be occupied for less than six months in any one calendar year (seasonal occupancy), the floor area shall not be less than 400 square feet. See Subsection 7.1.6.10, "Floor Area".
- (4) Lot Width. Minimum lot width shall be 200 feet at the building line.
- (5) Side Yard. There shall be a 25 foot minimum side setback from each side yard.
- (6) Rear Yard. There shall be a 25 foot minimum setback from the rear yard.

(7) Setback Lines. See Subparagraph 7.1.6.6 and 7.1.6.1(D)(6).

(8) Off-Street Parking. See Subparagraph 7.1.6.1(E).

## **SECTION IV – BUSINESS DISTRICTS**

### **7.1.4.1 MARINA DISTRICT (C2)**

**(A) INTENT.** This District is intended to provide for a limited range of water oriented commercial activities. It is the County's policy to no longer utilize the Marina District for new development and it has been retained in this Ordinance only to accommodate older, preexisting uses remaining within this District.

**(B) USES.** In the Marina District, no building or premises shall be used and no building shall hereafter be erected, moved or structurally altered, unless otherwise provided in this Ordinance, except for one or more of the following uses:

(1) Boat launching areas.

(2) Boat liveries, including boat storage, sale of boats, motors, fuel, marine supplies and the servicing of the boats and motors, but not the manufacture of boats or motors.

(3) Food, gifts, notions or variety stores.

(4) Restaurants, drive-in services.

(5) Sale of bait and sporting goods and supplies.

(6) Taverns.

(7) Residences of owners or operators when attached to one of the above permitted uses.

(8) Accessory uses and buildings.

(9) Signs per 7.1.4.4(B)(14).

(10) Sexually Oriented Businesses as defined in Chapter 2.4 of the Portage County Code of Ordinances.

(11) Ponds and/or excavations incidental to the District's use, not exceeding 10,000 sq. ft. total area (e.g. one 10,000 sq. ft. pond and/or excavation, or two 5,000 sq. ft. ponds and/or excavations, etc.). Excavated materials must remain on the property unless a plan for their removal is approved by the Planning and Zoning Staff.

### **(C) HEIGHT, YARDS AREA AND OTHER REQUIREMENTS.**

(1) Height. Except as otherwise provided in this Ordinance, no building shall exceed a height of 35 feet. See Paragraph 7.1.6.1(C).

(2) Floor Area. Buildings used for residential purposes shall comply with 7.1.2.1(D)(2), otherwise there shall be no minimum floor area for this District.

- (3) Lot Area. Buildings used for residential purposes shall comply with the lot area regulations of Subsection 7.1.2.1(D)(3), otherwise there shall be no minimum lot area for this District.
- (4) Lot Width. Buildings used for residential purposes shall comply with 7.1.2.1(D)(4), otherwise there shall be no minimum lot width for this District.
- (5) Side Yards. There shall be a six foot minimum setback from each side yard. No such side yard shall be less than six feet wide, except that any side yard abutting a side lot line of a lot in a residence district, and not separated by a street or alley, shall be a setback not less than 10 feet.
- (6) Rear Yard. There shall be a 12 foot minimum setback from the rear yard.
- (7) Setback Lines. See Subsection 7.1.6.6 and 7.1.6.1(D)(6).
- (8) Off-Street Parking. See Paragraph 7.1.6.1(E).
- (9) Any use permitted in this section will require a stormwater control plan to be approved by the Land Conservation Division (per the Wisconsin Construction Site Best Management Practice Handbook) before a Zoning Permit is issued.

#### **7.1.4.2 COMMERCIAL DISTRICT (C3)**

**(A) INTENT.** It is the intent of this District to provide appropriate areas for medium-scale commercial uses, which serve a community wide area. This District is not intended to be applied in immediate proximity to existing or planned concentrations of single family residential development, where land use conflicts are likely to occur. This District is not intended to be applied where access would be provided via roadways designated as "local" roads on the Portage County Functional Classification Rural System Map.

**(B) USE.** In the Commercial District, no building or premises shall be used and no building shall hereafter be erected, moved or structurally altered, unless otherwise provided in this Ordinance, except for one or more of the following uses:

- (1) All uses listed in this District shall have a maximum floor area of 15,000 square feet.
- (2) Residences of owners or operators when attached to one of the permitted uses listed below.
- (3) Any use permitted in the Marina District.
- (4) Art shop, antique shop.
- (5) Bakery employing not over five persons on the premises.
- (6) Bank, savings and loan or other financial institutions.
- (7) Barber shop, beauty parlor.

- (8) Book and stationery store, newsstand, card/novelty shop.
- (9) Bowling alleys.
- (10) Bus depot.
- (11) Business and professional offices.
- (12) Clothing store, department store, shoe store, shoe repair shop.
- (13) Clubs and lodges.
- (14) Drug stores, soda fountains, soft drink stands.
- (15) Florist shop, greenhouse.
- (16) Food products, retail fruit and vegetable store, grocery store, meat and fish market, supermarket.
- (17) Funeral homes.
- (18) Furniture store, appliances, office equipment, upholstering.
- (19) Hardware, household appliances, plumbing, heating and electrical supplies, sporting goods.
- (20) Hotel, motel.
- (21) Jewelry store.
- (22) Laundry, cleaning and dyeing establishment.
- (23) Music, radio and television store, record shop.
- (24) Paint store, interior decorator.
- (25) Parking lot.
- (26) Photographer, photography supply shop.
- (27) Printing and duplicating.
- (28) Private vocational schools, conducted for profit.
- (29) Public utility office or substation, telephone exchanges.
- (30) Radio and television broadcasting studio, tower, mast or aerial, microwave radio relay structures.
- (31) Restaurant, cafe, tavern.

- (32) Signs, billboards, sign painting shops.
- (33) Theater, except drive-in theaters.
- (34) Other retail uses similar in character to those listed in this section.
- (35) Manufacturing or storage in connection with any of the above uses, when clearly incidental to the conduct of a retail business on the premises.
- (36) Mini-warehousing.
- (37) Sports complexes.
- (38) Sexually Oriented Businesses as defined in Chapter 2.4 of the Portage County Code of Ordinances.
- (39) Wind Electrical Generation Tower (WEGT), private. Any WEGT used, intended to be used or designed to provide electricity to a structure at the site of generation. Any WEGT shall be setback from the nearest parcel line a distance no less than its total height, unless appropriate easements are secured from properties within the fall zone. The height of a WEGT is measured from the ground to the tip of the blade with the blade is at its highest point. A WEGT shall be constructed in a self support fashion (lattice/mono pole). A detailed site analysis must be completed by a wind site assessor prior to the issuance of a Zoning Permit. The Town Board of the Town in which the WEGT is located shall be given the opportunity to review the site analysis prior to the issuance of a Zoning Permit. Site analysis shall include, but not limited to, setbacks, location to residences, location to public and private airport/landing strips, other WEGTs, and Town recommendations.
- (40) Ponds and/or excavations incidental to the District's use, not exceeding 10,000 sq. ft. total area (e.g. one 10,000 sq. ft. pond and/or excavation, or two 5,000 sq. ft. ponds and/or excavations, etc.). Excavated materials must remain on the property unless a plan for their removal is approved by the Planning and Zoning Staff.
- (41) Sales of agricultural products, equipment, and/or associated merchandise.

(C) SPECIAL EXCEPTION USES. The following uses are permitted upon proper application as provided in this Ordinance particularly items (a) and (b) of Subparagraph 7.1.6.2(A)(2) only after such use shall have been approved in writing by the Board of Adjustment, after public hearing. Such approval shall be consistent with the general purpose and intent of this Ordinance and shall be based upon such evidence as may be presented at such public hearing, tending to show the desirability of specific uses from the standpoint of the public interest because of such factors as (without limitation because of enumeration) smoke, dust, noxious gases and odors, noise, glare, vibration, operation of heavy machinery, heavy vehicular traffic, increased traffic on streets and other safety and health factors; such uses shall be required to conform with the plan approved by the Board of Adjustment and shall meet the specific conditions attached below and such other conditions as the Board of Adjustment deems necessary in furthering the purpose of this Ordinance.

- (1) Permitted uses greater than 15,000 square feet.
- (2) Animal hospital, pet shop, veterinary.

- (3) Dance halls, skating rinks.
- (4) Feed and seed stores.
- (5) Go-kart and other similar race tracks.
- (6) Lumber yards.
- (7) Bed and breakfast establishments.
- (8) Gas stations, garages and vehicular towing services.
- (9) Car washes, whether independently operated or part of a convenience store.
- (10) Wind Electrical Generation Tower (WEGT), Commercial. Any WEGT to be primarily used to produce electricity that will ultimately be sold and/or used not at the site of generation.
- (11) Ponds and/or excavations incidental to uses in this District exceeding 10,000 sq. ft. of total area. Excavated materials must remain on the property unless a plan for their removal is approved by the Planning and Zoning Staff.

(D) HEIGHT, YARDS, AREA AND OTHER REQUIREMENTS.

- (1) Height. Except as otherwise provided in this Ordinance, no building shall exceed a height of 45 feet. See Paragraph 7.1.6.1(C).
- (2) Floor Area. Buildings used in whole or part for dwelling purposes, as opposed to accommodations for transients, shall have a floor area as required by the regulations of Subsection 7.1.2.2(D)(2).
- (3) Lot Area. Buildings used for residential purposes shall comply with the lot area regulations of Subsection 7.1.2.1(D)(3), otherwise there shall be no minimum lot area for this District.
- (4) Lot Width. Buildings used for residential purposes shall comply with 7.1.2.1(D)(4), otherwise there shall be no minimum lot area for this District.
- (5) Side Yards. There shall be a six foot minimum setback from each side yard. No such side yard shall be less than six feet wide, except that any side yard abutting a side lot line of a lot in a residence district, and not separated wherefrom by a street or alley, shall be setback not less than ten feet.
- (6) Rear Yard. There shall be a 12 foot minimum setback from the rear yard.
- (7) Setback Lines. See Subsection 7.1.6.6 and 7.1.6.1(D)(6).
- (8) Off-Street Parking. See Paragraph 7.1.6.1(E).
- (9) Any use permitted in this section will require a stormwater control plan for the site, approved by the Portage County Land Conservation Division (per the Wisconsin Construction Site Best Management Practice Handbook), on file with the Planning and Zoning Department as part of the Zoning Permit application and review process.

### **7.1.4.3 HIGHWAY COMMERCIAL DISTRICT (C4)**

**(A) INTENT.** It is the intent of this District to provide appropriate areas for large scale commercial uses, which serve a county-wide or larger regional area. Such uses shall be those generating large traffic volumes and/or requiring visibility and convenient access to major highways. This District is not intended to be applied where access would be provided via roadways designated as minor collectors or local roads on the Portage County Functional Classification Rural System Map. Furthermore, this District is not intended to be applied in close proximity to existing or planned concentrations of single family residential development, where land use conflicts are likely to occur.

**(B) USES.** The following uses are permitted:

- (1) Automobile, truck, agricultural implement and equipment, motorcycle, snowmobile and other vehicle showrooms, sales, and repairs.
- (2) Bowling alleys and dance halls.
- (3) Bus and truck terminals.
- (4) Contractor businesses and related storage yards.
- (5) Drive-in theaters.
- (6) General farming.
- (7) Greenhouses, landscaping contractors.
- (8) Hotels and motels.
- (9) Lumber yards.
- (10) Modular, manufactured, mobile homes and recreational vehicle storage and sales.
- (11) Public and municipal buildings, including repair, storage, maintenance of equipment.
- (12) Restaurants, taverns and drive in-restaurants.
- (13) Shopping centers, malls.
- (14) On-premises signs as follows:
  - (a) Two square feet of sign area shall be allowed per one lineal foot of lot frontage, with a maximum allowable area of signs not to exceed 500 square feet.
  - (b) A minimum allowable area of signs shall be 200 square feet.



(c) Each lot shall be allowed two free-standing signs, with a maximum square footage of 200 square feet for one side of the sign, not to exceed the allowable limit listed in (a) and (b).

(d) Up to five square feet of sign area advertising credit card services is allowed for each business or group of buildings on the same premises, in addition to the requirements of this section.

(e) The height of any sign shall not exceed 30 feet measured from natural grade to the top of the sign.

(f) Temporary signs, which include illuminated and/or flashing signs that can be rented and readily moved, may be allowed for a maximum time of 30 days and for a onetime basis only. Such signs shall not resemble, imitate, or approximate the shape, size, form, or color of railroad or traffic signs, signals or devices.

(g) Signs exempt from this Ordinance:

(1) Gasoline price signs.

(2) Signs required by federal, state or local laws.

(3) Signs for traffic or parking regulations.

(4) Signs pertaining to the lease or sale of a building or property.

(5) Construction signs.

(6) Signs, plaques, imprinted or cut surfaces showing the name of the building, date of building erection or similar non-advertising kinds of information.

(7) Small directional or regulatory signs or figures as required by a business to inform, direct or regulate pedestrian and/or vehicular traffic out of or about the property on which they are located.

(15) Single family residences provided said residence is an accessory use subsequent to a "permitted use" of this zone and provided that such residence is a physical part of the permitted use structure.

(16) Utility substation, transmission lines, etc.

(17) Warehousing/Mini-Warehousing

(18) Accessory buildings and uses clearly incidental to the commercial use of the property, provided, however, that no accessory building may be used as a dwelling unit.

(19) Off-premises signs as follows;

(a) Signs shall not exceed 30 feet measured from natural grade to the top of the sign.

(b) Signs up to 300 square feet.

(20) Sexually Oriented Businesses as defined in Chapter 2.4 of the Portage County Code of Ordinances.

(21) Wind Electrical Generation Tower (WEGT), private. Any WEGT used, intended to be used or designed to provide electricity to a structure at the site of generation. Any WEGT shall be setback from the nearest parcel line a distance no less than its total height, unless appropriate easements are secured from properties within the fall zone. The height of a WEGT is measured from the ground to the tip of the blade when the blade is at its highest point. A WEGT shall be constructed in a self support fashion (lattice/mono pole). A detailed site analysis must be completed by a wind site assessor prior to the issuance of a Zoning Permit. The Town Board of the Town in which the WEGT is located shall be given the opportunity to review the site analysis prior to the issuance of a Zoning Permit. Site analysis shall include, but not limited to, setbacks, location to residences, location to public and private airport/landing strips, other WEGTs, and Town recommendations.

(22) Ponds and/or excavations incidental to the District's use, not exceeding 10,000 sq. ft. total area (e.g. one 10,000 sq. ft. pond and/or excavation, or two 5,000 sq. ft. ponds and/or excavations, etc.). Excavated materials must remain on the property unless a plan for their removal is approved by the Planning and Zoning Staff.

(C) SPECIAL EXCEPTION USES. The following uses are permitted upon proper application as provided in this Ordinance particularly items (a) and (b) of Subparagraph 7.1.6.2(A)(2) only after such use shall have been approved in writing by the Board of Adjustment, after public hearing. Such approval shall be consistent with the general purpose and intent of this Ordinance and shall be based upon such evidence as may be presented at such public hearing, tending to show the desirability of specific uses from the standpoint of the public interest because of such factors as (without limitation because of enumeration) smoke, dust, noxious gases and odors, noise, glare, vibration, operation of heavy machinery, heavy vehicular traffic, increased traffic on streets and other safety and health factors; such uses shall be required to conform with the plan approved by the Board of Adjustment and shall meet the specific conditions attached below and such other conditions as the Board of Adjustment deems necessary in furthering the purpose of this Ordinance.

- (1) Business services.
- (2) General retail uses.
- (3) Mobile home parks.
- (4) On-premises signs as follows:
  - (a) Signs greater than 30 feet in height.
  - (b) Sign area greater than 500 square feet.
- (5) Professional offices.
- (6) Campgrounds.
- (7) Race tracks.
- (8) Off-premise signs as follows;
  - (a) Signs greater than 30 feet in height.

- (b) Sign area greater than 300 square feet.
- (9) Gas stations, garages, and vehicular towing services.
- (10) Car washes, whether independently operated or part of a convenience store.
- (11) Sports complexes.
- (12) Machining and/or fabricating facilities.
- (13) Wind Electrical Generation Tower (WEGT), Commercial. Any WEGT to be primarily used to produce electricity that will ultimately be sold and/or used not at the site of generation.
- (14) Asphalt and concrete recycling facilities.
- (15) Ponds and/or excavations incidental to uses in this District exceeding 10,000 sq. ft. of total area. Excavated materials must remain on the property unless a plan for their removal is approved by the Planning and Zoning Staff.

(D) HEIGHT, YARDS, AREA AND OTHER REQUIREMENTS.

- (1) Height. Except as otherwise provided in this Ordinance, no building shall exceed a height of 80 feet.
- (2) Floor Area. Buildings used in whole or part for dwelling purposes, as opposed to accommodations for transients, shall have a floor area as required by the regulations of Subsection 7.1.2.2(D)(2).
- (3) Lot Area. There shall be a minimum lot area of 20,000 square feet.
- (4) Lot Width. Minimum lot width shall be 100 feet wide at the building line.
- (5) Side Yards. There shall be an eight foot minimum setback from each side yard on any lot development for commercial or industrial uses. Such side yard shall be permanently maintained in grass, shrubs or trees and shall not be used for parking, storage, or driveways.
- (6) Rear Yard. There shall be a 12 foot minimum setback from the rear yard on any lot developed for commercial or industrial use. Such yard shall be permanently maintained in grass, shrubs or trees and shall not be used for parking, storage, or driveways.
- (7) Screening. Open parking and storage areas except for sale display merchandise shall be reasonably screened with either natural plant material which would have a mature height of at least four feet or fences or earthen berms at least four feet high.
- (8) Setback Lines. There shall be setback lines along abutting highways as required by the provisions of Subsection 7.1.6.1(D)(6), and 7.1.6.6.
- (9) Off-Street Parking. See Paragraph 7.1.6.1(E).

(10) Any use permitted in this section will require a stormwater control plan for the site, approved by the Portage County Land Conservation Division (per the Wisconsin Construction Site Best Management Practice Handbook), on file with the Planning and Zoning Department as part of the Zoning Permit application and review process.

#### **7.1.4.4 NEIGHBORHOOD COMMERCIAL DISTRICT (C1)**

**(A) INTENT.** It is the intent of this District to provide appropriate areas for small scale commercial uses, which serve a limited, neighborhood area. Land use and aesthetic compatibility of such businesses with existing or planned residential development, on adjacent lands, shall be emphasized.

**(B) USES.** The following uses are permitted:

- (1) All uses listed in this Subsection shall have a maximum floor area of 3,000 square feet.
- (2) Bakery, meat market, frozen food storage.
- (3) Barber and beauty shop.
- (4) Beer and liquor store.
- (5) Branch banks, savings and loan institutions and credit unions.
- (6) Drug store.
- (7) Flower shops, garden shops, lawn shops, and greenhouses.
- (8) Hardware and general merchandise stores.
- (9) Professional and business offices excluding veterinary offices and not including sales, storage, fabrication, etc.
- (10) Restaurant, cafe, not including drive-in restaurants.
- (11) Retail grocery and convenience goods store, not dispersing petroleum products or car washes.
- (12) Single family dwellings, not including residences less than 20 feet wide.
- (13) Accessory buildings and uses, including private garages, and buildings clearly incidental to the commercial use of the property, provided however, that no accessory building may be used as a separate dwelling unit.
- (14) No sign, business sign, name plate sign or advertising sign shall be erected except the following:
  - (a) A name plate sign, or professional name plate sign, identifying the owner or occupant of a building or dwelling unit, provided the surface area does not exceed six square feet.
  - (b) A sign pertaining to the lease or sale of a building or property, provided such sign shall not exceed six square feet in surface area and shall not be illuminated.

(c) The total surface area of all business signs on a lot shall not exceed the sum of two square feet per lineal foot of lot frontage. In the case of corner lots, the greatest width of a corner lot shall be the front for purposes of this Ordinance. The total area of all business signs on a lot shall not exceed 200 square feet in gross surface area.

(d) Business signs that are attached to buildings shall be limited to signs which shall not extend more than ten inches from the face of the building.

(e) One identification sign as specified in 7.1.2.1(B)(10)(d).

(f) Directional and regulating signs in any parking area necessary for the orderly movement of traffic provided that such sign shall not be used as advertising space.

(g) Temporary nonilluminated signs identifying an engineer, architect, contractor, or product engaged in or used in the construction of a building, provided such signs shall not exceed 12 square feet each in surface area, and are no more than 15 feet in height, and provided such signs are removed prior to the occupancy of the building.

(h) Business signs may be illuminated, but flashing or intermittent lighting is prohibited, except information signs that state the time, date, temperature and message.

(i) The top of the sign in this District shall not exceed 15 feet in height at natural grade.

(15) Bait shops.

(16) Retail uses similar to those listed above.

(17) Sexually Oriented Businesses as defined in Chapter 2.4 of the Portage County Code of Ordinances.

(18) Ponds and/or excavations incidental to the District's use, not exceeding 10,000 sq. ft. total area (e.g. one 10,000 sq. ft. pond and/or excavation, or two 5,000 sq. ft. ponds and/or excavations, etc.). Excavated materials must remain on the property unless a plan for their removal is approved by the Planning and Zoning Staff.

(19) Short-term rental.

(a) Some or all of the site plan review standards of 7.1.6.1 (A) (9) may apply.

(b) Occupancy of a short term rental may be limited by the private onsite wastewater treatment system.

(20) Bed and breakfast establishment.

(a) Some or all of the site plan review standards of 7.1.6.1 (A) (9) may apply.

(b) Occupancy of a bed and breakfast may be limited by the private onsite wastewater treatment system.

(C) SPECIAL EXCEPTION USES. The following uses are permitted upon proper application as provided in this Ordinance particularly items (a) and (b) of Subparagraph 7.1.6.2(A)(2) only after such use shall have been approved in writing by the Board of Adjustment, after public hearing. Such approval shall be consistent with the general purpose and intent of this Ordinance and shall be based upon such evidence as may be presented at such

public hearing, tending to show the desirability of specific uses from the standpoint of the public interest because of such factors as (without limitation because of enumeration) smoke, dust, noxious gases and odors, noise, glare, vibration, operation of heavy machinery, heavy vehicular traffic, increased traffic on streets and other safety and health factors; such uses shall be required to conform with the plan approved by the Board of Adjustment and shall meet the specific conditions attached below and such other conditions as the Board of Adjustment deems necessary in furthering the purpose of this Ordinance.

- (1) Permitted uses greater than 3,000 square feet.
- (2) Gas station (not including junked or used car storage or sales or wrecking services or car washes).
- (3) Office uses not permitted in Section (B).
- (4) Personal services not permitted in Section (B).
- (5) Repair shops.
- (6) Taverns.
- (7) Veterinary offices.
- (8) Schools, churches and cemeteries.
- (9) Ponds and/or excavations incidental to uses in this District exceeding 10,000 sq. ft. of total area. Excavated materials must remain on the property unless a plan for their removal is approved by the Planning and Zoning Staff.

(D) HEIGHT, YARDS, AREA AND OTHER REQUIREMENTS.

- (1) Height. Except as otherwise provided in this Ordinance, no building shall exceed a height of 45 feet. See Paragraph 7.1.6.1(C).
- (2) Floor Area. Buildings used in whole or in part for residential purposes which are hereafter erected, moved or structurally altered shall have a floor area of not less than 720 square feet. See Subsection 7.1.6.10, "Floor Area."
- (3) Lot Area. Minimum lot area in this District for newly created lots shall be 20,000 square feet exclusive of road right-of-way. Land in Conservancy Zoning District can be utilized in the creation of a new lot as long as the minimum lot area is non-Conservancy Zoned.
- (4) Lot Width. Minimum lot width shall be 100 feet wide at the building line.
- (5) Lot Coverage. No building or structure, including equipment and material storage, parking lots, Loading berths and driveways, shall cover more than 75% of area of any lot.
- (6) Side Yards. There shall be an eight foot minimum setback from each side yard on any lot developed for commercial or industrial use. Such side yard shall be permanently maintained in grass, shrubs, or trees, and shall not be used for parking, storage, or driveways.
- (7) Rear Yard. There shall be a 12 foot minimum setback from the rear yard.

(8) Setback Lines. See Subsection 7.1.6.6 and 7.1.6.1(D)(6).

(9) Off-Street Parking. See Paragraph 7.1.6.1(E)

(10) Any use permitted in this section will require a stormwater control plan for the site, approved by the Portage County Land Conservation Division (per the Wisconsin Construction Site Best Management Practice Handbook), on file with the Planning and Zoning Department as part of the Zoning Permit application and review process.

#### **7.1.4.5 PLANNED DEVELOPMENT DISTRICT (PD)**

(A) Intent. The intent of this District is to accommodate higher density single or mixed use development in unique and appropriate circumstances across the County. The Planned Development (PD) District provides an alternative to traditional site development, and allows for greater flexibility and imagination in design, while maintaining protection of the rural environment and preserving aesthetics, natural resources, and the character of agricultural lands. This zoning is to be applied on a project-by-project basis.

The objectives of the Planned Development District are:

(1) Create areas of residential and/or commercial development which are designed to co-exist with traditional rural activities such as agriculture and ag-industry.

(2) Allow for a complementary mixture of uses and density in an integrated and well planned manner within a single zoning district.

(3) Promote site planning that better adapts to site conditions and surrounding properties and provides a higher level of design, functionality, and resource protection than normally required for other conventional developments.

(4) Ensure contiguous and well-planned open space, landscaping/buffering, and preservation of the site's natural resources and environmentally sensitive lands.

(5) Ensure efficient and effective internal and external traffic access and circulation.

(6) Maintain consistency with Town and County Comprehensive Plans.

Unlike other Portage County Zoning Districts, the PD District designation is only applied in specific circumstances, after review and approval by the Portage County Planning and Zoning Committee and Board of Supervisors; there are no pre-approved locations. The PD District may only be approved in Towns that have taken specific action to allow its use, based on a discussion of the concept in their Comprehensive Plan.

"Planned Development" represents both a Portage County Zoning District and a formal plan of site development. A Planned Development site shall be designed to: promote the health and general welfare of the public, prevent the overcrowding of land, preserve natural features, complement traditional rural activities avoid congestion on County roadways, secure public safety, and provide for adequate water supply and waste treatment for all site uses. Project implementation shall proceed only upon rezoning to PD District, and subsequent approval of a Final Development Plan.

(B) Designation of Planned Development District Zoning.

(1) Approval of a Planned Development shall constitute an amendment to the Portage County Zoning Ordinance, through amendment of the County Zoning Map. Designation of a property with PD District zoning, in accordance with an approved Development Plan, shall supersede all existing and prior zoning classifications. A Development Plan shall be approved in conjunction with the rezoning of land to the PD District. The Development Plan shall specify both for the project as a whole and for subareas within the project, as appropriate, those principal and accessory uses and development densities that are to be permitted. The Portage County Board of Supervisors may include or exclude uses from the Development Plan, or include uses with attached conditions as appropriate, to achieve the intent of these provisions. In making its determination of the uses and development densities to be permitted within the Planned Development, the County Board may consider the compatibility and relationship of uses within the project, the compatibility and relationship of permitted uses adjoining, or in proximity to, the Planned Development, the appropriateness of permitted uses for the area in general and their overall impact on the community, and the consistency of the permitted uses with other adopted plans and policies.

(2) PD District zoning is to be used solely for new development of vacant land or the redevelopment of existing commercial or residential uses. PD District zoning is not to be used to obtain approval for uses in an existing development that are not permitted under the property's existing zoning district. Standards which vary from those contained in the Portage County Zoning Ordinance may be approved in a Planned Development Preliminary or Final Development Plan. If approved, these modifications would not need approval from the Portage County Board of Adjustment.

(3) All properties receiving this designation shall for zoning purposes be identified by the letters "PD" followed by an identifying number (PD-1, PD-2, etc.).

(C) Planned Development Types. The following forms or types of development are allowed in PD Districts (Planned Developments may also include a combination of these types):

(1) Single lot with single or multiple buildings containing multiple units (or with attached multiple units), served by private on-site water and waste treatment.

(2) Larger acreage divided into individual lots with a dedicated common area and served by private on-site water and waste treatment.

(3) Either of Types (1) or (2) above which are served by public water and sewer services provided by a municipality.

(D) Minimum District Size. The minimum acreage requirements for consideration as a PD District are as follows:

Type 1 (single lot/building(s)): three (3) acres

Type 2 (larger acreage subdivision): ten (10) acres

Smaller tracts may be allowed if the applicant can show the proposed Planned Development meets standards and purposes of Town and County Comprehensive Plans, preserves the health, safety and welfare of County citizens, and that all the following conditions exist:

(1) The proposal better adapts itself to the physical and aesthetic setting of the site and with surrounding land uses than could be developed using strict standards and land uses allowed within the original zoning district.

(2) The proposal would benefit the area surrounding the project to a greater degree than development allowed in the original zoning district.

(3) The proposal would provide mixed land use and/or site design flexibilities while enhancing site or building aesthetics to achieve an overall, higher quality of development than would otherwise occur in the original zoning districts.



(4) The proposal would ensure the concentration of open space into more workable or useable areas, and would preserve the natural resources of the site to a greater extent than would otherwise occur in the original zoning district.

(E) Flexibility of Design. PD Districts may allow development design and subdivision elements not otherwise permitted in Portage County Zoning Districts, if specific conditions are met, and provided the design meets the general standards for review and design in this District.

(1) Elements of Flexibility. The subdivision and development design elements that are granted flexibility include:

(a) Non-standard lot sizes,

(b) Higher density of housing, or floor-to-area ratios for commercial uses,

(c) Reduced right-of-way and street widths,

(d) Broader range of housing types/units, i.e. detached, clustered, semi-detached or attached multi-storied structures or combinations thereof,

(e) Land use mix,

(f) Zero lot lines and other modifications to minimum or maximum building setbacks,

(g) Agricultural operations, i.e. community gardens, commercial production, community supported agriculture, rentals, etc., and

(h) Open space, parks, trails and preservation of natural systems.

(2) Conditions for Flexibility. The conditions applied by the Portage County Board in exchange for flexibility in zoning regulation shall advance Portage County's Comprehensive Plan goals, and may include, but are not limited to, the following:

(a) Natural Systems: conditions to permanently protect and manage natural systems and resources.

(b) Housing Types and Affordability: conditions to ensure an appropriate mix of housing types and affordability.

(c) Pedestrian and Non-motorized Travel: conditions to enhance the options for non-motorized travel within Portage County.

(d) Appropriate Mix of Uses: conditions to ensure a "sustainable and synergistic" mix of land uses.

(e) Utility Services and Infrastructure: conditions to protect or enhance the quality of service from water and waste treatment systems.

(f) Green Infrastructure: conditions to enhance open space design, landscaping and appearance, and optimal stormwater management (green roofs, bio-swales, use of rainwater runoff, etc.).

(g) Building design: conditions on building design to protect community, natural, and economic resources.

(F) Application and Review Process for a Planned Development. Applications for PD District designation and Development Plan approval may be filed by the owner of the subject property or the owner's agent (see Section 7.1.6.7 Changes and Amendments below). Applications for PD District designation and Development Plan approval shall undergo a three-step review process as specified in this section.

(1) Sketch Plan and Pre-Application Meeting. Prior to any formal application submittal, the applicant shall prepare a "sketch plan" of the proposed PD District for review by the Portage County Planning and Zoning Department.

A sketch plan shall include the property location, legal description, current zoning, Town Comprehensive Plan Future Land Use designation, and a concept sketch of the proposed development. The concept sketch should be drawn to scale, on paper no smaller than 11"x17", and identify general locations and types of natural features on the site, including, but not limited to, wetlands, hydric soils, floodplain, topographic contours/areas of slopes  $\geq 12\%$ , soil type, and vegetative coverage, and intended uses.

Upon completion of the sketch plan review, Planning and Zoning Department staff shall provide the applicant with written comments with respect to conformity of the proposed Planned Development with Zoning Ordinance requirements, as well as provide any needed information to inform and assist the applicant in preparing an application for the PD District. Subsequent Plan submittals shall address Planning and Zoning Department staff comments. Following approval by Planning and Zoning staff, the applicant may proceed to the official application process. A copy of the sketch plan and Planning and Zoning staff comments will be forwarded to the Town in which the project is located.

(2) Rezoning Request and Preliminary Development Plan. This step constitutes the official application stage of the project, with submittal of both a request for rezoning to PD District and Preliminary Development Plan documentation. The Preliminary Development Plan, while more formal than the sketch plan, is still intended to provide the applicant with an opportunity to submit a plan showing the basic concept, character, and nature of the proposed PD District without becoming involved in the preparation of detailed Development Plans or engineering drawings.

(a) Initial Meeting. The applicant shall meet with Planning and Zoning Department staff to review the application for rezoning and Preliminary Development Plan information for compliance with the submittal requirements in Section G below. A Rezoning Review Checklist form shall be completed and initialed by property owner/agent and County Planning and Zoning Department staff during this meeting. A copy of the Rezoning Review Checklist shall also be forwarded to the Town Clerk of the affected Town to schedule for review and action by the Town Plan Commission and Town Board. The purpose of the Checklist is to formalize project specifics, identify what changes are required, if any, to both the Town Comprehensive Plan and County Zoning Ordinance, and provide a single description of the project to allow both Town and County staff to commence the review process. In addition to this initial meeting, County Planning and Zoning Staff shall be granted permission, upon request, to have access to the proposed site for review of natural features, topography, infrastructure, and site limitations in relation to the Preliminary Development Plan and layout.

(b) A recommendation from the Town Board shall be required to be received by the Portage County Planning and Zoning Department prior to the PD District rezoning request and Preliminary Development Plan request being brought before the Portage County Planning and Zoning Committee for public hearing, review, and action. The landowner/agent/developer is expected to work closely with the Town government to facilitate expedient processing by the Town Plan Commission and Town Board.

(c) The Portage County Planning and Zoning Committee shall hold a public hearing on the rezoning request and Preliminary Development Plan upon receiving official Town recommendation on both the rezoning and Preliminary Development Plan, and make a recommendation to the Portage County Board of Supervisors for action on each.

(d) The Portage County Board shall review and take final action on the recommendation from the Planning and Zoning Committee.

In order to permit Portage County and the applicant to proceed with some assurance, approval of the Preliminary Development Plan binds the applicant and the County with respect to the following development constraints:

- Categories of uses to be permitted;
- Overall maximum density of residential uses (broken down by type of structure) and intensity of nonresidential uses;

- General location of vehicular and pedestrian circulation systems;
- General location and extent of public and private open space;
- General location of residential and nonresidential land uses;
- General type of on-site waste system to be utilized; and
- Phasing of development.

(3) Final Development Plan. The Final Development Plan shall include all final revisions to the Preliminary Development Plan as identified by Portage County Planning and Zoning staff and approved by the Portage County Board of Supervisors. The Final Development Plan must also substantially conform to the Preliminary Development Plan approved by the Portage County Board of Supervisors. All engineering drawings must be stamped and signed by a professional engineer who is licensed in the State of Wisconsin. The Final Development Plan shall be submitted to the Planning and Zoning Department for final approval by the Portage County Planning and Zoning Committee.

Zoning Permits can be issued for the Planned Development after the Final Development Plan is approved by the Planning and Zoning Committee, all deeds (if necessary) are recorded at the Portage County Register of Deeds, and the required Portage County Sanitary Permit is obtained.

(G) Development Plan Minimum Submittal Requirements.

(1) Preliminary Development Plan. Upon completion of the sketch plan requirements, an application for a Preliminary Development Plan may be submitted. Eight (8) copies of Preliminary Development Plan materials shall be submitted to the Planning and Zoning Department. The Preliminary Development Plan shall contain the following information and documentation at a minimum to be considered a complete submittal:

(a) Applicant's name and contact information.

(b) Names and contact information of all professional consultants advising the applicant with respect to the proposed Planned Development.

(c) Legal description of the subject property.

(d) Names and addresses of all adjacent property owners.

(e) Current zoning district classification and present use of the subject property.

(f) One (1) or more maps drawn to scale, on paper no smaller than 11"x17", delineating the existing physical characteristics of the site, including:

1. Topography at contours of not more than five (5) feet;
2. Slopes of twelve (12) percent or more;
3. Property boundary lines and dimensions, available utility easements and dimensions, roadways, rail lines and public rights-of-way;
4. Streams/rivers, drainage ways, groundwater recharge areas, ponds, lakes and bodies of water;
5. A generalized description of vegetation and tree cover;
6. Wetlands, hydric soils, and floodplain, including the delineation of the 100-year floodplain, where applicable; and
7. Other physical features that may affect development of the property.

(g) A map depicting both the existing development of the subject property and appropriate adjacent property, including the approximate location of existing streets, property lines, easements, etc.

(h) A written statement, with supporting graphics, generally describing: the overall concept of the proposed PD District, the market which it is intended to serve; the uses included and any limitations upon uses; a description of the general architectural design or theme to be employed; building types and prototypical site layouts and floor plans, if appropriate; any proposed agreement, dedications or easements; any proposed private covenants and restrictions; and any other information pertinent to the proposal.

(i) One (1) or more maps drawn to scale, on paper no smaller than 11"x17", and a written description of the proposed PD District describing the following features of the project:

1. A general land use plan with a description of the type, location, and nature of land use within each area of the development;
2. A proposed traffic circulation concept, which illustrates both external and internal trafficways related to the development, including proposed rights-of-way, travel lanes and other transportation improvements;
3. A generalized layout and description of water service, sanitary sewerage, utilities, refuse collection, management of stormwater runoff, snow storage, and similar essential services;
4. A generalized landscape plan for the development, including the buffer and perimeter areas;
5. A delineation and description of the minimum open space area, including the buffer and perimeter areas;
6. A description of screening, and berming (if applicable), adjacent to existing residential areas; and
7. A sign plan that coordinates the size, location, and illumination of proposed signage within the development.

(j) A tabulation of the following information:

1. The approximate total number of dwelling units proposed, by type of structure and approximate number of bedrooms for residential units;
2. The approximate total square feet of building floor area proposed for each general type of nonresidential use, including size of commercial units in cubic feet;
3. The total land area, expressed in acres and as a percent of the total development area, proposed to be devoted to residential and nonresidential uses including types of structures, streets, public and private open space, and off-street parking and loading areas; and
4. The proposed number of off-street parking and loading spaces for each proposed type of land use.

(k) Construction in phases: If the PD District is proposed for construction in phases, a tentative schedule for phasing shall be submitted, stating the approximate beginning and completion date for each phase, the proportion of the total public and private open space, and the proportion of each type of proposed land use to be provided or constructed during each phase; and the overall chronology of development to be followed from phase to phase. All public improvements directly related to each phase shall be completed at the time the phase is developed. Improvements serving the proposed PD District shall be completed in a sequence assuring full utility of the District as a whole as well as all areas within the PD District.

(l) Traffic impact analysis: A traffic impact analysis indicating the relationship of the proposed development to traffic, road use, and development plans in the immediate surrounding areas.

(2) Final Development Plan. The Final Development Plan is intended to provide more detail, and to refine and implement the Preliminary Development Plan.

(a) Once approval of the Preliminary Development Plan and PD District rezoning have been granted by the Portage County Board of Supervisors, the applicant shall be eligible to submit an application for Final Development Plan approval to the Planning and Zoning Department. The application for Final Development Plan approval may

include the entire area included in the approved Preliminary Development Plan or one (1) or more phases thereof in accordance with a staging plan approved as part of the Preliminary Development Plan. The application shall contain a Plan which refines, implements and is in substantial conformity with the approved Preliminary Development Plan, and shall contain at least the following information and documentation to be considered a complete submittal:

1. Applicant's name and contact information.
  2. A legal description of the property for which Final Development Plan approval is sought.
  3. The date on which Preliminary Development Plan and PD District Zoning approval was granted.
  4. A preliminary plat of subdivision, if applicable, that includes a survey certified by a registered land surveyor, or final site development drawings stamped and signed by a professional engineer who is licensed in the State of Wisconsin, whichever is appropriate.
  5. A tabulation of the following information with respect to the area included in the Final Development Plan:
    - a. The total number of dwelling units proposed, by type of structure and number of bedrooms for residential units.
    - b. The total square feet of building floor area proposed for each general type of nonresidential use.
    - c. The total land area proposed to be devoted to residential uses and nonresidential uses, expressed in acres and as a percent of the total development area, including types of structures, public and private open space, streets, and off-street parking and loading areas.
  6. The proposed number of off-street parking and loading spaces for each proposed type of land use.
  7. A landscape plan specifying the design, description and arrangement of landscaping for all open space, buffer and perimeter areas in the PD District. This includes a description of the long term maintenance of the landscape plan.
  8. If the Preliminary Development Plan has identified areas of the open space to be owned and maintained by an entity (other than a governmental unit), copies of the maintenance plan, indicating ownership of the open space, shall be submitted to the Planning and Zoning Department. In instances where the PD District will be dedicating the open space to a unit of government, evidence of acceptance from that unit of government will also need to be submitted to the Planning and Zoning Department.
  9. Copies of any restrictive covenants that are to be recorded with respect to property included in the Final Development Plan.
  10. Utility plans, indicating placement and sizes of all public utilities, as appropriate.
  11. Submittal of a sanitary permit application, including all necessary materials per Portage County Private Sewage System Ordinance (Sec.7.9.4.C).
  12. A statement summarizing all changes that have been made in any document, plan, data or information previously submitted and preliminarily approved, together with revised copies of any such document, plan or data.
  13. Proof of recording of any easements and restrictive covenants prior to the sale of any land or structure or portion thereof within the PD District, and proof of the establishment and activation of any entity that is to be responsible for the management and maintenance of any public or private common open space or service facility.
  14. Such other and further information as the Planning and Zoning Committee shall find necessary for full consideration of the entire proposed PD District or any stage or unit thereof.
- (b) Substantial Conformity. A Final Development Plan shall be deemed **not** to be in substantial conformity with an approved Preliminary Development Plan if it:

1. Increases by more than five (5) percent from the maximum density approved in the Preliminary Development Plan.
2. Increases by more than five (5) percent the maximum floor area to be devoted to any nonresidential use.
3. Increases the height of buildings by more than five (5) percent.
4. Decreases by more than five (5) percent the area approved for public and private open space, or changes the general location of such areas.
5. Relocates approved circulation patterns to an extent that would decrease the ability of such patterns to function efficiently, adversely affect their relation to surrounding lands and circulation patterns, or would reduce their effectiveness as buffers or amenities.
6. Significantly alters the arrangement of land uses within the PD District.
7. Violates any provision of the codes and ordinances applicable to the proposed PD District.
8. Departs from the Preliminary Development Plan in any other manner which the Planning and Zoning Committee shall, based on stated findings and conclusions, find to materially alter the plan or concept for the proposed PD District.

(c) Action by the Planning and Zoning Committee. Within sixty (60) days following submittal of a complete application for the Final Development Plan, or such longer period as may be agreed to by the applicant, the Planning and Zoning Committee shall review the Plan with respect to its conformity to the approved Preliminary Development Plan; with respect to the merit or lack of merit of any departure of the Final Development Plan from substantial conformity with the Preliminary Development Plan; and with respect to compliance of the Final Development Plan with any conditions imposed by approval of the Preliminary Development Plan, and with the provisions of this section and all other applicable Federal, State, County and Town codes, ordinances and regulations.

If the Planning and Zoning Committee finds substantial conformity between such plans, and shall further find the Final Development Plan to be in all other respects complete and in compliance with any conditions imposed by approval of the Preliminary Development Plan, and with the provisions of this Zoning District and all other applicable Federal, State, County, and Town codes, ordinances and regulations, it shall approve the Final Development Plan. Planning and Zoning Committee action shall constitute final approval of the Final Development Plan.

The failure of the Committee to act within the aforesaid time period shall be deemed a denial of the Final Development Plan as submitted.

(d) Adjustments to the Plan during development. During construction of a PD District, the Planning and Zoning Director may authorize minor adjustments to the Final Development Plan, which are within substantial conformity of the Final Development Plan, as defined above.

(e) Amendments to the Final Development Plan. In addition to the minor adjustments authorized in the preceding section, an approved Final Development Plan may be amended, varied or altered in the same manner, and subject to the same limitations, as any other regulation established by this section. In addition, an approved Final Development Plan may be amended or altered pursuant to the procedures established by this section for its original approval.

(f) Compliance with Final Development Plan. The construction and operation of a PD District shall be in compliance with the approved Final Development Plan at all times.

(H) General Standards for Review. The PD District shall meet the following general standards:

- (1) Consistent with the Town and County Comprehensive Plans.
- (2) Protects and unifies natural systems. The Development Plan must provide for the preservation or creation of unique amenities such as natural streams, stream banks and shore buffers, wooded cover, rough terrain, man-made landforms, open space, or landscaping and similar areas.
- (3) Integrated with surrounding uses. The Development Plan is compatible and complementary with existing or proposed development in areas surrounding the project site.
- (4) Provides for adequate water and waste treatment systems that are sustainable long-term.

(I) General Standards for Design. The approved Final Development Plan shall provide detail regarding density, lot dimensions, natural features to be protected, open space, landscaping, maximum height of structures, setbacks, water and on-site waste facilities, and the provision of off-street parking and loading spaces. The PD District shall meet the following general standards:

(1) Density.

(a) For nonresidential development, the intensity of development may be regulated:

1. By specifying a floor area ratio (FAR) or ratios;
2. By specifying maximum square footage or gross leasable area;
3. By specifying setbacks, height and bulk restrictions; or
4. By a combination of the restrictions set out in subparagraph 1, 2 or 3, hereinabove, for the project as a whole or for components or subareas within the project. In addition, nonresidential Preliminary Development Plans may specify performance standards to be imposed on the project and restrictions regarding the location and nature of commercial and other nonresidential activities. In making its determination regarding the intensity of development and appropriate performance standards, the Portage County Board of Supervisors may consider the character and scale of similar development, the character and scale of surrounding development, the area in general, and the real or anticipated impact on public facilities and services.

(b) The permitted number of dwelling units may be distributed in any manner over the residential portion of the project consistent with the intent and provisions of this District. The Preliminary Development Plan shall specify distribution of residential density for the project as a whole or for subareas within the project. In making its determination regarding the distribution of residential densities, the Portage County Board of Supervisors may consider the compatibility of residential densities with other uses within the District as well as outside the District and the impact of residential densities on public facilities and services.

(2) Bulk, Area, and Height Requirements. The Preliminary Development Plan shall specify bulk, area, and height restrictions for the project as a whole, for subareas, and for components of the project. In making its determination regarding such restrictions, the Portage County Board of Supervisors may consider the character and scale of the proposed development as it relates to other uses and structures both within the District and outside the District, as well as the general character and scale of similar development within the area of the proposal.

(3) Open Space. A minimum of thirty five (35) percent of the gross area of the total development shall be dedicated for common open space. Common open space shall be used for recreational, park or environmental amenity purposes for the collective enjoyment of the occupants of the development. Up to one-half (½) of the required common open space may be covered by water, floodplain, stormwater detention/retention facilities, or left in a natural state which does not violate the nuisance provisions of the County and Town ordinance(s). To the

extent practicable, common open space shall be distributed equitably throughout the development in relation to the dwelling units which such common open space is intended to serve. The open space shall not be relegated to only isolated areas of unusable land, but shall be highly accessible, either physically or visually, to the majority of residents of the development. Common open space shall be maintained by a property owners association or may be conveyed to a public entity which will agree to maintain the common open space and facilities, subject to approval by the Portage County Board of Supervisors.

(4) Buffer Yard. There shall be a minimum thirty (30) foot wide buffer yard around the developed portion of the PD District, which shall be free of structures or parking areas and preserved with natural features so that the PD District is visually obscured from the abutting residential properties to the greatest extent possible. All landscaping shall be maintained in a healthy, neat growing condition, and all natural features shall be maintained in a healthy growing condition. Fencing, landscaping, and/or natural vegetation may be used in combination to obtain visual obscurity with a preference towards natural vegetation.

(5) Access to Public Thoroughfares. The Preliminary Development Plan shall specify the location and general design of ingress and egress to the project along with any proposed access restrictions. All lots created in association with the PD District shall have direct access to a public roadway, as required by the Portage County Subdivision and Zoning Ordinance. The Portage County Board of Supervisors may impose such access standards and restrictions as are necessary to protect the integrity and function of the County and Town thoroughfare system and to ensure the safe and efficient circulation of vehicles and pedestrians within the PD District. In making its determination regarding such access standards and restrictions, the Portage County Board of Supervisors may consider the classification and function of the thoroughfare system, existing and projected volumes of traffic, the condition and design of the affected thoroughfares, the effect of the proposed development on traffic flow and circulation patterns, and the consistency with other adopted plans and policies. Where dedication and/or construction is required, the requirements set forth in Section 7.4.6.1 of the Portage County Subdivision Ordinance, shall apply.

(6) All water supply systems must be approved by WI-DNR and proof of approval submitted as part of the Final Development Plan.

(7) Construction Site Erosion Plan and Stormwater Control Plan.

a) A Construction Site Erosion Plan must be developed and implemented to insure that during construction and times of soil disturbance, no sediments are being delivered to surface water, wetland/ hydric soils, and/or onto a neighboring parcel until vegetation has been successfully established and/or the stormwater plan has been implemented.

b) An approved Stormwater Control Plan shall be designed and implemented to control stormwater for a 25 year storm event. The development shall be designed to capture all of the runoff from impervious surfaces. The 25 year storm event is based on standards found in the Wisconsin Construction Site Best Management Practices handbook. Stormwater Control Plans must utilized at least six inches of best available vegetated topsoil.

(8) Slope. Areas within the PD District that consist of 12 percent or greater slope shall not be developed and should be considered open space.

(9) If the development occurs along a navigable body of water, the "vegetative buffer zone" along the water of 35 feet shall be increased to 50 feet. The increased portion of this buffer zone can be used to aid in stormwater design and designated as open space; however, the vegetative buffer zone shall be maintained in natural vegetation or revegetated with native plants. Paths, boardwalks, and/or trails within the buffer shall meet the standards in Chapter 7.7 of the Portage County Shoreland Zoning Ordinance, and shall be designed to minimize erosion and control/limit human traffic through the primary buffer.



(10) All structures shall maintain a 100 foot setback from the ordinary high water mark of any navigable body of water.

(11) Signs advertising the development shall meet requirements found in section 7.1.6.1(A)(10) of the Portage County Zoning Ordinance. All signs in conjunction with a commercial development within the PD District shall meet sign requirements found in section 7.1.4.3(B)(14) of the Portage County Zoning Ordinance.

(12) All Federal, State, and local permits must be obtained prior to the issuance of a Portage County Zoning Permit.

(J) Review of Abandoned Projects. The Final Development Plan must be submitted to the Planning and Zoning Department within one (1) year of approval of Preliminary Development Plan. An extension of time may be requested in writing by the developer/owner/agent for approval by the Planning and Zoning Director and/or Portage County Planning and Zoning Committee. The Planning and Zoning Committee may recommend the reversal of the PD zoning back to the District(s) in place at the time of original PD District application and the voiding of the Preliminary Development Plan to the Portage County Board of Supervisors for action without further hearing, if this one-year deadline expires.

(K) Notice and recording of Final Development Plan. The applicant/owner/developer shall file with the Portage County Planning and Zoning Department proof of recording of the Final Development Plan on the property with the Portage County Register of Deeds prior to issuance of a Portage County Zoning Permit.

## **SECTION V – MANUFACTURING DISTRICT**

### **7.1.5.1 INDUSTRIAL DISTRICT (IND)**

(A) INTENT. It is the intent of this District to provide for industrial and heavy manufacturing activities, which are not allowed elsewhere in this Ordinance. All uses should be treated as special exceptions, due to the intensive nature of industrial activities in general and the broad scope of this District.

(B) USE. All uses in the Industrial District shall be a special exception except as listed in 7.1.5.1(C)(1).

(C) SPECIAL EXCEPTION USES. See Section 7.1.6.5.

(1) All main or principal uses and buildings in this District shall be a Special Exception, except for signs, accessory uses and/or buildings for an approved Special Exception, and other types of incidental uses and buildings. There shall be detailed grading and surface water control plans submitted for review and approval by the Planning and Zoning Department.

(D) HEIGHT, YARD, AREA AND OTHER REQUIREMENTS.

(1) Height. See Paragraph 7.1.6.1(C).

(2) Floor Area. Buildings used in whole or in part for residential purposes which are hereafter erected, moved or structurally altered shall have a floor area of not less than 720 square feet. See Subsection 7.1.6.10, "Floor Area."

(3) Lot Area. For buildings or parts of buildings erected, moved or structurally altered for residential use, the lot area regulations of Subsection 7.1.2.2(D)(2) shall apply, otherwise no minimum lot area shall be required.

(4) Lot Width. There shall be a minimum lot width of 100 feet for caretakers residence, otherwise there is no minimum lot width.

(5) Side Yards. For buildings or parts of buildings erected, moved or structurally altered for residential use, the side yard regulations of Subsection 7.1.2.2 shall apply, there shall be a side yard not less than 6 feet wide on each side of a building hereafter erected, moved or structurally altered for any other use, and no automobile parking lot, stockpile, waste or salvage pile, equipment storage yard, or other accumulation of material or equipment in the open shall be stored or placed in such side yard, provided further that any such side yard which abuts a boundary of a residence district shall be not less than 25 feet wide, unless such residence district boundary lies within a street or alley.

(6) Rear Yard. There shall be a rear yard of not less than 12 feet in depth, except that:

(a) Such rear yard shall be increased in depth by 3 feet for each additional 5 feet by which the principal building on the lot exceeds 35 feet in height;

(b) Any such rear yard which abuts a boundary of a residence district shall be not less than 25 feet in depth unless such residence district boundary line lies within a street, alley or railroad right-of-way, provided that no automobile parking lot, stockpile, waste or salvage pile, equipment storage yard or other accumulation of material or equipment in the open shall be stored or place in such rear yard, except that loading platforms may be established in a rear yard if it abuts on a railroad.

(7) Setback Lines. See Subsection 7.1.6.6 and 7.1.6.1(D)(6).

(8) Off-Street Parking. See Paragraph 7.1.6.1(E).

(9) Any use permitted in this section will require a stormwater control plan to be approved by the Land Conservation Division (per the Wisconsin Construction Site Best Management Practice Handbook) before a Zoning Permit is issued.

## **SECTION VI – GENERAL PROVISIONS AND EXCEPTIONS**

### **7.1.6.1 BUILDINGS, AREA, HEIGHT, YARDS, AND PARKING**

#### **(A) BUILDINGS AND USES.**

(1) No provisions of this Ordinance shall be construed to bar an action to enjoin or abate the use or occupancy of any land or structure as a nuisance under the appropriate laws of the State of Wisconsin.

(2) No provision of this Ordinance shall be construed to prohibit the customary and necessary construction, reconstruction or maintenance of underground public utility neighborhood service line and mechanical appurtenances thereto, where reasonably necessary for the preservation of the public health, safety, convenience, and welfare.

(3) The use of buildings hereafter erected, converted, enlarged or structurally altered and the use of any land shall be in compliance with the regulations established herein for the District in which such land or building is located.

(4) Every building hereafter erected, converted, enlarged or structurally altered shall be located on a lot and in no case shall there be more than one residence building on one lot, except during the construction or moving in of a replacement residence, or as required by section 703 of the Wisconsin Statutes regulating condominiums or any successor State Statutes. Under no circumstances shall both residences be occupied at one time. The old residence shall be removed within 30 days of occupancy of the replacement home or time period at the discretion of the Planning and Zoning Department.

(5) Nothing herein contained shall require any change in the plans, construction, size or designated use of any building or part thereof for which a zoning permit has been issued before the effective date of this Ordinance and the construction of which shall have been started within six months from the date of such permit.

(6) Nonconforming uses and nonconforming structures.

(a) The existing lawful use of a building or premises at the time of the enactment of this Ordinance or any amendment thereto may be continued although such use does not conform with the provisions of this Ordinance for the District in which it is located, but no building or premises containing a nonconforming use shall be enlarged or extended, unless otherwise approved in writing by the Board of Adjustment after a public hearing.

(b) If the nonconforming use of a building or premises is discontinued for a period of 12 months, any future use of the building or premises shall conform to the regulations for the District in which it is located.

(c) A nonconforming structure or any part of a nonconforming structure may be repaired, maintained, renovated, remodeled, or rebuilt within its existing building envelope.

(d) A nonconforming structure or any part of a nonconforming structure may be expanded if the expanded portion conforms with existing development regulations.

(7) Accessory buildings which are not a part of the main building shall not occupy more than 30% of the area of the required rear yard and shall not be closer than six feet to any lot line. Where a private garage has an entrance facing on an alley, such entrance shall be located not less than ten feet from the nearest alley line. Where an accessory building is part of the main building or is substantially attached thereto, or is located partly or wholly in front of the rear wall of the main building, the side yard and rear yard requirements for the main building shall be applied to the accessory building (this will not include shelters for household pets). Farm buildings or buildings that house farm, dangerous, and or wild animals must be located a minimum of 25 feet from a property line and 100 feet from a neighboring residence unless section 7.1.6.1(A)(19) of this Ordinance provides otherwise.

(8) The Board of Adjustment, after investigation and Special Exception public hearing, may authorize the location of any of the following buildings or uses in any District from which they are excluded by this Ordinance, and excepting such use from the A1 Exclusive Agricultural, Conservancy, and Rural Limited Districts, provided that the Board shall find that the proposed location is necessary in order to serve the public health, safety, convenience and welfare, and provided further that each such building or use shall comply with all other regulations for the District in which it is proposed to be located. To protect the value of neighboring buildings or uses, the Board may attach reasonable conditions and safeguards, in line with the general purpose and intent of this Ordinance:

(a) Cemeteries.

(b) Fire and police stations.

- (c) Hospitals and clinics, but not veterinary hospitals or clinics.
- (d) Institutions, public or private, of an educational, philanthropic or charitable nature.
- (e) Private clubs or lodges, except those the chief activity of which is a service customarily carried on as a business.
- (f) Public utility buildings, structures and lines, including power transmission lines and micro-wave radio relay structures and their appurtenances, for such purposes as are reasonably necessary for the public convenience and welfare.
- (g) Railroad siding and structures.
- (h) Sewage disposal plants.
- (9) All commercial development, in any zoning district, is subject to site plan review by Portage County Planning and Zoning Department staff prior to issuance of a Zoning Permit. Site plan review shall include the following:
  - (a) Road access
  - (b) Stormwater Control Plan and/or Construction Site Erosion Plan
  - (c) Parking and paving
  - (d) Landscaping and screening
  - (e) Lighting
  - (f) Adequacy of setback for structures and storage. Setbacks required by specific zoning districts may need to be modified based on site specific conditions. Commercial structures 100 feet tall or greater shall be set back from the nearest property and/or right-of-way line a distance equal to the height of the structure.
  - (g) An approved Stormwater Control Plan from the WI-DNR must be on file prior to issuance of a Zoning Permit if the development is equal to or larger than one (1) acre.
- (10) Signs. Except where this Ordinance is more restrictive, all signs adjacent to highways hereafter erected, moved, altered, or reconstructed shall comply with all applicable regulations of the Wisconsin Statutes, including specifically those dealing with location of signs and with signs that simulate traffic control devices. Unless otherwise provided by this Ordinance or by the Wisconsin Statutes, signs shall be located in the following manner:
  - (a) Signs and billboards generally shall be erected outside a line parallel to and 5 feet from the highway right-of-way.
  - (b) Provided that the following types of signs may be erected in other relationships to the highway right-of-way lines as specified;

(1) One directory sign per parcel, advertising a business conducted or a service available at a specific location. Such sign(s) shall not be more than eight square feet in area, there shall not be more than two such signs relating to any one such location or use in the approaching direction along any one highway, no such sign(s) shall be placed more than five miles away from the location or use to which it relates, and such sign(s) may be placed at the right-of-way line of the highway. There shall not be more than one sign per parcel unless allowed as a special exception by the Board of Adjustment. Signs shall not exceed 8 feet in height.

(2) Signs used exclusively to advertise farm products for sale on the premises. Such signs shall not be more than eight square feet in area, there shall not be more than one such sign in either direction along any one highway or any one premises; no such sign shall be placed more than half a mile away from the point of sale of the products advertised and such signs may be placed at the right-of-way line of the highway.

(3) Signs giving the name of a farm or the farm owner, or farm directory signs. Freestanding signs shall not exceed 32 square feet. Lettering attached to farm buildings identified a farm, farm name or farm directory shall have no square footage limitations.

(4) City or village directory signs. Such signs shall not be more than 12 square feet in area, there shall not be more than one such sign, located not more than half a mile from a highway intersection or other point where guidance is necessary, and such signs may be placed at the right-of-way line of the highway.

(5) Signs of standard size and design placed by the public authorities for the guidance or warning of traffic. Such signs may be placed within the right-of-way of the highway.

(c) Provided that no sign may project more than six feet beyond a building when attached thereto, and may not in any case project over the right-of-way line of the highway; and

(d) Provided further that no sign shall be erected or hung so as to project into the vision clearance triangle established by the regulations of Subsection 7.1.6.6, except that a sign may be attached to a building which is standing within such triangle on the effective date of this Ordinance, when such sign is so attached or hung as not to constitute an additional projection into such vision clearance triangle.

(11) In the Residential District, all residences shall be at least 20 feet wide at the time of its original construction/manufacture. The combining of two residences, each constructed as separate units shall not be permitted.

(12) Semi-trailers, mobile homes, travel trailers, campers, automobiles, motor vehicles, etc. cannot be used for any use other than its intended use when it was new. These items may not be used as storage buildings or for storage.

(13) Camping units may be stored or parked indefinitely, provided they are stored on the site of the owner's residence. Camping unit(s) cannot be occupied and/or used for storage, and can only be used in an approved location as determined by the Planning and Zoning Department pursuant to (16) and (17) below.

(14) No person shall keep, maintain, or have in their possession or under their control or sell or convey within any Residential Zoning District, any farm, dangerous or wild animal; except where explicitly allowed by this Ordinance.

(15) Any conservation project(s) and/or practice which have plans and/or permits, approved and/or supervised by the Land and Water Conservation Division and/or the Natural Resource Conservation Service, provided that

substantive shoreland, floodplain, and wetland concerns are addressed, will not require a special exception approval. A Portage County Zoning Permit will be required before the start of these projects.

(16) Temporary use of camping unit(s) 20 days or less in one calendar year.

(a) Only two camping unit(s) per parcel.

(1) The Town can allow more than two camping units per site for a period of no longer than 4 days. The Portage County Health and Human Services Department and Town shall be notified 3 days prior to the use of the camping unit(s).

(b) Sewage must be disposed of properly in accordance with the Portage County Code of Ordinances and any other requirements of the Portage County On-Site Waste Specialist.

(c) Camping unit(s) may only be used in Agricultural, Conservancy and/or Rural Limited Zoning Districts except provided by (d) below.

(d) Camping unit(s) may be used on a Residentially zoned lot if it has a residence.

(e) Camping unit(s) shall be for private use only.

(17) Use of camping unit(s) on vacant land for more than 20 days in a calendar year may be allowed, provided the following requirements are met.

(a) An annual Portage County Zoning Permit is required.

(b) Sewage must be disposed of properly in accordance with the Portage County Code of Ordinances and any other requirements of the Portage County On-Site Waste Specialist.

(c) Camping unit(s) may only be used in Agricultural, Conservancy and/or Rural Limited Zoning Districts.

(d) Camping unit(s) shall only be used seasonally (less than six months in a calendar year).

(e) Only two camping units per parcel shall be allowed unless more are granted permission by the Town in which they are located. A letter from the Town indicating the temporary use of more than two camping units on a parcel must be on file with the Planning and Zoning Department before the camping units are used.

(f) Camping unit(s) must be located a minimum of 100 feet from a neighboring residence.

(g) The Planning and Zoning Department shall be granted permission from the landowner and owner of the camping unit(s) to conduct yearly on-site inspections with reasonable notice to the landowner and owner of the camping unit(s).

(h) Camping unit(s) will be for private use only.

(i) Camping unit(s) may be permitted in the R1, R2, R3, and R5 Residence Zoning Districts while a single family home is under construction.

(18) Soil Disturbances (not agricultural related), will require a Construction Site Erosion Plan utilizing appropriate practices referenced in the Wisconsin Construction Site Best Management Practice Handbook. The plan shall be approved by the Portage County Land Conservation Division prior to issuance of a Portage County Zoning Permit. Soil Disturbances that do not deliver sediment to surface water, and/or wetlands, and/or a neighboring property as determined by Planning and Zoning Department Staff will be exempt from this provision. An approved Stormwater Control Plan from the WI-DNR must be on file prior to issuance of a Zoning Permit if the development is equal to or larger than one (1) acre.

(19) Raising chickens and ducks in the R1, R2, R3, and R5 Residence Zoning Districts, provided the following requirements are met.

(a) Only egg laying chickens and ducks are allowed. (No guinea hens, turkeys, peacocks, and/or other chickens and/or fowl not used for egg laying purposes.)

(b) Roosters and/or Drakes are prohibited.

(c) Chickens / ducks shall be kept in a fully enclosed coop. The coop cannot exceed 120 square feet in floor space and 10 feet in side wall height. The coop's design and color shall compliment the residence. The coop shall be set back at least 50 feet from any adjoining property line and 100 feet from any neighboring residence.

(d) Chicken runs are allowed, but shall be fully enclosed so chickens/ ducks cannot escape.

(e) No slaughtering or butchering is allowed on site.

(f) No more than 12 chickens / ducks are allowed.

(g) Commercial sale of eggs is prohibited.

(h) Coops and runs shall be at least 50 feet from a well.

(20) The Planning and Zoning Department does not allow development in wetlands and hydric soils unless development is approved by the WI-DNR and/or Army Corps of Engineers. See Section 7.1.6.10 of the Portage County Zoning Ordinance for wetland definition.

#### (B) AREA REGULATIONS.

(1) No lot area shall be so reduced that the yards and open spaces shall be smaller than is required by this Ordinance, nor shall the density of population be increased in any manner except in conformity with the area regulations hereby established for the District in which a building or premises is located.

(2) Any substandard lot or parcel shown on a recorded subdivision, plat, assessor's plat or conveyance and recorded in the Office of the Register of Deeds for Portage County prior to the adoption of the Ordinance for Portage County may be used as a building site, or for any purpose permitted by this Ordinance, even though such lot or parcel does not conform to the minimum frontage or area requirements of the District which it is located; provided all of the following apply:

(a) The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.

(b) The substandard lot or parcel is developed to comply with all other Ordinances.

(3) Any lot or parcel shown on a recorded subdivision, plat, or assessor's plat or conveyance and recorded in the Office of Register of Deeds of Portage County prior to the adoption of this Ordinance, may be increased in size by the addition of all or part of the adjoining lots or parcels, and such resulting lots or parcels may be used for any purpose permitted in the District in which they are located even though by such addition such lots or parcels do not reach the minimum area or frontage required in such District, provided, however, that subsequent to such addition, the side yard, open space and percentage of occupancy provisions for lots of the resulting size shall apply; and provided further that after buildings have been erected on such lots or parcels there area or width shall not hereafter be reduced, except in conformity with the provisions of this Ordinance.

#### (C) HEIGHT REGULATIONS.

(1) Except as otherwise provided in this Ordinance, the height of any building hereafter erected, converted, enlarged or structurally altered shall be in compliance with the regulations established herein for the District in which such building is located.

(2) A basement shall be counted as a story for the purpose of height measurement if the vertical distance between the ceiling and the average level of the adjoining ground is more than five feet.

(3) Churches, schools, hospitals, sanatoriums, and other public and quasi-public buildings may be erected to a height not exceeding 50 feet, provided the front, side and rear yards required in the District in which such building is to be located are each increased at least one foot for each foot of additional height above the height limit otherwise established for the District in which such building is to be located.

(4) Farm buildings not for human habitation, ornamental structure, radio and television broadcasting and receiving towers, telephone, telegraph and power transmission poles, towers and lines, microwave radio relay structures and necessary mechanical appurtenances, and accessory structures essential to the use or protection of a building or to a manufacturing process carried on therein, are hereby exempted from the height regulations of this Ordinance and may be erected in accordance with other regulations or Ordinance of Portage County; provided that any structure which is accessory to a building in a residence or recreation district, or to a building on a residential lot in the General Agricultural District, shall be located not less than 25 feet from any lot line; and provided further that any structure on farm property shall be located not less than 25 feet from the nearest lot line of any adjoining residential lot.

(5) Residences may be increased in height by not more than ten feet when all yards and other required open spaces are increased by one foot for each foot by which such building exceeds the height limit of the District in which it is located.

(6) Where a lot abuts on two or more streets or alleys having different average established grades, the higher of such grades shall control only for a depth of 120 feet from the line of the higher average established grade.

(7) On through lots which extend from street to street, the height of the main building may be measured from the average elevation of the finished grade along the end of the building facing either street.

#### (D) FRONT, SIDE AND REAR YARD REGULATIONS.



- (1) No part of a yard or other open space provided about any building for the purpose of complying with the provisions of this Ordinance shall be included as part of a yard or other open space required for another building.
- (2) Except as otherwise provided in this Ordinance, any side yard, rear yard, front yard or court abutting a District boundary line shall have a minimum width and depth of ten feet.
- (3) No part of any building which has a setback less than is required by this Ordinance shall be enlarged or structurally altered within the front yard established by the setback required by this Ordinance for the District in which such building is located.
- (4) Building on through lots and extending from street to street may waive the requirements from a rear yard by furnishing an equivalent open space on the same lot in lieu of the required rear yard provided that the setback required by this Ordinance for the District in which such building is located.
- (5) Every part of a required yard shall be open and unoccupied by any structure from the ground upward, except as follows:
  - (a) Detached accessory buildings may be located in the rear yard, or in the side yard of a main building, provided an additional side yard, equal to that otherwise required for the main building, is provided.
  - (b) Sills, belt courses, cornices, canopies, eaves and ornamental architectural features may project into a required yard not more than 30 inches; provided that no such feature shall project over a street line.
  - (c) Bay windows, balconies and chimneys may project into a required yard not more than three feet in any case, but not more than 20% of the width of any side yard which does not abut on a street, provided that the total length of such projections is not more than one-third of the building wall on which they are located.
  - (d) Fire escapes may project into a required yard not more than five feet in any case, but not more than 20% of the width of any side which does not abut on a street, provided that no such fire escape need be less than three feet in width.
  - (e) Uncovered steps and landings may project into a required yard not more than six feet and shall not exceed 40 square feet.
  - (f) Walks and drives extending not more than six inches above the average level of abutting ground on one side, may be located in any yard.
  - (g) Fences, walls and hedges provided such fence, wall or hedge is not an obstruction to pedestrians and/or motorists.
- (6) Setback Lines. For those lots that have a width less than the minimum required by the Zoning District, setback off the front yard will be greater of either the road setbacks if the whole width abuts the right-of-way or 25 feet off the rear yard of the lot between the right-of-way and the lot to be built upon.
- (7) No building or structure shall be erected within 50 feet of the Plover River Bluff Line Survey.

(8) Inoperable and/or unlicensed motor vehicles, and/or solid waste cannot be stored/placed in the front yard in the Residence Zoning Districts. The front yard is established after the principal structure is constructed.

(E) MOTOR VEHICLES AND PARKING.

(1) In the Residence and Agricultural Districts, not more than half the space in any private garage may be rented for the storage of the private passenger vehicle of persons not resident(s) on the premises, except that all of the space in a private garage having a capacity of not more than two such vehicles may be so rented.

(2) In the Residence Districts, no commercial motor vehicle exceeding five tons rated capacity shall be stored in any private garage or on any lot.

(3) In the Commercial and Industrial Districts, wherever a lot abuts upon a public or private alley, sufficient loading space shall be provided on the lot or adjacent thereto in connection with any business or industrial use so that the alley shall at all times be free and unobstructed to the passage of traffic.

(4) Off-street parking spaces shall be 300 gross square feet per stall inclusive of adequate ingress and egress access aisle to connect with a public thoroughfare. The stall shall be nine feet wide and 18 feet long. A single stall garage or one stall in a multiple stall garage may replace any single required parking space.

(5) No building for which off-street parking space is required may be added to, structurally altered or converted in use so as to encroach upon or reduce the parking space below the required minimum.

(6) No parking space required under this Ordinance may be used for any other purposes; provided, however, that the open space required by this Ordinance for setback and side yards may be used for such parking spaces or approaches thereto, except where otherwise provided in this Ordinance, provided that on corner lots there shall be no parking in a vision clearance triangle.

(7) All parking spaces shall be graded and drained so as to prevent the accumulation of surface waters.

(8) Parking lots containing ten or more parking spaces which are located in the Residence Districts or adjoining residential lots shall be screened along the side or sides of such lots which abut the lot lines or residential lots by a solid wall, fence, evergreen planting of equivalent opacity or other equally effective means, built or maintained at a minimum height of four feet. If parking lots so located are lighted, the lights shall be so shielded as to prevent undesirable glare or illumination of adjoining residential property.

(9) Parking space required:

(a) Multiple family dwellings shall provide one off-street parking space for each family for which accommodations are provided in the building plus one.

(b) Roadside stands shall provide not less than five parking spaces at the place of business off the right-of-way of the highway.

(c) Establishments offering curbside service to customers who remain in their vehicles, shall provide at least five off-street parking spaces for each person employed to serve such customers.

- (d) Retail or local business places, banks, offices and professional offices and personal service shops shall provide at least one off-street parking space for 300 square feet of ground floor area, plus at least one additional parking space for each 500 square feet of upper floor area.
- (e) Buildings combining business and residential uses shall provide at least one off-street parking space for each 300 square feet of area devoted to business use, plus at least one parking space for each family for which accommodations are provided on the premises.
- (f) Theaters, churches, auditoriums, lodges or fraternity halls and similar places of public assemblage shall provide at least one parking space for each seven seats.
- (g) Lodging houses and dormitories shall provide at least one parking space for each two guest rooms.
- (h) Medical, correctional or charitable institutions shall provide at least one parking space for each two rooms for patients, clients, guests or persons detained on the premises, plus at least one additional parking space for each three persons employed on the premises.
- (i) Restaurants, taverns and similar places for eating and refreshments, except curb service establishments, shall provide at least one parking space for each 50 square feet of floor space devoted to the use of patrons.
- (j) Funeral homes and mortuaries shall provide at least one parking space for each 50 square feet of floor space devoted to parlors.
- (k) Bowling alleys shall provide at least five parking spaces for each alley.
- (l) Garages and service stations shall provide adequate off-street parking space to prevent the parking of vehicles waiting to be serviced or repaired on the public street or highway.
- (m) Industrial uses, warehouses, laboratories and research institutions shall provide at least one parking space for each four employees on the premises at any one time, plus at least one additional space for each vehicle operated in connection with such use, for which parking on the premises is required.
- (n) Parks and playgrounds, recreation camps and mobile home camps shall furnish parking spaces as required by the regulations governing each of these uses.
- (o) Any use not specifically named herein shall be assigned by the Zoning Administrator to the most appropriate of the above classifications, when not acceptable to the applicant, appeal may be made to the Board of Adjustment, which shall decide the matter at a public hearing.

#### **7.1.6.2 ZONING PERMITS AND COMPLIANCE CHECKS**

##### **(A) ZONING PERMITS.**

(1) There is herewith created the Office of Zoning Administrator. His duties shall be to administer, supervise and enforce the provisions of the County Zoning Ordinance. His compensations shall be determined by the County Board.

(2) Permits.

(a) No building, sign, other structure, use of land, or any part thereof shall hereafter be built, enlarged, altered or moved within the area subject to the provisions of this Ordinance until a Zoning Permit has been applied for in writing and obtained from the Zoning Administrator. Forms for application for Zoning Permits shall be supplied by the Zoning Administrator and a record of all Permits issued shall be kept in the Office of the Zoning Administrator. A Portage County Zoning Permit shall not be issued until there is compliance with all Portage County Code of Ordinances (see Chapter 7).

(b) All applications for a Zoning Permit shall be accompanied by a location sketch drawn to scale, showing the location, actual shape and dimensions of the lot to be built upon, the exact size and location of the building on the lot, the existing or intended use of the building, the number of families to be accommodated, the distance between the nearest point on the building and the centerline of the highway, and such other information with regard to the proposed building and neighboring lots or buildings as may be called for on the application or may be necessary to provide for the enforcement of this Ordinance.

(c) The term "building", as used in this section, shall include any building, structure or use of land which is governed by the requirements of this Ordinance, and any substantial alteration in the heating plant, sanitary facilities or mechanical equipment of any such building which would effect a change in its use.

(d) No Zoning Permit shall be required for any of the following cases:

(1) For any building on which work to the amount of \$1,000 or more has been done prior to the approval of this Ordinance by the town board of the town in which such building is located.

(2) For any accessory building less than 100 square feet, provided such building conforms to all the setbacks, yard and open space requirements of this Ordinance.

(3) For any interior remodeling, improvements or alterations, regardless of cost, provided however, there shall not be a change in use which would be prohibited in the District.

(4) For any exterior alterations, improvements or remodeling provided there is not an increase in floor area constructed to the existing building.

(5) For farm buildings and structures not for human habitation which are not permanently fixed to the ground and are readily removable in their entirety; provided that this regulation shall not apply to roadside stands or permitted signs.

(e) Project(s) must be substantially completed within 24 months from the issuance of the Zoning Permit.

(f) A Zoning Permit shall be required for any conforming use which is damaged by fire, explosion, act of God or public enemy to the extent of more than 50% of its current market value as determined by the local assessor.

(g) There shall be no issuance of a Zoning Permit, approval of a certified survey map, rezoning, and/or Board of Adjustment action until all zoning violations are corrected, unless zoning violations are corrected by subsequent compliance with the Zoning Ordinance, the issuance of a Zoning Permit, approval of a certified survey map, rezoning, and/or Board of Adjustment decision.

(h) The Planning and Zoning Department may require an affidavit to be recorded in the Register of Deeds Office by the property owner or agent prior to the commencement of any construction or activity to assure compliance with the Portage County Ordinances.

(i) Zoning Permits may require a Stormwater Control Plan approved by the Land and Water Conservation Division where impervious surfaces are being constructed within 300 feet of surface water and/or wetlands. Portage County Land and Water Conservation Division may require a Stormwater Control Plan if permitted impervious surfaces increase stormwater effects on an adjacent property. Impervious surfaces that do not drain towards surface water, wetlands, and/or adjacent property are not subject to this requirement.

(j) In cases where any approvals are required from the Army Corps of Engineers and/or the WI-DNR no Zoning Permit shall be issued until their approval is on file with the Planning and Zoning Department.

#### (B) COMPLIANCE CHECKS.

(1) In order to ensure compliance with Section 7.1.6.2 of the Portage County Zoning Ordinance, Planning and Zoning Department staff shall have the right to contact the property owner and arrange to enter onto property during reasonable hours to verify that work was completed as approved through the Zoning Permit process. If, however, staff is refused entry, either in advance or on-site after presentation of County employee identification, staff shall obtain a special inspection warrant in accordance with §66.0019, Wisconsin Stats., except in case of emergency.

#### (C) FEES.

(1) A fee determined by the Portage County Planning and Zoning Committee shall be paid to the Zoning Administrator. A schedule of such fees shall be made available by the Portage County Zoning Department and the Portage County Clerk.

(2) The required fee shall be paid to the Zoning Administrator upon application for a Permit. All such fees collected by the Zoning Administrator shall be remitted to the County Treasurer.

(3) Increased fees shall be assessed where construction and/or a use has begun prior to the issuance of a Portage County Zoning Permit, as indicated on the Planning and Zoning Department Fee Schedule.

### **7.1.6.3 BOUNDARIES OF DISTRICTS**

(A) USE DISTRICTS. In unsubdivided property, unless otherwise indicated on the map, the District boundary lines are the centerline of streets, highways, railroads, section lines, quarter-section lines, quarter-quarter lines or such lines extended. Where not otherwise indicated on the map, it is intended that the District boundary line be measured at right angles to the nearest highway right-of-way line and be not less than 300 feet in depth, provided however, that wherever a Commercial District is indicated on the District Map as a strip paralleling the highway, the depth of such strip shall be 300 feet measured at right angles to the right-of-way line of the street or highway to which it is adjacent, unless a different depth is shown on the map. The length of each strip shall be shown on the map. When the Commercial District is located at the intersection of streets or highways, the length shall be measured from the intersection of each street or highway right-of-way line included in such District.

(B) THE FLOODWAY AND FLOOD FRINGE OVERLAY DISTRICTS shall include all unincorporated lands of Portage County which would be inundated by the "regional flood" for any navigable stretch of a stream as

designated on the official Federal Emergency Management Administration (FEMA) Flood Insurance Rate Map (FIRM) adopted by the Portage County Board of Supervisors.

#### **7.1.6.4 INTERPRETATION AND APPLICATION**

It is not intended by this Ordinance to interfere with, abrogate or annul any existing easements, covenants, or other agreements between parties, nor is it intended by this Ordinance to repeal, abrogate, annul or in any way impair or interfere with any existing provisions of the law or Ordinance or any rules, regulations or permits previously adopted or issued, or which shall be adopted or issued pursuant to law, relating to the use of buildings or premises, provided, however, that where this Ordinance imposes a greater restriction upon the use of buildings or premises than is imposed or required by such existing provisions of law, Ordinance, or by such rules, regulations, agreements, covenants, or permits, the provisions of this Ordinance shall control.

#### **7.1.6.5 VARIANCES, SPECIAL EXCEPTIONS AND ADMINISTRATIVE ERRORS**

(A) ESTABLISHMENT. There shall be a Board of Adjustment consisting of five members and two alternates to be appointed by the County Executive with the approval of the County Board. Members so appointed shall be for one, two and three years, respectively, successors shall be appointed in like manner at the expiration of each term and their terms of office shall be three years in all cases, beginning July 1 in the year appointed. The members of the Board of Adjustment shall all reside within the County and outside the limits of incorporated cities and villages; provided however, that no two members shall reside in the same town. The Board of Adjustment shall choose its own chair. Vacancies shall be filled for the unexpired term of any members whose term becomes vacant in the same manner as the original appointment. The members of the Board of Adjustment shall be compensated at the same per diem and mileage rates as paid the County Board of Supervisors.

#### (B) RULES.

(1) The Board of Adjustment will review monthly at a public hearing each petition, under paragraphs (D) Duties and (E) Powers, of the Board of Adjustment. Such petition must be accompanied by a fee set by the Portage County Planning and Zoning Committee. If the petitioner desires an earlier review than would be accorded by the above schedule, they may obtain same by paying a special fee also determined by the Planning and Zoning Committee. The special fee shall also be required for the filing of a similar appeal that was denied by the Board of Adjustment within the past twelve months.

(2) All meetings of the Board of Adjustment shall be open to the public.

(3) Any public hearing which the Board of Adjustment is required to hold under paragraphs (D) Duties and (E) Powers, of the Board of Adjustment, shall be held by name, address or other commonly known means of identification, shall be included in the notice given of such hearing. Other matters upon which the Board of Adjustment is required to act may also be heard at any such hearing, provided that such matters are included in the notice given of such hearing.

(4) Notice of any public hearing which the Board of Adjustment is required to hold under the terms of this Ordinance shall specify the date, time and place of hearing and the matters to come before the Board of Adjustment at such hearing, and such notice shall be given in each of the following ways:

- (a) By publication in the official newspaper of the County once each week for two successive weeks, the last of which shall be at least one week before the public hearing and if no newspaper is in circulation in an affected town, by posting in at least three public places likely to give notice no later than two weeks before the public hearing.
- (b) By mailing of notices to the town clerk of each town affected by the petition at least ten days prior to the date of the hearing.
- (c) By certified mail to the parties having a legal interest in any of the matters to come before the Board of Adjustment at such hearing.
- (d) By mailing of notices of any appeal reviewed in compliance with the floodplain or shoreland provisions of this Ordinance to the Department of Natural Resources.
- (5) The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Office of the Board of Adjustment and shall be a public record.
- (6) The Board of Adjustment shall have power to call on any other County Departments for assistance in the performance of its duties and it shall be the duty of such other departments to render all such assistance as may be reasonably required.
- (7) The Board of Adjustment may adopt such rules as are necessary to carry into effect the regulations of the County Board.
- (8) In the case of a party petitioning who believes it is to his or her advantage to obtain an earlier review of the petition than the next scheduled Board of Adjustment meeting, he or she may obtain such by depositing with the Planning and Zoning Department of Portage County the fee as determined the Planning and Zoning Committee and by petitioning by letter to said Chair for a hearing on his petition.
- (9) A double filing fee for a variance or special exception shall be assessed for any activity commenced without first obtaining Board of Adjustment approval through public hearing.

(C) APPEALS.

- (1) Appeals to the Board of Adjustment may be taken by any person aggrieved or by any office, department, board or bureau of Portage County affected by any decision of the Zoning Administrator. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board of Adjustment, by filing with the Zoning Administrator and the Board of Adjustment a notice of appeal specifying the ground thereof. The Zoning Administrator shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.
- (2) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator shall certify to the Board of Adjustment after notice of appeal shall have been filed with him by reason of facts stated in the certificate a stay would cause imminent peril to life or property. In such case, the proceeding shall not be stayed otherwise than by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application on notice to the Zoning Administrator and on due cause shown.

(3) The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. A copy of any appeal granted in compliance with the shoreland or floodplain provisions of this Ordinance shall be forwarded to the Department of Natural Resources.

(D) DUTIES. The Board of Adjustment shall have the following duties:

(1) To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the Zoning Administrator.

(2) To hear and decide special exceptions to the terms of this Ordinance, as follows:

(a) The following special exception uses may be heard by the Board of Adjustment which may:

(1) Permit the location of recreation camps in the Districts in which such camps may be established under this Ordinance, under the conditions specified in Subparagraph 7.1.3.3(C)(2).

(2) Permit the location of micro-wave radio relay structures in the Single Family Residence District, under the same procedure and subject to the same conditions as specified in Subparagraph 7.1.6.1(A)(8).

(3) Permit the location of mobile home parks in the Districts in which such parks may be established under this Ordinance, under the conditions specified in the regulations for those Districts.

(4) Permit the location of certain uses in the R2 Single Family Residence District as specified in Paragraph 7.1.2.1(C).

(5) Permit the location of certain uses in the R4 Multiple Family Residence District as specified in Paragraph 7.1.2.2(C).

(6) Permit the location of certain uses in the R1 Rural and Urban Fringe Residence District as specified in Paragraph 7.1.2.3(C).

(7) Permit the location of certain uses in the R3 One and Two Family Residence Districts as specified in Paragraph 7.1.2.4(C).

(8) Permit the location of certain uses in the R5 Waterfront Residence District as specified in Paragraph 7.1.2.5(C).

(9) Permit the location of certain uses in the A4 General Agricultural District, as specified in Paragraph 7.1.3.1(C).

(10) Permit the location of certain uses in the Conservancy District, as specified in Paragraph 7.1.3.2(C).

(11) Permit the location of certain uses in the Recreation District, as specified in Paragraph 7.1.3.3(C).

(12) Permit the location of certain uses in the A1 Exclusive Agricultural District as specified in Paragraph 7.1.3.4(C).



- (13) Permit the location of certain uses in the A2 Agricultural Transition District as specified in Paragraph 7.1.3.5(C).
- (14) Permit the location of certain uses in the A3 Low Density Agricultural District as specified in Paragraph 7.1.3.6(C).
- (15) Permit the location of certain uses in the A20 Primary Agricultural District as specified in Paragraph 7.1.3.7(C)
- (16) Permit the location of certain uses in the C3 Commercial District, as specified in Paragraph 7.1.4.2(C).
- (17) Permit the location of certain uses in the C4 Highway Commercial District as specified in Paragraph 7.1.4.3(C).
- (18) Permit the location of certain uses in the C1 Neighborhood Commercial District as specified in Paragraph 7.1.4.4(C).
- (19) Permit the location of certain uses in the Industrial District, as specified in Subparagraph 7.1.5.1(C).
- (20) Permit the location of certain uses in the RL Rural Limited District as specified in paragraph 7.1.3.8(C).
- (21) Hear and decide any question or determination referred to the Board of Adjustment by any Section in this Ordinance.
- (22) Permit the location of certain buildings and uses in any District, as specified in Subparagraph 7.1.6.1(A)(8).
- (23) Permit additional directory signs along highways, advertising a business conducted or a service available at a particular location, as specified in Subparagraph 7.1.6.1(A)(10)(b)(1).

(b) Required Evaluations. In passing upon any special exceptions, the Board of Adjustment shall make the following evaluations, where appropriate, in addition to those required elsewhere in this Ordinance and base its decision thereon.

- (1) Evaluate the effect of the proposed use upon:
  - (a) The maintenance of safe and healthful conditions;
  - (b) The prevention and control of water pollution including sedimentation;
  - (c) Existing topographic and drainage features and vegetative cover on the site;
  - (d) The location of the site with respect to floodplains and floodways of rivers or streams;
  - (e) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover;
  - (f) The location of the site with respect to existing or future access roads;
  - (g) The need of the proposed use for a shoreland location;

(h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;

(i) The amount of liquid wastes to be generated and the adequacy of the proposed disposal system;

(j) Location factors under which domestic uses shall be generally preferred, uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source, and use locations within an area tending to minimize the possibility of pollution shall be preferred over use locations tending to increase that possibility;

(k) The importance of the services provided by the proposed facility to the community;

(l) The availability of alternative locations;

(m) Such other factors as are relevant to the purposes of this Ordinance.

(c) Required Findings. No special exceptions shall be granted by the Board of Adjustment unless finds the following conditions exist:

(1) The use would not substantially harm the public health, safety, and general welfare, and would not be contrary to State Law or Administrative Code.

(2) The use would be consistent with surrounding uses and the neighborhood would not be injured thereby.

(3) The use is consistent with this Ordinance and any County or municipal plan which is based on historic, geographic, and socio-economic facts.

(3) To hear and decide variances from the terms of this Ordinance.

(a) Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Ordinance, the Board of Adjustment shall have the power, in passing upon petitions, to authorize such variance from the terms of this Ordinance.

(b) Required Evaluations. In passing upon variances, the Board of Adjustment shall make the evaluations required when passing upon special exceptions, where appropriate.

(c) Required Findings. No variance shall be granted by the Board of Adjustment unless it finds the conditions exist:

(1) Granting the variance would not be contrary to the public interest, State Law or Administrative Code, the spirit of the Ordinance would be observed and substantial justice done;

(2) The use is permitted in the District;

(3) The hardship is due to special conditions unique to the property, rather than considerations personal to the property owner;

- (4) Granting the variance would not be detrimental to surrounding landowners;
- (5) Hardship is not created by any person having interest in the property;
- (6) A property owner bears the burden of proving unnecessary hardship by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome;
- (7) The request represents the minimum relief necessary to relieve unnecessary burdens.

(E) POWERS. The Board of Adjustment shall have the following powers:

(1) To require the applicant to furnish, in addition to the information required for a Zoning Permit, the following information:

- (a) A plan of the area showing contours, soil types, normal high water elevation, groundwater conditions, bedrock, slope and vegetative cover;
- (b) Location of buildings, parking areas, traffic access, driveways, walkways, piers, open spaces and landscaping;
- (c) Plans of building, sewage disposal facilities, water supply systems and arrangements of operations;
- (d) Specification for areas of proposed filling, grading, lagooning, dredging or cutting and replanting;
- (e) Other pertinent information necessary to determine if the proposed use meets the requirements of the floodplain provisions.

(2) To attach such conditions, in addition to those required elsewhere in this Ordinance, that it deems necessary in furthering the purpose of this Ordinance. Violation of any of these conditions shall be deemed a violation of this Ordinance. Such conditions may include, but not be limited to, the following specifications:

- (a) Type of shore cover.
- (b) Increased setbacks and yards.
- (c) Specified sewage disposal and water supply facilities.
- (d) Landscaping and planting screens.
- (e) Period of operation.
- (f) Operation control.
- (g) Sureties.
- (h) Deed restrictions.
- (i) Location of piers, docks, parking and signs.

- (j) Requirement for construction of channel modification, dikes, levees and other protection measures.
- (k) The following shoreland protection measures and conservation standards may be required without limitation because of specific enumeration;
  - (1) The smallest amount of bare ground be exposed for as short a time as feasible;
  - (2) Temporary ground cover such as mulch be used and permanent cover such as sod be planted;
  - (3) Diversions, silting basins, terrace and other methods to trap sediment be used;
  - (4) Lagooning be conducted in such a manner as to avoid creation of fish trap conditions;
  - (5) Fill is stabilized according to accepted engineering standards;
  - (6) Fill will not restrict a floodway or destroy the storage capacity of a floodplain;
  - (7) Sides of channels or artificial watercourses be stabilized to prevent slumping;
  - (8) Sides of channels or artificial watercourses be constructed with side slopes of three units horizontal distance to one unit vertical or flatter, unless bulkheads or riprapping are provided.
- (3) Unless otherwise ordered by the Board of Adjustment, all decisions by the Board of Adjustment that require the issuance of a Zoning Permit must include provisions that such Zoning Permit is to be issued within one year of the decision date. The Zoning Permit must be issued before any activity or construction starts unless the appellant requests an extension from the Board of Adjustment through the Portage County Planning and Zoning Department before one year had elapsed. Failure to obtain a Zoning Permit or an extension of time within which to obtain a Zoning Permit will result in the approval granted by the Board of Adjustment becoming void and the appellant will be required to re-petition the Board of Adjustment.

#### **7.1.6.6 SETBACK LINES**

**(A) HIGHWAYS.** For the purpose of determining the distance buildings and other structures shall be set back from streets and highways, the streets and highways of Portage County are divided into the following classes:

- (1) Class 1 highway.
  - (a) All state and federal highways are hereby designated as Class 1 highways; provided that this classification shall also include the entire frontage of all those highways which lie within the Highway Commercial District and which intersect at an interchange.
  - (b) The setback line for Class 1 highways shall be 110 feet from the centerline of the highway or 50 feet from the right-of-way line, whichever is greater; the centerline shall be as shown on the highway plans.
  - (c) Sale merchandise such as cars, trucks, recreation vehicles, etc. that are not permanently affixed to the ground, may not be considered structures, and shall be allowed no closer than ten feet from the highway right-of-way.

(2) Class 2 highways.

(a) All County Roads are hereby designated as Class 2 highways. For the purpose of this Ordinance any road will be considered as a County Road after it has been placed on the County road system by the County Board and approved by the State Highway Commission or is proposed by the Planning and Zoning Committee and adopted as a planned County Road highway by the County Highway Committee.

(b) The setback for Class 2 highways shall be 75 feet from the centerline of such existing or proposed highway or 42 feet from the right-of-way line of such existing highway, whichever is greater.

(c) Sales merchandise such as cars, trucks, recreation vehicles, etc. that are not permanently affixed to the ground, not be considered structures, and shall be allowed no closer than ten feet from the highway right-of-way.

(3) Class 3 highways.

(a) All town roads are hereby designated as Class 3 highways. For the purpose of this Ordinance, any road will be considered a town road when it is included on the Department of Transportation Town Plat Record, and certified as correct by the town board, or is a road proposed by the Planning and Zoning Committee and adopted as a planned town road by the town board.

(b) The setback for Class 3 highway shall be 63 feet from the centerline of such existing or proposed highway or 30 feet from the right-of-way line of such existing highway, whichever is greater.

(c) Sales merchandise such as cars, trucks, recreation vehicles, etc. that are not permanently affixed to the ground, not be considered structures, and shall be allowed no closer than ten feet from the highway right-of-way line.

(4) The following shall apply on any street or highway:

(a) For vacant lots in partially occupied blocks that do not abut on a lake or stream, the following rules shall apply:

(1) When the setback for an existing main building or buildings is greater than the setback otherwise required by this subsection, and a building site fronting the same street is located within 250 feet of such main building or buildings, as measured along the straight line between the nearest points on such building site and such main building or buildings, the setback on such building site shall be the average of the setback otherwise required by this subsection; provided that no existing setback greater than twice the setback required by Subparagraphs (1), (2) and (3) of this subsection shall be considered in applying the above rule.

(2) A setback less than the setback required by Subparagraphs (1), (2) and (3) of this subsection shall not be permitted on any building site, except by order of the Board of Adjustment, unless there are at least five existing main buildings built to less than such required setback, within 500 feet of such building site. In such case, the setback to be applied to such building site shall be the average of the setbacks of the nearest existing main building on each side of such building site, or, if there be no main building on one side, the average of the setback for the main building on one side and the setback required by Subparagraph (1), (2) and (3) of this subsection.

(3) When the nearest main building is more than 250 feet from a building site, measured as specified in Subparagraph (1) above, the setback requirements of Subparagraph (1), (2) and (3) of this subsection shall apply.

(B) VISION CLEARANCE.

(1) There shall be a vision clearance triangle in each quadrant of all intersections of highways or street with OTHER HIGHWAYS OR STREETS OR RAILROAD RIGHTS-OF-WAY. Such vision clearance triangle shall be bounded by the highway, street or railroad right-of-way lines which are located a distance back from the intersection of the right-of-way lines equal to twice the setback required on the intersecting highway or street. In the case of railroads, the setback, for the purposes of this paragraph, shall be considered to be 100 feet from the centerline of the right-of-way. In addition, the following rules shall apply:

(a) At highway intersections with transitional widening, such transitional widening shall be considered as additional width and the setback line on the side of the highway which is widened shall be increased by an amount equal to the width of such transitional widening.

(b) At highway intersections with curve connections, the pavement of surfacing on the curve shall be classified as provided in Subparagraph (A)(1), (A)(2) and (A)(3) above and the setback along the curve determined accordingly. The vision clearance triangle required by Subsection (B)(1) above shall be computed as if the highways intersected without the curve connection, and whichever line requires the greater vision clearance opening shall prevail.

(c) Within a vision clearance triangle, no structure or object of natural growth shall be constructed, maintained or permitted to grow between a height of two and one-half feet and ten feet above the elevation of the street or highway grade at the centerline, or the top of the curb if there be a curb. This regulation shall not apply to the trunks of trees, posts not over six inches square or in diameter, retaining walls used to support ground at or below its natural level, or wire fences, none of which shall be planted, placed, designed or constructed so as to constitute a substantial obstruction to the view of motorists and pedestrians across the vision clearance opening from one highway or street to another.

(C) STRUCTURES PERMITTED WITHIN SETBACK LINES.

(1) Open fences, entrance markers and structures.

(2) Telephone, telegraph and power transmission and distribution towers, poles and lines, transformers and similar necessary appurtenances, and portable equipment housings that are readily removable in their entirety. Additions to and replacements of all such structures may be made, provided the owner will file with the County Clerk of Portage County, an agreement in writing to the effect that the owner will move or remove all new construction, additions and replacements erected after the adoption of this Ordinance at his expense, when necessary for the improvement of the highway.

(3) Underground structures, not capable of being used as foundations for future prohibited aboveground structures.

(4) Access or frontage roads constructed by the public according to plans approved by the County Highway Committee.

(5) Permitted signs and signs placed by the public authorities for the guidance or warning of traffic.

(6) These provisions shall not be interpreted so as to prohibit the planting and harvesting of field crops, shrubbery or trees, except as these may be restricted within a vision clearance triangle by the provisions of Paragraph (B)(1)(c).

(7) Bus warming shelters provided less than 16 square feet, located outside of right-of-way and not affixed to a foundation.

#### **7.1.6.7 CHANGES AND AMENDMENTS**

##### **(A) PETITION.**

(1) The Board of Supervisors of Portage County may from time to time amend, supplement or change by Ordinance the boundaries of Districts or regulations herein established. A petition for such amendment, supplement or change shall first be filed with the County Clerk:

- (a) By any property owner in the area to be affected by the matter of such petition;
- (b) By the town board of any town wherein the Ordinance is in effect;
- (c) By any member of the County Board; or
- (d) By the County Planning and Zoning Committee.

(2) The County Clerk shall refer such petition to the County Planning and Zoning Committee for its consideration, recommendation and report. Such consideration will be given the petition by the County Planning and Zoning Committee if the petition was accompanied by a fee as determined by the Planning and Zoning Committee.

##### **(B) PUBLIC HEARING.**

(1) The County Planning and Zoning Committee shall hold a public hearing on such petition for amendment, supplement or change of the County Zoning Ordinance, given notice of the time and place of such hearing by publication in the County as a Class two notice as specified in Chapter 985 of the Wisconsin State Statutes, in the official newspaper of the County and in addition, if the Committee deems it essential under the circumstances, by similar publication in other newspapers of the Committee's choice, by posting or mailing of notices to certain parties affected. A copy of such notice shall be mailed by certified mail to the town clerk of each town affected by the proposed amendment, supplement or change at least ten days prior to the date of the hearing.

(2) Such hearing shall be held in the County-City Building, in the City of Stevens Point, Wisconsin, unless some other place is otherwise designated by the County Planning and Zoning Committee or unless the town affected requests that it be held in its town hall. If more than one town is affected, the hearing shall be held in such County-City Building, unless some other place is otherwise designated by the County Planning and Zoning Committee. The Planning and Zoning Committee may, at its option, hold more than one public hearing in regard to any proposed change if it appears to the Planning and Zoning Committee that the number of towns affected by such change are too large or too widely distributed throughout the County to be reasonably accommodated at one place of meeting.

(3) If a town affected by the proposed change disapproves of the proposed change, the town board of such town may file a certified copy of a resolution adopted by such board disapproving of the petition with the Planning and Zoning Committee prior to or at the public hearing. If the town board of the town affected in the case of an Ordinance relating to the location of boundaries of use districts file such a resolution, or the town boards of a majority of the towns affected in the case of an Ordinance relating to the location of boundaries of use districts file such a resolution, or the town boards of a majority of the towns affected in the case of all other amendatory Ordinances except amendment of Overlay Districts or boundary thereof, file such resolutions, the Planning and

Zoning Committee may not recommend approval of the petition without change, but may only recommend approval with changes or recommend disapproval. Amendments relating only to Overlay Districts or boundaries thereof, shall not be subject to town board approval or disapproval. As soon as possible after such public hearing, the Planning and Zoning committee shall act, subject to the above paragraph, on such petition either approving, modifying or disapproving of the change. If its action is favorable to granting the requested change or any modification thereof, it shall cause an Ordinance to be drafted effectuating its determination and shall submit such proposed Ordinance directly to the County Board with its recommendations. If the Planning and Zoning Committee, after its public hearing, shall recommend denial of the petition, it shall report its recommendation directly to the County Board with its reasons for such action. Proof of publication of the notice of the public hearing held by the Planning and Zoning Committee and proof of the giving of notice to the town clerk of such hearing shall be attached to either such report. Notification of town board resolution filed under the above paragraph, shall be attached to either such report.

(C) ADOPTION.

(1) Upon receipt of such Committee report, the County Board may adopt the Ordinance as drafted by the Planning and Zoning Committee or with amendments, or it may refuse to deny the petition recommended by the Planning and Zoning Committee in which case it shall re-refer the petition to the Committee with directions to draft an Ordinance to effectuate the petition and report the same back to the County Board which may then adopt or reject such Ordinance.

(2) In case a protest against a proposed amendment not relating only to Overlay Districts or boundaries thereof, be filed with the County Clerk at least 24 hours prior to the date of the meeting of the County Board at which the report of the Planning and Zoning Committee is to be considered, duly signed and acknowledged by the owners of 50% or more of the area proposed to be altered, or by abutting owners of over 50% of the total perimeter of the area proposed to be altered included within 300 feet of the parcel or parcels proposed to be rezoned, action on such Ordinance may be deferred until the Planning and Zoning Committee shall have had a reasonable opportunity to ascertain and report to the County Board as to the authenticity of such ownership statements. Each signer shall state the amount of area of frontage owned by him and shall include a description of the lands owned by him. If such statements are found to be true, such Ordinance shall not be adopted except by affirmative vote of three-fourths of the members of the County Board present and voting. If such statements are found to be untrue to the extent that the required frontage of areas of ownership is not present, such protest may be disregarded.

(3) If any such amendatory Ordinance except amendments relating only to Overlay Districts or boundaries thereof makes only the change sought in the petition and if the petition was not disapproved at the public hearing by the town board of the town affected in the case of an Ordinance relating to the location of district boundaries or by the town boards of a majority of the towns affected in the case of all other amendatory Ordinances it shall become effective on passage. An amendment to Overlay Districts or boundaries thereof shall not be subject to town or town board approval but shall be effective upon passage by the County Board and approval by the Department of Natural Resources. The Clerk shall record in his office the date on which such Ordinance becomes effective and he shall notify the town clerk of all towns affected by such Ordinance of such effective date and also insert such effective date in the proceeding of the County Board.

(4) Any other such amendatory Ordinance excluding amendments relating only to Overlay Districts or boundaries thereof shall within seven days after adoption by the County Board be transmitted by the County Clerk by registered mail only to the town clerk of the town in which the lands affected by such change are located and shall become effective 40 days after the adoption of the Ordinance by the County Board unless such town board, prior to such date, files a certified copy of a resolution disapproving of such Ordinance, said Ordinance shall become effective



upon the filing of the resolution of the town board approving same with the County Clerk. The County Clerk shall record in his office the date on which such Ordinance becomes effective and he shall notify town clerks of all towns affected by such Ordinance of such effective date and also make such report to the County Board, which report shall be printed in the proceedings of the County Board.

#### **7.1.6.8 ENFORCEMENT AND PENALTIES**

The provisions of this Ordinance shall be enforced under the direction of the County Board of Supervisors, through the County Planning and Zoning Committee, the Zoning Administrator and the County law enforcement officers.

(1) Any person, firm, company, corporation, agent, contractor or subcontractor who violates any terms of this Ordinance shall be subject to a forfeiture of not less than fifty (\$50) dollars, nor more than five hundred (\$500) dollars, together with the costs of any enforcement action. Each day of violation shall constitute a separate offense. The court may utilize any lawful authority to compel enforcement of this Ordinance, including contempt. Compliance therewith may be enforced by injunctive relief at the suit of the County or the owner or owners of land within the district affected by the regulations of this Ordinance.

#### **7.1.6.9 VALIDITY**

Should any Section, clauses or provision of this Ordinance be declared by the courts to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

#### **7.1.6.10 DEFINITIONS**

For the purpose of this Ordinance, certain terms and words are defined as follows:

Words used in the present tense include the future; words in the singular number include the plural number, and words in the plural number include the singular number; the word "building" includes the word "structure" and the word "shall" is mandatory and not discretionary.

***Accessory Building*** - A subordinate building or portion of the main building, the use of which is incidental to the permitted use of the main building.

***Agricultural Event Center*** - A farm based enterprise or business that provides a facility for hire for social gatherings including but not limited to meetings, parties, weddings, receptions, and barn dances. The use must promote the retention of the rural nature of the community in which it is located.

***Airport, Public*** - Any airport which complies with the definition contained in Section 114.013(3), Wisconsin Statutes, or any airport which serves or offers to serve any common carriers engaged in the air transport.

***Alley*** - A public or private way of affording only secondary means of access to the abutting property.

***Automobile Wrecking Yard*** - Any parcel on which there is located two or more inoperable and/or unlicensed self-propelled vehicles and/or associated parts thereof, which are stored in the open. A vehicle is stored in the open if it is not located within a building as defined by this ordinance. Valid license plates shall be properly displayed on the vehicle for it to be considered operable.

***Basement*** - A story partly or wholly underground.

**Bed and Breakfast Establishment** - Anyplace of lodging that provides eight or fewer rooms for rent to tourists or transients, is the owner's personal residence and is occupied by the owner at the time of rental and in which the only meal served to guests is breakfast.

**Billboard** - A large advertising sign without size limitations.

**Block** - That property abutting on one side of a street between the two nearest intersecting streets, railroad right-of-way, or natural barriers; provided, however, that where a street curves so that any two chords thereof form an angle of 120 degrees or less, measured on the lot side, such curve shall be considered as an intersecting street.

**Boarding House** - A building or premises where meals are served by pre-arrangement for definite periods of time for compensation for five or more persons, and not exceeding 20 persons, not open to transients, in contradistinction to hotels and restaurants open to transients.

**Boathouse, Private** - An accessory building on the same lot with a residence, designed for the protection or storage of boats, which shall not be used for either temporary or permanent dwelling purposes.

**Boat Liveries** - Establishments offering the rental of boats and repairs and fishing equipment.

**Building** - A structure having a roof supported by columns or walls. Each portion of a building separated by division of walls from the ground up, without openings in those walls, is a separate building for the purpose of this Ordinance.

**Building, Front of** - That side of a building which faces toward the principal road, street, highway or serving the same.

**Building envelope** - The three dimensional space within which a structure is built.

**Building Site** - The space or area of ground upon which a building is to be erected, which it will exactly cover.

**Camp** - A premises, including temporary and permanent structures, which is operated as an overnight living quarters where both food and lodging or facilities for food and lodging are provided for children or adults or both children and adults for a planned program of recreation or education, and which is offered free of charge or for a payment of a fee by a person or by the State or a local unit of government. Camp does not include any of the following: (a) An overnight planned program of recreation or education for adults or families at an establishment holding a current campground, hotel, motel or restaurant permit. (b) An overnight planned program, recreation or education for less than four consecutive nights and without permanent facilities for food and lodging. (c) An overnight planned program for credit at an accredited academic institution of higher education. A tournament, competition, visitation, recruitment, campus conference or professional sports team training camp. Recreational and educational camp has the meaning prescribed for camp.

**Campground** - Any parcel or tract of land designed, maintained, intended or used for the purpose of providing a location for overnight camping or for providing accommodations for overnight use of camping units which is open to the public, regardless of whether or not a fee is charged. Three or more camping units shall constitute a campground.

**Camping Unit** - Any portable unit, not more than 400 square feet in area, used as a shelter, including, but not limited, to a camping trailer, motor home, bus, van, pickup truck camper, or mobile recreational vehicle.

**Club** - An association of persons for some common purpose but not including groups organized primarily to render a service which is customarily carried on as a business.

**Commercial Recreational Establishment** - Any activity providing recreational use of a property in exchange for money or other considerations.

**Commercial Stable** - The use of land with related buildings or structures for the commercial breeding, rearing or boarding of more than four horses.

**Commercial Vehicle** - Any vehicle used for commercial purposes that is five ton rated capacity or larger.

**Conservation Standards** - Guidelines and specifications for soil and water conservation practices and management enumerated in the Technical Guide prepared by the USDA, Natural Resource Conservation Service, for Portage County adopted by the County Soil and Water Conservation District Supervisors, and containing suitable alternatives for the use and treatment of land based upon its capabilities from which the landowner selects that alternative which best meets their needs in developing their Soil and Water Conservation Plan.

**Contractor Storage Yard** - A place where heavy equipment, vehicles, construction equipment or any material commonly used in the erection of any structure is stored or accumulated. Projects with active permits involving the materials on site shall not be considered a contractor's storage yard.

**Construction Site Erosion Plan** - Plan developed and implemented to insure that during construction and times of soil disturbance, no sediments are delivered to surface water, wetland/hydric soils, and/or adjacent parcels until vegetation has been successfully established and/or a Stormwater Control Plan is implemented.

**Dangerous or Wild Animal** - means and includes any animal which is not naturally tame or which, because of its size, vicious nature, or other characteristic could constitute a danger to human life or property if the animal is not contained on its premises.

**Development Regulations** - The part of a zoning ordinance that applies to elements including, but not limited to, setback, height, lot coverage, and yard requirement.

**District** - A section or sections of Portage County for which the regulations governing the use of land and buildings are uniform.

**Dry Sail Marina** - A marina located within one mile of a navigable body of water for the temporary storage and launch of ready to sail boats.

**Dwelling, Multiple Family** - A building or portion there-of used or intended to be used by two or more families living independently of each other.

**Dwelling, Single Family** - A detached building designed for, and occupied exclusively by, one family.

**Dwelling, Two Family** - A detached building designed for, an occupied exclusively by, two families.

**Family** - Any number of individuals related by blood, adoption, marriage, or not to exceed five persons not so related, living together on the premises as a single housekeeping unit, including any domestic servants.

**Fall Zone** – Area that the tower would fall into that is equal to or greater than the height of the tower. Height of a WEGT is measured from the ground to the tip of the blade when the blade is at its highest point.

**Farm** - An area of land devoted to the production of field or truck crops, livestock or livestock products, which constitute the major use of such property. This includes fur farms in which the animals are housed and fed under artificial conditions.

**Farm Residence** - A single-family dwelling that is occupied by any of the following:

1. An owner, operator or employee of the farm.
2. A parent or child of an owner or operator of the farm.

**Farm Animal** - includes but not limited to, poultry, fowl, cattle, sheep, swine, goats, venison, horses, ungulates, fish, and/or animals associated with a farming operation.

**Flood Fringe** - 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.

**Floodplain** - Land which has been or maybe covered by flood water during the regional flood. It includes the floodway and flood fringe, and may include other designated floodplain areas for regulatory purposes.

**Flood Protection Elevation** - An elevation of two feet of freeboard above the water surface profile elevation designated for the regional flood.

**Floodway** - The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.

**Floor Area** - The area within the outer lines of the exterior walls of a building, at the top of the foundation or basement wall; provided that the floor area of a dwelling shall not include space not usable for living quarters, such as attics, utility or unfinished basement rooms, garages, breeze ways and unenclosed porches, or terraces.

**Flowage** - The reach of a navigable watercourse that is outside its normal channel because of a man-made obstruction.

**Fur Farm** - Any property comprising land or buildings or both, used for the purpose of raising or harboring fur bearing animals including those defined in Section 29.01(3)(c), Wisconsin Statutes, and also including chinchillas and other fur bearing animals, if any, whether the animals are kept for breeding or slaughtering or pelting purposes.

**Garage, Public** - A building or portion thereof used for the housing or care of motor vehicles for the general public or where any such vehicles are equipped or repaired for remuneration or kept for hire or sale.

**Garage, Private** - An accessory building or accessory portion of the main building, used or designed or intended to be used for the storage of private motor vehicles.

**Highway** - See "Street".

**Highway, Intersecting** - A highway or any political jurisdiction which forms one or more legs of an interchange with another highway and to which access is only partially controlled.

**Hotel** - A place where sleeping accommodations are offered for pay to transients, in 5 or more rooms, and all related rooms, buildings and areas.

**Kennel** - The use of land with related buildings or structures for the commercial breeding, rearing or boarding of more than four dogs over the age of eight months of age.

**Less Restricted** - The use of land or building first permitted in a certain District is less restricted than other uses first permitted in Districts appearing earlier in the numerical order in which such Districts are numbers in this Ordinance.

**Lodging Houses** - A building other than a hotel, where lodging is provided for compensation, for five or more persons not members of a family.

**Lot** - A parcel of land occupied or designed to be occupied by one building and its accessory buildings or uses, including the open spaces required by this Ordinance, and abutting on a public street or other officially approved means of access. A lot may be a parcel designated in a plat or described in a conveyance recorded in the Office of the Register of Deeds, or any part of a larger parcel when such part complies with the requirements of this Ordinance as to width and area for the District in which it is located.

**Lot, Corner** - A lot located in the intersection of two streets, any two corners of which have an angle of 120 degrees or less, or is bounded by a curved street, any two chords of which, on the inside of a curve, from an angle of 120 degrees or less.

**Lot, Interior** - A lot which is not a corner lot.

**Lot Lines** - The lines bounding a lot as defined herein.

**Lot of Record** - Any validly recorded lot which at the time of its recording complied with all applicable laws, Ordinances, and regulations.

**Lot Width** - For purposes of this Ordinance, the width of a lot shall be the shortest distance between the side lines at the setback line.

**Manufactured Home** - A structure transportable in one or more sections, which in the traveling mode is eight (8) body feet or more in width or forty (40) body feet or more in length, or when erected on-site is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein and which complies with all manufactured home construction and safety standards established under 42 U.S.C. 5401-5426, which became effective June 15, 1976.

**Marina** - A facility located on a body of water which provides docking, storage, maintenance and other facilities for boats.

**Mobile Home** - A vehicle manufactured or assembled before June 15, 1976, designed to be towed as a single unit or in sections upon a highway by a motor vehicle and equipped and used, or intended to be used, primarily for human habitation, with walls of rigid uncollapsible construction, which has an overall length in excess of 45 feet.

**Mobile Home Park** - An area of premises on which is provided the required space for the accommodation of two or more trailers, mobile homes, and/or manufactured homes, together with necessary accessory buildings, driveways, walks, screening and other required adjuncts.

**More Restricted** - The use of land or building first permitted in a certain District is more restricted than other uses first permitted in districts appearing later in the numerical order in which such districts are numbered in this Ordinance.

**Motel** - A hotel that furnishes on-premise parking for motor vehicles of guests as part of the room charge, without extra cost, and that is identified as a "motel" rather than a "hotel" at the request of the operator.

**Nonconforming Building or Structure** - a building or structure that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance.

**Nonconforming Use** - A use of a building or premises that does not conform with the regulations of the District in which it is situated.

**Ordinary High Water Mark (OHWM)** - 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.

**Park, Amusement** - An area, publicly or privately owned, containing amusement and recreation facilities and devices, whether operated for profit or not.

**Park, Public** - An area owned by the County or municipality within the County, operated for the convenience and recreation of the public, and containing such facilities as the owning municipality shall see fit.

**Parking Lot** - A lot where automobiles are parked or stored temporarily, but not including the wrecking of automobiles or other vehicles or storage for the purpose of repair or wrecking.

**Person** - Except when otherwise indicated by the context, the word "person" shall include the plural, or a company, firm, corporation or partnership.

**Premises** - A house, building and its lands.

**Professional Office** - The office of a doctor, practitioner, dentist, minister, architect, landscape architect, professional engineer, lawyer, author, musician, or other recognized professional.

**Protected Shoreland Area** - All shorelands of navigable waters in Portage County outside of incorporated cities and villages which are less than 1,000 feet from the normal high water elevation of lakes, ponds, or flowages or less

than 300 feet from the normal high water elevation or to the landward side of a floodplain or navigable reaches of rivers or streams, whichever is greater.

**Recreation Camp** - An area containing one or more permanent buildings used occasionally or periodically for the accommodation of members of associations or groups for recreational purposes.

**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 Regional Flood Elevation (RFE) is equivalent to the Base Flood Elevation (BFE).

**Residential Dwelling** - Any building, structure, or part of the building or structure, that is used or intended to be used as a home, residence, or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

**Residential Lot** - Any lot that has a residence and the principle use of the lot is for the residence, regardless of the underlying zoning district.

**Riding Stable** - A building or premises used for the rent or lease of horses or animals for riding.

**Roadside Stand** - A structure having a ground area of not more than 300 square feet, not permanently fixed to the ground, readily removable in its entirety, not fully enclosed and to be used solely for the sale of farm products on the premises (or adjoining premises). There shall not be more than one such roadside stand on any single premise.

**Salvage Yard** - Means a site or facility at which salvageable materials are stored or sold or at which wrecking, dismantling or demolition of salvageable materials are conducted, including automobile junkyards, scrap metal salvage yards and similar uses, except commercial recycling operations. Two or more inoperative vehicles or pieces of equipment stored outside of a completely enclosed building shall constitute a salvage yard.

**Service Station** - Any building, structure, premises or other place used for the dispensing, sale or offering for sale of any motor fuel or oil, having pumps and storage tanks; also where battery, tire and similar services are rendered, but not including buildings or premises where such business is incidental to the conduct of a public garage used for the repair or storage of motor vehicles.

**Setback Lines** - Lines established adjacent to highways for the purpose of defining limits within which no building or structure or any part thereof shall be erected or permanently maintained, except as shown herein. "Within a setback line" means between the setback line and the highway right-of-way.

**Short-term Rental** - A residential dwelling that is offered for rent for a fee and for fewer than 29 consecutive days. A short-term rental may include a tourist rooming house.

**Sign** - Anything erected, hung, suspended, painted or attached to any structure, carrying words, letters, figures, phrases, sentences, names, designs, trade names or trade makers of any other device placed so as to be visible from a street or highway and calling attention to a business, trade, profession, commodity, product, person, firm or corporation.

**Sign Directory** - A sign displaying the name of a person, community, home, farm, area or locality of interest, business or a kind of business or service conducted at a specific location, but not any general brands, products or services whether related or unrelated to such specific location. Such a sign may also display necessary brief directions, including the distance to the location to which it refers.

**Slaughter House** - Any building or premises used for the killing or dressing of rabbits, poultry, fowl, fish, cattle, sheep, swine, goats, venison, horses, or other ungulates, and the storage, freezing and curing of meat and preparation of meat products.

**Soil Disturbance** – Fill, grading, and/or extraction covering 1,000 square feet or more that is not an agricultural related practice.

**Solid Waste Disposal Site (Residential, Recreation, and Conservancy Zoning Districts)** – Outside storage for any used, secondhand or refuse material, including but not limited to garbage, rubbish, brush piles, ashes, street refuse including street sweepings, machinery and/or engines not in operating condition (including motor vehicles), industrial waste, demolition waste, construction waste material, excavation waste or contaminated soils not in connection with a permitted use. For these Zoning Districts, a site shall be considered a Solid Waste Disposal Site if this storage occupies in total area:

- For lots 1 acre or less: 100 sq. ft. or more
- For lots greater than 1 acre but less than 2 acres: 150 sq. ft. or more
- For lots greater than 2 acres but less than 3 acres: 200 sq. ft. or more
- For lots greater than 3 acres: 250 sq. ft. or more

A proposed or intended use by the owner of the used or secondhand materials does not constitute an exception to this definition.

**Solid Waste Disposal Site (Agricultural, Commercial and Industrial Zoning Districts)** – Outside storage for any used, secondhand or refuse material, including but not limited to garbage, rubbish, ashes, street refuse including street sweepings, industrial waste, demolition waste, construction waste material, excavation waste or contaminated soils not in connection with a permitted use, etc. For these Zoning Districts, a site shall be considered a Solid Waste Disposal Site if this storage occupies in total area:

- For parcels 5 acres or less: 500 sq. ft. or more (unless in conjunction with a farm operation)
- Parcels larger than 5 acres are subject to the above language if the material(s) in question is not being used or intended to be used for agricultural production.

**Special Exception** - The use of property, including the use and location of buildings, the size of lots and the dimension of required yards, otherwise not allowable under the terms of this Ordinance, which is permissible by reason of special provision of this Ordinance, or for which a special permit may be issued by the Board of Adjustment, under conditions specified in this Ordinance.

**Stormwater Control Plan** - Plan designed and implemented to control stormwater for a 25 year storm event. Stormwater Control Plans shall be designed to capture and/or control all runoff from proposed impervious surfaces. The 25 year storm event is based on standards found in the USDA-NRCS Engineer Field Handbook. Stormwater Control Plans must utilize at least six inches of best available vegetated topsoil. The Stormwater Control Plan



standards may be reduced through the use of a restored enhanced vegetative buffer zone subject to approval by Planning and Zoning Staff.

**Story** - The vertical distance between the surface of any floor and the floor next above it, or if there be no floor above it, the space between such floor and the ceiling next above it.

**Story, Half** - A story under any roof except a flat roof, the wall plates of which on at least two opposite exterior walls are not more than four feet above the floor of such story.

**Street** - A public or private thoroughfare which affords a primary means of access to abutting property. A driveway to a farm building shall not be considered a street for the purpose of determining setback, even though such driveway may have been designated a town road for the purpose of maintenance.

**Street Line** - The dividing line between a street and the abutting lot.

**Structure** - Any man-made object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, which includes, but is not limited to, such objects as roofed and walled buildings, gas or liquid storage tanks, bridges dams and culverts.

**Structural Alterations** - Any change in the supporting members of a structure such as bearing walls, columns, beams or girders, footings and piles.

**Substandard Lot** - A legally created lot or parcel that met any applicable lot size requirements when it was created, but does not meet current lot size requirements.

**Temporary Structure** - A movable structure not designed for human occupancy which may be used for the protection of goods or chattels.

**Tourist Rooming House** - Lodging places and tourist cabins and cottages, other than hotels and motels and campgrounds, in which sleeping accommodations are offered for pay to tourists or transients. It does not include private boarding or rooming houses not accommodating tourists or transients, or bed and breakfast establishments.

**Tourist or Transient** - A person who travels to a location away from his or her permanent address for a short period of time for vacation, pleasure, recreation, culture, business, or employment.

**Trailer** - Any vehicle, house car, camp car, or any portable or mobile vehicle on wheels, skids, rollers or blocks, either self-propelled or propelled by any other means, which is used or originally designed to be used for residential, living or sleeping purposes.

**Trailer Camp** - See "Mobile Home Park".

**Transient** - See "Tourist or Transient".

**Unnecessary Hardship** - An unusual or extreme decrease in the adaptability of the property to the uses permitted in the District which is caused by facts, such as terrain or soil conditions, uniquely applicable to the particular pieces of property as distinguished from those applicable to most or all property in the District.

**Variance** - A departure from the terms of this Ordinance as applied to a specific building, structure or parcel of land, which the Board of Adjustment may permit, contrary to the regulations of this Ordinance for the District in which such building, structure or parcel of land is located, when the Board finds that literal application of such regulations will effect a limitation of the use of the property which does not generally apply to other properties in the same District, and for which there is no compensating gain to the public health, safety or welfare.

**Vision Clearance** - An unoccupied triangular space at the intersection of highways or streets with other highways, streets or roads, or at the intersection of highways or streets with railroads. Such vision clearance triangle shall be bounded by the intersecting highway, street, road or railroad right-of-way lines and a setback line connecting points located on such right-of-way lines by measurement from their intersection as specified in this Ordinance.

**Watercourse** - A natural channel or basin of or for water, such as a stream, creek, river, lake, pond, flowage or any natural or artificial canal or ditch for the conveyance of water.

**Water Line** - The shortest straight line that lies wholly within a lake or stream lot, provided that not less than 75% of the total length of such line shall be on, or on the landward side of, the ordinary high-water mark of such lake or stream.

**Wetlands** - Those areas where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

**Yard** - An open space on a lot, on which a building is situated, unoccupied except as otherwise provided in this Ordinance, open and unprotected from the ground to the sky by structures.

**Yard, Front** - A yard extending across the full width of the lot and measured between the front line of the lot and the front line of the building.

**Yard, Rear** - A yard extending from the rear line of the main building to the rear lot line for the entire width of the lot, excluding such projections as are permitted hereinafter.

**Yard, Side** - A yard on each side of the main building extending from the side wall of the building to the side lot line, and from the front yard to the rear yard. When an accessory building is constructed as part of the main building or constructed on one side of the main building, the side yard requirements shall be the same for the accessory building as required for the main building.

#### **7.1.6.11 WHEN EFFECTIVE**

This Ordinance and any amendments thereto shall be in effect in all protected shoreland areas of Portage County outside of incorporated cities and villages upon passage by the County Board and shall be in effect in the remaining areas of any town in Portage County when approved by the town board and when a certified copy of the approving resolution is filed with the County Clerk. All rezoning Ordinances or parts of Ordinances in conflict with provisions of this Ordinance are hereby repealed.

The Portage County interim Zoning Ordinance, enacted November 13, 1964 and as amended, shall remain in effect in each Town which has ratified the same for a period of one year following passage of this comprehensive Zoning

Ordinance by the County Board or until such comprehensive Zoning Ordinance is approved by the board of said town, whichever period is shorter. (Section 59.69(2)(e) of Wisconsin Statutes, Chapter 343, Laws of 1965).

Passed November 14, 1966. Resolution No. 58  
Revised July 31, 1995,  
Revised June 28, 1999  
Revised May 1, 2000  
Revised January 16, 2007  
Revised June 17, 2008  
Revised May 19, 2009  
Revised July 20, 2010  
Revised Resolution No. 95-2010-2012 on 12-21-10  
Revised Resolution No. 136-2010-2012 Amended on 3-15-11  
Revised Resolution No. 225-2012-2012 on 11-4-13  
Revised Resolution No. 133-2014-2016 on 8-18-15  
Revised Resolution No. 200-2014-2016 on 2-16-16  
Revised Resolution No. 126-2016-2018 on 5-16-2017  
Revised by Resolution No. 26-2018-2020 on 8-27-2018  
Revised by Resolution No. 198-2020-2022 on 2-15-2022

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## **7.2 WELLHEAD PROTECTION ORDINANCE**

### **7.2.1 PURPOSE AND AUTHORITY**

**Purpose.** The residents of Portage County, whether served by private wells or municipal supplies, depend exclusively on groundwater for a safe drinking water supply. Certain land use practices and activities can seriously threaten or degrade groundwater quality. The purpose of this Wellhead Protection Ordinance is to institute land use regulations and restrictions to protect the municipal water supplies of the Villages of Amherst, Junction City, Plover and Whiting, and the City of Stevens Point, and to promote the public health, safety and general welfare of the residents of Portage County.

**Authority.** Statutory authority of the County to enact these regulations was established by the Wisconsin Legislature in 1983, Wisconsin Act 410 (effective May 11, 1984), which specifically added groundwater protection to the statutory authorization for municipal planning and zoning to protect public health, safety and welfare. This Ordinance is adopted pursuant to the authorization in s. 59.69 Wisconsin State Statutes.

### **7.2.2 APPLICATION OF REGULATIONS**

The regulations specified in this Wellhead Protection Ordinance shall apply to the unincorporated areas of Portage County that lie within the recharge areas for municipal water supply wells as a Groundwater Protection Overlay District and are in addition to the requirements in the underlying zoning district. If there is a conflict between this Ordinance and the Zoning Ordinance, the more restrictive provision shall apply.

The Groundwater Protection Overlay District is divided into three districts; District A, District B, and District C. All district boundaries are intended to end or begin at road centerlines, railways, surface water features, or tax parcel lines. The boundaries of the districts are shown upon maps of Portage County, being designated as the “Groundwater Protection Districts for Municipal Recharge Areas in Portage County” as adopted or amended by the County Board.

### **7.2.3 DEFINITIONS**

For the purpose of this Ordinance the definitions contained in 7.1.6.10 are hereby incorporated by reference.

**Animal Confinement Facilities** - Locations of confinement of livestock at a density exceeding three animal units per acre and more than 500 animal units in total.

**Animal Units** - A unit of measure used to determine the total number of single animal types or combination of animal types, as specified in s. NR 243.11, that are at an animal feeding operation.

**Aquifer** - A saturated, permeable geologic formation that contains and will yield significant quantities of water.

**Cone of Depression** - The area around a municipal well, in which the water level has been lowered at least one tenth of a foot by pumping the well.

**Farm Plan** - A written document which details the conduct and management of agricultural activities on a farm utilizing best management practices and applicable Federal, State, and local standards based on the potential contamination of groundwater. A farm plan must be approved by the Land and Water Conservation section of the Planning and Zoning Department.

**Hazardous Chemical** - Chemicals identified as hazardous by CFR 40 Part 302.

**Ten Year Time of Travel (TOT)** - The Ten Year TOT is the recharge area upgradient of the cone of depression, the outer boundary of which it is determined or estimated that groundwater will take ten years to reach a pumping well.

**Twenty Year Time of Travel (TOT)** - The Twenty Year TOT is the recharge area upgradient of the cone of depression, the outer boundary of which is determined or estimated that groundwater will take twenty years to reach a pumping well.

**POWTS** - Private On-Site Wastewater Treatment System or POWTS, has the meaning given under s. 145.01(12), Wis. Stats.

**Toxic** - When ingested or absorbed, is harmful or fatal to living organisms.

**Recharge Area** - Area in which water reaches the zone of saturation by surface infiltration and encompasses all areas or features that supply groundwater recharge to a well.

**Wellfield** - A piece of land used primarily for the purpose of locating wells to supply a municipal water system.

### **7.2.4 GROUNDWATER PROTECTION OVERLAY DISTRICT A**

#### **7.2.4.1 INTENT**

District A of the groundwater protection overlay district is the area of land within the cone of depression as shown on the groundwater protection overlay district maps. These lands are subject to the most stringent land use and development restrictions because of close proximity to the wells and therefore greatest threat of contamination.

#### **7.2.4.2 PERMITTED USES**

The following uses are permitted uses within Groundwater Protection Overlay District A, provided that such uses are subject to minimum separation distances of chapter NR 811.12(5)(d) Wisconsin Administrative Code. Uses not

listed here or in Section 7.2.4.3 are considered prohibited uses unless a determination of similarity to a permitted or special exception use (based on potential for groundwater contamination) is made by the Zoning Administrator.

- (1) Parks and playgrounds, provided there are no POWTS dispersal components or fuel storage tank facilities
- (2) Wildlife areas, natural and woodland areas
- (3) Nonmotorized trails, such as biking, skiing, nature and fitness trails
- (4) Sewered residential developments subject to conditions in Section 7.2.5.3
- (5) Unsewered (single family) residential development only on existing lots of record on the effective date of this Ordinance and subject to the conditions in Section 7.2.5.3
- (6) Agricultural activities, except those listed as prohibited, subject to conditions in Section 7.2.5.3
- (7) Above ground liquid propane tanks, 1000 gallons or less, accessory to a permitted or special exception use

#### **7.2.4.3 SPECIAL EXCEPTIONS**

The following uses may be allowed as special exceptions within Groundwater Protection Overlay District A, provided that such uses are subject to minimum separation distances of chapter NR 811.12(5)(d) Wisconsin Administrative Code.

- (1) Commercial uses served by municipal sanitary sewer except those listed as prohibited in Section 7.2.4.4 and subject to conditions in Section 7.2.5.3

#### **7.2.4.4 PROHIBITED USES**

The following uses are prohibited uses within the Groundwater Protection Overlay District A. These uses are prohibited based on the high probability that the activities routinely associated with these uses (storage, use, and handling of potential pollutants) will cause groundwater contamination.

- (1) Above or below ground hydrocarbon, petroleum, or hazardous chemical bulk storage tanks
- (2) Animal confinement facilities
- (3) Any manufacturing or industrial use
- (4) Any commercial use where hazardous chemicals are an integral part of such use including but not limited to:
  - a. Bulk fertilizer and/or pesticide facilities
  - b. Dry cleaning businesses
  - c. Electroplating facilities
  - d. Exterminating businesses
  - e. Gas stations
  - f. Paint and coating manufacturing
  - g. Printing and duplicating businesses
  - h. Radioactive or toxic materials storage and waste facilities
- (5) Asphalt and concrete products manufacturing
- (6) Automobile, truck, agricultural implement and equipment, municipal, small engine and other vehicle repair of a commercial nature
- (7) Bus or truck terminals
- (8) Cemeteries
- (9) Junk yards or auto salvage yards
- (10) Landfills or waste disposal facilities
- (11) Nonmetallic mining
- (12) Manure and animal waste storage facilities
- (13) Recycling facilities
- (14) Salt or deicing material storage
- (15) Septage and/or sewage sludge spreading
- (16) Slaughterhouses
- (17) Spray wastewater facilities

(18) Wastewater treatment or disposal facilities that are commercial, industrial, or municipal

## **7.2.5 GROUNDWATER PROTECTION OVERLAY DISTRICT B**

### **7.2.5.1 INTENT**

District B of the groundwater protection overlay district is the area of land which contributes water to the municipal well starting at the line which delineates the cone of depression and ends at the line delineating the ten year time of travel. Land use regulations within Groundwater Protection Overlay District B are less restrictive than in Overlay District A because of longer flow times and a greater potential for remediation, dilution and attenuation. Agricultural Best Management Practices (BMP) minimizing use of pesticides and fertilizers are strongly encouraged.

### **7.2.5.2 PERMITTED USES**

The following uses are permitted within Groundwater Protection Overlay District B, provided that such uses are subject to minimum separation distances of chapter NR 811.12(5)(d) Wisconsin Administrative Code. Uses not listed here or in Section 7.2.5.4 are considered prohibited uses unless a determination of similarity to a permitted or special exception use (based on potential for groundwater contamination) is made by the Zoning Administrator.

- (1) All uses listed as permitted uses in Groundwater Protection Overlay District A
- (2) Commercial, manufacturing and/or industrial uses served by municipal sanitary sewer, except those listed as prohibited uses
- (3) Unsewered (single family) residential uses, subject to the conditions in Section 7.2.5.3

### **7.2.5.3 DESIGN AND PERFORMANCE STANDARDS**

The following standards and requirements shall apply to all uses permitted within Groundwater Protection Overlay District B.

- (1) Minimum lot size for unsewered uses shall be two acres. Lot sizes less than 2 acres may be allowed for any one of the following:
  - a. Existing lots of record on the effective date of this Ordinance
  - b. Developments which will be served by municipal sewer within five years of the approval of the development
  - c. Developments utilizing the "Open Space Design Option" of the "Portage County Subdivision Ordinance"

Only lots zoned Single Family Residence, One and Two Family Residence, and Waterfront Residence Districts as listed in 7.1 Portage County Ordinances can be smaller than two acres. The number of units allowed shall be based on a net density calculation using a conventional subdivision design as a two acre subdivision but provided that an overall density of one unit per two acres is not exceeded.
- (2) Nitrogen applications on manicured lawn or grass may not exceed rates described in UW Extension publication A2303.
- (3) Natural vegetative covers, not requiring the use of pesticides or fertilizers after initial establishment are encouraged as an alternative to manicured lawn or grass.
- (4) All petroleum product storage tanks shall provide leak proof containment not less than 125% of the tank volume, except basement heating fuel storage tanks.
- (5) All storm drainage from commercial and industrial sites shall be retained on site or discharged to a municipally operated storm drain. If retained on site, storm water shall be discharged to settling ponds where it will percolate through at least six inches of topsoil with vegetation. Use of drywells or other subsurface drains for storm water drainage is prohibited.
- (6) Pesticide and fertilizer storage is permitted at the location of retail sales of these products, provided that the products are delivered in retail quantity containers and no repackaging and/or mixing is done on site.
- (7) Pesticide and fertilizer storage is permitted for on farm use by the owner or farm operator.

- (8) Bulk liquid pesticide/fertilizer storage containers exceeding 55 gallons are permitted providing the containers are located within a leakproof containment area not less than 125% of the volume of the largest container. ICC approved transport containers do not require containment.
- (9) Salt storage must conform to standards in Chapter Trans. 277, Wisconsin Administrative Code.
- (10) Fertilizer and animal waste shall not be applied at rates which exceed the nutrient requirements of the crops grown on the applicant site as listed in the University of Wisconsin Extension publication A2809, Nutrient Application Guidelines for Field, Vegetable, and Fruit Crops in Wisconsin.
- (11) Conduct and management of agricultural activities shall be subject to a farm plan (based on the potential for groundwater contamination) utilizing best management practices and applicable federal, state, and local standards to be approved by the Land and Water Conservation section.

#### **7.2.5.4 SPECIAL EXCEPTIONS**

The following uses may be allowed as special exceptions within Groundwater Protection Overlay District B, provided that such uses are subject to minimum separation distances of chapter NR 811.12(5)(d) Wisconsin Administrative Code.

- (1) Fertilizer storage and use associated with retail sales outlets
- (2) Cemeteries
- (3) Salt and deicing storage, including sand/salt combinations
- (4) Recycling facilities
- (5) Bus or Truck Terminals
- (6) Commercial uses which do not require municipal sanitary sewer or POWTS including, but not limited to, mini-warehousing
- (7) Gas Stations

#### **7.2.5.5 PROHIBITED USES**

The following uses are prohibited uses within Groundwater Protection Overlay District B except as provided in Sections 7.2.5.3 or 7.2.5.4. These uses are prohibited based on the high probability that activities routinely associated with these uses (storage, use, and handling of potential pollutants) will cause groundwater contamination.

- (1) Below ground hydrocarbon, petroleum, or hazardous chemical bulk storage tank
- (2) Animal confinement facilities
- (3) Any unsewered commercial, manufacturing and/or industrial use
- (4) Any commercial, manufacturing, or industrial use where hazardous chemicals are an integral part of such use including but not limited to:
  - a. Bulk fertilizer and/or pesticide facilities
  - b. Dry cleaning businesses
  - c. Electroplating facilities
  - d. Exterminating businesses
  - e. Paint and coating manufacturing
  - f. Printing and duplicating businesses
  - g. Radioactive or toxic materials storage and waste facilities
- (5) Asphalt and concrete products manufacturing
- (6) Automobile, truck, agricultural implement and equipment, municipal, small engine, and other vehicle repair of a commercial nature
- (7) Junk yards or auto salvage yards
- (8) Landfills or waste disposal facilities
- (9) Nonmetallic mining
- (10) Septage and/or Sewage sludge spreading
- (11) Slaughterhouses

- (12) Spray wastewater facilities
- (13) Wastewater treatment or disposal facilities that are commercial, industrial, or municipal

## **7.2.6 GROUNDWATER PROTECTION OVERLAY DISTRICT C**

### **7.2.6.1 INTENT**

District C of the groundwater protection overlay district is the area of land which contributes water to the municipal well starting at the line which delineates the ten year time of travel and ends at the line delineating the twenty year time of travel. Management measures in this District are the least restrictive of the recharge districts. Agricultural Best Management Practices (BMP) minimizing use of pesticides and fertilizers are strongly encouraged.

### **7.2.6.2 PERMITTED USES**

The following uses are permitted within Groundwater Protection Overlay District C, provided that such uses are subject to minimum separation distances of chapter NR 8.11.12(5)(d) Wisconsin Administrative Code. Uses not listed here or in Section 7.2.6.3 are considered prohibited uses unless a determination of similarity to a permitted or special exception use (based on potential for groundwater contamination) is made by the Zoning Administrator.

- (1) All uses permitted in Groundwater Protection Overlay Districts A and B.
- (2) Salt and deicing storage, including sand salt combinations.
- (3) Aboveground hydrocarbon and petroleum product storage tanks accessory to a permitted use or special exception use.
- (4) Unsewered residential uses, subject to the conditions in Section 7.2.5.3.

### **7.2.6.3 SPECIAL EXCEPTIONS**

The following uses may be allowed as special exceptions within Groundwater Protection Overlay District C, provided that such uses are subject to minimum separation distances of chapter NR 811.12(5)(d) Wisconsin Administrative Code.

- (1) Below ground hydrocarbon, petroleum, or hazardous chemical bulk storage tank
- (2) Animal confinement facilities
- (3) Any unsewered commercial, manufacturing and/or industrial use
- (4) Any commercial, manufacturing, or industrial use where hazardous chemicals are an integral part of such use including but not limited to:
  - a. Bulk fertilizer and/or pesticide facilities
  - b. Dry cleaning businesses
  - c. Electroplating facilities
  - d. Exterminating businesses
  - e. Gas stations
  - f. Paint and coating manufacturing
  - g. Printing and duplicating businesses
- (5) Asphalt and concrete products manufacturing
- (6) Automobile, truck, agricultural implement and equipment, municipal, small engine and other vehicle repair of a commercial nature
- (7) Bus or truck terminals
- (8) Cemeteries
- (9) Junk yards or auto salvage yards
- (10) Landfills or waste disposal facilities
- (11) Nonmetallic mining
- (12) Recycling facilities
- (13) Septage and/or sewage sludge spreading
- (14) Slaughterhouses



- (15) Spray wastewater facilities
- (16) Wastewater treatment or disposal facilities that are commercial, industrial, or municipal

#### **7.2.6.4 DESIGN AND PERFORMANCE STANDARDS**

The following standards and requirements shall apply to all uses permitted within Groundwater Protection Overlay District C.

- (1) Pesticide and fertilizer storage is permitted at the location of retail sales of these products, provided that the products are delivered in retail quantity containers and no repackaging and/or mixing is done on site.
- (2) Bulk liquid pesticide/fertilizer storage containers exceeding 55 gallons are permitted providing the containers are located within a leak proof containment area not less than 125% of the volume of the largest container. ICC approved transport containers do not require containment.
- (3) All storm drainage from commercial and industrial sites shall be retained on site or discharged to a municipally operated storm drain. If retained on site, storm water shall be discharged to settling ponds where it will percolate through at least six inches of topsoil with vegetation. Use of drywells or other subsurface drains for stormwater drainage is prohibited.
- (4) Hazardous/toxic materials storage and use. Site plan review required, including description of all materials, operational practices to prevent groundwater contamination, contingency plan for accidental discharges, and a proposed disposal plan for anticipated wastes.
- (5) Salt storage must conform to standards in Chapter Trans. 277, Wisconsin Administrative Code.
- (6) Minimum lot size for unsewered lots shall be two acres, except as provided in 7.2.5.3(1).
- (7) Fertilizer, animal waste, septage, and sewage sludge shall not be applied at rates which exceed the nutrient requirements of the crops grown on the application site as listed in the University of Wisconsin Extension publication A2809, Nutrient Application Guidelines for Field, Vegetable, and Fruit Crops in Wisconsin.
- (8) Pesticide and fertilizer storage is permitted for on-farm use by the owner or operator.
- (9) Conduct and management of agricultural activities shall be subject to a farm plan (based on the potential for groundwater contamination) utilizing best management practices and applicable federal, state, and local standards to be approved by the Land and Water Conservation section.

#### **7.2.6.5 PROHIBITED USES**

The following uses are prohibited in this district:

- (1) Hazardous/toxic waste facilities
- (2) Radioactive waste facilities

#### **7.2.7 ADMINISTRATION**

##### **7.2.7.1 DETERMINATIONS**

The boundaries of the Groundwater Protection Overlay Districts shall be as shown on the maps titled Groundwater Protection Districts for Municipal Recharge Areas in Portage County, as adopted or amended by the County Board. Boundary determinations for specific properties shall be made by the Zoning Administrator.

##### **7.2.7.2 VARIANCES, SPECIAL EXCEPTIONS AND ADMINISTRATIVE APPEALS**

Variations, special exceptions and administrative appeals shall be made to the Board of Adjustment as provided in Section 7.1.6.5 Portage County Ordinance.

##### **7.2.7.3 CHANGES AND AMENDMENTS**

The Board of Supervisors of Portage County may from time to time amend, supplement or change by Ordinance the boundaries of Districts or regulations herein as provided in Section 7.1.6.7 Portage County Ordinance.

#### **7.2.7.4 NONCONFORMING USES AND STRUCTURES**

Structures or uses of premises, which existed lawfully at the time of enactment of this Ordinance, shall be regulated as provided in Section 7.1.6.1(A)(6) Portage County Ordinance.

Any use listed as a prohibited use within a Groundwater Protection Overlay District on the Effective date of this Ordinance will be allowed to upgrade the facilities to facilitate or enhance groundwater protection. Plans for the proposed upgrade must be approved, and the appropriate permit issued by the Planning and Zoning Department, prior to any work being initiated.

#### **7.2.7.5 ENFORCEMENT AND PENALTIES**

The provisions of this Ordinance shall be enforced as provided in Section 7.1.6.8 Portage County Ordinance.

#### **7.2.7.6 SEVERABILITY**

If any portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

Adopted February 2, 1993

Revised by Resolution No. 174-2020-2022 Amended on 11-9-2021

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### **7.3 WIRELESS TELECOMMUNICATION FACILITY ORDINANCE**

#### **7.3.1 PURPOSE**

The purpose and intent of the regulations and requirements of Section 7.3 ("Section") are to:

- A. Facilitate the provision of wireless communication facilities through careful siting and design standards.
- B. Avoid potential damage to adjacent properties from the construction and operation of wireless communication facilities through structural standards and setback requirements.
- C. Provide a process for obtaining necessary permits for telecommunications facilities, while at the same time protecting the interests of Portage County citizens.
- D. Encourage the use of alternative support structures and collocation of new antennas on existing telecommunication towers thereby maximizing the use of existing and approved towers, buildings or structures to accommodate new wireless communication antennas, to reduce the number of towers needed to serve the industry.
- E. Take into consideration the location of and possible impact to, known migratory bird flyway routes during the siting and placement of telecommunications facilities.
- F. Accommodate the communication needs of residents and businesses while protecting the public health, safety and general welfare. This ordinance is not intended to have the effect of prohibiting wireless services to or within the

County, rather its intent is to ensure that a non-discriminatory, competitive, and broad range of telecommunications services and high quality telecommunications are provided to serve the community.

### **7.3.2 AUTHORITY AND JURISDICTION**

This Section is adopted pursuant to the authorization in s. 59.69 and s. 66.0404 Wisconsin State Statutes. The jurisdiction of this Section shall be limited to the unincorporated areas of Portage County, but shall not be in effect in any unzoned town until approved by the town board pursuant to s. 59.69(5)(C) Wisconsin State Statutes.

### **7.3.3 DEFINITIONS**

**Alternative Support Structure** - Clock towers, steeples, silos, light poles, water towers, electric transmission towers, buildings or similar structures that may support telecommunications facilities.

**ANSI/TIA** - American National Standards Institute/Telecommunication Industry Association.

**Antenna** - Any device or equipment used for the radiation or gathering of electromagnetic waves, which may include omni-directional antenna (rod), directional antenna (panel) or parabolic antenna (dish), but excludes satellite antennas with diameters of two feet or less.

**Applicant** - Any person, carrier/provider, firm, partnership or company who files an application for any permit required by this ordinance for the construction, replacement, or alteration of the wireless telecommunication facility or any component thereof.

**Carrier** - Companies licensed by the FCC to build personal wireless telecommunication facilities and operate personal wireless telecommunication services. Also called provider or mobile service provider.

**Collocation** - The location of more than one (1) antenna or set of antenna of more than one (1) government or commercial wireless communication service provider on the same tower structure.

**Equipment Compound** - An area surrounding or adjacent to the base of an existing support structure within which is located mobile service facilities

**FAA** - Federal Aviation Administration.

**FCC** - Federal Communications Commission.

**Guyed Tower** - A telecommunications tower that is supported in whole or in part by guy wires and ground anchors or other means of support besides the superstructure of the tower itself.

**Height** - The distance measured from ground level to the highest point on any tower or structure, including any antenna.

**Lattice (self-support) Tower** - A telecommunications tower that consists of vertical and horizontal supports and crossed metal braces, with no other means of support besides the superstructure of the tower itself.

**Mobile Service** - Has the meaning given in 47 USC 153 (33). Also called Wireless Communication/Telecommunication.

**Mobile Service Facility** - The set of equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment, that is necessary to provide mobile service to a discrete geographic area, but does not include the underlying support structure.

**Mobile Service Provider** - A person who provides mobile service. Also called carrier or provider.

**Mobile Service Support Structure** - A freestanding structure that is designed to support a mobile service facility.

**Monopole** - A telecommunications tower of a single pole design, with no other means of support besides the superstructure of the tower itself.

**Public Safety Tower** - A tower owned and/or operated by Portage County whose primary purpose shall be to serve law enforcement, fire service, emergency medical service, emergency management, traffic safety, and related agencies and entities.

**Provider** - See CARRIER.

**Satellite Dish** - A device incorporating a reflective surface that is solid, open mesh, or bar configured that is a shallow dish, cone, horn, or cornucopia shaped and is used to transmit and/or receive electromagnetic signals. This definition is meant to include, but is not limited to, what are commonly referred to as satellite earth stations, Television Receives Only (TVROs) and satellite microwave antennas.

**Substantial Modification** - The modification of a mobile service support structure, including the mounting of an antenna on such a structure, that does any of the following:

1. For structures with an overall height of 200 feet or less, increases the overall height of the structure by more than 20 feet.
2. For structures with an overall height of more than 200 feet, increases the overall height of the structure by 10 percent or more.
3. Measured at the level of the appurtenance added to the structure as a result of the modification, increases the width of the support structure by 20 feet or more, unless a larger area is necessary for collocation.
4. Increases the square footage of an existing equipment compound to a total area of more than 2,500 square feet.

**Support Structure** - An existing or new structure that supports or can support a mobile service facility, including a mobile service support structure, utility pole, water tower, building, or other structure.

**Telecommunication Facility** - A facility, site, or location that contains one or more antennas, towers, alternative support structures, satellite dish antennas, other similar devices, and support equipment, also called mobile service facility which is used for transmitting, receiving, or relaying telecommunication signals, excluding exempted facilities.

**Tower** - Any structure that is designed and constructed primarily for the purpose of supporting one (1) or more antennas (or is itself an antenna), including guy towers, monopole towers and self-supporting lattice towers and any support.

**Tower Accessory Structure** - Any structure located at the base of a tower for housing base receiving/transmitting equipment.

**Wireless Communication/Telecommunication** - Any personal wireless services as defined in the Federal Telecommunications Act of 1996, including FCC licensed commercial wireless telecommunications services such as cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), global system of mobile communications (GSM), paging and similar services that currently exist or may be developed. Also called mobile service.

#### **7.3.4 APPLICABILITY AND EXEMPTIONS**

A. Applicability. This Section applies to the following activities:

1. The siting and construction of a new mobile service support structure and facilities.
2. The substantial modification of an existing support structure and mobile service facilities.
3. Collocation on existing support structures.

B. District height limitation. The requirements set forth in this Section shall govern the design and siting of towers and antennas that exceed the height limitations specified for each zoning district under Chapter 7, Portage County Code of Ordinances.

C. Television antenna, satellite dishes, amateur radio, receive only antennas. This Section shall not govern the installation of any tower or antenna that is less than 100 feet in total height and is owned and/or operated by a federally licensed amateur radio operator or is used exclusively for receive-only antennas, provided that the primary uses of the property is not a telecommunications facility and that the antenna use is accessory to the primary use of the property. Federally licensed amateur radio operator and receive only towers 100 feet or taller shall obtain a zoning permit and are subject only to applicable setback requirements per 7.1 Portage County Ordinances. Commercial antennas attached to such a tower or any tower modification made for the purpose of accommodating such an antenna shall comply with all applicable requirements of this Section.

D. Portage County Public Safety Towers shall be exempt from this Section. For coordination purposes, the Portage County Sheriff's Office will notify the Planning and Zoning Department of their planned locations for Public Safety Towers. Collocation of non-public mobile service facilities on Public Safety Towers shall require the issuance of a zoning permit.

E. Mobile services providing public information coverage of news of a temporary or emergency nature shall be exempt from this Section, but subject to approval by the Zoning Administrator or his/her designee.

F. Any other devices not mentioned above that are exempt according to State or Federal regulations.

#### **7.3.5 GENERAL REQUIREMENTS**

A. All towers and antennas shall comply with all FCC and FAA regulations.

B. Design and installation of all towers and antennas shall comply with the manufacturers' specifications and with ANSI/TIA standards.

C. Installation of all towers and antennas shall comply with applicable state and local building and electrical codes.

- D. For leased sites, written authorization for siting the wireless telecommunication facilities from the property owner must be provided.
- E. All unused towers and antennas must be removed by the owner/operator within 12 months of cessation of operation or use, unless a written exemption is provided by the Zoning Administrator. After the facilities are removed, the site shall be restored to its original or an improved condition, and anchoring elements shall be removed to within 5 feet of the ground. Removal of anchoring elements to a depth less than 5 feet may be approved if the applicant can provide information that the reduced depth will not have an adverse impact on use of the land after restoration. If removal and/or restoration is not completed within 90 days of the expiration of the 12 month period specified herein, the County is authorized to order completion of the removal and site restoration.
- F. Collocation of multiple users upon a single tower is the preferred method of siting multiple antennas.
- G. All ground-mounted telecommunication towers shall be self-supporting monopoles or lattice towers except where satisfactory evidence is submitted to the Board of Adjustment that a guyed tower is required.
- H. Only one (1) tower is allowed on a parcel of land. Applications to place multiple towers upon a single parcel shall require credible evidence that collocation is not practical. Additional towers upon a single parcel may be allowed with a special exception permit, and such towers shall be placed as close together as is technically possible.
- I. All Towers constructed must have an approved carrier and can not be built on speculation.

### **7.3.6 PROHIBITIONS**

- A. No temporary mobile communication sites are permitted except in the case of equipment failure, equipment testing, equipment replacement or in the case of emergency situations. Placement of temporary equipment shall be limited to 90 days unless extended in writing by the Zoning Administrator.
- B. No advertising message/sign shall be affixed to any tower or antenna.
- C. No part of any tower or antenna shall extend across or over any right-of-way, public street, highway, sidewalk or property without written permission of the controlling authority.

### **7.3.7 GREATER RESTRICTIONS**

- A. Areas Limiting Telecommunication Facility Location. Telecommunications facilities may be permitted as described in this Section, but are also subject to greater restrictions including, but not limited to, the following:
1. Review and approval by the Federal Aviation Administration (FAA), State Bureau of Aeronautics and other appropriate agencies, if located within:
    - a) ½ mile radius from heliports;
    - b) 1 mile radius from private airport runway(s);
    - c) 3 mile radius from public use airport runway(s).
  2. Wetland regulations.
  3. Portage County Floodplain Zoning Ordinance.
  4. Portage County Shoreland Zoning Ordinance.

5. Portage County Subdivision Ordinance.

### **7.3.8 PERFORMANCE STANDARDS**

Except as provided in this Section, all wireless communication facilities shall meet the dimensional standards of the zoning district in which they are located.

#### **7.3.8.1 SETBACK AND SEPARATION**

A. Tower structures 100 feet tall or greater shall be set back from the nearest property line a distance equal to the height of the tower. Tower structures less than 100 feet tall shall be set back from the nearest property line a distance equal to the setback of a principal commercial structure as would be required by the underlying zoning district. This setback may be reduced to a lesser specified distance if the applicant submits a report stamped by a professional engineer that certifies that the tower is designed and engineered to collapse upon failure within the lesser specified distance.

B. Tower structures 100 feet tall or greater shall be set back from the nearest road right-of-way a distance equal to the height of the tower, or the right-of-way setbacks established in the Portage County Zoning Ordinance, whichever is greater. Tower structures less than 100 feet tall shall be set back from the road right-of-way a distance equal to the right-of-way setbacks established in the Portage County Zoning Ordinance. The road right-of-way may be reduced to a lesser specified distance if the applicant submits a report stamped by a professional engineer that certifies that the tower is designed and engineered to collapse upon failure within the lesser specified distance.

C. Subsurface anchors or portions of anchors that are subsurface shall be located on the property in which the tower has been constructed.

#### **7.3.8.2 COLLOCATION/SHARING OF FACILITIES**

A. For a new mobile service support structure, applications must include an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.

#### **7.3.8.3 Reserved for future use.**

#### **7.3.8.4 SECURITY FENCING, LIGHTING, AND SIGNS**

A. All towers shall be reasonably protected against unauthorized access. The bottom of the tower from ground level to 12 feet above ground shall be designed to preclude unauthorized climbing and shall be enclosed with a minimum of a 6 foot high chain link fence with a locked gate.

B. Security lighting for on-ground facilities and equipment is permitted, as long as it is down shielded to keep light within the boundaries of the site.

C. Signs shall be mounted on the fenced enclosure, on or adjacent to the gate prohibiting entry without authorization, warning of the danger from electrical equipment and/or unauthorized climbing of the tower, and identifying the owner of the tower and telephone number for contact in case of emergency.

#### **7.3.8.5 COLOR AND MATERIALS**

A. Telecommunication towers shall be constructed out of metal or other non-flammable material, unless specifically permitted by the County to be otherwise.

#### **7.3.8.6 PARKING AND ACCESS**

A. There shall be adequate off-street parking provided for each site. Additional parking may be required by the Zoning Administrator if the minimum parking proves to be inadequate. Minimum parking is considered to be one stall for each prospective user of the site. Access must be provided by an all-weather gravel or paved driveway.

B. All sites must be served by a minimum twenty (20) foot wide ingress/egress with a turnaround. All sites shall use existing access points and roads whenever possible. The access point to the site shall be approved by the Portage County Highway Dept., State of WI DOT, or the applicable municipality depending on road jurisdiction.

#### **7.3.9 PERMIT REQUIREMENTS**

A. The construction or installation of any wireless telecommunication facility requires the issuance of a zoning permit and may require a special exception permit under this Section. See 7.1.6.2 and 7.1.6.5 Portage County Zoning Ordinance for fees and additional requirements.

1. Zoning Permit. Zoning permits are required for the following:

- a) The placement of a new mobile service facility on an existing support structure.
- b) The construction of a new mobile service support structure.
- c) The substantial modification of an existing mobile service support structure.
- d) Collocation of non-public mobile service facilities on Public Safety Towers.
- e) Federally licensed amateur radio operator and receive only towers 100 feet or taller subject only to applicable setback requirements per 7.1 Portage County Ordinances.

2. Special Exception permit. Uses and facilities requiring a Special Exception permit under this Section may be authorized by the Board of Adjustment upon the submittal and approval of a properly completed application for a Special Exception permit as detailed in this subsection. Special Exception permits are required for the following:

- a) The construction of a new mobile service support structure which results in a tower height of 200 feet or higher.
- b) The substantial modification of an existing mobile service support structure which results in a tower height of 200 feet or higher.
- c) Two or more mobile service support structures on a single lot.
- d) Guyed tower.

3. Failure to obtain the proper permits shall be considered a violation of this Section and may subject the violator to any appropriate penalties.

B. Applications. The application shall be in writing and shall contain all of the following information:

1. The name and business address of, and the contact individual for, the applicant.



2. The location of the proposed or affected support structure.
3. The location of the proposed mobile service facility.
4. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
5. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
6. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.

### **7.3.10 NON-COMPLIANCE/REVOICATION**

Grounds for revocation of the Special Exception permit shall be limited to one of the following findings as determined by the Portage County Board of Adjustment:

- A. The owner of such site, service provider, and/or tower owner fails to comply with the requirements of this Section as it existed at the time of the issuance of the special exception permit;
- B. The permittee has failed to comply with the conditions of approval imposed;
- C. The facility has not been properly maintained. If one of these findings exist, Planning and Zoning Department staff shall report the non-compliance to the Portage County Board of Adjustment. The owner of the site, service provider, and/or tower shall be notified of the non-compliance and given an opportunity to present their position to the Board of Adjustment. If the Board determines that the facility is non-compliant, a corrective notice shall be given with a time period specified. If compliance is not obtained in the time identified, the Special Exception permit will automatically be rescinded.

### **7.3.11 TRANSFERABILITY**

All permits issued under this Section shall be transferable, and all subsequent holders of such permits shall be subject to all applicable requirements of this Section and any permit conditions that may exist.

### **7.3.12 SEVERABILITY**

If any portion of this Section is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Section shall not be affected.

### **7.3.13 ENFORCEMENT AND PENALTIES**

The provisions of this Section shall be enforced under the direction of the County Board of Supervisors, through the County Planning and Zoning Committee, the Zoning Administrator and the County law enforcement officers. For

forfeitures and penalties related to non-compliance with this Section of the Zoning Code, please see Section 7.1.6.8, Enforcement and Penalties.

Adopted May 18, 1999

Revised January 16, 2007

Revised June 17, 2008

Revised Resolution No. 126-2016-2018 on 5-16-2017

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## **7.4 SUBDIVISION ORDINANCE**

### **7.4.1 STATUTORY AUTHORIZATION, PURPOSE, DEFINITIONS**

#### **7.4.1.1 STATUTORY AUTHORITY**

In order to achieve the purpose of Chapter 236, Wisconsin Statutes, and to provide safe and orderly subdivision layouts, the following regulations are adopted pursuant to Section 59.97(1), 59.971(3), 144.46(2), 144.28(8) and 236.45, Wisconsin Statutes.

#### **7.4.1.2 PURPOSE**

These regulations are adopted for the following purposes:

- (A) To protect and provide for the public health, safety and general welfare of the unincorporated areas of Portage County.
- (B) To guide the future growth and development of the unincorporated areas of Portage County, in accordance with adopted County development guides and land use plans.
- (C) To provide for adequate light, air, water supply and privacy, to secure safety from fire, flood and other danger and to prevent overcrowding and undue congestion.
- (D) To protect the character and the social and economic stability of all parts of the unincorporated areas of Portage County.
- (E) To protect and conserve property values and the value of buildings and improvements upon the land and to minimize land use conflicts.
- (F) To guide public and private policy and action in order to provide adequate and efficient transportation, water, sewerage, schools, parks, playgrounds, recreation and other public requirements and facilities.
- (G) To provide for the safe and efficient movement of vehicular and pedestrian traffic, to provide for the proper location and width of streets and access points and to help implement official street plans.

(H) To establish reasonable standards of design and procedures for subdivisions and resubdivisions, in order to further the orderly layout and use of land; and to insure proper legal descriptions and monumenting of subdivided land.

(I) To protect and preserve natural resources such as, among other things, productive agricultural lands, wetlands and shorelands and to encourage the wise use and management of these areas.

(J) To prevent the pollution of air, groundwater, streams and ponds; and to assure the adequacy of the site for the proposed use(s) including soil suitability for on-site waste disposal.

### **7.4.1.3 DEFINITIONS**

For the purpose of these regulations, the following terms are defined:

**Arterial Road** - See Principal Arterial Road and Minor Arterial Road.

**Collector Road** - A road intended to collect and move traffic from local roads to arterial roads. As used here, the term "collector" includes roads so designated on the Portage County Urban Functional Classification Map, as well as roads designated as major and minor collectors on the Portage County Rural Functional Classification Map.

**Copy** - A true and accurate facsimile of all pages of an original document. Such a copy shall be on durable white paper with legible dark lines and lettering.

**County Plat** - Division of a lot, parcel or tract of land by the subdivider, where the act of division or successive division creates five (5) or more lots or outlots of twenty (20) acres each or less in area (exclusive of right-of-way) within a period of five (5) years or less. An outlot(s) created for the expressed purpose of providing access for the joint use and ownership of abutting landowners shall not be included in the determination of a county plat.

**Cul-De-Sac** - A local road or street with only one outlet and having a single terminal for the safe and convenient reversal of traffic movement.

**Designated Agent** - For the purposes of this ordinance, this term shall refer to the Portage County Planning and Zoning Department, unless another agency or individual is specifically identified.

**Driving Surface** - The actual paved or finished road surface intended for vehicular travel, not including the shoulders.

**Dwelling Unit** - One or more rooms intended for occupancy as separate living quarters, with separate and exclusive living, cooking, sleeping, and bath facilities.

**Easement** - A right-of-way granted, but not dedicated, for limited use of private land.

**Final Plat** - The final map of all or a portion of a subdivision, subsequent to a preliminary plat, as required by this ordinance.

**Flood Boundary (100-year)** - Boundary of the flood fringe as defined in Chapter NR116, Wisconsin Administrative Code.

**Floodway** - An area required to carry the discharge of the regional flood, as defined in Chapter NR116, Wisconsin Administrative Code.

**Functional Classification** – Identification of highways and streets according to the character of service they are intended to provide, ranging from a high degree of travel mobility to land access functions. The official Portage County Functional classification maps for urban and rural areas are created and periodically updated by the Wisconsin Department of Transportation, and approved by the Portage County Highway Committee.

**Grade** - The slope of a road, street or other public way, specified in percentage (%) terms.

**Local Road** - A road intended to provide access to other roads from individual properties, over short distances. Local roads include all roads not designated as collectors or arterials on the Portage County Urban and Rural Functional Classification Maps.

**Lot** - A designated parcel or tract of land which is established as permitted by this ordinance and which is under one (1) ownership and confined to two (2) contiguous quarter-quarter sections or government lots.

**Lot Area** - Lot area shall be determined exclusive of road right-of-way and exclusive of any portion of the land that is below the ordinary high water mark, except where otherwise provided in this ordinance or the Portage County Zoning Ordinance.

**Major Collector Road** - See Collector Road.

**Major Subdivision** - Division of a lot, parcel, or tract of land by the subdivider, where the act of division or successive division creates five (5) or more lots or outlots of one and one-half (1½) acres each or less in area within a period of five (5) years or less.

**Minor Arterial Road** - A road which collects and distributes traffic in a manner similar to principal arterials, except that it serves secondary traffic generating areas. Minor arterials connect principal arterials to collector roads. Minor arterials are designated on the Portage County Urban and Rural Functional Classification Maps.

**Minor Collector Road** - See Collector Road.

**Minor Subdivision** - Division of a lot, parcel or tract of land by the subdivider, where the act of division creates one (1) or more lots or outlots of twenty (20) acres each or less in area (exclusive or right-of-way). An outlot(s) created for the expressed purpose of providing access for the joint use and ownership of abutting landowners shall not be included in the determination of a minor subdivision.

**Navigable Waters** - Any body of water which is navigable under the laws of this State and as determined by the Wisconsin Department of Natural Resources.

**Outlot** - A tract of land, other than a lot or block, designated as an outlot on a plat or certified survey map.  
*Parcel* - See Lot.

**Planning and Zoning Committee** - The Portage County Planning and Zoning Committee authorized by Section 59.97(2), Wisconsin Statutes.

**Planning and Zoning Department** - The Portage County Wisconsin Planning and Zoning Department.

**Plat** - A map of a subdivision.

**Preliminary Consultation** - An initial meeting between a subdivider and the Planning and Zoning Department, during which the subdivider must present a sketch plat and is apprised of any deficiencies in the proposed subdivision, and prerequisite to the submission of a preliminary plat, in the case of a major subdivision, or the final document, in the case of a county plat or minor subdivision.

**Preliminary Plat** - A drawing indicating the proposed layout of a subdivision, as described in these regulations, that is submitted to the Planning and Zoning Committee for approval.

**Principal Arterial Road** - A road which serves traffic movements of an interstate or interregional nature and stressing traffic mobility rather than access. Principal arterials serve the highest order function in the road classification hierarchy. Principal arterials are designated on the Portage County Urban and Rural Functional Classification Maps.

**Replat** - The changing of boundaries of a recorded subdivision plat or part thereof. The dividing of a lot or Outlot, without changing the exterior boundaries of said lot or outlot, is not a replat.

**Right-Of-Way** - A strip of land occupied or intended to be occupied by a road, railroad, utility line, or for other special purposes, and normally requiring public dedication where public maintenance is involved.

**Roadtop** - The driving surface and shoulders of a road.

**Sketch Plat** - Rough layout of a proposed land development, of sufficient detail, clarity and accuracy to be used for discussion purposes during the preliminary consultation stage of a major subdivision, county plat and minor subdivision.

**State** - The State of Wisconsin.

**Subdivider** - A landowner, their agent or successive owner or their agent who causes any portion of land to be divided into a subdivision.

**Subdivision** - The division of land into two (2) or more lots, parcels or tracts by the subdivider.

**Wetlands** - Means those areas where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions. Portage County wetlands are mapped based on both the DNR Wetland Inventory Maps and hydric soils defined in the Soil Survey of Portage County, Wisconsin.

**Zoning Administrator** - The Zoning Administrator for Portage County, Wisconsin.

## **7.4.2 GENERAL PROVISIONS**

### **7.4.2.1 COMPLIANCE**

(A) Any division of land which results in a major subdivision, as herein defined, shall be in compliance with those sections of Chapter 236, Wisconsin Statutes, relating to subdivisions as defined in Section 236.02(12), and all applicable provisions of this ordinance.

(B) Any division of land which results in a county plat, as herein defined, shall be in compliance with the requirements for a county plat under Section 7.8 and all other applicable provisions of this ordinance.

(C) Any division of land which results in a minor subdivision, as herein defined, shall be in compliance with those sections of Chapter 236, Wisconsin Statutes, relating to certified survey maps, layout requirements, penalties and remedies, and supplemental provisions, as well as all applicable provisions of this ordinance. All minor subdivisions must be signed by a Town Board member or Town Board designee after Town Board action in accordance with Town Board policy. The Town signature is required before final County Planning and Zoning approval.

#### **7.4.2.2 EXCLUSIONS**

In no instance shall the provisions of this section relating to subdivisions apply to:

(A) Transfers of interest in land by will or pursuant to court order.

(B) Leases for a term not to exceed ten (10) years, mortgages or easement.

(C) The sale or exchange of parcels of land between owners of adjoining property if additional lots are not thereby created and the lots resulting are not reduced below the minimum sizes required by this ordinance or other applicable laws or ordinances.

(D) Existing parcels or lots of record, as well as surveys, which do not create major subdivisions, county plats, or minor subdivisions as defined in this ordinance, except that Section 7.4.6.1(E)(3) shall apply.

#### **7.4.2.3 ABROGATION AND GREATER RESTRICTIONS**

The provisions of this ordinance supersede all the provisions of any county subdivision ordinance adopted under Chapter 236, Wisconsin Statutes, which relates to subdivisions. However, where an ordinance adopted under a statute other than Chapter 236, Wisconsin Statutes, 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. Where this subdivision ordinance is silent as to a standard procedure, the appropriate provisions under the general Portage County Zoning Ordinance shall apply.

(A) This ordinance shall not require approval or be subject to disapproval by any town or town boards.

(B) If an existing town ordinance relating to subdivisions is more restrictive than this ordinance or any amendments thereto, the town ordinance governs in all respects to the extent of the greater restrictions but not otherwise.

(C) 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.

#### **7.4.2.4 INTERPRETATION**

The provisions of this ordinance shall be held to be minimum requirements, liberally construed in favor of the governing body, and shall not be deemed a limitation on or repeal of any other powers granted by local or State statutes.

#### **7.4.2.5 SEVERABILITY**

If any portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

#### **7.4.3 LAND SUITABILITY**

No land that falls under the provisions of this ordinance shall be approved as a major subdivision, county plat, or minor subdivision which is held unsuitable for the proposed use by the Planning and Zoning Committee for reason of flooding, inadequate drainage, severe erosion potential, unfavorable topography, inadequate or contaminated water supply, inadequate sewage disposal capabilities; potential for negative impacts to surface waters or groundwater; conflict with existing or planned parks, roads, highways, airports, drainage channels, schools or other public developments; conflict with intensive agricultural activities; or any other feature likely to be harmful to the health, safety or welfare of the future residents of the proposed subdivision or of the community. In determining land suitability, the Planning and Zoning Committee shall place particular emphasis on consistency with adopted Development Guides or Land Use Plans.

The Planning and Zoning Committee, in applying the provisions of this section, shall be writing recite the particular facts upon which it bases its conclusion that the land is not suitable for the proposed use and afford the subdivider an opportunity to present evidence regarding such suitability at a public meeting. Thereafter, the Planning and Zoning Committee may affirm, modify or withdraw its determination of unsuitability.

#### **7.4.4 DEDICATIONS AND RESERVATIONS**

(A) The subdivider who creates a major subdivision shall be required to pay a fee or dedicate suitable land for public parks or other related use according to the following schedule:

- (1) Dedication to the public of one (1) acre of land for each twenty (20) lots.
- (2) Payment to the town park fund of \$250 for each lot.
- (3) Any combination of (1) and (2) as agreed to by the town board.

If the town board elects not to require land or fees as provided above or does not have a designated park fund, said land shall be dedicated for County parks or fees paid to a County park fund, or combination thereof, as determined by the Planning and Zoning Department and County Parks Department.

(B) A major subdivision which abuts a navigable water body shall provide public access to the high water mark at least sixty-six (66) feet wide which is connected to existing public roads, at not more than one-half ( $\frac{1}{2}$ ) mile intervals as measured along the lake or stream shore except where greater intervals and wider access is agreed upon by the State Department of Natural Resources, the State Department of Agriculture, Trade and Consumer Protection and

the Planning and Zoning Committee. The Planning and Zoning Committee may require dedications of access points of greater width or at more frequent intervals at points designated by them and may require adequate turnaround areas where deemed necessary.

In addition, when a county plat or minor subdivision abuts a navigable water body, the Planning and Zoning Committee may require reservation of access points to the water to allow for future public purchase, where a need has been determined in town or county plans or by such officials and based on consideration of relevant factors such as the size and layout of the proposed subdivision, the physical character of the shoreline and its suitability for public access, and the proximity and use of existing public access points.

(C) The lands lying between the meander line, established in accordance with Section 236.20(2)(g), and the water's edge, and any otherwise unpalatable lands which lie between a proposed subdivision and the water's edge shall be included as part of lots, outlots or public dedications in any plat abutting a lake or stream. This requirement applies not only to lands proposed to be subdivided, but also to all land under option to the subdivider or in which he holds any interest and which are contiguous to the lands proposed to be subdivided and which abut a lake or stream, as provided in Section 236.16(4), Wisconsin Statutes.

(D) Where a preexisting, official plan of the county or any municipality of the county calls for a public development, the subdivider shall reserve said land with no building development for acquisition by the county or the municipality in which the land is located, for a period of three (3) years, unless this period is extended by mutual agreement which shall be in the form of a written contact.

#### **7.4.5 DESIGN STANDARDS**

Major subdivisions, county plats, and minor subdivisions shall be designed and laid out in proper relation to existing and proposed streets, existing and proposed access points, potential location of on-site waste disposal facilities and wells, topography, surface water drainage, vegetative cover, natural features, and the most advantageous use and/or development of adjoining areas.

##### **7.4.5.1 LOTS**

(A) Size. Lot size and dimensions shall comply with the minimum standards of the Portage County Zoning Ordinance where applicable or town zoning ordinance where applicable, as well as the provisions of Comm 83, Wisconsin Administrative Code, and Chapter 236, Wisconsin Statutes.

Larger lot sizes/dimensions may be required where site conditions such as steep slopes surrounding land uses such as agriculture, or groundwater characteristics may warrant, as determined by the Planning and Zoning Committee. Where both the Portage County Shoreland Zoning Ordinance and any town zoning ordinance adopted under Section 60.61 or 60.62, Wisconsin Statutes apply, the greater restrictions shall apply. Smaller lot sizes/dimensions may be allowable through the "lot averaging" option described in Section 7.4.5.2 below.

(B) Orientation. In general, side lot lines shall be at right angles to street lines or radial to curving street lines.

(C) Frontage. Each lot shall have an approved access that fronts a public road as required by the Portage County Zoning Ordinance. Only two lots shall share a common access point to a public road. Lots with an access easements may be permitted by the Planning and Zoning Committee in those towns which have not approved the County's Zoning Ordinance, under Section 59.69(5)(c), Wisconsin Statutes. In those cases where an access easement is permitted, the following standards shall apply:



- (1) The easement shall be a minimum of 33 feet wide at its narrowest point.
  - (2) The easement shall be nonexclusive, i.e., access shall be granted at all times for public service vehicles, including, but not limited to, fire and police vehicles, ambulances, and school busses.
  - (3) The easement shall be located in compliance with Section 7.4.6.1(E) of this ordinance, pertaining to minimum separation distances of access points.
  - (4) The following statement shall be shown clearly on the major subdivision, county plat, or minor subdivision document:  
Access to this property is provided by nonexclusive easement. The Town of \_\_\_\_\_ has no responsibility or liability for the snow plowing or other maintenance of said easement or for the construction of a driving surface upon said easement.
- (D) Depth and Width. In general, the depth of a lot should not exceed three (3) times its width as its widest point. Lot width shall be in accordance with the provisions of Section 7.4.5.1(A) of this ordinance.
- (E) Flag Lots. The stem of a flag lot shall not be greater in length than the quarter-quarter section / Government Lot in which it is located and shall not be less than thirty-three (33) feet in width at its narrowest point, except where permitted by the Planning and Zoning Department.

#### **7.4.5.2 Lot Averaging Option**

The purpose of this subsection is to provide an alternative and innovative design technique which promotes the goals of this ordinance and comprehensive planning to a greater degree than a conventional subdivision. In particular, the agriculture and resource protection goals and objectives included in the Town and Portage County Comprehensive Plans and the idea of maintaining large, contiguous open rural areas which may be better addressed if some modification of the minimum lot size requirement is allowed, provided the overall intensity of permitted development is consistent with that which would result from conventional development.

This "lot size averaging" technique (herein after called "lot averaging") permits flexibility in subdivision design and promotes a more efficient use of land and the protection of productive agricultural or forest land, scenic views, historic sites, shorelines, wetlands, important habitat areas and other resources of importance to the community, while minimizing the alteration of the natural topography of the land, in accordance with the goals and objectives of County and Town Comprehensive Plans.

(A) Applicability. The lot averaging option for subdividing land may be utilized in the A-20 Primary Agricultural, A-2 Agricultural Transition, and A-3 Low Density Agricultural Zoning Districts only, and only in those Towns that enable its use through specific action of the Town Board.

(1) The Planning and Zoning Department or Planning and Zoning Committee shall have the authority to determine whether the use of the lot averaging option is appropriate (see Sections 7.4.8, and 7.4.9 below). A recommendation from the Plan Commission and Town Board of the Town where the subdivision is proposed shall be required prior to Planning and Zoning determination.

(2) The minimum acreage for a lot size averaging subdivision plan shall be 40 acres in the A-20 Primary Agricultural District, 20 acres in the A-2 Agricultural Transition District and 40 acres in the A-3 Low Density Agricultural District. The specified acreage for each zoning district stated above is inclusive of road right of way.

(B) Density. The total number of potential lots available for a lot averaging subdivision plan will in part be determined based on the number which would be otherwise approved under a conventional subdivision plan. The applicant must submit a sketch plat showing lots, road rights-of-way, storm water management areas, and any other areas which would not be incorporated in individual lots as necessary to meet the usual minimum standards for the district without the need for any lot area or lot dimension variances. The sketch must also account for development limitations such as steep slopes, wetlands, floodplain, septic suitability, water availability and quality, adequate driveway access to each lot, and compliance with Town and or Portage County subdivision regulations.

(1) The conforming sketch plat shall be of sufficient detail to permit the Planning and Zoning Department staff to make an informed decision that the subdivision would satisfy all ordinance requirements, including the suitability analysis (Section 7.4.3), and would be approvable as a conventional subdivision without the need for any lot area or lot dimension variances or exceptions to subdivision design standards.

(2) The number of lots shown on an accepted sketch plat shall preliminarily be the maximum number of lots permitted under lot size averaging. Less than the maximum number of lots may ultimately be available, depending on the total acreage involved, the underlying zoning district, and design criteria consideration listed in Section 7.5.4.2(C) below.

(3) The method of calculating the lot averaging option shall be "by 40", i.e. by quarter-quarter section or government lot. The quarter-quarter section or government lot may contain other previously created parcels, but the parcel to be divided must contain the minimum acreage described in 7.5.4.2(A) above. The lot averaging option may not include land in excess of a quarter-quarter section or government lot, and limits the number of lots to be created to a maximum of four lots: three lots of 2 to 3 acres in size and the larger remnant parcel (see Section 7.4.5.2(D) below). The four lots to be created must average the minimum required lot size allowed under the existing zoning. Subdivisions proposing five or more lots are more appropriately developed under a Residential Zoning District. The maximum number of lot splits allowed in the A-3 Zoning District utilizing lot averaging will also be four per quarter-quarter section or government lot.

(C) Site Design Criteria. Lot averaging designs shall shift the more intensive development toward those lands which can best support the installation of the dwelling, well, septic system, and associated site improvements. Similarly, lot averaging shall locate less intensive development in those areas which exhibit sensitive environmental features (i.e. water bodies, wetlands, floodplains, steep slopes (>12%), shallow bedrock (<5feet), prime aquifer recharge areas, seasonal high water table, etc.) or which contain active or prime agricultural lands (as identified in the Town or County Comprehensive Plan) or mature woodlands. On tracts in areas which are predominantly active agricultural lands or consist of prime agricultural soils or soils of statewide or local importance (as defined by the Wisconsin Department of Agriculture), the preservation of agricultural lands shall take precedence. On tracts in areas which are predominantly prime forested area, the preservation of forested areas will take precedence.

(1) The applicant shall clearly demonstrate to the Planning and Zoning Department that the lot size averaging plan is preferable to the conventional plan in the achievement of the goals, objectives and purposes of this ordinance and the County and Town Comprehensive Plan. Factors to be considered in this demonstration include, but are not limited to, agriculture and forestry retention, stream corridor, wetlands and floodplain preservation, steep slope protection, overall site design (including well water quantity and quality), reduction in impervious coverage,

improved circulation, consideration of the site's natural features, topography, and relationship to open spaces on neighboring parcels, and conservation of scenic vistas. Lot averaging may be permitted when it is determined that the goals and objectives of the Comprehensive Plan(s) and the Subdivision Ordinance are better served by the lot averaging plan than by a conventional plan.

The layout and design of a lot averaging subdivision proposal may be approved by the Planning and Zoning Department based on a finding that the proposal fits with the character of the land and neighborhood, soils are adequate to support on-site waste disposal and wells, proposed access, traffic and pedestrian circulation promotes safety, storm water management and impervious surface issues are addressed, and other issues relating to the future use and enjoyment of the property are addressed.

(2) The factors considered by the Planning and Zoning Department when evaluating the proposed arrangement of lots may include, but not be limited to, the following:

(a) Feasibility of continued or future agricultural use.

(b) Feasibility of continued or future forest management.

(c) Arrangement of roads, storm water facilities, wastewater and other utilities in conformance with the natural features of the parcel, minimizing changes to the topography.

(d) Protection of stream corridors and other important habitat areas.

(e) Protection of wetlands, floodplains, hydric and other sensitive soils.

(f) Relationship to neighboring property, including conservation easements, or natural, cultural, recreational or scenic features.

(i) All development shall maintain the minimum front, rear, and side yard setbacks of the existing zoning requirements.

(ii) All development adjacent to agricultural uses shall be subject to an increased side, rear, or front yard setback, if necessary, as established by Planning and Zoning Department staff.

(iii) All development adjacent to wetlands and other sensitive natural areas shall be subject to an increased side, rear, or front yard setback, if necessary, as established by Planning and Zoning Department staff.

(iv) Impervious surface coverage not to exceed 10% of the lot. Impervious surface coverage may exceed 10% if the excess percentage of storm water is retained on site during specified storm events.

(v) Lots to be developed shall be clustered in order to maximize the amount of land to be preserved unless the petitioner can prove an alternative method of siting is more appropriate.

(g) A Certified Survey Map (CSM) must be completed and accompany the deed along with any restrictions to be recorded with the Portage County Register of Deeds.

(D) Lot Size. The minimum lot area under the averaging option may be reduced to two (2) acres (exclusive of road right-of-way), with a maximum reduced lot size of three (3) acres (exclusive of road right-of-way), provided that the average lot area throughout the development shall be at least that of the underlying zoning district, and in any event shall result in no greater number of lots than could be approved under a standard lot configuration which conforms with the underlying zoning district. The larger part of the parcel left after splitting the smaller lot(s) shall be called the "remnant".

(1) At least two (2) acres of the reduced size lot shall be zoned A-20 Primary Agricultural, A-2 Agricultural Transition, or A-3 Low Density Agricultural. If a three (3) acre lot is requested, up to one (1) acre may be zoned Conservancy.

(2) The proposed lots shall meet all requirements for safe septic system operation established by applicable Town, County and State regulations.

(E) Protected Areas and Deed Restrictions. The lot averaging plan will concentrate development away from the most important resource areas and from those areas of the property that are most environmentally sensitive, as described in Section 7.4.5.2(C) above. For each lot less than the minimum size normally required for the zoning district, one or more lots larger than the minimum shall be provided in order to maintain an average lot size no smaller than the minimum lot size normally required for the zoning district.

(1) Long-term protection from further development shall be provided for the remnant area of the subdivision. The deed for any lot over three (3) acres in size created by lot averaging shall contain a restriction prohibiting further subdivision for the purpose of creating an additional lot or lots. Further subdivision of these remnant lots, or use for other than one (1) dwelling unit and/or agriculture, forestry, conservation, non-commercial outdoor recreation, or other principle use or building as otherwise permitted by the zoning ordinance, shall be prohibited. A second farm residence on a single parcel shall also be prohibited when utilizing this option.

(2) Before any lot split under this section becomes effective, and before construction may commence, written approval or authorization of the lot averaging subdivision plan must be issued by the Portage County Planning and Zoning Department. The original written authorization from the Portage County Planning and Zoning Department shall be filed with the Portage County Register Deeds as a deed restriction on the remnant parcel as set forth in said authorization.

(3) The authorization shall also specify that if the Town's Comprehensive Plan or local zoning map is amended to allow for greater density in the area including the remnant, the density of the remnant parcel will also change in conformity therewith.

(4) The deed restriction shall also be structured in such a way that, if all lots that are part of the approved lot averaging plan are not immediately split from the parent parcel, the ability to create the full number of approved lots is preserved.

(5) When only a portion of a tract is to be developed in a lot averaging plan, deed restrictions against further subdivision shall not be required for the entire tract but only for the portion of the tract devoted to the lot averaging plan.

(6) A Certified Survey Map (CSM) of the lots to be created (including the remnant) will accompany the deed, along with any restrictions, to be recorded with the Portage County Register of Deeds.

(7) Below is language that can be included in the authorization form given to the landowner seeking subdivision.

(8) "Before this lot split becomes effective and before construction may commence, the original of this document, along with a Certified Survey Map (CSM), must be filed with the Portage County Register of Deeds as a deed restriction on parcel number \_\_\_\_\_ as set forth herein."

#### **7.4.6 IMPROVEMENTS**

Where required by the town board, the subdivider shall install, at his own expense, any required street and utility improvements, or other improvements as required herein. In addition, where required by the town board, the subdivider shall, prior to the final approval of any major subdivision, county plat, or minor subdivision, enter into a contract with the town agreeing to install the required improvements and shall file with said contract a surety bond

or make other financial arrangements with the town board guaranteeing the completion of such improvements with a period of time specified by the town board.

#### **7.4.6.1 PUBLIC AND PRIVATE ROADS**

The subdivider may be required to dedicate land for public roads and to construct such roads, as determined by the Planning and Zoning Department or town board. Where dedication and/or construction is required, the following shall apply:

(A) Road Design and Location. Public roads shall be designed and located to take into account:

- (1) Existing and planned streets, particularly as shown on any official street map which has been adopted by Portage County or any local unit of government;
- (2) Topographic conditions including the bearing capacity and erosion potential of the soil;
- (3) Public convenience and safety including facilitating fire protection, snow plowing and pedestrian traffic;
- (4) The proposed uses of land to be served;
- (5) Anticipated traffic volumes; and
- (6) Further resubdivision possibilities.

(B) Construction Standards for Public Roads. Town roads shall be constructed as required by town ordinance. Where no town ordinance pertaining to road construction exists, town roads shall have a minimum right-of-way width of sixty-six (66) feet and may be required to comply with other standards when so determined by the Portage County Highway Department.

(C) Frontage and Backage Roads. The use of frontage and backage roads may be required along principal and minor arterial roads, at the discretion of the Planning and Zoning Department.

(D) Cul-de-sacs. In addition to the requirements of this section, cul-de-sacs shall have a minimum turnaround right-of-way diameter of one hundred-twenty (120) feet and a minimum turnaround driving surface of one-hundred (100) feet in diameter. Cul-de-sacs shall have a maximum length of six-hundred (600) feet within any municipal sewer service jurisdiction/boundary approved by the County and the State Department of Natural Resources and one-thousand (1,000) feet where no sewer service jurisdiction presently exists. Length shall be measured from the farthest point of the turnaround right-of-way to the right-of-way of the nearest connecting through-street. These standards shall not be applicable to temporary cul-de-sacs.

(E) Access Points. In order to protect and preserve the safety, efficiency, and planned function of roadways, all public and private access points into public roads and highways in the unincorporated areas of Portage County shall comply with the provisions contained herein. Certain roads may require greater access protection than is provided here, based on locally adopted plans or policies. Access permits on the state trunk highways system must be acquired from Wisconsin Department of Transportation (DOT), District 4, subject to state and county regulations.

(1) Minimum Distance Between Adjacent Access Points

Road Classification	Distance in Feet
Principal Arterial .....	1,000
Minor Arterial .....	600
Collectors .....	300

(a) Designated road classifications are shown on the Portage County Urban and Rural Functional Classification Maps.

(b) Spacing will be measured from the midpoint of access points on the same side of the road, including road intersections.

(2) Design. The use of shared or consolidated access is encouraged in order to minimize the number of access points and resulting interruptions to traffic flow. Access points along opposite sides of a roadway shall be located directly opposite each other, whenever possible. No private access shall exceed sixty-six (66) feet in width at the right-of-way line. On local roads, access points shall be located a minimum of fifty (50) feet from a road intersection, as measured from the midpoint of the access to the intersection of the road rights-of-way.

(3) Preexisting Lots of Record. These standards shall not be enforced in such a way as to deny access to lots of record which are in existence prior to the adoption of this ordinance. However, any new access to such lots shall be in compliance with the access separation standards of this section.

(4) Corner Lots. Where a parcel abuts more than one (1) public road, and where such roads are classified differently according to the functional classification, access shall be required onto the road with the lowest order functional status whenever possible.

(5) Modifications. The Planning and Zoning Committee may permit modifications from the provisions of this section where no viable alternatives exist and where the application of these standards would create a hardship, but in no case shall a modification be permitted to Section 7.4.6.1(E)(1) which is less than the following minimum standards: Principal Arterial 850 feet, Minor Arterial 500 feet, Collectors 275 feet, EXCEPT on those road segments with a posted speed limit of 35 mph or less, modifications shall not be less than the following: Principal Arterial 500 feet, Minor Arterial 300 feet, Collectors 150 feet; this exception shall not apply where reduced or advisory speeds are associated with warning signs related to road hazards such as curves or other special conditions. The Planning and Zoning Committee shall be the only body having authority to reject a modification request.

(6) Consistency with State Access Control Plans. In no case shall the Planning and Zoning Committee or its designated agent apply the access separation standards of this section or approve a modification thereof so as to conflict with any access control plan approved by the State Department of Transportation.

(F) Road Intersections. Roads shall intersect each other at nearly right angles as topography and other limiting factors of good design permit, as determined by the Planning and Zoning Department. Where roads do not intersect at right angles, the minimum angle of intersection shall not be less than 60°. In order to avoid dangerous jogs, roads should be designed to intersect directly opposite each other or to have a minimum centerline offset of one-hundred twenty-five (125) feet, unless a greater separation is deemed necessary by the Planning and Zoning Department.

**7.4.6.2 GROUNDWATER MANAGEMENT AND WATER SUPPLY FACILITIES**

Where there is no existing public water supply facility, the Planning and Zoning Department is empowered to require the subdivider to provide sufficient data to determine whether or not a water supply of acceptable quality exists. The data required of the subdivider shall be based on the advice and recommendations of the County Water Quality Specialist, the Central Wisconsin Groundwater Center and any other knowledgeable professionals that may assist the County with water quality issues.

The Planning and Zoning Department shall, at the time the sketch plat is submitted or within fifteen (15) days thereafter, inform the subdivider as to the particular groundwater monitoring and testing data to be provided by the subdivider, which may include but shall not be limited to the following:

- (A) Location, number, depth and maintenance of monitoring wells;
- (B) Direction and/or rate of groundwater flow;
- (C) Water quality parameters to be tested (pesticides, herbicides, bacteria, nitrates, etc.);
- (D) Sampling dates;
- (E) Easements: and
- (F) Conditions of the upgradient recharge area and location of the subdivision with respect to any downgradient municipal or private well recharge areas.

All water quality analyses shall be conducted by a state certified laboratory.

Where adequate water samples or test data can be obtained from existing wells within the immediate area of a proposed subdivision, such data may be utilized, in lieu of on-site monitoring wells, as determined by the Planning and Zoning Department. Monitoring wells may be required for a major subdivision or county plat, but shall not be required for minor subdivisions.

The subdivider shall provide the Planning and Zoning Department with all required groundwater data prior to the preliminary plat being submitted for approval, in the case of a major subdivision or prior to the time the county plat or minor subdivision is submitted for approval. Specific monitoring and/or test results shall be recorded on the face of the preliminary plat, and any final plat(s), county plat(s) or certified survey map(s), as well as the deed for each lot.

The determination of acceptable water quality by the Planning and Zoning Department shall be based on the on-site monitoring data or test results from nearby wells, the vulnerability of the site to groundwater contamination, the direction and rate of groundwater flow, adjacent land uses upgradient of the site to the groundwater divide, the location of known point sources of potential contaminants, and known groundwater quality and concerns in adjacent developments. The subdivider may be required to furnish such information as is necessary for this determination. The Planning and Zoning Department may consult Appropriate County staff or outside professionals for technical support and evaluation of data.

In the event that monitoring and testing results indicate significant groundwater quality problems, the Planning and Zoning Department may require a community water system for the subdivision including a centralized well, as opposed to individual wells. Furthermore, a community water system may be required where a proposed

subdivision with demonstrated groundwater quality problems, lies within an area where future hookup to a municipal water system is anticipated, such as within a designated sewer service area. Where more significant water quality problems exist, the Planning and Zoning Department may recommend denial of the proposed subdivision by the Planning and Zoning Committee.

Use of a water treatment system to meet acceptable water quality standards shall only be considered if the development includes a community well and distribution system, and an adequate maintenance association for the central community water supply and treatment system. Water treatment systems shall also be subject to approval by the Wisconsin Department of Natural Resources, as required by State Statutes. Treatment systems for individual wells shall not be permitted as a means for approval of new development.

#### **7.4.6.3 SURVEY MONUMENTS**

The following shall apply:

(A) The subdivider of a major subdivision shall install survey monuments in accordance with the requirements of Section 236.15, Wisconsin Statutes.

(B) The subdivider of a county plat or minor subdivision shall install survey monuments in accordance with the requirements of Section 236.34, Wisconsin Statutes.

#### **7.4.6.4 STORM WATER MANAGEMENT AND CONSTRUCTION SITE EROSION CONTROL**

(A) General Requirements:

A storm water management plan shall be provided by the subdivider, at the determination of the Planning and Zoning Department. The subdivider or agent shall submit recommendations for storm water management, at the time of the submission of the sketch plat, in the case of a major subdivision, county plat, or minor subdivision. Storm water management plans shall be submitted over the signature and seal of a registered professional engineer, unless authorized otherwise by the Planning and Zoning Department. A registered professional engineer or certified surveyor, unless authorized otherwise by the Planning and Zoning Department, will be required to oversee installation of all storm water management features shown on the approved plans. Certification shall be required over the seal of the registered professional, unless authorized otherwise by the Planning and Zoning Department that the "as built" conditions substantially conform to the approved plans. This certification shall not release the subdivider from the responsibility to construct in accordance with approved plans until "as built" conditions have been approved by the governing Town and County.

The development is also required to meet all appropriate construction site and post-construction performance standards included in Wisconsin State Code Chapter NR 151, as well as any other applicable state or federal requirements. Any such requirements shall be incorporated into all storm water management plans submitted to the Planning and Zoning Department.

(B) Design Considerations:

(1) The storm water runoff control plan prepared in compliance with this procedure policy shall consider and design for conditions unique to the site. Unique site conditions may include, but are not limited to: steep slopes, high water table; limited downstream drainage system; previously altered conditions; shallow soils; and smaller sites with



limited available space. The design criteria for such unique site conditions, and other innovative design proposals, shall be agreed upon by the designer and the governing Town and County.

(2) Storm water management may include, but is not limited to, the use of the following: Diversions; Waterways; Detention and Retention Ponds; Infiltrations Basins; Culverts, including size and placement; Topography data at appropriate contour intervals; Road elevations (including private access), including placement of; and Seeding and Mulching. Such plans shall be based upon a 25-year storm event using a minimum runoff curve number (RCN) of 60. A higher storm event or RCN may be necessary when considering protection of water quality and/or preventing runoff onto adjacent property. The Planning and Zoning Department may require that drainage easements of widths sufficient to accommodate storm runoff, be provided.

(3) All storm water runoff control plans shall consider and design for the safety of the public. Low-grade side slopes and shallow shelves in the basin designs are encouraged. In some situations fencing may be necessary as determined by Planning and Zoning – minimum standards for fencing.

(4) All storm water runoff control plans shall consider the impacts of increased peak flow and/or increased volume to the capacity of the planned development and downstream drainage system. Culverts will require special design criteria set and/or approved by the governing Town and County.

(5) The design of storm water runoff control plan facilities shall be adequately sized for the contributing drainage area. The designer may opt to include the offsite drainage area in the plan facilities or to safely divert or route the offsite drainage flow around the plan facilities. Water from upstream of the development shall be conveyed through or diverted around the parcel so as to minimize erosion and flooding.

#### **7.4.6.5 SANITARY SEWERAGE**

(A) General Provisions:

(1) In areas that have a public sanitary sewer system on or near the proposed subdivision, the local municipality furnishing such service and the Planning and Zoning Committee shall determine the feasibility of service and the procedures to be followed by the subdivider in joining the system.

(2) The Planning and Zoning Committee may prohibit the installation of on-site waste disposal facilities requiring soil absorption systems and where such systems could have significant negative impacts on groundwater and surface water quality. The Committee may, with approval of the Department of Natural Resources, allow alternative or experimental methods of waste treatment and disposal. Plans for on-site waste disposal facilities not utilizing soil absorption systems shall be approved in writing by the Planning and Zoning Committee. The subdivider shall clearly indicate on the face of the plat or certified survey map in any deeds of conveyance that soil absorption systems are not to be used.

(3) Disposal facilities shall be constructed to meet the requirements of Chapter ILHR 83, Wisconsin Administrative Code, the standards set out in Section 7.9, Portage County Ordinances, and other state and local requirements.

(4) The subdivider shall carry out soil tests in the manner required by Comm 83, Wisconsin Administrative Code. Lots shall comply with the minimum areas and widths, and shall have the specified minimum areas free of limiting conditions to meet the requirements of Comm 83, Wisconsin Administrative Code.

(B) Determination of Suitability. The Planning and Zoning Department shall determine the suitability of a proposed development for soil absorption systems. Such determination shall be based on the soils maps contained in the Portage County Soil Survey together with the suitability ratings in Appendix C of this ordinance. Where a proposed building sites(s) includes soils which are rated as having severe or very severe limitations for soil absorption systems, the subdivider may be required to provide further soil evaluations, including soil borings. Such evaluations shall be conducted by a certified soil tester.

Where said soil evaluations indicate that the site(s) in question is unsuitable for soil absorption systems, the plat or certified survey map or part thereof which is unsuitable shall not be approved for building unless an appeal is allowed under Section 7.9.2(C) Portage County Ordinances.

#### **7.4.6.6 SURFACE WATER MANAGEMENT**

Surface water management for the prevention of erosion and flooding shall be provided by the subdivider at the determination of the Planning and Zoning Department. The subdivider or agent shall submit recommendations for surface water management at the time of the submission of the sketch plat in the case of a major subdivision, county plat, or minor subdivision. Proper surface water management shall include, but not be limited to, the following:

- (A) Diversions;
- (B) Waterways;
- (C) Culverts and placement of;
- (D) Topography data at appropriate contour intervals;
- (E) Road elevations and placements of, including private access; and
- (F) Seeding and mulching.

#### **7.4.7 PROCEDURES FOR MAJOR SUBDIVISION REVIEW**

##### **7.4.7.1 PRELIMINARY CONSULTATION**

Prior to the filing of an application for the approval of a preliminary plat, the subdivider shall consult with the Planning and Zoning Department and present a sketch plat of the preliminary plat area for review. At this review, or within fifteen (15) days thereafter, the Planning and Zoning Department shall inform the subdivider of any additions, changes, or corrections to the plat. The sketch plat shall be of reasonable accuracy, drawn to an appropriate scale, and include the following information:

- (A) Locational data including: boundaries of the property being considered for sale or development; a general description of all property owned or controlled by the subdivider contiguous to the proposed plat; the appropriate size/area of the parcel(s); names of the landowner(s) and surveyor; township, range and section in which the property is located; north arrow and scale; and date of the map;

(B) Existing features including: roads, driveways/access points, utility easements, navigable waters, approximate location of the 100-year floodplain, and any other data pertinent to the preliminary consultation.

#### **7.4.7.2 PRELIMINARY PLAT**

The subdivider shall submit sufficient copies of the preliminary plat to the Planning and Zoning Department so that copies can be submitted by the Planning and Zoning Department to the agencies having authority to approve and object to plats under the provisions of Sections 236.10 and 236.12, Wisconsin Statutes. The preliminary plat, based upon exterior boundary survey by a registered land surveyor, shall be in sufficient detail to determine if all requirements have been met, shall be shown on a map at a scale of one(1) inch equals one hundred (100) feet, and shall include:

(A) All information required on the sketch plat as per Section 7.4.7.1;

(B) A location sketch showing the location of the site with respect to surrounding roads and landmarks (not required for minor subdivisions), and any quarter-quarter section line, section line, township line, or range line within or abutting the proposed site;

(C) Lot layout including widths or depths, the location and size of any principal or accessory structures together with their setbacks from any abutting road right-of-way and abutting lot lines;

(D) Existing and proposed roads, utilities (the subdivider is encouraged to consult with appropriate utility companies prior to locating new utility easements), easements, parks, public access, community facilities and dedications or reservations of land;

(E) Land characteristics including soil conditions, seasonally wet areas, rock outcrops and areas with slopes over twelve percent (12%), delineation of the 100-year flood boundary and floodway boundary, waterways, ditches, and shorelines; at their discretion, the Planning and Zoning Department may also require appropriate topographic data to be shown;

(F) Proposed filling, grading, lagooning, dredging, or surface drainage;

(G) Delineation of any areas of restricted access along public roads which are within or abutting the proposed development, including access restrictions imposed by the Wisconsin Department of Transportation or by this ordinance. This shall include the location of existing access points along both sides of the road(s), together with the required access separations as specified in Section 7.4.6.1(E)(1) of this ordinance;

(H) Proposed subdivision name and proposed road names;

(I) Any proposed restrictive covenants for the land involved shall be stated;

(J) Results of any required groundwater monitoring or testing as per Section 7.4.6.2 of this ordinance;

(K) The approximate area, in square feet, of each lot and outlot, exclusive of road right-of-way. As pertains to county plats and minor subdivisions, the approximate area, in square feet, shall also be shown which is exclusive of road right-of-way. The exact area, in square feet, shall be shown on the final document;

(L) The approximate area, in square feet, of any portion of a lot or outlot which is located within the boundaries of an incorporated municipality (city or village) and the approximate remaining area which is located outside the municipal boundaries. The exact area, in square feet, shall be shown on the final document.

The Planning and Zoning Committee shall approve, approve conditionally, or reject the preliminary plat within ninety (90) days, as provided by Section 236.11, Wisconsin Statutes. Failure of the Planning and Zoning Committee to act within ninety (90) days shall constitute approval, unless this time period is extended by mutual agreement with the subdivider.

#### **7.4.7.3 FINAL PLAT**

The final plat shall conform to the preliminary plat as approved and to the requirements of all applicable ordinances and state laws including Sections 236.15, 236.20 and 236.21, Wisconsin Statutes, and shall be submitted to those agencies having authority to approve or object to plats as provided in Sections 236.10 and 236.12, Wisconsin Statutes, before any lots are sold. If desired by the subdivider, the final plat may consist of only that portion of the approved preliminary plat which he proposes to record at that time. However, such portion shall conform to all requirements of this ordinance. Sufficient copies of a final plat of an approved preliminary plat or a portion thereof shall be submitted to the Planning and Zoning Committee within six (6) months of the date of approval of the preliminary plat, otherwise their approval shall become null and void, unless an extension of time is applied for by the subdivider and granted by the Planning and Zoning Committee. The Planning and Zoning Committee or its designated agent, shall approve or reject the final plat within sixty (60) days of its submission, unless the time is extended by agreement with the subdivider. If the Planning and zoning Committee or its designated agent fails to approve the final plat within sixty (60) days, and if the time has not been extended, and if no unsatisfied objections have been filed within that period, the plat shall be deemed approved.

#### **7.4.7.4 REPLAT**

When it is proposed to replat a recorded subdivision, or part thereof, so as to change the boundaries of a recorded subdivision or part thereof, the subdivider or person wishing to replat shall vacate or alter the recorded plat as provided in Sections 236.36 through 236.44, Wisconsin Statutes. The subdivider, or person wishing to replat, shall then proceed as specified in Sections 7.4.7.1 through 7.4.7.3 of this ordinance.

#### **7.4.8 PROCEDURES FOR COUNTY PLAT REVIEW**

“Procedures for Major Subdivision Review”, 7.4.7 of the Portage County Code of Ordinances, shall be followed for County Plats with the exception that Planning and Zoning Staff may approve or conditionally approve the preliminary and/or final plat.

#### **7.4.9 PROCEDURES FOR MINOR SUBDIVISION REVIEW**

The subdivider shall consult with the Planning and Zoning Department and shall submit sufficient copies of a sketch plat as determined by the Department, which contains all information required under Section 7.4.7.1 of this ordinance to the Planning and Zoning Department. Within fifteen (15) days of receiving copies of the sketch plat, the Planning and Zoning Department, as designated agent, shall take action to approve, conditionally approve, or refer such map to the Planning and Zoning Committee, unless time is extended by mutual agreement with the subdivider. The Planning and Zoning Department, as designated agent, shall have the authority to approve or conditionally approve a minor subdivision, however, the Planning and Zoning Committee is the only body having

authority to reject a minor subdivision. Where a minor subdivision is conditionally approved or rejected, the conditions of approval or reasons for rejection shall be stated in writing. When the Planning and Zoning Department determines that a minor subdivision is to be referred to the Planning and Zoning Committee, the Department may require submittal of the minor subdivision ten (10) days prior to the meeting at which it is to be considered. Minor subdivisions may be referred to the appropriate town board, municipality and utility companies for review and comment at the discretion of the Planning and Zoning Department.

The subdivider shall submit a minor subdivision, or portion thereof, to the Planning and Zoning Department for final approval within six (6) months of the Department's last approval of the sketch plat, otherwise said approval shall become null and void, unless an extension of this time period is agreed to by the Planning and Zoning Department. The minor subdivision shall contain all information required under Section 7.4.7.2(A) through (L) of this ordinance and Section 236.34, Wisconsin Statutes.

All minor subdivisions shall be prepared in accordance with the requirements of Section 236.34, Wisconsin Statutes, pertaining to certified survey maps.

The subdivider shall record a minor subdivision, or portion thereof, in the office of the Portage County Register of Deeds within ninety (90) days of the date of the final county approval, otherwise said approval shall become null and void, unless an extension of this time period is agreed to by the Planning and Zoning Department. An approved minor subdivision which subsequently becomes null and void under this section may be resubmitted to the Planning and Zoning Department for reapproval, but shall be subject to a resubmittal fee.

#### **7.4.10 MODIFICATIONS**

The Planning and Zoning Committee may permit modification from the provisions of this ordinance after holding a public hearing as provided in Section 7.1.6.5 of the County Zoning Ordinance, except as provided in Section 7.4.6.1(E)(5) of this ordinance.

##### **7.4.10.1 CONDITIONS**

The following conditions must apply:

- (A) Because of the unique topographic or other conditions of the land involved, literal application of the provisions of this ordinance would impose undue hardship;
- (B) Conditions are attached to plat or certified survey map approval that assure compliance with the requirements of this ordinance insofar as practical;
- (C) There is compliance with the provisions of Chapter 236, Wisconsin Statutes, and other relevant state laws; and
- (D) The purposes and intent of this ordinance are observed.

##### **7.4.11 FEES**

Fees shall be determined by the Planning and Zoning Committee and shall be paid to the Zoning Administrator at the time an application for a major subdivision, county plat or minor subdivision is filed with the Zoning

Administrator. A schedule of such fees shall be made available by the Planning and Zoning Department. All such fees collected by the Zoning Administrator shall be remitted to the County Treasurer.

#### **7.4.12 ENFORCEMENT AND PENALTIES**

The provisions of this ordinance shall be enforced under the direction of the County Board of Supervisors, through the County Planning and Zoning Committee, the Planning and Zoning Department and the County law enforcement officers. Any person, firm, company, corporation, agent, contractor or subcontractor who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be subject to a fine of not less than fifty (\$50) dollars, nor more than one thousand (\$1,000) dollars, together with the costs of action, and in default of payment thereof, to imprisonment in the county jail for a period of not less than one (1) day nor more than six (6) months, or until such fine and costs be paid, and each day of violation shall be deemed a separate offense.

In addition, the remedies provided by Sections 236.30, 236.32 and 236.335, Wisconsin Statutes shall be available to the County. Compliance may be enforced by injunctive order at the suit of the County or any affected landowner(s). The recording of a major subdivision, county plat or minor subdivision with the County Register of Deeds, where the document does not include all certificates and signatures of all approving authorities as required by this ordinance or State Statutes, shall constitute a violation of this ordinance; any person(s) who causes such a document to be recorded may be subject to penalty under this ordinance.

Adopted September 20, 1990

### [APPENDIX A](#)

#### **SOIL SUITABILITY FOR ON-SITE WASTE DISPOSAL FACILITIES**

##### A-1

Revised June 17, 2008

Revised by Resolution No. 137-2010-2012 on March 15, 2011

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### **7.5 OPEN SPACE DESIGN OPTION**

#### **7.5.1 INTENT**

The intent of the Open Space Design Option is to support a sustainable rural environment, while permitting limited residential development. Increasing development pressure in rural areas has led to this new subdivision design process which would encourage single family development that is more environmentally sensitive and less intrusive upon the existing rural landscape. The Open Space Design Option allows dwelling units to be grouped onto part of the parcel so the remaining acreage can be preserved as open lands and appropriate separations from agricultural practices and other non-residential uses can be observed. The overall density remains the same as would be found in a traditional development in the existing zoning district.

The open space subdivision design process emphasizes the preservation of agriculture and the natural environment as a basis for the grouping of dwellings. Homes are separated from adjacent property or other groupings of dwellings by the open space that is protected from development.

The following provisions are intended to result in residential development that is consistent with the Portage County Code of Ordinances.

### **7.5.2 OBJECTIVES**

The following objectives shall be considered in the review of any application for an open space development.

7.5.2.1 To promote environmentally sensitive residential development by requiring open space preservation, thereby preserving the natural character of open fields, stands of trees, ponds, streams, hills or other features identified by the community.

7.5.2.2 To preserve the rural landscape and protect environmentally sensitive lands through the permanent preservation of open space and natural resources.

7.5.2.3 To provide for agricultural and aesthetic use of open space by allowing developers to reduce lot sizes while maintaining the residential density required in the existing zoning district, thus providing a more flexible and economical residential layout.

7.5.2.4 To provide appropriate separation and buffering between residential development and non residential uses.

### **7.5.3 APPLICATION OF THE OPEN SPACE DESIGN OPTION**

The Open Space Design Option may be applied to tax parcels of twenty (20) acres or more in communities with an Open Space and Rural Landscape Preservation section in their land use plan. Lands with open space of State and local significance, including Primary and Secondary Open Space as defined in Section 7.5.4, are encouraged to utilize this option. Determination of open space significance is based upon a combination of factors including recommendations found in the Open Space and Rural Landscape Preservation section of a Town's Land Use Plan, recommendations from the County Open Space Plan, soils, topography, existing vegetation and habitat, historic use of land, size of parcel, use of land for agricultural purposes and character of the surrounding areas.

### **7.5.4 PRIMARY AND SECONDARY OPEN SPACE**

Towns wanting to allow for low density residential development while also preserving the traditional rural/country activities and character of the township have identified Primary and Secondary Open Space in their Town Land Use Plan. The Open Space and Rural Landscape Preservation Section of the Town's Land Use Plan identifies areas in the township where efforts to preserve open spaces, such as agricultural activities, wildlife habitat and woodlands, will be made. Boundary maps for the Primary and Secondary Open Space defined below are found in each Town's Land Use Plan.

#### **7.5.4.1 PRIMARY OPEN SPACE**

Natural regions of the town comprising only the most severely constrained lands, where development is typically restricted under current codes and laws. These regions would include regulated wetlands, 100 year floodplains and

slopes exceeding 20 percent. These lands may be designated within a Conservancy Zoning District. Primary Open Space may also include intensively farmed areas of a community that should be protected from excessive development to preserve the viability of the farm economy. This area would be defined by highly productive farmlands and areas where farm operations are concentrated.

#### **7.5.4.2 SECONDARY OPEN SPACE**

Secondary Open Space may include natural, historic or cultural elements identified by the community as significant for preserving the natural landscape of the area. This category may also include small inclusions of prime agricultural soils where these soils coincide with crop lands, meadows, pastures and slopes exceeding 12 percent. Other elements of regional significance can be added to this category for future protection.

### **7.5.5 DEVELOPMENT REQUIREMENTS**

#### **7.5.5.1 DENSITY STANDARDS**

(A) The total number of dwelling units permitted in an Open Space Development shall be determined by submittal of a conventional subdivision plan identifying the potential lots and buildable lands. After Portage County Planning and Zoning Department review of the conventional subdivision plan, the maximum number of lots available for the open space development will be determined. The maximum residential density specified for the zoning district in which the development is located shall not be increased, except where provided in Section 7.5.5.1(C).

(B) The Open Space Design Option allows a landowner to create lots smaller than the existing zoning would otherwise permit, while maintaining the overall density of that zoning district. To qualify for this decreased lot size, the tax parcel must be twenty (20) acres or more in size and have acreage unencumbered by deed restrictions greater than or equal to the minimum lot size of the existing zoning. Deed restricted acreage includes acreage in the tax parcel previously used to calculate a lot split. This restricted acreage is shown as a statement on the deed of the tax parcel prohibiting a specific amount of acreage from being used for future lot split calculations. Deed restricted acreage is calculated as follows:

Minimum lot size required by zoning - Size of new lot created =  
The amount of acres deed restricted on the tax parcel

(C) Density Bonus. Acreage zoned Conservancy on the tax parcel (excluding water bodies) may be included in the calculation of total lot density for a proposed development when an open space design is used, provided the additional lots do not violate any provision of this ordinance.

(D) Residential lots shall be grouped on the tax parcel so that designated open space within a development includes at least fifty (50) percent of the parcel's Secondary Open Space and one-hundred (100) percent of the Primary Open Space. Each lot must abut a designated open space.

#### **7.5.5.2 MINIMUM LOT SIZE**

Lots not served by a public or common sanitary sewer shall be at least two (2) acres in size, exclusive of road right of way. Lots served by public or common sanitary sewer and are part of a subdivision plat shall have a minimum lot size of 15,000 square feet, exclusive of road right of way.

#### **7.5.5.3 OPEN SPACE STANDARDS**



(A) The following areas shall not be used in the calculation for determining designated open space:

(1) Areas devoted to public or private streets or rights-of-way or any land that has been or is to be conveyed to a public agency.

(2) Areas devoted to residential lots, an accessory use, vehicle access, vehicle parking or an approved land improvement.

(3) All areas in surface water bodies.

(B) Calculating Designated Open Space. The amount of land designated as permanent open space shall be equal to or greater than the amount of restricted acreage calculated for the tax parcel, as required in Section 7.5.5.1(B) above and shall satisfy the requirements of Section 7.5.5.1(D). Except as noted in Section 7.5.5.3(A) above, any undeveloped land area within the boundaries of the tax parcel may be included as required open space.

(C) Ownership of Designated Open Space. The designated open space land may be held by the original owner, held in common by some or all of the owners of the newly created lots or sold to a third party. Public access may or may not be allowed. The parties responsible for management of the designated open space will be described in the Land Stewardship Plan (Section 7.5.9).

(D) Use of Designated Open Space. Designated open space land may be used for recreation, conservation, agricultural uses or preservation in an undeveloped state. Options for the use of designated open space shall be detailed in the Land Stewardship Plan (Section 7.5.9).

(E) Preservation of Designated Open Space. The developer shall set aside designated open space through an irrevocable conveyance that is acceptable to the Portage County Corporation Counsel. Forms of dedicating open space may include, but are not limited to a recorded deed restriction, covenants that run perpetually with the land, purchase of development rights, conservation easement, etc.

Such conveyance shall assure that the designated open space identified on an approved Preliminary Plan and required Land Stewardship Plan (Section 7.5.9) will be protected from all forms of development, except as shown on said plans. Such conveyance shall:

(1) Indicate the proposed allowable use(s) of the designated open space.

(2) Require that parties who have an ownership interest in the designated open space maintain the designated open space.

(3) Provide standards for scheduled maintenance of the designated open space.

(4) Provide for maintenance to be undertaken by the Township, or designated agent, in the event that the designated open space is inadequately maintained as per the Land Stewardship Plan, with the assessment of cost upon the property owners.

(F) Structures Built In Designated Open Space Areas. Any structure(s) or building(s) accessory to recreation, conservation or agriculture may be erected within the designated open space, subject to the approved Land

Stewardship Plan and appropriate zoning and building permits. The accessory structure(s) or building(s) shall not exceed, in the aggregate, one (1) percent of the required open space area.

(G) Access to Designated Open Space. Designated open space intended for recreation or use by the residents shall be easily accessible to pedestrians. Accessibility for the handicapped and older citizens should be considered in design. Each lot must abut a designated open space.

## **7.5.6 MINIMUM DESIGN STANDARDS**

### **7.5.6.1 LOCATION OF LOTS**

Residential lots shall be laid out, to the greatest extent feasible, to achieve the following objectives.

(A) Unsewered Lots. Each new lot shall have a minimum two (2) acre building site containing 24 inches of unmottled soil (mottles as indicators of high ground water), shall be outside of regulated wetlands and floodplains and shall be suitable for primary structure construction without major alterations to the land, such as filling or removing soil and/or bedrock.

(B) Sewered Lots. Parcels shall have a minimum 15,000 square foot building site containing 24 inches of unmottled soil (mottles as indicators of high ground water), shall be outside of regulated wetlands and floodplains and shall be suitable for primary structure construction without major alterations to the land, such as filling or removing soil and/or bedrock

### **7.5.6.2 SETBACKS**

Setbacks required in the existing zoning district shall apply unless specified below.

(A) Front, rear and side yard setbacks may be staggered to provide for a maximum variety in the size of such yards.

(B) Residential lots adjacent to agricultural irrigation systems shall be established a minimum of 250 feet from the closest irrigation gun or other liquid dispersal device. Residential lots abutting all other agricultural uses permitted in the agricultural zoning districts of the Portage County Zoning Ordinance shall be established a minimum of 100 feet from the agricultural practice as defined at the time of plat. Setbacks established on the plat or certified survey map shall remain in perpetuity.

### **7.5.6.3 LOT WIDTH**

Minimum lot widths of the existing zoning shall apply.

### **7.5.6.4 ROADWAY STANDARDS**

(A) Access. All lots (residential and open space) shall have direct access to a public roadway, as required by County Subdivision and Zoning Ordinances.

(B) Internal Roads. The subdivider may be required to construct and dedicate internal roads to the public, as determined by the Planning and Zoning Department or Town Board. Where dedication and/or construction is required, the requirements set forth in Section 7.4.6.1, Portage County Subdivision Ordinance, shall apply.

#### **7.5.6.5 OPEN SPACE BETWEEN CLUSTERS**

Open spaces between residential clusters (if applicable), including those spaces used as recreation areas, shall be at least one hundred (100) feet wide and shall be protected with an irrevocable conveyance that is found acceptable to the Portage County Corporation Counsel [see Section 7.5.5.3(E)].

#### **7.5.6.6 LANDSCAPING AND BUFFERING**

Vegetated buffer zones shall have a minimum width of fifty (50) feet and shall be required between residential lots and agricultural land uses. This buffer system can be located on either the residential lot, designated open space, or both. An on-site visit will make it possible to make recommendations as to the long term health of an existing or proposed buffer in accordance with Portage County Planning and Zoning Department's performance standard, "Tree, Shrub, Grass Vegetative Residential Buffer." A site evaluation shall be conducted on or before the on-site walkabout identified in Section 7.5.7.

#### **7.5.6.7 WATERWAY BUFFERING**

All dwellings and accessory structures shall be located no less than one hundred (100) feet from lakes, ponds, flowages, rivers, streams and creeks. In developments with common open space, common access to the water feature shall be provided as part of the common open space (building setbacks from property lines shall still apply).

#### **7.5.6.8 PRESERVING ROADWAY FRONTAGE**

All dwellings and accessory structures shall be setback no less than one hundred (100) feet from the centerline of external public roads unless highway setbacks require a greater distance. A preferred management option for roadway frontage is to preserve the natural vegetation, except for the removal of exotic, dead or diseased vegetation. The screening potential of existing vegetation may be improved by planting gaps with native trees and shrubs. Land converted from agriculture should be planted with vegetation typical of the surrounding area.

### **7.5.7 SITE ANALYSIS & DESIGN PROCESS**

This section describes the design process for a proposed development or lot split. The full Portage County Subdivision Ordinance contains specific requirements related to the division of land in Portage County that may not be addressed in this section.

Any development that uses the open space design option shall follow the design process described below. The requirements of this section apply to the entire tax parcel.

#### **7.5.7.1 INITIAL CONFERENCE**

The applicant's/developer's first step in an open space design process is an orientation meeting with Planning and Zoning Department Staff and Town Representatives. The purpose of the meeting is to familiarize the applicant with the submittal requirements for the project and the Staff with the development proposal.

### **7.5.7.2 CREATING AN EXISTING FEATURES PLAN**

The Existing Features Plan maps each site's special features and is required for all proposed subdivisions. This Plan forms the basis of the design process for open space lands, house locations, street alignments and lot lines and at a minimum must include:

- (A) Land contours based at minimum upon topographical maps published by the U.S. Geological Survey;
- (B) The location of severely constraining elements such as slopes 12 – 20 percent, slopes greater than 20%, wetlands, watercourses, intermittent streams and 100-year floodplains and all rights-of-way and easements;
- (C) Soil boundaries as shown on USDA Natural Resources Conservation Service Soils Maps; and
- (D) The location of significant features such as woodlands, tree lines, open fields, meadows, scenic views into or out from the property, watershed divides, drainage ways, groundwater gradient, fences or stone walls, rock outcrops, existing structures, roads, trails and any sites of local significance as identified by the Town, County or State.
- (E) Primary Open Space and Secondary Open Space, as described in Section 7.5.4 of this ordinance and identified in the Open Space and Rural Landscape Preservation section of the Town's Land Use Plan. The applicant/developer, shall bring a copy of the Existing Features Plan to the on-site walkabout (see 7.5.7.3 below).

### **7.5.7.3 ON-SITE WALKABOUT**

After the Existing Features Plan has been prepared, the applicant shall schedule a mutually convenient date to walk the property with a representative from the Portage County Planning and Zoning Department and the Town. The purpose of this visit is to familiarize local officials with the property's special features and to provide them an opportunity to respond to the applicant regarding the preservation of the Primary, Secondary and other Open Space and potential house locations and street alignments.

### **7.5.7.4 LAYOUT OF SITE IMPROVEMENTS**

Lands not identified as Designated Open Space in the Existing Features Plan may be considered potential development areas for the site. It is within these development areas that site improvements are located.

- (A) Location of House Sites. Building sites for homes are located before any other improvements. This eliminates the constraints that streets and lot lines may impose on the home siting process. House sites shall be setback a minimum of 100 feet from Primary Open Space, and 50 feet from Secondary Open Space.
- (B) Street, Utility and Lot Layout. Proposed streets and utilities shall be aligned to provide vehicular access and proposed services to each house in the most reasonable and economical way. When lots and access streets are laid out, they shall be located in a way that avoids or at least minimizes adverse impacts on both the Primary and Secondary Open Space. Wetland crossings and streets traversing existing slopes over 12 percent are strongly discouraged. Street connections are encouraged to minimize the number of new cul-de-sacs to be maintained by the township and to facilitate easy access to and from homes in different parts of the property (and on adjoining parcels). Electrical utilities should be buried unless ground conditions prohibit such activity.

(C) Lot Lines. The final step is to draw in the lot lines (where applicable).

#### **7.5.7.5 PRE-SUBMISSION CONFERENCE**

Prior to submission of the Preliminary Plan, the applicant shall meet with Staff of the Portage County Planning and Zoning Department to discuss how the design process described in this Section has been applied to the subject property. The applicant should bring, at a minimum, a sketch of the proposed development that illustrates initial thoughts about a conceptual layout for open space, house sites and street alignments. At the discretion of the Portage County Planning and Zoning Department Staff this conference may be combined with the on-site walkabout.

#### **7.5.7.6 PRELIMINARY PLAN**

After the pre-submission conference, a Preliminary Plan shall be submitted for all proposed subdivisions. As used in this ordinance, the term "Preliminary Plan" refers to a preliminary, scaled plan, drawn to illustrate the layout for open space lands, house sites and street alignments. This is the stage where drawings are tentatively illustrated, before substantial engineering costs are incurred in the design of any proposed subdivision layout. A Preliminary Plan should also include information required to meet the "Preliminary Plat" or certified survey map requirements of Section 7.4.7.2 of the Portage County Subdivision Ordinance to expedite the submission process. Within fifteen (15) days of receiving the Preliminary Plan, the Portage County Planning and Zoning Department shall inform the subdivider of any additions, changes, or corrections to the plan. Upon subsequent revision (if required) the plan would then be ready to prepare and submit as a preliminary plat or certified survey map.

#### **7.5.8 SITE REVIEW PRINCIPLES**

In evaluating the layout of lots and open space, the following criteria shall be considered by the Town and the Portage County Planning and Zoning Committee, or designated agent, as indicating design appropriate to the site's natural, historic and cultural features or any other factor consistent with the principles and intent of this ordinance. Originality in lot layout shall be encouraged to achieve the best possible relationship between development and open space. Accordingly, the Town and the Portage County Planning and Zoning Committee, or designated agent, shall evaluate proposals to determine whether the proposed development plan:

7.5.8.1 Protects and preserves all floodplains, wetlands and steep slopes from clearing, grading, filling, or construction (except as may be approved by the township for essential infrastructure or active or passive recreation amenities).

7.5.8.2 Preserves and maintains elements of the landscape identified in the Town's Land Use Plan as significant for preserving the natural landscape of the area.

7.5.8.3 Sites dwellings on the least productive agricultural lands.

7.5.8.4 Maintains or creates an upland buffer system with a minimum width of 100 feet adjacent to wetlands and perennial surface waters, including lakes, ponds, flowages, rivers, streams and creeks, for the purpose of filtering out and minimizing sediment and chemical contamination of surface water, or to remediate groundwater contamination. This will be according to Portage County Planning and Zoning Department's performance standard, "Surface Water and Groundwater Remedial Action Buffers."

7.5.8.5 Designs around existing fencelines and treelines between fields or meadows and minimize impacts on large woodlands (as defined by the Town), especially those containing many mature trees or a significant wildlife habitat.

7.5.8.6 Leaves scenic views and vistas unblocked or uninterrupted, particularly as seen from public thoroughfares.

7.5.8.7 Avoids siting new construction on prominent hilltops or ridges.

7.5.8.8 Protects wildlife habitat areas of species listed as endangered, threatened, or of special concern by the US Environmental Protection Agency and/or by the Wisconsin Department of Natural Resources.

7.5.8.9 Designs around and preserve sites of historic, archaeological, or cultural value and their surroundings, insofar as needed to safeguard the character of the feature.

7.5.8.10 Protects rural roadside character and improves public safety and vehicular carrying capacity by avoiding development fronting directly onto existing public roads. Establishes buffer zones along the scenic corridor of rural roads.

7.5.8.11 Landscapes common areas (such as community greens), cul-de-sac islands and both sides of new streets with native specie shade trees and flowering shrubs with high wildlife conservation value.

7.5.8.12 Provides active recreational areas in suitable locations that offer convenient access by residents and adequate screening from nearby house lots.

7.5.8.13 Includes a pedestrian circulation system designed to assure that pedestrians can walk safely and easily on the site, between properties and activities or special features within a neighborhood open space system.

7.5.8.14 Provides open space that is reasonably contiguous. Such open space should be designed as part of larger contiguous and integrated greenway systems, as per the policies in the Open Space and Rural Landscape Preservation Section of the Town's Land Use Plan.

## **7.5.9 MANAGEMENT OF OPEN SPACE**

A Land Stewardship Plan for the long-term management of designated open space lands and the use, maintenance and insurance of any common facilities (if present), including provisions for funding shall be provided to and approved by the Portage County Planning and Zoning Committee or designated agent prior to preliminary plan approval. Such plan shall:

7.5.9.1 Define ownership.

7.5.9.2 Establish necessary regular and periodic operation and maintenance responsibilities.

7.5.9.3 Establish staffing needs, insurance requirements and other associated costs and define the means for funding the same on an on-going basis.

7.5.9.4 Specifically focus on the long-term management of designated open space lands. A draft Land Stewardship Plan shall be submitted at the time of preliminary plan review and a final Land Stewardship Plan at the time of final plat or certified survey map submittal.

The Land Stewardship Plan shall include a narrative, based on the site analysis required in Section 7.5.7, describing:

- (A) Existing conditions including all natural, cultural, historic and scenic elements in the landscape;
- (B) Objectives for each designated open space area, including:
  - (1) The proposed management objectives for the area; and the measures proposed for achieving the objectives.
  - (2) Proposed restoration measures, including: measures for correcting increasingly destructive conditions, such as erosion; and, if applicable, measures for restoring historic features.
- (C) A maintenance and operations plan identifying operations needed for maintaining the stability of the resources including, where applicable:
  - (1) Mowing schedules.
  - (2) Weed control.
  - (3) Planting schedules.
  - (4) Forest management plans.
  - (5) Clearing and cleanup.
  - (6) At the Town's discretion, the applicant may be required to place in escrow sufficient funds for the maintenance and operation costs of common facilities for a maximum of one year.

7.5.9.5 Include provisions and procedures for amendments to the Land Stewardship Plan.

7.5.9.6 In the event that the organization established to own and maintain common facilities, or any successor organization, fails to maintain all or any portion of the common facilities in reasonable order and condition in accordance with the development plan and all applicable laws, rules and regulations, the Town may serve written notice upon the organization and upon the residents and owners of the common facilities or lands, explaining the manner in which the organization has failed to maintain the common facilities. The notice shall identify corrections required and the timeframe within which the corrections shall be made. Upon failure to comply within the time specified, the organization, or any successor organization, shall be considered in violation of this Ordinance, in which case the bond, if any, may be forfeited and any permits may be revoked or suspended. The Town has the authority to enter and enforce the covenants in the irrevocable conveyance specified in Section 7.5.5.3(E).

7.5.9.7 The costs of corrective action by the Town shall be assessed proportionate to tax assessments against the properties that have the right of enjoyment of the common facilities and shall become a lien on said properties. The Town, at the time of entering upon such common facilities for the purpose of maintenance, shall file a notice of such lien in the office of the County Register of Deeds upon the properties affected by such lien.

Adopted March 21, 2000

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## **7.6 – FLOODPLAIN ZONING ORDINANCE**

### **7.6.1 STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE, TITLE AND GENERAL PROVISIONS**

#### **7.6.1.1 STATUTORY AUTHORIZATION**

This Ordinance is adopted pursuant to the authorization in ss 59.69, 59.692 and 59.694; and the requirements in ss 87.30, Stats.

#### **7.6.1.2 FINDING OF FACT**

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

#### **7.6.1.3 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.

#### **7.6.1.4 TITLE**

This Ordinance shall be known as the Floodplain Zoning Ordinance for Portage County, Wisconsin.



### 7.6.1.5 GENERAL PROVISIONS

#### (1) **AREAS TO BE REGULATED**

This Ordinance regulates all areas of special flood hazard shown on the Flood Insurance Rate Map (FIRM) as zones A, AO, AH, A1-30, AE, VE, V1-30, or V. Additional areas identified on maps approved by the Department of Natural Resources (DNR) and Portage County may also be regulated under the provisions of this ordinance, where applicable. If more than one map or revision is referenced, the most restrictive information shall apply.

#### (2) **OFFICIAL MAPS & REVISIONS**

Special Flood Hazard Areas (SFHA) are designated as zones A, A1-30, AE, AH, AO, VE, V1-30, or V on the Flood Insurance Rate Maps (FIRMS) based on flood hazard analyses summarized in the Flood Insurance Study (FIS) listed subd. (a) below. Additional flood hazard areas subject to regulation under this ordinance are identified on maps based on studies approved by the DNR and listed in subd. (b) below. These maps and revisions are on file in the office of the Portage County Planning and Zoning Department, Portage County. If more than one map or revision is referenced, the most restrictive information shall apply.

##### (a) **OFFICIAL MAPS:** Based on the FIS

Flood Insurance Rate Map (FIRM), panel numbers 55097CIN0A, 55097C0020D, 55097C0025D, 55097C0040D, 55097C0041D, 55097C0042D, 55097C0043D, 55097C0044D, 55097C0065D, 55097C0070D, 55097C0090D, 55097C0115D, 55097C0120D, 55097C0140D, 55097C0155D, 55097C0160D, 55097C0165D, 55097C0170D, 55097C0180D, 55097C0181D, 55097C0182D, 55097C0183D, 55097C0184D, 55097C0190D, 55097C0192D, 55097C0195D, 55097C0205D, 55097C0210D, 55097C0211D, 55097C0213D, 55097C0220D, 55097C0230D, 55097C0255D, 55097C0260D, 55097C0265D, 55097C0270D, 55097C0280D, 55097C0290D, 55097C0303D, 55097C0304D, 55097C0305D, 55097C0308D, 55097C0309D, 55097C0310D, 55097C0326D, 55097C0327D, 55097C0328D, 55097C0329D, 55097C0331D, 55097C0333D, 55097C0380D, 55097C0383D, 55097C0385D, 55097C0395D, 55097C0405D, and 55097C0415D dated July 20, 2009; with corresponding profiles that are based on the Flood Insurance Study (FIS), July 20, 2009, 55097 CV000A.

(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 FIS at the site of the proposed development.

1. Jordan Dam, Dam Failure analysis approved by the Department of Natural Resources on March 1, 1995, including:
  - a. Map dated May 12, 1994 and titled Appendices C - Hydraulic Shadow Map
  - b. Floodway data table dated May 17, 1994 and titled Appendices E - Dambrk Output - Failure of Dam, Floodway Data Tables
  - c. Flood profiles dated May 17, 1994 and titled Appendices E - Dambrk Output - Failure of Dam, Flood Profiles
2. Spring Creek Dam, Dam Failure analysis approved by the Department of Natural Resources on August 10, 2017, including:
  - a. Map dated May 17, 2017 and titled Exhibit 2 - 100-year Flood Map - Dam Failure Condition
  - b. Floodway data table dated May 17, 2017 and titled Table 3 - Floodway Data, Dam Failure (Piping Breach) column

3. Fountain Lake Dam, Dam Failure analysis approved by the Department of Natural Resources on February 13, 2019, including:
  - a. Map dated November 24, 2014 and titled Exhibit 2 - 100-year Flood Map - Dam Failure Condition
  - b. Floodway data table dated November 2014 and titled Exhibit 14 - Floodway Data for Dam Failure Condition
  - c. Flood Profiles dated November 2014 and titled Exhibit 3 - 100-year Flood Profiles - Dam Failure Condition

### **(3) ESTABLISHMENT OF FLOODPLAIN ZONING DISTRICTS**

The flood hazard areas regulated by this ordinance are divided into 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 within AE Zones as shown on the FIRM or within A Zones shown on the FIRM when determined according to s. 7.6.5.1(5). The hydraulic shadow, as shown in the adopted dam failure analysis report listed in 7.6.1.5(2)(b), shall be regulated as a Floodway District unless delineated as a Floodfringe District by the report.
- (b) The Floodfringe District (FF) is that portion of a riverine special flood hazard area outside the floodway within AE Zones on the FIRM or when floodway limits have been determined according to s. 7.6.5.1(5) within A Zones shown on the FIRM.
- (c) The General Floodplain District (GFD) is those areas that may be covered by floodwater during the regional flood in which a floodway boundary has not been delineated on the FIRM, including A Zones on the FIRM.

### **(4) LOCATING FLOODPLAIN BOUNDARIES**

Discrepancies between the exterior boundaries of zones A1-30, AE, AH or A on the official floodplain zoning map and actual field conditions may be resolved using the criteria in paragraphs (a) or (b) below. If a significant difference exists, the map shall be amended according to s. 7.6.8. The Zoning Administrator can rely on a boundary derived from a profile elevation to grant or deny a Zoning 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. Disputes between the Zoning Administrator and an applicant over the district boundary line shall be settled according to s. 7.6.7(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 also approve any map amendment pursuant to s. 7.6.8 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 products, including any boundary of zone A, AO, V1-30, VE or V, the location of the boundary shall be determined by the map scale.

### **(5) REMOVAL OF LANDS FROM FLOODPLAIN**

- (a) 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.7.6.8 Amendments.
- (b) The delineation of any of the Floodplain Districts may be revised by Portage County where natural or man-made changes have occurred and/or where more detailed studies have been conducted. However, prior to any such change, approval must be obtained from the Wisconsin Department of Natural Resources and Federal Emergency Management Agency. A completed Letter of Map Revision is a record of this approval. The floodplain administrator shall not sign a community acknowledgement form unless all criteria set forth in the following paragraphs are met:
  - 1. The land and/or land around the structure must be filled at least two feet above the regional or base flood elevation;
  - 2. The fill must be contiguous to land outside the floodplain; the applicant shall apply for a zoning permit before applying for a LOMR or LOMR-F;
- (c) Removal of lands from the floodplain may also occur by operation of §87.30(1)(e), Wis. Stat. if a property owner has obtained a letter of map amendment from the federal emergency management agency under 44 C.F.R. 70.

## **(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. Although exempt from a local zoning permit and permit fees, DOT must provide sufficient project documentation and analysis to ensure that the community is in compliance with Federal, State, and local floodplain standards.

## **(8) ABROGATION AND GREATER RESTRICTIONS**

- (a) This Ordinance supersedes all the provisions of any municipal zoning ordinance enacted under s. 59.69, 59.692 or 59.694 or s 87.30, Stats., 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 this 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, Portage County or any officer or employee thereof for any flood damage that may result from reliance of 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.

**7.6.2 GENERAL STANDARDS APPLICABLE TO ALL FLOODPLAIN DISTRICTS**

Portage County shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding and assure that all necessary permits have been received from those governmental agencies whose approval is required by federal or state law.

- (1) If a proposed building site is in a flood-plane area, all new construction and substantial improvements shall:
  - (a) be designed and anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - (b) be constructed with flood-resistant materials;
  - (c) be constructed by methods and practices that minimize flood damages; and
  - (d) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (2) If a subdivision or other proposed new development is in a flood-prone area, the community shall assure that:
  - (a) such proposed subdivision or other proposed new development is consistent with the need to minimize flood damage within the flood-prone area;
  - (b) public utilities and facilities such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
  - (c) adequate drainage is provided to reduce exposure to flood hazards; and

- (d) 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. 7.6.7.1(2).

#### **7.6.2.1 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 provisions of s. 7.6.8 are met.

#### **7.6.2.2 WATERCOURSE ALTERATIONS**

No Zoning 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. 7.6.2.1 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. 7.6.8 Amendments, Portage County 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.

#### **7.6.2.3 CHAPTER 30, 31, WIS STATS, DEVELOPMENT**

Development which requires a permit from the Department, under chs. 30 and 31, Wis. 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. 7.6.8.

#### **7.6.2.4 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 Portage County Department of Health and Human Services and the Department of Agriculture, Trade and Consumer Protection;
- (2) A Zoning 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 Portage County Planning and Zoning Committee and/or zoning administrator, 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 Portage County Department of Health and Human Services, the Department of Agriculture, Trade and Consumer Protection and all other applicable regulations.
- (6) Only portable tents and camping units that meet the definition of a mobile recreational vehicle with all the following criteria are allowed.
  - (a) Built on a single chassis meaning that the entire recreational vehicle does not need to be assembled or disassembled for transport or use.
  - (b) 400 square feet or less.
  - (c) Self-propelled or permanently towable by a light duty truck- meaning that the recreational vehicle has an engine and is capable of being driven or is permanently towable by a light duty truck with a maximum gross vehicle weight of no more than 8500 lbs., to 12,000 lbs. This means no modification is necessary to the single chassis and that the tongue and hitch equipment is permanently attached to the recreational vehicle
  - (d) Not for use as a permanent dwelling-meaning manufactured, mobile or modular homes meeting HUD or other standards for year round occupancy do not meet the definition of recreational vehicle.
  - (e) Fully licensed - meaning all local, state and federal requirements to immediately move the recreational vehicle are maintained and in place at all times. This would include all tilting requirements, license plates or annual safety type inspections if required. Any required oversized load permits/approvals must be issued on a permanent type basis to be considered fully licensed.
  - (f) Ready for highway use - meaning all of the following:
    1. On its wheels or jacking system - meaning the wheels are physically on the recreational vehicle with air in the tires. If on a jacking system the system must be part of the vehicle or of the type which can quickly be lowered. If a pier type foundation is required or used this would not be considered ready for highway use.
    2. Is attached to the site only by quick-disconnect utilities and security devices
    3. Has no permanently attached additions.
- (7) 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 consistent with 7.6.2.4(6) and shall ensure compliance with all the provisions of this section.
- (8) The municipality shall monitor the limited authorizations issued by the campground operator to assure compliance with the terms of this section.
- (9) 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.

- (10) All service facilities, including but not limited to refuse collection, electric service, gas lines, propane tanks, sewage systems and wells shall be properly anchored and placed at or floodproofed to the flood protection elevation.
- (11) Standards for structures in a campground:
- (a) All structures must comply with section 7.6.2.4 or meet the applicable requirements in ss. 7.6.3, 7.6.4, 7.6.5.1 for the floodplain district in which the structure is located;
  - (b) Deck/landing - a portable landing may be allowed for a camping unit for each entry provided that the landing is not permanently attached to the ground or camping unit, is no more than 200 square feet in size, shall be portable, contain no walls or roof, and can be removed from the campground by a truck and/or trailer. Sections of such portable landings may be placed together to form a single deck not greater than 200 square feet at one entry point. Provisions for the removal of these temporary landings during flood events must be addressed within the written agreement with the municipality complaint with section 7.6.2.4(4). Any such deck/landing structure may be constructed at elevations lower than the flood protection elevation but must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood.
  - (c) Deck/patios that are constructed completely at grade may be allowed, but must also comply with applicable shoreland zoning standards.
  - (d) Camping equipment and appurtenant equipment in the campground may be allowed provided that the equipment is not permanently attached to the ground or camping unit, is not used as a habitable structure, and must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood. Provisions for the removal of this equipment during flooding events shall be addressed within the written agreement with the municipality complaint with section 7.6.2.4(4).
  - (e) Once a flood warning in the written agreement has been issued for the campground, the campground owner or the designated operator shall ensure that all persons, camping units, decks, camping equipment and appurtenant equipment in the campground shall be evacuated within the timelines specified within the written agreement with the municipality complaint with section 7.6.2.4(4).
- (12) A land use permit shall be obtained as provided under 7.6.7.1(2) before any 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

#### **7.6.2.5 FLOODED AGRICULTURE - CRANBERRY FARMS (FA-C)**

- (1) STATEMENT OF PURPOSE: The Federal government created the National Flood Insurance Program (NFIP) to establish flood risk zones and to provide flood insurance to property owners in communities that adopt and enforce floodplain regulations in accordance with regulatory floodplain maps approved by the Federal Emergency Management Agency (FEMA). In recognition of the NFIP's requirements, the following ordinance provisions shall apply to Flooded Agriculture - Cranberry Farms (FA-C).

Cranberry farming uses extensive water management systems that are often located in areas designated as a Special Flood Hazard Area (SFHA).

Within SFHA, this Ordinance establishes the minimum floodplain regulations, which apply to maintenance and FA-C development activities and it preserves the orderly and efficient use of land for agricultural purposes. The provisions of this Ordinance are limited to floodplain management requirements. This section is designed to clarify permit procedures for routine activities related to cranberry culture.

- (2) **APPLICABILITY:** The Ordinance provisions for this district shall apply to all Flooded Agriculture - Cranberry Farms (FA-C) in the SFHA as identified on the effective Flood Insurance Rate Map (FIRM) or Flood Hazard Boundary Map (FHBM) for Portage County. The intent of this district is to provide a consistent regulatory framework for both maintenance and development activities, which are required for the efficient management of a cranberry farming operation.

These provisions describe the activities associated with FA-C, the potential for each activity to impact the Base Flood Elevation (BFE) or floodway and the requirements for each activity. This Ordinance does not apply to the construction, maintenance, repair or modification of any building in this district. Buildings and all other development activities not associated with cranberry farming are regulated by other sections of this Floodplain Zoning Ordinance.

- (3) **PERMITTED USE:** Any use or FA development activity, which occurs in a FA-C must meet the requirements in this section.

- (4) **DEFINITIONS.** In this section:

- (a) "Department" means the Wisconsin Department of Natural Resources.
- (b) "Existing cranberry farm" means the area of active cranberry farming as established pursuant to Section 7.6.2.5(5).
- (c) "FA-C" means the portions of the existing cranberry farm as defined in section 7.6.2.5(5) and that are subject to SFHA regulations.
- (d) "FA-C development activities" are development activities listed in Section 7.6.2.5(6)(d). FA-C development activities do not include maintenance activities and do not include the construction, maintenance, repair or modification of any building.
- (e) "Permit required" means that a FA-C Permit is required.
- (f) "Perimeter dike" means the dike or system of dikes that are closest to the boundary line of the existing cranberry farm, usually the outermost dike.
- (g) "Maintenance activities" are activities identified in Section 7.6.2.5(8)(d) that take place within the boundary of an existing cranberry farm.



- (h) "Special Flood Hazard Area (SFHA)" means an area having special flood hazards and is shown on a Flood Hazard Boundary Map or a Flood Insurance Rate Map as an A, or AE zone.
- (5) ESTABLISHMENT OF EXISTING CRANBERRY FARM: The construction or maintenance of a building is not covered by this section. (For construction or maintenance, please refer to sections 7.6.3, 7.6.4, 7.6.5.1 of the Ordinance.)
- (a) To establish the boundary of an "existing cranberry farm," a person must file with the community a certified legal description of the farm boundary as it existed on July 20, 2009. The area of existing use includes all farm production areas, all farm support land and all farm support areas including dikes, impoundments, water storage reservoirs, ditches, sand stockpiles and roads. The area of established uses does not include buildings.
- (b) Upon Issuance of the FA-C Permit, the FA-C development that is completed in accordance with the FA-C permit shall be established as an existing cranberry farm upon completion.
- (6) REQUIREMENTS FOR NEW FA-C DEVELOPMENT ACTIVITIES IN FLOODED AGRICULTURE DISTRICTS - CRANBERRY FARMS (For construction or maintenance, please refer to sections 7.6.3, 7.6.4, 7.6.5.1 of the Ordinance.)
- (a) A Zones: FA-C development activities in an A Zone may not cause a cumulative impact on the base flood elevation (BFE) of more than 1.0 (one) foot at any point on the waterway. If any project causes an increase in flooding elevations that would impact other properties, then the provisions of the community's floodplain zoning standards apply. Increases equal to or greater than one foot would require submittal of the engineering study to FEMA for a Conditional Letter of Map Revision (CLOMR). It is the project sponsor's responsibility to contract for and submit the engineering study to the community. All studies shall be reviewed and approved by the Department at the community's request. It is the community's responsibility to determine if the project meets the district criteria, determine if a permit is appropriate, and submit the CLOMR application to FEMA when necessary.
- (b) AE Zones: FA-C development activities in the designated floodway of an AE Zone must be analyzed using the current, effective hydraulic model to ensure that the project does not cause an increase to the BFE. If any project causes an increase in flooding elevations that would impact other properties, the provisions of NR 116.11(3) apply. Any increase requires submittal of the engineering study to FEMA for a Conditional Letter of Map Revision (CLOMR). It is the project sponsor's responsibility to contract for and submit the engineering study to the community. All studies shall be reviewed and approved by the Department at the community's request. It is the community's responsibility to determine if the project meets the district criteria, determine if a permit is appropriate, and submit the CLOMR application to FEMA when necessary.
- (c) All FA-C development activities require a FA-C permit in accordance with section 7.6.2.5(9).
- (d) FA-C development activities include:
1. New Dikes and Impoundments. Construction of a dike or an impoundment outside the boundary of existing cranberry farm. Includes the use of heavy machinery.

2. New Ditches. Construction of a new ditch outside the boundary of existing cranberry farm. Includes the use of heavy machinery to dig the ditch and the removal of plant and debris material.
3. New Farm Roads. Construction of a farm road outside the boundary of existing cranberry farm. Includes the placement of materials as appropriate to build a road that is adequate for expected loads.
4. New Reservoirs. Construction of a reservoir outside the boundary of existing cranberry farm. Includes the use of heavy machinery for excavation.
5. Sand Mining. Sand Mining outside the boundary of existing cranberry farm. Includes the extraction and stockpiling of sand using heavy equipment or hydraulic dredges.
6. New Water Control Structures. Placement of a water control structure in a ditch or reservoir outside the boundary of existing cranberry farm. Includes the placement of a bulkhead or other water control structure in a dike to control water movement in ditches and reservoirs. Rip rap and other material may be used to prevent erosion and failure of structure.
7. New Bed Construction. Construction of a new cranberry bed outside of the boundary of an existing cranberry farm.

#### (7) MAINTENANCE ACTIVITIES

- (a) Maintenance activities conducted in accordance with section 7.6.2.5(8) in the designated floodplain of A Zone or an AE Zone will not cause an increase in the BFE.
- (b) Maintenance activities do not require a FA-C permit.

#### (8) REQUIREMENTS FOR MAINTENANCE ACTIVITIES IN FLOODED AGRICULTURE - CRANBERRY FARMS

- (a) Maintenance activities must take place within the boundary of an existing cranberry farm and below the top of the existing perimeter dike.
- (b) Maintenance of dikes or impoundments must be conducted such that the height of the existing dike or impoundment is maintained.
- (c) No spoil materials may be placed such that the height of the top of the perimeter dike on an existing cranberry farm is increased above the established height of the perimeter dike. If spoils materials are placed outside of the existing farm perimeter dike but within the existing farm boundary, then they must be placed outside of the SFHA, must meet the cumulative impact requirement for an A Zone or must be in the non-floodway portion of an AE Zone.
- (d) Maintenance activities include the following:
  1. New Bed Drainage within Boundary of Existing Cranberry Farm. Includes installation of drain tiles to improve water management; creation of perimeter ditches around the bed area (inside the impoundments) to direct water on and off the bed; and/or installation of water control structures on

ends of beds to allow for flooding and drainage.

2. Bed Drainage - Renovation within Boundary of Existing Cranberry Farm. Includes installation of drain tiles to improve water management; creation of perimeter ditches around the bed area (inside the impoundments) to direct water on and off the bed; and/or installation of water control structures on ends of beds to allow for flooding and drainage.
3. New Bed Leveling within Boundary of Existing Cranberry Farm. Cranberry beds are leveled using heavy equipment and a laser level. Sand is deposited onto the bed surface as needed to achieve a level surface with a slight crown in the center such that water drains to the edges of the bed. Beds are entirely surrounded by dikes.
4. Bed Leveling - Renovation within Boundary of Existing Cranberry Farm. Cranberry beds are leveled using heavy equipment and a laser level. Sand is deposited onto the bed surface as needed to achieve a level surface with a slight crown in the center such that water drains to the edges of the bed. Beds are entirely surrounded by dikes.
5. New Bed Planting within Boundary of Existing Cranberry Farm. Vines are planted into the bed surface using plugs, mechanical planting equipment and/or vines spread on the ground and pushed into the surface with a modified disc. Beds are entirely surrounded by dikes.
6. Bed Planting - Renovation within Boundary of Existing Cranberry Farm. Vines are planted into the bed surface using plugs, mechanical planting equipment and/or vines spread on the ground and pushed into the surface with a modified disc. Beds are entirely surrounded by dikes.
7. New Bed Removal of Materials or Scalping within Boundary of Existing Cranberry Farm. Existing plant material is removed. Plant material is loaded into trucks and removed.
8. Bed Removal of Materials or Scalping - Renovation within Boundary of Existing Cranberry Farm. Existing plant material is removed. Plant material is loaded into trucks and removed.
9. New Bed Sanding within Boundary of Existing Cranberry Farm. Sand is deposited onto the bed surface using heavy equipment to bring the planting surface to the desired level.
10. Bed sanding - Renovation within Boundary of Existing Cranberry Farm. Sand is deposited onto the bed surface using heavy equipment to bring the planting surface to the desired level.
11. Dike - Seeding. Reservoirs and bed dikes are seeded to stabilize bank and prevent erosion. Most seeding is done with a hydro seeder after a suitable planting medium has been placed on the area to be seeded.
12. New Dike or Impoundment within Boundary of Existing Cranberry Farm. New construction of dikes and impoundments and placement of new water control structures within the established perimeter of an existing cranberry farm.
13. Dike or Impoundment - Repair/Maintenance of Existing Structures. Includes excavating adjacent to dikes to increase storage capacity and control of water flow, excavating sand from a reservoir to

increase the water storage capacity, installation of splitter dikes to manage water flow and subdivide reservoirs, and replacement of existing water control structures.

14. Ditch - Cleaning and Maintenance of Existing Ditches. Drainage and irrigation ditches are cleaned using heavy equipment to remove plant material and debris. Spoils cannot be placed on the ditch side of any adjacent dike.
  15. New Ditch within Boundary of Existing Cranberry Farm. New ditches are constructed using heavy machinery. Plant material and debris are removed.
  16. Farm Road - Maintenance of Existing Roads. Farm roads are graded and repaired to maintain height, stability and width. Sand or gravel is placed in damaged areas. Culverts are replaced. Roads are mowed to prevent growth of bush or flowers that serve as competition for pollinators.
  17. New Farm Road within Boundary of Existing Cranberry Farm. Farm roads are constructed using placement of materials as appropriate for the loads expected to be carried.
  18. Harvest - Flood. Water is released from storage areas and gravity flowed or pumped into production (cranberry bed) areas. An initial "raking" flood of 6-12 inches is applied. After harvest machinery moves through the beds, the water level is increased above the vine canopy to allow the fruit to be corralled and removed.
  19. Irrigation - Flood. Water is released from the reservoir or pumped onto the beds to provide a flood for insect control or protection during severe weather. Water is then returned to the reservoir or other water body.
  20. Irrigation System Maintenance and Renovation. Periodic repair of cranberry bed sprinkler systems includes nozzle replacement; mainline replacement with aluminum or plastic materials; burial of laterals; upgrades to pumping systems and construction of pumping stations within the perimeter of the most-external impoundment of the farm.
  21. Reservoir Maintenance and Construction Reservoirs within the Boundary of Existing Cranberry Farm. Reservoirs are periodically excavated to alter or maintain depth levels. Heavy equipment is used for excavation.
- (9) FA-C PERMITS. A FA-C permit shall be obtained before any development in the FA-C 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 of the proposed development area; and
3. Statement that the proposed use is cranberry farming.

- (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 proposed development area;
  2. Location of the ordinary high-water mark of any abutting navigable waterways;
  3. Location of any structures with distances measured from the lot lines and street center lines; and
  4. Location of SFHA floodplain and floodway limits as determined from the official floodplain zoning maps.
- (c) **A ZONE APPLICATION.** An application for FA-C development activity in an A zone shall include a certificate of no-rise, or a technical analysis sufficient to show that the proposed development will not cause a cumulative impact on the base flood elevation (BFE) of more than 1.0 (one) foot within the regulatory floodplain of a particular reach on the waterway.
- (d) **AE ZONE APPLICATION.** An application for FA-C development activity in an AE zone shall include submission of a certificate of no-rise. If the analysis shows the project will cause an increase greater than 0.00 feet in the BFE, then the project sponsor shall provide the community with information necessary for the community to evaluate the proposed budget.

### **7.6.3 FLOODWAY DISTRICT (FW)**

#### **7.6.3.1 APPLICABILITY**

This section applies to all floodway areas on the floodplain zoning maps and those identified pursuant to s. 7.6.5.1(5)

#### **7.6.3.2 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.7.6.3.3 and 7.6.3.4; and
  - All permits or certificates have been issued according to s. 7.6.7.1:
- (1) Agricultural uses, such as: farming, outdoor plants 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. 7.6.3.3(4).

- (4) Uses or structures accessory to open space uses, or classified as historic structures that comply with ss. 7.6.3.3 and 7.6.3.4.
- (5) Extraction of sand gravel or other materials that comply with s.7.6.3.3(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, 31, Stats.
- (7) Public utilities, streets and bridges that comply with s. 7.6.3.3(3).
- (8) Camping Units Outside of Established Campgrounds. Sites for placing camping units shall have a low flood damage potential and shall meet the following provisions:
  - (a) The camping unit is an easily removable tent or is a mobile recreational vehicle.
  - (b) A maximum of 3 camping units per tax parcel are allowed and the tax parcel is not advertised, represented or used as a campground.
  - (c) Camping units shall only be used seasonally and may not occupy a site within the floodplain for more than 180 consecutive days in a calendar year at which time the camping unit(s) must be removed from the floodplain.
  - (d) Camping units shall meet applicable Shoreland Zoning standards.
- (9) Public or Private Campgrounds
- (10) 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.
- (11) Public or private wells used to obtain potable water for recreational areas that meet the requirements of local ordinances and chs. NR 811 & NR 812, Wis. Adm. Code.
- (12) Wastewater treatment ponds or facilities permitted under s. NR 110.15(3)(b), Wis. Adm. Code.
- (13) Sanitary sewer or water supply lines to service existing or proposed development located outside the floodway that complies with the regulations for the floodplain area occupied.

### **7.6.3.3 STANDARDS FOR DEVELOPMENT IN FLOODWAY AREAS**

#### **(1) GENERAL**

- (a) Any development in the floodway shall comply with s. 7.6.2 and have a low flood damage potential.

- (b) Applicants shall provide an analysis calculating the effects of this proposal on the regional flood height to determine the effects of the proposal according to s. 7.6.2.1 and 7.6.7.1(2)(c). The analysis must be completed by a registered professional engineer in the state of Wisconsin.
- (c) Any encroachment in the regulatory floodway is prohibited unless the data submitted for subd. 7.6.3.3(1)(b) above demonstrates that the encroachment will cause no increase in flood elevations in flood events up to the base flood at any location or removes the encroached area from the regulatory floodway as provided in s. 7.6.1.5(5).

## (2) STRUCTURES

Structures accessory to permanent open space uses, including utility and sanitary facilities, 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 either have the lowest floor elevated to or above the flood protection elevation and shall meet all the following standards:
  - 1. Be dry floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water and completely dry to the flood protection elevation without human intervention during flooding;
  - 2. Have structural components capable of meeting all provisions of s. 7.6.3.3(2)(g) and;
  - 3. Be certified by a registered professional engineer or architect, through the use of a Federal Emergency Management Agency Floodproofing Certificate, that the design and methods of construction are in accordance with section 7.6.3.3(2)(g).
- (c) Must be anchored to resist flotation collapse, and lateral movement;
- (d) Mechanical and utility equipment must be elevated to or above the flood protection; and
- (e) Must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood.
- (f) For a structure designed to allow the automatic entry of floodwaters below the Regional Flood Elevation, the applicant shall submit a plan that meets s. 7.6.3.3(2)(a) through 7.6.3.3(2)(e) and meets or exceeds the following standards:
  - 1. The lowest floor must be elevated to or above the regional flood elevation;
  - 2. 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;

3. The bottom of all openings shall be no higher than one foot above the lowest adjacent grade; openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters, otherwise must remain open.
  4. The use must be limited to parking, building access or limited storage.
- (g) Certification: Whenever floodproofing measures are required, a registered professional engineer or architect shall certify that the following floodproofing measures will be utilized, where appropriate, and are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regional flood:
1. Reinforcement of floors and walls to resist rupture, collapse, or lateral movement caused by water pressures or debris buildup;
  2. Construction of wells, water supply systems and waste treatment systems so as to prevent the entrance of flood waters in such systems and must be in accordance with provisions in Sections 7.6.3.4(4) and 7.6.3.4(5);
  3. Subsurface drainage systems to relieve external pressures on foundation walls and basement floors;
  4. Cutoff valves on sewer lines or the elimination of gravity flow basement drains; and
  5. Placement of utilities to or above the flood protection elevation.

### (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. 7.6.2.1.

### (4) FILLS OR DEPOSITION OF MATERIALS

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

- (a) The requirements of s. 7.6.2.1 are met;
- (b) No material is deposited in the navigable channel 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.

#### **7.6.3.4 PROHIBITED USES**

All uses not listed as permitted uses in s. 7.6.3.2 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. Ad. 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;
- (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.

#### **7.6.4 FLOODFRINGE DISTRICT (FF)**

##### **7.6.4.1 APPLICABILITY**

This section applies to all floodfringe areas shown on the floodplain zoning maps and those identified pursuant to s. 7.6.5.1(5)

##### **7.6.4.2 PERMITTED USES**

Any structure, land use, or development is allowed in the Floodfringe District if the standards in s. 7.6.4.3 are met, the use is not prohibited by this or any other Ordinance or regulation and all permits or certificates specified in s. 7.6.7.1 have been issued.

##### **7.6.4.3 STANDARDS FOR DEVELOPMENT IN FLOODFRINGE AREAS**

All of s. 7.6.2 shall apply in addition to the following requirements according to the use requested. Any existing structures in the floodfringe must meet the requirements of s. 7.6.6 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 7.6.6 Nonconforming Uses.

- (a) All new construction, including placement of manufactured homes, and substantial improvement of residential structures, shall have the lowest floor elevated to or above the flood protection elevation on fill. The fill around the structure shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. No area may be removed from the floodfringe district unless it can be shown to meet s. 7.6.1.5(5).
- (b) Notwithstanding s. 7.6.4.3(1)(a), a basement or crawlspace floor may be placed at the regional flood elevation if it is designed to make all portions of the structure below the flood protection elevation watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. No floor of any kind 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 paragraph subd. (d).
- (d) In developments where existing street or sewer line elevations make compliance with paragraph (c) impractical, Portage County may permit new development and substantial improvements where roads are below the regional flood elevation if:
  - 1. Portage County 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. Portage County has a DNR-approved emergency evacuation plan that follows acceptable hazard mitigation planning guidelines.

## (2) ACCESSORY STRUCTURES OR USES

In addition to s. 7.6.2, new construction and substantial improvements of accessory structures shall be constructed on fill with the lowest floor at or above the regional flood elevation.

## (3) COMMERCIAL USES

In addition to s. 7.6.2, any commercial structure which is erected, altered or moved into the floodfringe shall meet the requirements of s. 7.6.4.3(1). Subject to the requirements of sub. 7.6.4.3(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

In addition to s. 7.6.2, 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

measures in s. 7.6.7.5. Subject to the requirements of sub. 7.6.4.3(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. 7.6.7.5. 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. 7.6.7.5;
- (b) Minor roads or nonessential 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. 7.6.7.5(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 water into the system, pursuant to s. 7.6.7.5(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 provision of this Ordinance.

#### (11) MANUFACTURED HOMES

- (a) Owners or operations 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. 7.6.4.3(1).

## (12) CAMPING UNITS OUTSIDE OF ESTABLISHED CAMPGROUNDS

Sites for placing camping units shall have a low flood damage potential and shall meet the following provisions:

- (a) The camping unit is an easily removable tent or is a mobile recreational vehicle.
- (b) A maximum of 3 camping units per tax parcel are allowed and the tax parcel is not advertised, represented or used as a campground.
- (c) Camping units shall only be used seasonally and may not occupy a site within the floodplain for more than 180 consecutive days in a calendar year at which time the camping unit(s) must be removed from the floodplain.
- (d) Camping units shall meet applicable Shoreland Zoning standards.

## (13) PUBLIC OR PRIVATE CAMPGROUNDS

### **7.6.5 OTHER FLOODPLAIN DISTRICTS**

#### **7.6.5.1 GENERAL FLOODPLAIN DISTRICT (GFP)**

##### **(1) APPLICABILITY**

The provisions for the General Floodplain District shall apply to development in all floodplains mapped as A, AO, AH, and AE zones within which a floodway is not delineated on the Flood Insurance Rate Maps identified in s. 7.6.1.5(2)(a).

##### **(2) FLOODWAY BOUNDARIES**

For proposed development in zone A, or in zone AE within which a floodway is not delineated on the Flood Insurance Rate Map identified in s. 7.6.1.5(2)(a), the boundaries of the regulatory floodway shall be determined pursuant to s. 7.6.5.1(5). If the development is proposed to encroach upon the regulatory floodway, the development is subject to the standards of s. 7.6.3. If the development is located entirely within the floodfringe, the development is subject to the standards of s. 7.6.4.

### (3) **PERMITTED USES**

Pursuant to s. 7.6.5.1(5), it shall be determined whether the proposed use is located within a floodway or floodfringe area.

Those uses permitted in floodway (s.7.6.3.2) and floodfringe areas (s. 7.6.4.2) are allowed within the general floodplain district, according to the standards of s. 7.6.5.1(4), provided that all permits or certificates required under s. 7.6.7.1 have been issued.

### (4) **STANDARDS FOR DEVELOPMENT IN THE GENERAL FLOODPLAIN DISTRICT**

S. 7.6.3 applies to floodway areas determined pursuant to 7.6.5.1(5); s. 7.6.4 applies to floodfringe areas determined to pursuant to 7.6.5.1(5).

### (5) **DETERMINING FLOODWAY AND FLOODFRINGE LIMITS**

Upon receiving an application for development within zone A, or within zone AE where a floodway has not been delineated on the Flood Insurance Rate Maps, the Zoning Administrator shall:

- (a) 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.
- (b) 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;
  1. A Hydrologic and Hydraulic Study as specified in s. 7.6.7.1(2)(c);
  2. Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information;
  3. Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.

## **7.6.6 NONCONFORMING USES**

### **7.6.6.1 GENERAL**

#### (1) APPLICABILITY

- (a) The standards in this section shall apply to all uses and buildings that do not conform to the provisions contained within this floodplain zoning ordinance or with s. 87.30, Stats., NR 116.12-14 Wis. Adm. Code and 44 CFR 59-72. These standards 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 hereto. A party asserting existence of a lawfully established nonconforming use or structure has the burden of proving that the use or structure was compliant with the floodplain zoning ordinance in effect at the time the use or structure was compliant with the floodplain zoning ordinance in effect at the time the use or structure was created.

- (b) As permit applications are received for additions, modifications, or substantial improvements to nonconforming buildings in the floodplain, Portage County shall keep a record of those nonconforming buildings, their present equalized assessed value and the costs of those activities associated with changes to those buildings.
- (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) Portage County 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. 7.6.4.3(1) only when costs equal or exceed 50% of the nonconforming structure’s present equalized assessed value. 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. Modifications or additions allowed under the 50% provisions of this section may be located within the footprint of the nonconforming structure. Modifications or additions allowed under the 50% provisions of this section located outside of the footprint of the nonconforming structure must meet the elevation and fill requirements of the applicable floodplain district where the addition or modification is located;

- (e) No maintenance on a per event basis 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. 7.6.4.3(1) only when costs equal or exceed 50% of the nonconforming structure's present equalized assessed value. Maintenance to any nonconforming structure, which does not exceed 50% of its present equalized assessed value on a per event basis, does not count against the cumulative calculations over the life of the structure for substantial improvement calculations.
- (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. 7.6.4.3(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 following minimum 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 flood protection elevation using fill, pilings, columns, posts or perimeter walls. Perimeter walls must meet the requirements of s. 7.6.7.5(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.

#### 2. Nonresidential Structures

- a. Shall meet the requirements of s. 7.6.6.1(2)(h)1a-d.
  - 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. 7.6.7.5(1) or (2).
- (3) A nonconforming historic structure may be altered if the alteration will not preclude the structures continued designation as a historic structure, the alteration will comply with s. 7.6.3.3(1), flood resistant materials are used, and construction practices and floodproofing methods that comply with s. 7.6.7.5 are used. Repair or rehabilitation of historic structures shall be exempt from the development standards of s. 7.6.6.1(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.

### **7.6.6.2 FLOODWAY DISTRICT**

- (1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a 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. 7.6.6.1;
  - (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. 7.6.7.5, by means other than the use of fill, to the flood protection elevation.
  - (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 a 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 Ordinance, s. 7.6.7.5(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 a Floodway District. Any replacement, repair or maintenance of an existing well in a Floodway District shall meet the applicable requirements of all municipal Ordinances, s. 7.6.7.5(3) and chs. NR 811 and NR 812, Wis. Adm. Code.

### **7.6.6.3 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 Portage County, and meets the requirements of s. 7.6.6.1 and 7.6.4.3, except where s. 7.6.6.3(2) is applicable.
- (2) Where compliance with the provisions of par. 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, using the procedures established in s. 7.6.7.3., may grant a variance from those provisions of par. 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, will not be installed;
  - (d) Flood depths will not exceed two feet;
  - (e) Flood velocities will not exceed two feet per second; and
  - (f) The structure will not be used for storage of materials as described in s. 7.6.4.3(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 s. 7.6.7.5(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. 7.6.7.5(3) and ch. NR 811 and NR 812, Wis. Adm. Code.

### **7.6.7 ADMINISTRATION**

Where a Zoning Administrator or designated agent, planning agency or a Board of Adjustment has already been appointed to administer a Zoning Ordinance adopted under ss. 59.69 and 59.692, Stats., these officials shall also administer this Ordinance.

#### **7.6.7.1 ZONING ADMINISTRATOR**

## (1) DUTIES AND POWERS

The Zoning Administrator or designated agent 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 and perform a substantial damage assessment 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 any case-by-case analyses, and any other required information.
  - 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 Portage County Planning and Zoning Committee and Corporation Counsel 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) ZONING PERMIT

A Zoning 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 high water-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 North American Vertical Datum (NAVD);
8. Data sufficient to determine the regional flood elevation in NAVD at the location of the development and to determine whether or not the requirements of s. 7.6.3 or 7.6.4 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. 7.6.2.1. This may include any of the information noted in s. 7.6.3.3(1).

(c) HYDRAULIC AND HYDROLOGIC STUDIES TO ANALYZE DEVELOPMENT

All hydraulic and hydrologic studies shall be completed under the direct supervision of 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 and in AE zones within which a floodway is not delineated:
  - 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 floodplain and floodway delineations, the revised flood profiles, topographic work map, annotated FIRMS and/or Flood Boundary Floodway Maps (FBFMs), construction plans, bridges plans.
- ii. Certified topographic map of suitable scale, contour interval, and the 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. If the permitted work has not started within 180 days of the permit date, the development must comply

with any regulation, including any revision to the FIRM or FIS, that took effect after the permit date.

### (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 floodproofing measures meet the requirements of s. 7.6.7.5.
- (e) Where applicable pursuant to s. 5.1(4), the applicant must submit a certification by a registered professional engineer or surveyor of the elevation of the bottom of the lowest horizontal structural member supporting the lowest floor (excluding pilings or columns), and an indication of whether the structure contains a basement.
- (f) Where applicable pursuant to s. 5.1(4), the applicant must submit certifications by a registered professional engineer or architect that the structural design and methods of construction meet accepted standards of practice as required by s. 5.1(4).

### (4) OTHER PERMITS

Prior to obtaining a zoning permit for floodplain development the applicant must secure all necessary permits from federal, state, and local agencies, including but not limited to those required by the US Army Corps of Engineers under s.404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1334.

#### **7.6.7.2 PLANNING AND ZONING COMMITTEE**

(1) The Portage County Planning and Zoning Committee shall:

- (a) Oversee the functions of the office of the Zoning Administrator; and
- (b) Review and advise the Portage County Board of Supervisors on all proposed amendments to this Ordinance, maps and text.

(2) The Planning and Zoning Committee shall not:

- (a) Grant variances to the terms of the Ordinance in place of action by the Portage County Board of Adjustment; or
- (b) Amend the text or zoning maps in place of official action by the Portage County Board of Supervisors.

### **7.6.7.3 BOARD OF ADJUSTMENT**

The Portage County Board of Adjustment, created under s. 59.694, Stats., is hereby authorized or shall be appointed to act for the purposes of 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 Adjustment 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.
- (c) Variances – Hear and decide, upon appeal, variances from the Ordinance standards.

#### **(2) APPEALS TO THE BOARD**

- (a) Appeal to the Board may be taken by any person aggrieved, or by any office 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;
- 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. 7.6.7.3(3).
- b. Decide variance applications according to 7.6.7.3(4).
- c. Decide appeals of permit denials according to s. 7.6.7.4.

(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 procedures 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;
- (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 Planning and Zoning Committee or the person contesting the boundary location to petition the Portage County Board of Supervisors for a map amendment according to s. 7.6.8.

(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.7.6.1.3.
- (b) In addition to the criteria in par. (a), to qualify for a variance under FEMA regulations, the Board must find that the following criteria have been met;
1. The variance shall not cause any increase in the regional flood elevation;
  2. The applicant has shown good and sufficient cause for the issuance of the variance;
  3. Failure to grant variance would result in exceptional hardship;
  4. Granting the variance will not result in additional threats to public safety, extraordinary expense, create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
  5. The variance granted is the minimum necessary, considering the flood hazard, to afford relief.
- (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. 7.6.8; 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.

#### **7.6.7.4 TO REVIEW APPEALS OF PERMIT DENIALS**

(1) The Board of Adjustment shall review all data related to the appeal. This may include:

- (a) Permit application data listed in s. 7.6.7.1(2);

- (b) Floodway/floodfringe determination data in s. 7.6.5.1(5);
  - (c) Data listed in s. 7.6.3.3(1)(b) where the applicant has not submitted this information to the Zoning Administrator or designated agent; 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. 7.6.7.3;
  - (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. 7.6.8 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.

#### **7.6.7.5 FLOODPROOFING STANDARDS**

- (1) No permit or variance shall be issued for a non-residential structure designed to be watertight below the regional flood elevation until the applicant submits a plan certified by a registered professional engineer or architect that the floodproofing measures will protect the structure or development to or above the flood protection elevation and submits a FEMA Floodproofing Certificate. Floodproofing is not an alternative to the development standards in ss. 2.0, 3.0, 4.0, 5.1, or 5.3.
- (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) meeting or exceeding 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.
- (f) Placement of essential utilities to or above the flood protection elevation; and
- (g) 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 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.

#### **7.6.7.6 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) All real estate transfers should show what floodplain zoning district any real property is in.

#### **7.6.8 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. 7.6.8.1.

- (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. 7.6.8.1. 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. 7.6.8.1.

#### **7.6.8.1 GENERAL**

The governing body shall change or supplement the floodplain zoning district boundaries and this Ordinance in the manner outlined in 7.6.8.2 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 s. 7.6.1.5(2)(b);
- (4) Any fill in the floodplain 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 Portage County; 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.

#### **7.6.8.2 PROCEDURES**

Ordinance amendments may be made upon petition of any party according to the provisions of s. 59.69, Stats. The petitions shall include all data required by s. 7.6.5.1(5) and 7.6.7.1(2). The Zoning 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 Portage County Planning and Zoning Committee for a public hearing and recommendation to the Portage County Board of Supervisors. 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. 59.69, Stats.
- (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.

## **7.6.9 ENFORCEMENT AND PENALTIES**

The provisions of this Ordinance shall be enforced under the direction of the County Board of Supervisors, through the County Planning and Zoning Committee, the Zoning Administrator, and the County law enforcement officers.

Any violation of the provisions of this Ordinance by any person shall be unlawful and shall be referred to the County Corporation Counsel who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to Portage County a penalty of 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 Portage County, the state, or any citizen thereof pursuant to s. 87.30, Stats.

## **7.6.10 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.

**"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.

**"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. An accessory structure shall not be used for human habitation.

**"ALTERATION"** - An enhancement, upgrade or substantial change or modification other than an addition or repair to a dwelling or to electrical, plumbing, heating, ventilating, air conditioning and other systems within a structure.

**"Adm."** - Administrative

**"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.

**"BASEMENT"** - Any enclosed area of a building having its floor sub-grade, i.e., below ground level, on all sides.

**"BREAKAWAY WALL"** - A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

**"BUILDING"** - See *STRUCTURE*.

**"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 high-water mark, except where such filling is prohibited by the floodway provisions of this ordinance.

**"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.

**"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.

**"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.

**"CFR"** - Code of Federal Regulations.

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

**"COMMUNITY"** – County.

**"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.

**"DECK"** – An unenclosed exterior structure that has no roof or sides and has a permeable floor which allows the infiltration of precipitation.

**"DEPARTMENT"** - The Wisconsin Department of Natural Resources.

**"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.

**"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.

**"ENCROACHMENT"** - Any fill, structure, equipment, building, use or development in the floodway.

**"FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)"** - The federal agency that administers the National Flood Insurance Program.

**"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.

**"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.

**"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.

**"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.

**"FLOOD INSURANCE RATE MAP" (FIRM)** - A map of Portage County on which the Federal Insurance Administration has delineated both the floodplain and the risk premium zones applicable to Portage County. This map can only be amended by the Federal Emergency Management Agency.

**"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.

**"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.

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

**"FLOODPLAIN MANAGEMENT"** - Policy and procedures to ensure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.

**"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.

**"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.

**"FLOOD PROTECTION ELEVATION"** - An elevation of two feet of freeboard above the regional flood elevation. (Also see: **FREEBOARD**.)

**"FLOOD STORAGE"** - Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.

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

**"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.

**"HABITABLE STRUCTURE"** - Any structure or portion thereof used or designed for human habitation.

**"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.

**"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.

**"HIGHEST ADJACENT GRADE"** - The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**"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.

**"HYDRAULIC SHADOW"** - The area of land downstream from a dam that would be inundated by water upon failure of the dam during the regional flood.

**"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.

**"LAND USE"** - Any nonstructural use made of unimproved or improved real estate. (Also see **"DEVELOPMENT"**.)

**"LOWEST ADJACENT GRADE"** - Elevation of the lowest ground surface that touches any of the exterior walls of a building.

**"LOWEST FLOOR"** - The lowest floor of the lowest enclosed area (including basement). An enclosed space as provided in s. 7.6.5.3(2)(f), is not considered the building's lowest floor;

**"MAINTENANCE"** - The act or process of ordinary upkeep and repairs, including redecorating, refinishing, nonstructural repairs, or the replacement of existing fixtures, systems or equipment with equivalent fixtures, systems or structures.

**"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."

**"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.

**"MANUFACTURED HOME PARK OR SUBDIVISION"** - 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.

**"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.

**"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 and ready 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."

**"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.

**"MODEL, DUPLICATE EFFECTIVE"** - A copy of the hydraulic analysis used in the effective FIS and referred to as the effective model.

**"MODEL, EFFECTIVE"** - The hydraulic engineering model that was used to produce the current effective Flood Insurance Study.

**"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 and Duplicate Effective Model.

**"MODEL, REVISED (PRE-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.

**"MUNICIPALITY" or "MUNICIPAL"** - The county, city or village governmental units enacting, administering and enforcing this zoning ordinance.

**"NAVD" or "NORTH AMERICAN VERTICAL DATUM"** - Elevations referenced to mean sea level datum, 1988 adjustment.

**"NGVD" or "NATIONAL GEODETIC VERTICAL DATUM"** - Elevations referenced to mean sea level datum, 1929 adjustment.

**"NEW CONSTRUCTION"** - Structures for which the start of construction commenced on or after the effective date of a floodplain zoning regulation adopted by Portage County and includes any subsequent improvements to such structures.

**"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.)

**"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.)

**"NONFLOOD DISASTER"** - A fire, ice storm, tornado, windstorm, mudslide or other destructive act of nature, but excludes a flood.

**"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.

**"OFFICIAL FLOODPLAIN ZONING MAP"** - That map, adopted and made part of this Ordinance, as described in s. 7.6.1.5(2), which has been approved by the Department and FEMA.

**"OPEN SPACE USE"** - Those uses having a relatively low flood damage potential and not involving structures.

**"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.

**"PERSON"** - An individual, or group of individuals, corporation, partnership, association, municipality or state agency.

**"PRIVATE SEWAGE SYSTEM or POWTS"** - 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 (DSPS), 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.

**"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.

**"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.

**"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 Regional Flood Elevation (RFE) is equivalent to the Base Flood Elevation (BFE).

**"START OF CONSTRUCTION"** - The date the Zoning 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.

**"Stats."** - State Statutes

**"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.

**"ss."** - Statutes

**"SUBDIVISION"** - Has the meaning given in s. 236.02(12), Wis. Stats. or 7.4 of the County Code of Ordinances.

**"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.

**"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 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.

**"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.

**"VARIANCE"** - An authorization by the Portage County Board of Adjustment 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.

**"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.

**"WATERSHED"** - The entire region contributing runoff or surface water to a watercourse or body of water.

**"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.

**"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.

**"WETLANDS"** - means those areas where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

**"Wis."** - Wisconsin

Adopted by County Board November 12, 1973

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Date of Adoption: April 19, 1983

Date of Publication: April 23, 1983

Adopted by County Board June 29, 2005

Revised June 17, 2008

Revised by Resolution No. 167-2008-2010 on June 16, 2009

Revised by Resolution No. 198-2020-2022 on February 15, 2022

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## **7.7 SHORELAND ZONING ORDINANCE**

### **7.7.1 STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE AND TITLE**

#### **7.7.1.1 STATUTORY AUTHORIZATION**

This Ordinance is adopted pursuant to the authorization in s. 59.692 Wisconsin State Statutes (Stats.) to implement 59.692, 59.694, 236.45, and 281.31 Stats.

#### **7.7.1.2 FINDING OF FACT**

Uncontrolled use of shorelands and pollution of navigable waters of Portage County would adversely affect the public health, safety, convenience, and general welfare, and impair the tax base. The legislature of Wisconsin has delegated responsibility to the counties to further the maintenance of safe and healthful conditions and prevent and control water pollution; to protect spawning grounds and fish and aquatic life; to control building sites, the placement of structures and land uses; and to preserve shore cover and natural beauty. This responsibility is hereby recognized by Portage County, Wisconsin.

#### **7.7.1.3 PURPOSE**

For the purpose of promoting public health, safety, convenience and general welfare, and promoting and protecting the “public trust” in navigable waters, which protects every citizen’s right to the use of those waters, 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) Establishing minimum lot sizes to provide adequate area for private sewage disposal facilities;
- (3) Controlling filling and grading to prevent serious soil erosion problems; and
- (4) Limiting impervious surfaces to control runoff which carries pollutants.

(B) Protect spawning grounds, fish, and aquatic life through:

- (1) Preserving wetlands and other fish and aquatic habitat;
- (2) Regulating pollution sources; and
- (3) Controlling shoreline alterations, dredging, and lagooning.

(C) Control building sites, placement of structures, and land uses through:

- (1) Separating conflicting land uses;
  - (2) Prohibiting certain uses detrimental to the shoreland area;
  - (3) Setting minimum lot sizes and widths;
  - (4) Setting minimum building setbacks from waterways; and
  - (5) Setting the maximum height of structures regulated in the Shoreland Zoning area.
- (D) Preserve and restore shoreland vegetation and natural scenic beauty through;
- (1) Restricting removal of natural shoreland cover;
  - (2) Preventing shoreline encroachment by structures;
  - (3) Controlling shoreland excavation and other earth moving activities;
  - (4) Regulating the use and placement of boathouses and other structures;
  - (5) Controlling the use and placement of signs; and
  - (6) Preserving native wetland plant/tree communities and preventing the destruction and degradation of wetlands.

#### **7.7.1.4 TITLE**

Portage County Shoreland Zoning Ordinance

#### **7.7.2 GENERAL PROVISIONS**

##### **7.7.2.1 REGULATED SHORELAND AREAS**

Provisions of this Ordinance apply to the shorelands of all navigable waters, as “navigable waters” are defined in s. 281.31(2)(d), Stats. in the unincorporated areas of Portage County, which are:

(A) Within one-thousand (1,000) feet of the ordinary high water mark of navigable lakes, ponds, or flowages. Lakes, ponds, or flowages in Portage County shall be presumed navigable, if they are listed in the Wisconsin Department of Natural Resources (WI-DNR) publication FH-800 “Wisconsin Lakes” or are shown on the United States Geological Survey quadrangle maps or other zoning base maps.

(B) Within three-hundred (300) feet of the ordinary high water mark of navigable rivers and streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams in Portage County shall be presumed navigable, if they are designated as either continuous, perennial, or intermittent waterways on the United States Geological Survey quadrangle maps.

(C) Determinations of navigability and ordinary high water mark location shall initially be made by the Portage County Zoning Administrator. When questions arise, the Zoning Administrator shall contact the appropriate office of the WI-DNR for a final determination of navigability or ordinary high water mark. The county may work with surveyors with regard to s. 59.692(1h) Stats.

(D) Under s. 281.31(2m) Stats., notwithstanding any other provision of law or Administrative Rule promulgated thereunder, this Shoreland Zoning Ordinance does not apply to:

(1) 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

(2) Lands adjacent to artificially constructed drainage ditches, ponds or stormwater retention basins that are not hydrologically connected to a natural navigable waterbody.

(E) The provisions of this chapter apply to regulation of the use and development of unincorporated shoreland areas. Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48 (13), Stats, applies, state agencies are required to comply with, and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance or repair of state highways and bridges carried out under the direction and supervision of the Wisconsin Department of Transportation is not subject to local shoreland zoning ordinances if s. 30.2022 (1), Stats, applies. Shoreland zoning requirements in annexed or incorporated areas are provided in s. 61.353 and s. 62.233, Stats.

#### **7.7.2.2 OFFICIAL SHORELAND ZONING MAPS**

The following maps are hereby adopted and made part of this Ordinance:

(A) The most recent version of the Wisconsin Department of Natural Resources Wetland Inventory Maps for Portage County as depicted on the Department of Natural Resources Surface Water Data Viewer.

(B) United States Geological Survey Quadrangle Maps.

(C) Federal Emergency Management Agency Flood Insurance Rate Maps for Portage County as adopted and amended by Portage County.

#### **7.7.2.3 COMPLIANCE**

The use of any land or water, the size, shape and placement of lots, the use, size, type and location of structures on lots, the installation and maintenance of water supply and waste disposal facilities, the filling, grading, lagooning, dredging of any lands, the cutting of shoreland vegetation, and the subdivision of lots, shall be in full compliance with the terms of this Ordinance and other applicable local, State or Federal regulations. Buildings, signs, other structures, and certain grading, filling, or excavating activities shall require a Zoning Permit unless otherwise expressly excluded by a provision of this Ordinance. Property owners, including, but not limited to, tenants and occupants of property, builders, and contractors are responsible for Ordinance compliance.



#### **7.7.2.4 MUNICIPALITIES AND STATE AGENCIES REGULATED**

Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48(13), Stats. applies, State agencies, are required to comply with, and obtain all necessary permits under the terms of this Ordinance within the regulated shoreland areas. The construction, reconstruction, maintenance, or repair of State highways and bridges carried out under the direction and supervision of the Wisconsin Department of Transportation are not subject to the terms of this Ordinance if s. 30.2022, Stats. applies.

#### **7.7.2.5 ABROGATION AND GREATER RESTRICTIONS**

The provisions of this Ordinance supersede all the provisions of the Portage County Zoning Ordinance adopted under s. 59.69, Stats., or any predecessor statute, which relates solely to shorelands. However, where an Ordinance adopted under a statute other than Section 59.692, Stats., 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.

(A) This Ordinance shall not require approval or be subject to disapproval by any town or town board.

(B) If an existing town ordinance relating to shoreland is more restrictive than this Ordinance or any amendments hereto, the town ordinance continues in all respects to the extent of the greater restrictions, but not otherwise.

(C) 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.

(D) This Ordinance may establish standards to regulate matters that are not regulated in ch. NR115, Wisconsin Administrative Code, but that further the purposes of this Ordinance.

(E) The construction and maintenance of a facility is considered to satisfy the requirements of this ordinance if the Department of Natural Resources has issued all required permits or approvals authorizing the construction or maintenance under ch. 30, 31, 281, or 283 Stats.

(1) A "facility" has the meaning for purposes of this subsection as any property or equipment of a public utility, as defined in s. 196.01 (5), Stats., or a cooperative association organized under ch. 185, Stats., for the purpose of producing or furnishing heat, light, or power to its members only, that is used for the transmission, delivery, or furnishing of natural gas, heat, light, or power.

#### **7.7.2.6 INTERPRETATION**

In their interpretation and application, provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the County, and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Stats. Where a provision of this Ordinance is required by statute and a standard in Chapter NR115, Wisconsin Administrative Code, and where the Ordinance provision is unclear, the provision shall be interpreted in light of the statute and Chapter NR115 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.

### **7.7.2.7 SEVERABILITY**

If any portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

### **7.7.3 DIMENSIONS OF BUILDING SITES; AREA, HEIGHT, LAND DIVISIONS AND DEVELOPMENT STANDARDS**

Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety, and welfare, and protection against pollution of the adjacent body of water.

#### **7.7.3.1 LOTS NOT SERVED BY PUBLIC SANITARY SEWER**

(A) Minimum area and width for each lot. The minimum lot area shall be 20,000 square feet and the minimum lot width shall be 100 feet at the building setback line, with at least 100 feet of frontage at the ordinary high water mark.

#### **7.7.3.2 LOTS SERVED BY PUBLIC SANITARY SEWER**

(A) Minimum area and width for each lot. The minimum lot area shall be 10,000 square feet and the minimum lot width shall be 65 feet at the building setback line, with at least 65 feet of frontage at the ordinary high water mark.

#### **7.7.3.3 SUBSTANDARD LOTS**

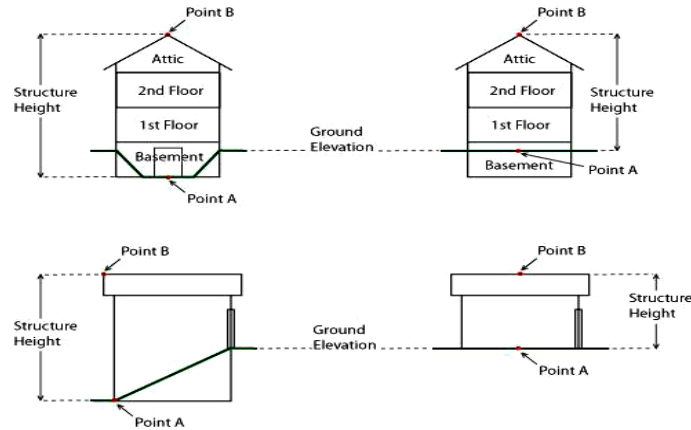
(A) A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following apply:

- (1) The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.
- (2) The substandard lot or parcel has never been developed with one or more of its structures placed partly upon adjacent lot or parcel.
- (3) The substandard lot or parcel is developed to comply with all other ordinance requirements.

#### **7.7.3.4 HEIGHT**

To protect and preserve wildlife habitat and natural scenic beauty, on or after February 1, 2010, construction that results in a structure taller than 35 feet within 75 feet of the ordinary high water mark of any navigable waters is prohibited.

(A) Structure height is the measurement of the vertical line segment starting at the lowest point of any exposed wall and its intersect with the ground (Point A in the following diagram) to a line horizontal to the highest point of a structure (Point B in the following diagram), unless specified under other sections of this code.



### 7.7.3.5 LAND DIVISIONS

Land divisions shall be subject to review under the terms of the Portage County Subdivision Ordinance and the following:

- (A) In such review all the following factors shall be considered:
  - (1) Hazards to the health, safety or welfare of future residents.
  - (2) Proper relationship to adjoining areas.
  - (3) Adequate stormwater drainage facilities.
- (B) Lots must meet all applicable standards of this Ordinance.

### 7.7.3.6 ACCESS LOT DEVELOPMENT

The development of a riparian lot as an access lot for use by owners of more than one back lot may take place after obtaining a special exception permit from the Board of Adjustment and subject to the following requirements:

- (A) The minimum lot area, width and frontage of an access lot shall meet the applicable standard of this ordinance.
- (B) The proposed access lot shall not provide water access for more than 3 back lots.
- (C) The back lots having access to the water over the access lot must be situated so that the furthest boundary is no more than 1,000 feet from the back of the access lot.
- (D) The construction or placement of any structure, other than an exempt structure, on an access lot is prohibited.
- (E) Each back lot owner shall be granted an undivided interest in the access lot. The access lot shall not be subdivided in any way.

(F) The following additional conditions may be considered for an access site/lot including and not limited to: waste containment, sanitary facility, noise limits, screening, parking, parking controls, time requirements and identification of sites, fish cleaning, gasoline and oil handling, and disposition of all waste materials.

#### **7.7.3.7 ACCESS EASEMENTS**

Except as provided by special exception as an access lot, no owner of riparian land that abuts a navigable water may grant by an easement or by a similar conveyance any riparian right in the land to another person, except for the right to cross the land in order to provide public access to the navigable water.

#### **7.7.3.8 NUMBER OF PRINCIPAL STRUCTURES PER LOT**

There shall be not more than one residential unit/housing unit or not more than one nonresidential principal building per lot except for lots meeting the following requirements:

(A) The minimum dimensions of the lot area, width and frontage prescribed by this Ordinance shall be multiplied by each additional residential unit/housing unit for nonresidential principal building proposed for the lot.

#### **7.7.4 SETBACKS, FENCES, EXEMPT AND FLOODPLAIN STRUCTURES**

Permitted building setbacks shall be established to conform to health, safety, and welfare requirements, preserve natural beauty, reduce flood hazards, and avoid water pollution.

##### **7.7.4.1 STRUCTURE SETBACKS**

(A) Ordinary High Water Mark (OHWM) Setbacks.

(1) All buildings, signs and structures, unless otherwise allowed or required by this Ordinance, shall be set back at least 75 feet from the ordinary high water mark of navigable waters. Distance is measured from the nearest part of the building or structure to the ordinary high water mark of navigable waters.

(2) A setback of less than 75 feet may be allowed for a new principal structure where there are existing principal structures in both directions. The new principal structure shall be setback a distance at least equal to the average of the distances from the ordinary high water mark of the two existing principal structures provided all of the following are met:

- (a) Both of the existing principal structures are located on an adjacent lot to the proposed principal structure.
- (b) Both of the existing principal structures are located within 250 feet of the proposed principal structure and are the closest structure.
- (c) Both of the existing principal structures are located less than 75 feet from the ordinary high water mark.
- (d) The average setback shall not be reduced to less than 35 feet from the ordinary high water mark of any navigable water.

(3) A setback of at least 100 feet may be required where there are existing principal structures in both directions which are equal to or greater than 100 feet from the ordinary high water mark provided all of the following are met:

- (a) Both of the existing principal structures are located on an adjacent lot to the proposed principal structure.

- (b) Both of the existing principal structures are located within 200 feet of the proposed principal structure.
- (c) Both of the existing principal structures are located greater than or equal to 100 feet from the ordinary high water mark.
- (d) The increased setback does not apply if the resulting setback limits the placement to an area on which the structure cannot be built.

(B) Yard and Highway Setbacks. Structures shall comply with following yard and highway setbacks except as otherwise provided in this Ordinance

- (1) Side Yards. There shall be 10 feet minimum setback from each side lot line.
- (2) Rear Yards. There shall be a 25 foot minimum setback from the rear lot line for principal structures and a 10 foot minimum setback from the rear lot line for detached accessory structures.
- (3) Front Yard. There shall be a 25 foot minimum setback from the front lot line.
- (4) Highway Setbacks. Minimum required highway setbacks shall apply to all yards which abut public roads. Such minimum required setbacks shall vary depending on the type of public road and shall be whichever distance is greater in accordance with the following table.

Jurisdiction of Public Road	Minimum Setback from Closest Public Road Right-of-Way	Minimum Setback From Centerline of Travelled Public Road
Town, Village or City Road	30 feet	63 feet
County Road	42 feet	75 feet
State Trunk or U.S. Highway	50 feet	110 feet

(5) Structures Permitted within required Yard and Highway Setbacks.

- (a) Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter, and satellite earth station antennas that are two meters or less in diameter.
- (b) Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pump house covers, private on-site wastewater treatment systems that comply with Chapter SPS 383 Wisconsin Administrative Code, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control stormwater runoff from the structure.
- (c) Stairs, sidewalks, walkways, rail systems, paths or driveways.
- (d) Fences, signs, landscaping features, retaining walls and propane storage tanks.
- (e) Sills, belt courses, cornices, canopies, eaves and ornament architectural features may project into a required yard not more than 30 inches.
- (f) Covered steps and landings not exceeding 40 square feet.
- (g) Minor structures 16 square feet or less.

#### **7.7.4.2 FENCES**

Solid or chain link fences shall not be located within the OHWM setback. Agricultural fences are allowed per s. 90 Stats. Fences are exempt from permitting requirements of Section 7.7.12.2 and from all yard setback requirements.

### **7.7.4.3 EXEMPT STRUCTURES**

All of the following structures are exempt from the OHWM setback standards in Section 7.7.4.1(A).

(A) Open sided and screened structures, such as gazebos, decks, patios and screen houses; subject to the following:

- (1) The part of the structure that is nearest to the water is located at least 35 feet landward from the ordinary-high water mark.
- (2) The floor area of all the structures, excluding boathouses, within the OHWM setback area specified in Section 7.7.4.1(A) will not exceed 200 square feet.
- (3) The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.
- (4) The Portage County Planning and Zoning Department must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least 70% of the half of the OHWM setback specified in Section 7.7.4.1(A) that is nearest to the water.

(B) Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter, and satellite earth station antennas that are two meters or less in diameters.

(C) Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with Chapter SPS 383 Wisconsin Administrative Code, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.

(D) Stairs, sidewalks, walkways, or rail systems that are necessary to provide pedestrian access to the shoreline may be allowed subject to the following:

- (1) The width is limited to a maximum of sixty (60) inches.
- (2) Attached benches and seats that do not impede or interfere with the function of the stairs/landings. Tables are prohibited.
- (3) They have no canopies and/or roofs.
- (4) Landings are allowed when required for safety purposes and shall not exceed forty (40) square feet.

(E) Boathouses used for the storage of watercraft and related materials; subject to the following:

- (1) The boathouse shall be located above the ordinary high water mark and entirely within the designated access and viewing corridor. The closest point of the structure shall be a minimum of 5' from the OHWM. The furthest point of the structure shall be 35' from the OHWM.
- (2) Boathouses shall be designed and constructed solely for the storage of watercraft and related equipment.
- (3) One Boathouse is permitted on a lot as an accessory structure.

- (4) Shall not contain plumbing and cannot be used for human habitation.
- (5) Boathouses shall not exceed one story, 400 square feet in floor area and a length to width ratio of 2:1.
- (6) Boathouse roofs shall have a pitched roof that is no flatter than 4/12 pitch, and shall not be designed or used as decks, observation platforms or for other similar uses.
- (7) Earth toned color shall be required for all exterior surfaces of a boathouse.
- (8) The main door shall face the water.
- (9) Patio doors, fireplaces and other features inconsistent with the use of the structure exclusively as a boathouse are not permitted.
- (F) Devices or systems used to treat runoff from impervious surfaces.

#### **7.7.4.4 FLOODPLAIN STRUCTURES**

Buildings and structures to be constructed or placed in a floodplain shall be required to comply with Chapter 7.6 of the Portage County Floodplain Zoning Ordinance.

#### **7.7.5 CAMPING UNITS AND CAMPGROUNDS**

##### **7.7.5.1 CAMPING UNITS**

Camping units shall meet all applicable provisions of this Ordinance subject to the following standards:

- (A) No more than 3 camping units shall occupy a lot except when authorized as a campground.

##### **7.7.5.2 CAMPGROUNDS**

- (A) Campgrounds may be permitted as a special exception subject to approval by the Board of Adjustment.

#### **7.7.6 VEGETATION**

##### **7.7.6.1 PURPOSE**

To protect natural scenic beauty, fish and wildlife habitat and water quality, Portage County hereby establishes standards to regulate removal of vegetation in shoreland areas, consistent with sound forestry and soil conservation practices and which consider the effect of vegetation removal on water quality, including soil erosion, and the flow of effluents, sediments and nutrients.

##### **7.7.6.2 ESTABLISHMENT OF A VEGETATIVE BUFFER ZONE**

To protect water quality, fish and wildlife habitat and natural scenic beauty and to promote preservation and restoration of native vegetation, land that extends from the ordinary high water mark of a navigable waterway to a

minimum of 35 feet inland shall be designated as a vegetative buffer zone. Removal of vegetation in the vegetative buffer zone is prohibited, except as follows:

(A) Routine maintenance of vegetation within the vegetative buffer zone may be permitted, subject to review per Section 7.7.6.2(D) of this Ordinance prior to performing maintenance.

(B) All shoreland properties are allowed to remove trees and shrubs in the vegetative buffer zone to create an access and viewing corridor subject to the following:

(1) The access and viewing corridor may be a maximum of 35 feet wide for every 100 feet of shoreline frontage; 70 feet wide for lots with at least 200 feet of shoreline frontage, 105 feet wide for lots with 300 feet of shoreline frontage, and so on.

(2) Lots with less than 100 feet of shoreline frontage are allowed an access and viewing corridor which is equal to 35% of the shoreline frontage.

(3) Access and viewing corridors may run continuously up to the maximum width allowed by the shoreline frontage. Multiple access and viewing corridors may be allowed up to the maximum width allowed by the shoreline frontage.

(4) Access and viewing corridors must be vegetated except where otherwise allowed by this Ordinance and State or Federal regulations.

(C) Removal of trees and shrubs in the vegetative buffer zone is allowed on a parcel with 10 or more acres of forested land, consistent with "generally accepted forestry management practices" as defined in s. NR 1.25 (2)(b), and described in WI-DNR publication "Wisconsin Forest Management Guidelines" (publication FR-226), provided that vegetation removal is consistent with these practices.

(D) Through authorization by the Portage County Planning and Zoning Department, and issuance of a Zoning Permit, additional vegetation management activities in the vegetative buffer zone, but outside of the allowable access and viewing corridor, may be permitted subject to the following:

(1) The Zoning Permit shall require that all management activities comply with detailed plans approved by Portage County Planning and Zoning staff.

(2) All management activities shall be designed to control erosion by limiting sedimentation into the water body, improve the plant community by replanting in the same area, and maintain and monitor the newly restored area.

(3) Removal of vegetation within the vegetative buffer zone is necessary to manage exotic or invasive species, to remove vegetation that must be removed to control disease, or to remove vegetation creating an imminent safety hazard to persons or property, provided that any vegetation removed under the Zoning Permit be replaced by replanting in the same area as soon as practicable.

### **7.7.6.3 RESTORATION OF A VEGETATIVE BUFFER ZONE**

Restoration of the vegetative buffer is required for lots which have not been previously developed when a new zoning permit is issued, a vacant lot is created as a result of a lot split, a violation of a vegetative buffer zoned standards has occurred, or when chosen as part of a mitigation requirement. Restoration of the vegetative buffer zone is not required for previously developed lots. Previously developed lots are those tax parcels which have an



existing principal building. Lots which are vacant or which only have existing accessory structures are not considered previously developed for purposes of this subsection. Restoration of the vegetative buffer zone shall meet the following standards:

(A) Restoration. When all mowing, pruning, and vegetation cutting ceases and native species or approved cultivars of native species are planted at required densities within the vegetative buffer zone this shall be known as restoration. All restorations shall meet the following standards:

(1) Planting shall be species native to Wisconsin and approved by the Planning and Zoning Department. Cultivars of these native species may be used if approved by the Planning and Zoning Department.

(2) Trees shall be planted to restore a density of at least 1 stem per 100 square feet of vegetative buffer zone area.

(3) Shrubs shall be planted to restore a density of at least 2 stems per 100 square feet of vegetative buffer zone area, except for closed canopy forest types.

(4) Ground cover shall be restored to the extent practicable.

(B) Vegetative Buffer Zone Plan Requirements. A plan for the restoration of a vegetative buffer zone area shall include:

(1) An inventory of plant species currently present and an indication of their density.

(2) A list of desired native, site-adapted species (or approved cultivars of native species), size or age of species and a schedule for their planting. A minimum size or age of species may be required depending on site conditions.

(3) A sketch of showing no-mow areas and/or the placement and densities of each species planned.

(4) A description of how the applicant intends to carry out the project including a watering plan and the erosion control measures that will be used during restoration.

(5) A description of the proposed method for removal of existing turf grass or other non-native species. Landscape cloth, plastic, mill felt or other barriers similar in nature may only be used on a temporary basis to facilitate the removal of non-native species.

(6) A Replacement schedule for restoration plantings. Any vegetation required, but subsequently dies due to neglect, lack of watering, planting errors, deer browse, etc. shall be replaced and maintained.

## **7.7.7 IMPERVIOUS SURFACE STANDARDS AND REQUIREMENTS**

### **7.7.7.1 IMPERVIOUS SURFACE STANDARDS**

To protect water quality and fish and wildlife habitat, and to protect against pollution of navigable waters, Portage County hereby establishes impervious surface standards applicable to the construction, reconstruction, expansion, replacement, or relocation of any impervious surface on a riparian lot or parcel and any nonriparian lot or parcel that is located entirely within 300 feet of the ordinary high water mark of any navigable waterway.

(A) CALCULATION OF IMPERVIOUS SURFACE. Percentage of impervious surface shall be calculated by dividing the surface area of existing and proposed impervious surfaces on the portion of a lot or parcel that is within 300 feet of the ordinary high water mark by the total surface area of the lot or parcel, and multiplied by 100. Impervious surfaces treated by devices such as stormwater ponds, constructed wetlands, infiltration basins, rain gardens, bio-swales or other engineered systems shall be excluded from the impervious surface calculations. Impervious surfaces which discharge to an internally drained pervious area that retains the runoff on or off the parcel and allows infiltration into the soil shall be excluded from the impervious surface calculations.

(1) Impervious Surface Standard. The amount of impervious surface allowed on the portion of a lot or parcel that is within 300 feet of the ordinary high water mark is restricted to a total of 15% of the area.

(2) Maximum Impervious Surface. A total amount of impervious surface greater than 15%, but not exceeding 30%, may be permitted on the portion of a lot or parcel within 300 feet of the ordinary high water mark, if a mitigation plan, as defined in Section 7.7.8 below, is approved by Portage County Planning and Zoning Department staff.

(B) EXISTING IMPERVIOUS SURFACES. For existing impervious surfaces that were lawfully placed when constructed, but that do not comply with impervious surface standards in 7.7.7.1(A) above, the property owner may do any of the following:

(1) Maintain and repair the existing impervious surfaces.

(2) Replace existing impervious surfaces with similar surfaces within the existing building envelope.

(3) Relocate or modify an existing impervious surface with similar or different impervious surface, provided the relocation or modification does not result in an increase in the percentage of impervious surface that existed on the effective date of this Ordinance, and the impervious surface meets applicable setback requirements in 7.7.4 above.

## **7.7.8 MITIGATION**

### **7.7.8.1 PURPOSE**

Mitigation, for the purpose of this Section, is defined as “*balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.*”

### **7.7.8.2 MITIGATION REQUIRED**

Mitigation required by this Ordinance shall be assigned points based on the schedule below. Projects must earn enough points to offset the impacts of the activity by choosing options for mitigating those activities which have at least an equal number of points:

(A) Activities requiring mitigation:

(1) Impervious surface coverage is greater than 15% but less than 20% - 2 points

(2) Impervious surface coverage is greater than or equal to 20% but less than 30% - 3 points

(3) Lateral expansion of nonconforming principal structure within the shoreland setback - 3 points

- (4) Relocation of nonconforming principal structure within the shoreland setback - 3 points
- (B) Options to earn mitigation:
  - (1) Removal of less than 500 square feet of structure from within the 75 foot OHWM setback - 1 point
  - (2) Removal of greater than or equal to 500 square feet of structure from within the 75 foot OHWM setback - 2 points
  - (3) Installation of an approved stormwater control plan which treats all impervious surfaces - 2 points
  - (4) Restoration to a compliant vegetative buffer zone - 2 points
  - (5) Increasing depth of an existing compliant vegetative buffer - 1 point for every 5 feet
  - (6) Reducing width of allowable view and access corridor(s) - 1 point for every 5 foot reduction per 100 feet of shoreline frontage
  - (7) Locating all non-exempt structures beyond the minimum OHWM Setback - 1 point for every 25 foot increase beyond required minimum (maximum of 3 points)
  - (8) Removal of an existing sand beach at least 200 sq. ft. in size within 35 feet of the OHWM with restoration of the area - 1 point
  - (9) Installation of a vegetative buffer per standards in section 7.7.6.3 along one side lot line - 1 point for every 10 feet of buffer width

### **7.7.8.3 MITIGATION PLAN**

A plan that establishes options which adequately offset the impacts of development on water quality, near-shore aquatic habitat, upland wildlife habitat, and natural scenic beauty. Submittal requirements for mitigation plan review are:

- (A) A site plan that describes the proposed mitigation measures:
  - (1) The mitigation requirements in the site plan shall be designed to restore natural functions lost through development and human activities.
  - (2) The mitigation requirements in the site plan shall be proportional in scope to the impacts on water quality, near-shore aquatic habitat, upland wildlife habitat, and natural scenic beauty (as identified by Portage County Planning and Zoning Department staff).
- (B) An implementation schedule which includes enforceable obligations on the property owner to establish and maintain mitigation options in perpetuity. Owners of the property shall record an instrument in the Portage County Register of Deeds Office detailing the mitigation plan and future management plan prior to issuance of the Zoning Permit.

## **7.7.9 SOIL DISTURBING ACTIVITIES**

Soil Disturbing Activities may be permitted only in accordance with the provisions of this Ordinance and other State and Federal laws where applicable, and only if done in a manner designed to minimize erosion, sedimentation, and impairment of fish and wildlife habitat and natural scenic beauty.

### **7.7.9.1 GENERAL STANDARDS**

Soil disturbing activities include filling, grading, lagooning, dredging, ditching or excavating. Soil disturbing activities may be permitted in the shoreland area subject to the following standards:

- (A) It is done in a manner designed to minimize erosion, sedimentation, and impairment of fish and wildlife habitat.
- (B) A State or Federal permit is obtained, in addition to a permit under this Ordinance, if State or Federal laws require the issuance of a permit for the filling, grading, lagooning, dredging, ditching, or excavating that is proposed.
- (C) Any soil disturbing activities in the shoreland area is protected against erosion by erosion control practices approved by the Portage County Planning and Zoning Department.
- (D) Filling, grading or excavating within the required vegetative buffer zone depth is prohibited except for the following:
  - (1) In association with an exempt structure authorized under 7.7.4.3 or a nonconforming structure authorized under 7.7.10 and only to the minimum extent necessary.
  - (2) Rip rap or other bank stabilization measures authorized by state or federal regulations.
  - (3) Public road, bridge, dam and public recreation related construction and maintenance activities.
  - (4) Activities associated with restoration of the vegetative buffer zone or other permitted activities in 7.7.6.
  - (5) Flood proofing measures authorized by the Portage County Floodplain Ordinance.

### **7.7.9.2 ZONING PERMIT REQUIRED**

A zoning permit is required for soil disturbing activities for the following:

- (A) Soil disturbing activities in any area which is within 300 feet landward of the OHWM of navigable water and which has surface drainage toward the water and on which there is one or more of the following:
  - (1) Filling or grading of 1,000 square feet or more on slopes of 10% or greater.
  - (2) Filling or grading of 500 square feet or more within 75 feet of the OHWM.
  - (3) An area of one acre or greater will be disturbed by excavation, grading, filling or other earthmoving activities, resulting in the loss or removal of protective ground cover or vegetation.

- (4) When constructing stairways, walkways, or lifts within the vegetative buffer zone.
- (5) When re-constructing an existing retaining wall within the OHWM setback.
- (B) Any construction or dredging commenced on any artificial waterway, canal, ditch, lagoon, pond, lake or similar waterway where the purpose is the ultimate connection with a navigable body of water.

### **7.7.9.3 ZONING PERMIT CONDITIONS**

In granting a zoning permit, the following conditions shall apply where appropriate, in addition to those provisions specified in Section 7.7.12.2.

- (A) The smallest amount of bare ground shall be exposed for as short a time as feasible.
- (B) Temporary ground cover (such as mulch or erosion control matting) shall be used and permanent vegetative cover (such as sod) shall be established.
- (C) Diversion berms or bales, silting basin, terraces, filter fabric fencing and other methods shall be used to trap sediment.
- (D) Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions.
- (E) Fill shall be stabilized according to accepted engineering standards.
- (F) Fill shall not restrict a floodway or impact the storage capacity of a floodplain.
- (G) Sides of a channel or artificial watercourse shall be stabilized to prevent slumping.
- (H) Sides of channels or artificial watercourses shall be constructed with slopes (side) of two units horizontal distance to one unit vertical distance or flatter, unless bulkheads or rip-rapping are provided.

### **7.7.9.4 EXEMPTIONS**

The following shall not require a zoning permit for soil disturbing activities.

- (A) Soil conservation practices approved by the Portage County Planning and Zoning Department.
- (B) Tree cutting, shrubbery removal, and ordinary maintenance of drainage ditches within an organized Drainage District as specified in Chapter 88 Stats.
- (C) Agricultural practices such as plowing of fields or installation of conservation practices as they are prescribed and adhere to standards inherent in Wisconsin Administrative Code as promulgated under Ch. 281 and 92, Wis. Stats.
- (D) Forestry activities such as harvesting of trees and construction of landings consistent with “generally accepted forestry management practices” as defined in s. NR 1.25 (2)(b), and described in WI-DNR publication “Wisconsin Forest Management Guidelines” (publication FR-226).

## **7.7.10 NONCONFORMING USES AND STRUCTURES AND STRUCTURES AUTHORIZED BY VARIANCE**

### **7.7.10.1 DISCONTINUED NONCONFORMING USE**

If a nonconforming use is discontinued for a period of 12 months, any future use of the building, structure or property shall conform to the ordinance.

### **7.7.10.2 MAINTENANCE, REPAIR, REPLACEMENT OR VERTICAL EXPANSION OF NONCONFORMING STRUCTURES**

An existing structure that was lawfully placed when constructed but, that does not comply with the required shoreland setback, may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the nonconforming structure. Further, an existing structure that was lawfully placed when constructed, but that does not comply with the required shoreland setback may be vertically expanded to a maximum height of 35 feet above grade level. Expansion of a structure beyond the existing footprint may be allowed if the expansion is necessary to comply with the applicable state or federal requirements.

### **7.7.10.3 LATERAL EXPANSION OF NONCONFORMING PRINCIPAL STRUCTURE WITHIN THE SETBACK**

An existing principal structure that was lawfully placed when constructed but, that does not comply with the required building setback per section 7.7.4.1(A), may be expanded laterally, provided that all of the following requirements are met:

- (A) The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.
- (B) The existing principal structure is at least 35 feet from the ordinary high water mark.
- (C) Lateral expansions are limited to a maximum of 200 square feet over the life of the structure. No portion of the expansion may be any closer to the ordinary high water mark than the closest point of the existing principal structure.
- (D) Portage County Planning and Zoning Department shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in section 7.7.8.
- (E) All other provisions of the shoreland ordinance shall be met.

### **7.7.10.4 EXPANSION OF A NONCONFORMING PRINCIPAL STRUCTURE BEYOND SETBACK**

An existing principal structure that was lawfully placed when constructed, but that does not comply with the required building setback under section 6.1, may be expanded horizontally, landward, or vertically provided that the expanded area meets the building setback requirements per section 7.7.4.1 and that all other provisions of the shoreland ordinance are met. A mitigation plan is not required solely for expansion under this paragraph, but may be required per section 7.7.7.

### **7.7.10.5 RELOCATION OF NONCONFORMING PRINCIPAL STRUCTURE**

An existing principal structure that was lawfully placed when constructed, but that does not comply with the required building setback per section 7.7.4.1, may be relocated on the property provided all of the following requirements are met:

- (A) The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.
- (B) The existing principal structure is at least 35 feet from the ordinary high-water mark.
- (C) No portion of the relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.
- (D) Portage County Planning and Zoning Department determines that no other location is available on the property to build a principal structure of a comparable size to the footprint of the structure proposed for relocation that will result in compliance with the shoreland setback requirement per section 7.7.4.1.
- (E) Portage County Planning and Zoning Department shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in section 7.7.8.
- (F) All other provisions of the shoreland ordinance shall be met.

#### **7.7.10.6 MAINTENANCE, REPAIR, REPLACEMENT OF NONCONFORMING BOATHOUSES**

An existing boathouse that was lawfully placed when constructed but that does not comply with the standards within section 7.7.4.3 may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the 3-dimensional building envelope of the nonconforming boathouse. The roof of an existing boathouse may be used as a deck provided that:

- (A) The boathouse has a flat roof.
- (B) The roof has no side walls or screens.
- (C) The roof may have a railing that meets the Department of Safety and Professional Services standards.

#### **7.7.10.7 MAINTENANCE, REPAIR, REPLACEMENT OR VERTICAL EXPANSION OF STRUCTURES THAT WERE AUTHORIZED BY VARIANCE**

A structure, of which any part has been authorized to be located within the shoreland setback area by a variance granted before July 13, 2015 may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the authorized structure. Additionally, the structure may be vertically expanded to a maximum height of 35 feet above grade level. Expansion of a structure beyond the existing footprint may be allowed if the expansion is necessary to comply with applicable state or federal requirements.

#### **7.7.10.8 MAINTENANCE, REPAIR, REPLACEMENT OF EXEMPT STRUCTURES**

An existing exempt structure listed in 7.7.4.3 that was lawfully placed when constructed, but that does not comply with one or more standards of this ordinance, may be maintained, repaired, replaced, restored, rebuilt or remodeled

if the activity does not expand the footprint and does not go beyond the three-dimensional building envelope of the existing structure. Expansion of a structure beyond the existing footprint may be allowed if the expansion is necessary to comply with applicable state or federal requirements.

## **7.7.11 SHORELAND-WETLAND DISTRICT**

### **7.7.11.1 DESIGNATION**

This district shall include all shorelands within the jurisdiction of this ordinance which meet the definition of wetlands in section 7.7.12.7. The most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer will be used for purposes of identifying wetlands but shall not be substituted for actual field conditions.

(A) Locating Shoreland-Wetland Boundaries. Where an apparent discrepancy exists between the shoreland wetland district boundary shown on the Wisconsin Wetland Inventory maps and actual field conditions, the County shall contact the Department to determine if the map is in error. If the Department determines that a particular area was incorrectly mapped as wetland or meets the wetland definition but was not shown as wetland on the map, the county shall have the authority to immediately grant or deny a shoreland zoning permit in accordance with the applicable regulations based on the Department determination as to whether the area is wetland. Depending on the scope of the proposed activity, a third-party wetland delineation may be required by the Department or the County and all costs shall be assumed by the applicant. Maps do not represent the definitive presence and boundaries of wetlands and cannot serve as a substitute for a delineation of wetland boundaries. In order to correct wetland mapping errors on the official zoning map, an official zoning map amendment must be initiated within a reasonable period of time. Hydric soils in the Soil Survey of Portage County Wisconsin may be used for purposes of identifying wetlands but shall not be substituted for actual field conditions.

### **7.7.11.2 PURPOSE**

This district is created to maintain safe and healthful conditions, to prevent water pollution, to protect fish spawning grounds and wildlife habitat, to preserve shore cover and natural beauty and to control building and development in wetlands whenever possible. When development is permitted in a wetland, the development should occur in a manner that minimizes adverse impacts upon the wetland.

### **7.7.11.3 PERMITTED USES**

The following uses shall be allowed, subject to general shoreland zoning regulations contained in this ordinance, the provisions of chs. 30, 31, and 281.36, Stats, and the provisions of other applicable local, state and federal laws:

(A) Activities and uses which do not require the issuance of a zoning permit, but which must be carried out without any filling, flooding, draining, dredging, ditching, tiling or excavating:

(1) Hiking, fishing, trapping, hunting, swimming, 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 pasturing of livestock;



- (4) The cultivation of agricultural crops;
- (5) The practice of silviculture, including the planting, thinning, and harvesting of timber; and
- (6) The construction or maintenance of duck blinds.

(B) Uses which do not require the issuance of a zoning permit and which may include limited filling, flooding, draining, dredging, ditching, tiling, or excavating but only to the extent specifically provided below:

(1) Temporary water level stabilization measures necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the silvicultural activities if not corrected;

(2) The cultivation of cranberries including flooding, dike and dam construction or ditching necessary for the growing and harvesting of cranberries;

(3) The maintenance and repair of existing agricultural drainage systems including ditching, tiling, dredging, excavating and filling necessary to maintain the level of drainage required to continue the existing agricultural use. This includes the minimum filling necessary for disposal of dredged spoil adjacent to the drainage system provided that dredged spoil is placed on existing spoil banks where possible;

(4) The construction or maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance;

(5) The construction or maintenance of piers, docks or walkways built on pilings, including limited excavating and filling necessary for such construction and maintenance; and

(6) The maintenance, repair, replacement or reconstruction of existing town and county highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.

(C) Uses which require the issuance of a zoning permit and which may include limited filling, flooding, draining, dredging, ditching, tiling or excavating, but only to the extent specifically provided below:

(1) The construction and maintenance of roads which are necessary to conduct silvicultural activities or agricultural cultivation 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 impact upon the natural functions of the wetland enumerated in section 7.7.11.5(B);
- (c) The road is designed and constructed with the minimum cross sectional area practical to serve the intended use; and
- (d) Road construction activities are carried out in the immediate area of the roadbed only.

(2) The construction or maintenance of nonresidential buildings provided that:

(a) The building is essential for and used solely in conjunction with the raising of waterfowl, minnows or other wetland or aquatic animals; or some other use permitted in the shoreland wetland district;

- (b) The building cannot, as a practical matter, be located outside the wetland;
- (c) Such building is not designed for human habitation and does not exceed 500 sq. ft. in floor area; and
- (d) Only limited filling or excavating necessary to provide structural support for the building is authorized.

(3) The establishment of public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms, fur animal farms, fish hatcheries, and public boat launching ramps and attendant access roads, provided that:

- (a) Any private development is used exclusively for the permitted use and the applicant has received a permit or license under ch. 29, Stats, where applicable;
- (b) Filling or excavating necessary for the construction or maintenance of public boat launching ramps or attendant access roads is allowed only where such construction or maintenance meets the criteria in section 7.7.11.3(C)(1); and
- (c) Ditching, excavating, dredging, or dike and dam construction in public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms, fur animal farms, and fish hatcheries is allowed only for the purpose of improving wildlife habitat and to otherwise enhance wetland values.

(4) The construction or maintenance of electric, gas, telephone, water and sewer transmission and distribution facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members and the construction or maintenance of railroad lines provided that:

- (a) The transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland;
- (b) Such construction or maintenance is done in a manner designed to minimize adverse impact upon the natural functions of the wetland enumerated in section 7.7.11.5(B).

#### **7.7.11.4 PROHIBITED USES**

Any use not listed in section 7.7.11.3 is prohibited, unless the wetland or portion of the wetland has been rezoned by amendment of this ordinance in accordance with section 7.7.11.5 of this ordinance and s. 59.69(5)(e), Stats.

#### **7.7.11.5 REZONING OF LANDS IN THE SHORELAND WETLAND DISTRICT**

(A) For all proposed text and map amendments to the shoreland wetland provisions of this ordinance, the appropriate office with the Department shall be provided with the following:

- (1) A copy of every petition for a text or map amendment to the shoreland wetland provisions of this ordinance, within 5 days of the filing of such petition with the county clerk. Such petition shall include a map describing any proposed rezoning of a shoreland wetland;
- (2) Written notice of the public hearing to be held on a proposed amendment at least 10 days prior to such hearing;
- (3) A copy of the county zoning agency's findings and recommendations on each proposed amendment within 10 days after the submission of those findings and recommendations to the county board; and

- (4) Written notice of the county board's decision on the proposed amendment within 10 days after it is issued.
- (B) A wetland, or a portion thereof, in the shoreland wetland district shall not be rezoned if 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, 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) Wetlands both within the boundary of designated areas of special natural resource interest and those wetlands which are in proximity to or have a direct hydrologic connection to such designated areas as defined in NR 103.04, Wis. Adm. Code.
- (C) If the Department of Natural Resources notifies the county zoning agency that a proposed text or map amendment to the shoreland wetland provisions of this ordinance may have a significant adverse impact upon any of the criteria listed in section 7.7.11.5(B) of this ordinance, that amendment, if approved by the county board, shall contain the following provision:

"This amendment shall not take effect until more than 30 days have elapsed after written notice of the county board's approval of this amendment is mailed to the Department of Natural Resources. During that 30 day period the Department of Natural Resources may notify the county board that it will adopt a superseding shoreline ordinance for the county under s. 59.692(6), Stats. If the Department does so notify the county board, the effect of this amendment shall be stayed until the s. 59.692(6), Stats, adoption procedure is completed or otherwise terminated."

## **7.7.12 ADMINISTRATIVE PROVISIONS**

### **7.7.12.1 ZONING ADMINISTRATOR**

The Zoning Administrator shall have the following duties and powers:

- (A) Implementing and administering a system for the issuance of permits for new construction, development, reconstruction, structural alteration or moving of buildings and structures. A copy of applications shall be required to be filed in the Portage County Planning and Zoning Department, which is the office of the Portage County Zoning Administrator.

- (B) Regularly inspecting permitted work in progress to ensure conformity of the finished work with the terms of this Ordinance.
- (C) Implementing and administering a Variance procedure which authorizes the Portage County Board of Adjustment to grant such Variance from the terms of the Ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of the Shoreland Zoning Ordinance, a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship.
- (D) Implementing and administering a Special Exception procedure which authorizes the Portage County Board of Adjustment to grant a use which is permitted by this Ordinance provided that certain conditions specified in the Ordinance are met.
- (E) Keeping a complete record of all proceedings before the Portage County Board of Adjustment and Portage County Planning and Zoning Committee.
- (F) Providing written notice to the appropriate office of the WI-DNR at least 10 days prior to any hearing on a proposed Variance, Special Exception, appeal for a map or text interpretation, map or text amendment, and copies of all proposed land divisions submitted to the County for review which meet the provisions of NR 115.05(2).
- (G) Providing to the appropriate office of the WI-DNR within 10 days after grant or denial, copies of any: decision on a Variance, Special Exception or conditional use permit, decision following an appeal for a map or text interpretation, or map or text amendment of an ordinance.
- (H) Implementing and administering mapped zoning districts and the recording, on an official copy of such map, all district boundary amendments.
- (I) Seeking appropriate penalties for violations of various provisions of this Ordinance, including forfeitures. Compliance with the Ordinance shall also be enforceable by the use of injunctions to prevent or abate a violation as provided in s. 59.69(11), Stats.
- (J) Assist in prosecuting violations of the Shoreland Zoning Ordinance.
- (K) The zoning administrator may issue a special permit to relax the standards of this ordinance in order to provide reasonable accommodations as required by provisions of federal and state law related to the Americans with Disabilities Act (ADA). Such relaxation shall be the minimum necessary to be consistent with federal guidelines for accommodation of persons with disabilities and shall, where practicable, be terminated when the facility is no longer used by the disabled person. A person applying for a permit for construction under this section shall establish the nature and extent of the disability and that the relaxation requested is the minimum necessary to provide reasonable use of the facility. A deed restriction or affidavit for the reasonable accommodation may be filed with the register of deeds.

#### **7.7.12.2 ZONING PERMITS**

No building, sign, other structure, use of land, or any part thereof shall hereafter be built, enlarged, altered or moved within the area subject to the provisions of this Ordinance until a Zoning Permit has been applied for in writing and obtained from the Zoning Administrator subject to the following:

(A) Forms for application for Zoning Permits shall be supplied by the Zoning Administrator and a record of all Permits issued shall be kept in the Office of the Zoning Administrator. A Portage County Zoning Permit shall not be issued until there is compliance with all Portage County Code of Ordinances.

(B) All applications for a Zoning Permit shall be accompanied by a location sketch showing the location, shape and dimensions of the lot to be built upon, the exact size and location of the building on the lot, the existing or intended use of the building, the distance between the nearest point on the building and the centerline of the highway, and such other information with regard to the proposed building and neighboring lots or buildings as may be called for on the application or may be necessary to provide for the enforcement of this Ordinance.

(C) The term "building", as used in this section, shall include any building, structure or use of land which is governed by the requirements of this Ordinance, and any substantial alteration in the building which would effect a change in its use.

(D) No Zoning Permit shall be required for any of the following cases:

(1) For a detached accessory storage structure less than 100 square feet, signs and other minor structures 16 square feet or less, provided such building conforms to all the setbacks, yard and open space requirements of this Ordinance.

(2) For any remodeling, improvements or alterations provided there shall not be a change in use which would be prohibited or which would require a special exception under this Ordinance.

(3) For any remodeling, improvements or alterations provided there is not an increase in floor area to the existing building and provided not more than 50% of the structural elements are replaced.

(4) For farm buildings and structures not for human habitation which are not permanently fixed to the ground and are readily removable in their entirety.

(5) For certain nonconforming structures exempt from permit requirements under 59.692 (1K) Stats. and where not required by other Portage County Ordinances.

(E) Zoning permits are valid for 2 years and projects authorized by the permit must be substantially completed within 24 months from the issuance of the Zoning Permit.

(F) There shall be no issuance of a Zoning Permit, approval of a certified survey map, rezoning, and/or Board of Adjustment action until all zoning violations are corrected, unless zoning violations are corrected by subsequent compliance with the Zoning Ordinance, the issuance of a Zoning Permit, approval of a certified survey map, rezoning, and/or Board of Adjustment decision.

(G) The Planning and Zoning Department may require an affidavit to be recorded in the Register of Deeds Office by the property owner or agent prior to the commencement of any construction or activity to assure compliance with Portage County Ordinances.

### **7.7.12.3 BOARD OF ADJUSTMENT, VARIANCES, SPECIAL EXCEPTIONS, AND ADMINISTRATIVE APPEALS**

(A) Establishment. There shall be a Board of Adjustment consisting of five members and two alternates to be appointed by the County Executive with the approval of the County Board. Members so appointed shall be for one, two and three years, respectively, successors shall be appointed in like manner at the expiration of each term and their terms of office shall be three years in all cases, beginning July 1 in the year appointed. The members of the Board of Adjustment shall all reside within the County and outside the limits of incorporated cities and villages; provided however, that no two members shall reside in the same town. The Board of Adjustment shall choose its own chair. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant in the same manner as the original appointment. The members of the Board of Adjustment shall be compensated at the same per diem and mileage rates as paid the County Board of Supervisors.

(B) Rules.

(1) The Board of Adjustment will review monthly at a public hearing each petition, under paragraphs (D) Duties and (E) Powers, of the Board of Adjustment. Such petition must be accompanied by a fee set by the Portage County Planning and Zoning Committee. If the petitioner desires an earlier review than would be accorded by the above schedule, they may obtain same by paying a special fee also determined by the Planning and Zoning Committee. The special fee shall also be required for filing of a similar appeal that was denied by the Board of Adjustment within the past twelve months.

(2) All meetings of the Board of Adjustment shall be open to the public.

(3) Any public hearing which the Board of Adjustment is required to hold under paragraphs (D) Duties and (E) Powers, of the Board of Adjustment, shall be held by name, address or other commonly known means of identification and shall be included in the notice given of such hearing. Other matters upon which the Board of Adjustment is required to act may also be heard at any such hearing, provided that such matters are included in the notice given of such hearing.

(4) Notice of any public hearing which the Board of Adjustment is required to hold under the terms of this Ordinance shall specify the date, time and place of hearing and the matters to come before the Board of Adjustment at such hearing, and such notice shall be given in each of the following ways:

(a) By publication in the official newspaper of the County once each week for two successive weeks, the last of which shall be at least one week before the public hearing and if no newspaper is in circulation in an affected town, by posting in at least three public places likely to give notice no later than two weeks before the public hearing.

(b) By mailing of notices to the town clerk of each town affected by the petition at least ten days prior to the date of the hearing.

(c) By certified mail to the parties having a legal interest in any of the matters to come before the Board of Adjustment at such hearing.

(d) By mailing of notices of any appeal reviewed in compliance with this Ordinance to the Department of Natural Resources.

(5) The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Office of the Board of Adjustment and shall be a public record.

(6) The Board of Adjustment shall have power to call on any other County Departments for assistance in the performance of its duties and it shall be the duty of such other departments to render all such assistance as may be reasonably required.

(7) The Board of Adjustment may adopt such rules as are necessary to carry into effect the regulations of the County Board.

(8) In the case of a party petitioning who believes it is to their advantage to obtain an earlier review of the petition than the next scheduled Board of Adjustment meeting, he or she may obtain such by depositing with the Planning and Zoning Department of Portage County the fee as determined by the Planning and Zoning Committee and by petitioning by letter to said Chair for a hearing on their petition.

(9) A fee as determined the Planning and Zoning Committee for a variance or special exception shall be assessed for any activity commenced without first obtaining Board of Adjustment approval through public hearing.

(C) Appeals.

(1) Appeals to the Board of Adjustment may be taken by any person aggrieved or by any office, department, board or bureau of Portage County affected by any decision of the Zoning Administrator. Such appeal must be filed within 30 days after the decision in writing is made and filed, by filing with the Zoning Administrator and the Board of Adjustment a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

(2) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator shall certify to the Board of Adjustment after notice of appeal shall have been filed with him by reason of facts stated in the certificate a stay would cause imminent peril to life or property. In such case, the proceeding shall not be stayed otherwise than by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application on notice to the Zoning Administrator and on due cause shown.

(3) The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. A copy of any appeal granted in compliance with the provisions of this Ordinance shall be forwarded to the Department of Natural Resources.

(D) Duties. The Board of Adjustment shall have the following duties:

(1) To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the Zoning Administrator.

(2) To hear and decide special exceptions as required by this Ordinance.

(a) Required Evaluations. In passing upon any special exceptions, the Board of Adjustment shall make the following evaluations, where appropriate, in addition to those required elsewhere in this Ordinance and base its decision thereon.

1. Evaluate the effect of the proposed use upon:

- a. The maintenance of safe and healthful conditions;
- b. The prevention and control of water pollution including sedimentation;
- c. Existing topographic and drainage features and vegetative cover on the site;
- d. The location of the site with respect to floodplains and floodways of rivers or streams;
- e. The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover;
- f. The location of the site with respect to existing or future access roads;
- g. The need of the proposed use for a shoreland location;
- h. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- i. The amount of liquid wastes to be generated and the adequacy of the proposed disposal system;
- j. Location factors under which domestic uses shall be generally preferred, uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source, and use locations within an area tending to minimize the possibility of pollution shall be preferred over use locations tending to increase that possibility;
- k. The importance of the services provided by the proposed facility to the community;
- l. The availability of alternative locations;
- m. The heights, velocity, duration, rate of rise and sedimentation transport of the flood waters at the site;
- n. Such other factors as are relevant to the purposes of this Ordinance.

2. Required Findings. No special exceptions shall be granted by the Board of Adjustment unless it finds the following conditions exist:

- a. The use would not substantially harm the public health, safety, and general welfare, and would not be contrary to State Law or Administrative Code.
- b. The use would be consistent with surrounding uses and the neighborhood would not be injured thereby.
- c. The use is consistent with this Ordinance and any County or municipal plan which is based on historic, geographic, and socio-economic facts.

(3) To hear and decide variances from the terms of this Ordinance.

(a) Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Ordinance, the Board of Adjustment shall have the power, in passing upon petitions, to authorize such variance from the terms of this Ordinance.

(b) Required Evaluations. In passing upon variances, the Board of Adjustment shall make the evaluations required when passing upon special exceptions, where appropriate.

(c) Required Findings. No variance shall be granted by the Board of Adjustment unless it finds the following conditions exist:

1. Granting the variance would not be contrary to the public interest, State Law or Administrative Code, the spirit of the Ordinance would be observed and substantial justice done;
2. The use is permitted in the Ordinance;



3. The hardship is due to special conditions unique to the property, rather than considerations personal to the property owner;
4. Granting the variance would not be detrimental to surrounding landowners;
5. Hardship is not created by any person having interest in the property;
6. A property owner bears the burden of proving unnecessary hardship by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome;
7. The request represents the minimum relief necessary to relieve unnecessary burdens.

(E) Powers. The Board of Adjustment shall have the following powers:

(1) To require the applicant to furnish, in addition to the information required for a Zoning Permit, the following information:

- (a) A plan of the area showing contours, soil types, normal high water elevation, groundwater conditions, bedrock, slope and vegetative cover;
- (b) Location of buildings, parking areas, traffic access, driveways, walkways, piers, open spaces and landscaping;
- (c) Plans of building, sewage disposal facilities, water supply systems and arrangements of operations;
- (d) Specification for areas of proposed filling, grading, lagooning, dredging or cutting and replanting.

(2) To attach such conditions, in addition to those required elsewhere in this Ordinance, that it deems necessary in furthering the purpose of this Ordinance. Violation of any of these conditions shall be deemed a violation of this Ordinance. Such conditions may include, but not be limited to, the following specifications:

- (a) Type of shore cover.
- (b) Increased setbacks and yards.
- (c) Specified sewage disposal and water supply facilities.
- (d) Landscaping and planting screens.
- (e) Period of operation.
- (f) Operation control.
- (g) Sureties.
- (h) Deed restrictions.
- (i) Location of piers, docks, parking and signs.
- (j) Requirements for construction of channel modification, dikes, levees and other protection measures.

(3) Unless otherwise ordered by the Board of Adjustment, all decisions by the Board of Adjustment that require the issuance of a Zoning Permit must include provisions that such Zoning Permit is to be issued within one year of the decision date. The Zoning Permit must be issued before any activity or construction starts unless the appellant requests an extension from the Board of Adjustment through the Portage County Planning and Zoning Department before one year had elapsed. Failure to obtain a zoning permit or an extension of time within which to obtain a zoning permit will result in the approval granted by the Board of Adjustment becoming void and the appellant will be required to re-petition the Board of Adjustment.

#### **7.7.12.4 RESERVED FOR FUTURE USE**

#### **7.7.12.5 CHANGES AND AMENDMENTS**

The Portage County Board may from time to time, alter, supplement or change the boundaries of use, districts and the regulations contained in this Ordinance in accordance with the requirements of s. 59.69(5)(e), Wisconsin Stats., and Chapter NR 115, Wisconsin Administrative Code.

(A) Amendments to this Ordinance may be made on petition of any interested party as provided in s. 59.69(5)(e)(1), Wisconsin Stats.

(B) Every petition for a text or map amendment filed with the Portage County Clerk shall be referred to the Portage County Planning and Zoning Committee. A copy of each petition shall be mailed to the appropriate District and Area offices of the WI-DNR within five days of the filing of the petition with the Portage County Clerk. Written notice of the public hearing to be held on a proposed amendment shall be mailed to the appropriate District and Area offices of the WI-DNR at least ten days prior to the hearing.

(C) A copy of the County Board's decision on each proposed amendment shall be forwarded to the appropriate District and Area offices of the WI-DNR within ten days after the decision is issued.

#### **7.7.12.6 ENFORCEMENT AND PENALTIES**

Any development, any building, or structure constructed, moved, or structurally altered, or any 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 Portage County Zoning Administrator or the Portage County Planning and Zoning Committee shall refer violations to the Portage County Corporation Counsel, who shall expeditiously prosecute 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 not less than fifty (\$50) dollars nor more than one-thousand (\$1,000) dollars per offense, together with the taxable costs of 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 County, the State, or any citizen thereof pursuant to s. 87.30(2), or 59.69(11), Stats.

#### **7.7.12.7 DEFINITIONS**

For the purpose of administering and enforcing this Ordinance, the terms or words used herein shall be interpreted as follows: words used in the present tense include the future; words in the singular number include the plural number; and 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.

(A) The following terms used in this Ordinance mean:

***"Access and viewing corridor"*** means a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.

***"Access lot development"***, also known as "lot pyramiding", "keyhole development" or "development funneling" is the practice whereby a lot, lots, outlot, common open space or commonly owned lot is used for waterfront access by a number of back lots located away from or not contiguous with the water body.

***"Accessory structure or use"*** means a 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. Accessory structures may include, but not limited to, garage, shed, storage building, boathouse, porch, deck, gazebo, or patio.

**“Back lot”** means a parcel of any size, whether or not improved or subdivided or platted, which does not abut the shoreline or ordinary high water mark of a navigable body of water.

**“Boathouse”** 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 these structural parts.

**“Bulkhead line”** means a geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the WI-DNR pursuant to s. 30.11, Wisconsin Stats., and which allows filling to the landward side of the line, except where such filling is prohibited by the floodway provisions of this or a stricter ordinance.

**“Building envelope”** means the three dimensional space within which a structure is built.

**“Campground”** means a parcel or tract of land that is designed, maintained, intended, or used for the purpose of providing camping for 4 or more camping units offered with or without charge, for temporary overnight sleeping accommodations.

**“Camping unit”** means any portable device, not more than 400 square feet in area, used as temporary dwelling, including but not limited to a camping trailer, motor home, recreational vehicle, or tent that remains on a property for more than 20 days per calendar year. Does not include the storage of such camping unit on a lot as an accessory use during periods when it is not occupied.

**“Channel”** means a natural or artificial watercourse with definite bed and banks to confirm and conduct normal flow of water.

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

**“Drainage system”** means one or more artificial ditch, tile drain or similar device which collects surface runoff or groundwater and conveys it to a point of discharge.

**“Existing development pattern”** means the principal structures existing within 250 feet of a proposed principal structure in both directions along the shoreline.

**“Flood” or “Flooding”** means a general and temporary condition of partial or complete inundation of normally dry land areas caused by the overflow of inland waters, or the unusual and rapid accumulation or runoff of surface waters from any source.

**“Floodplain”** means the land which has been or may be hereafter covered by floodwater during the regional flood. The floodplain includes the floodway and floodfringe as those terms are defined in Chapter NR116, Wisconsin Administrative Code.

**“Floodproofing”** means any treatment of land or buildings, and their attendant water supply and sanitary sewage disposal facilities that reduce the flood damage and water contamination hazard. This includes sealing, anchoring, elevating and filling.

**“Generally accepted forestry management practices”** mean forestry management practices that promote sound management of a forest. Generally accepted forestry management practices include those practices contained in the most recent version of the Wisconsin Department of Natural Resources publication known as Wisconsin Forest Management Guidelines.

**“Housing unit”** means any structure that serves to provide overnight accommodations for not more than one family, most commonly a single-family residence or individual condominium unit. It may also include a hotel room, motel room, tourist lodging room, bed and breakfast room or boarding house room in the context of commercial land uses. Synonymous with a residential unit.

**“Impervious surface”** means an area that releases as runoff all or a majority of the precipitation that falls on it. Impervious surface excludes frozen soil, but includes rooftops, sidewalks, driveways, parking lots, and streets, unless specifically designed, constructed, and maintained to be pervious. Roadways as defined in s. 340.01(54), Wis. Adm. Code, or sidewalks as defined in s. 340.01(58), Wis. Adm. Code, are not considered impervious surfaces.

**“Lagoon”** means an artificial enlargement of a waterway.

**“Lot width”** means the shortest distance between the side property lines at the building line.

**“Maintenance and repair”** includes such activities as interior remodeling, painting, decorating, paneling, plumbing, insulation, and replacement of windows, doors, wiring, siding, roof and other nonstructural components; and the repair of cracks in foundations, sidewalks, walkways, and the application of waterproof coatings to foundations. These activities do not require a Zoning Permit.

**“Mobile home”** means 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.

**“Navigable waters”** mean 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. Notwithstanding any other provision of law or administrative rule promulgated there under, shoreland ordinances required under Sections 59.692 and 281.31, Wisconsin Stats., and Chapter NR115, Wisconsin Administrative Code, do not apply to lands adjacent to:

- (1) Farm drainage ditches where such lands are not adjacent to a natural navigable stream or river and such lands were not navigable streams before ditching; and
- (2) Artificially constructed drainage ditches, ponds or stormwater retention basins that are not hydrologically connected to a natural navigable water body

**“Ordinary high water mark (OHWM)”** 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.

**“Portage County Board of Adjustment”** means that board appointed by the County Executive and approved by the Portage County Board under s. 59.694, Wisconsin Stats., with duties as described under Section 7.1.6.5 of the Portage County Zoning Ordinance.

**“Portage County Planning and Zoning Committee”** means that committee or agency created or designated by the Portage County Board under s. 59.69(2)(a), Wisconsin Stats., to act in all matters pertaining to County planning and zoning.

**“Principal structure(s) and use(s)”** means any and all of the primary uses of a property, treated as a use permitted by right or as a special exception use, rather than as an accessory use or a temporary use and the structures associated with such use(s). Most often associated with, but not limited to, a residence or commercial use.

**“Regional flood”** means 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, once in every 100 years.

**“Repair”** means to modify or replace less than 50% of the structural elements of a structure.

**“Routine maintenance of vegetation”** means normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.

**“Setback from water”** means the minimum horizontal distance from the ordinary high water mark of a body of water to the nearest part of a structure.

**“Shorelands”** mean 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.

**“Sign”** means anything erected, hung, suspended, painted or attached to any structure, carrying words, letters, figures, phrases, sentences, names, designs, trade names or trade makers of any other device placed so as to be visible from a street or waterway and calling attention to a business, trade, profession, commodity, product, person, firm or corporation. Signs of standard size and design placed by public authorities for the guidance or warning of traffic are exempt. Signs temporary in nature such as, but not limited to, real estate advertising signs or political signs are exempt. Signs 2 square feet or less are exempt.

**“Shoreland setback”**, also known as **“OHWM setback”** or the **“shoreland setback area”** in s. 59.692(1)(bn) Stats., means an area in a shoreland that is within a certain distance of the ordinary high water mark in which the construction or placement of buildings or structures has been limited or prohibited under an ordinance enacted under s. 59.692, Stats.

**“Silvicultural thinning”** means a woodland management practice which, for the purpose of this Ordinance, improves or maintains the quality of adjacent surface water through responsible cutting in shorelands; and by which long-lived species are perpetuated and provision is made for efficient methods of slash disposal.

**“Special Exception”** 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 Portage County Board of Adjustment.

**“Stormwater Control Plan”** means a plan designed and implemented to control stormwater for a 25 year storm event. Stormwater Control Plans shall be designed to capture and/or control all runoff from proposed impervious surfaces. The 25 year storm event is based on standards found in the USDA-NRCS Engineer Field Handbook. Stormwater Control Plans must utilize at least six inches of best available vegetated topsoil. The Stormwater Control Plan standards may be reduced through the use of a restored or enhanced vegetative buffer zone subject to approval by Planning and Zoning Staff.

**“Structure”** means any man-made object with form, shape and utility, either permanently or temporarily attached to, placed upon or in the ground, or any attachment to something on a premises, including, but not limited to, dwellings, accessory buildings, additions, signs, decks, swimming pools, platforms, porches, balconies, gazebos, satellite dishes, fences, boathouses, stairs, walkways, sidewalks, piers, wharves, patios, bridges, firepit, garages, sheds and retaining walls.

**“Subdivision”** means the division of a lot, parcel, or tract of land by the owner or his agent or by the owner’s immediate grantee or his agent for the purposes of conveyance of title where the act of division or successive division creates two or more lots or outlots of twenty acres each or less.

**“Substandard lot”** means a lot that does not conform to the dimensional requirements of this Ordinance.

**“Travel trailer”** means a vehicular portable structure designed as a temporary dwelling for travel, recreation and vacation use, which does not fall within the definition of a mobile home.

**“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.

**“Variance”** means an authorization granted by the Portage County Board of Adjustment to construct or alter a building or structure in a manner that deviates from the dimensional standards of this Ordinance.

**“Wetlands”** mean those areas where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

**“Yard”** means an open space portion of a lot that is unoccupied by a structure and unobstructed from the ground upward, except as otherwise provided herein.

**“Yard, Front”** means a yard extending along the full width of the front lot line between side lot lines and extending from the abutting front street right-of-way or street easement line to a depth required in the yard regulations. The front yard may not abut a street right-of-way, but may run parallel to it.

**“Yard, Rear”** means a yard extending along the full width of the rear lot line between the side lot lines and extending toward the front lot line for a depth as specified in the yard regulations.

**“Yard, Side”** means a yard extending along the side lot line between the front and rear yards, having a width as specified in the yard regulations.

“**Yard, Street**” means a yard extending along the full width of a lot in those yards that abut a public street right-of-way or easement for a depth as specified in the yard regulations. Corner lots have 2 such yards.

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Revised by Resolution 26-2018-2020 on August 27, 2018

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## **7.8 NONMETALLIC MINING RECLAMATION ORDINANCE**

### **PART I – GENERAL**

#### **7.8.1 TITLE**

### **NONMETALLIC MINING RECLAMATION ORDINANCE FOR PORTAGE COUNTY**

#### **7.8.2 PURPOSE**

The purpose of this chapter is to establish a local program to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place after the effective date of this chapter, in compliance with Chapter NR 135, Wisconsin Administrative Code and Subchapter I of Chapter 295, Wisconsin Statutes. It is not intended that this chapter repeal, abrogate, annul, impair or interfere with any existing rules, regulation, ordinances or permits not concerning nonmetallic mining reclamation previously adopted pursuant to other Wisconsin law.

#### **7.8.3 STATUTORY AUTHORITY**

This chapter is adopted under authority of Portage County Section 295.13(1), Wisconsin Statutes; Section NR 135.32, Wisconsin Administrative Code; Section 59.51, Wisconsin Statutes.

#### **7.8.4 INTERPRETATION**

In their interpretation and application, the provisions of this chapter shall be held to be the applicable requirements for nonmetallic mining reclamation and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes outside the reclamation requirements for nonmetallic mining sites required by Subchapter I of Chapter 295, Wisconsin Statutes and Chapter NR 135, Wisconsin Administrative Code. Where any terms or requirements of this chapter may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply. Where a provision of this chapter is required by Wisconsin Statutes, or by a standard in Chapter NR 135, Wisconsin Administrative Code, and where the provision is unclear, the provision shall be interpreted to be consistent with the Wisconsin Statutes and the provisions of Chapter NR 135, Wisconsin Administrative Code.

### **7.8.5 SEVERABILITY**

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

### **7.8.6 DEFINITIONS**

All definitions for the purposes of this Chapter are those contained in Section NR 135.03, Wisconsin Administrative Code.

- (1) "Alternative requirement" an alternative to the reclamation standards of this chapter provided through a written authorization granted pursuant to Portage County Nonmetallic Mining Reclamation Ordinance Section 7.8.17.
- (2) "Applicable reclamation ordinance" a nonmetallic mining reclamation ordinance including this chapter, that applies to a particular nonmetallic mining site and complies with the requirements of this Chapter NR 135, Wisconsin Administrative Code and Subchapter 1 of Chapter 295, Wisconsin Statutes.
- (3) "Borrow site" an area outside of a transportation project site from which stone, soil, sand or gravel is excavated for use at the project site, except the term does not include commercial sources.
- (4) "Contemporaneous reclamation" the sequential or progressive reclamation of portions of the nonmetallic mining site affected by mining operations that is performed in advance of final site reclamation, but which may or may not be final reclamation, performed to minimize the area exposed to erosion, at any one time, by nonmetallic mining activities.
- (5) "Department" the Wisconsin Department of Natural Resources.
- (6) "Environmental pollution" has the meaning in Section 295.11(2), Wisconsin Statutes.
- (7) "Existing mine" a nonmetallic mine where nonmetallic mining takes place before August 1, 2001.
- (8) "Financial assurance" a commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in Section 7.8.13 and is sufficient to pay for reclamation activities required by this chapter.
- (9) "Highwall" means a vertical or nearly vertical face in solid rock or a slope of consolidated or unconsolidated material that exceeds 3:1 (Three feet horizontal to one foot vertical).
- (10) "Landowner" the person who has title to land in fee simple or who holds a land contract for the land. A landowner is not a person who owns nonmetallic mineral rights to land, if a different person possesses title to that land in fee simple or holds a land contract for that land.
- (11) "Licensed professional geologist" means a person who is licensed as a professional geologist pursuant to Chapter 47, Wisconsin Statutes
- (12) "Municipality" any city, town, village, county.



(13) "Nonmetallic mineral" a product, commodity or material consisting principally of naturally occurring, organic or inorganic, nonmetallic, nonrenewable material. Nonmetallic minerals include, but are not limited to, stone, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat, talc and topsoil.

(14) "Nonmetallic mining" or "mining" means all of the following:

(a) Operations or activities at a nonmetallic mining site for the extraction from the earth of mineral aggregates or nonmetallic minerals for sale or use by the operator. Nonmetallic mining includes use of mining equipment or techniques to remove materials from the in-place nonmetallic mineral deposit, including drilling and blasting, as well as associated activities such as excavation, grading and dredging. Nonmetallic mining does not include removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.

(b) Processes carried out at a nonmetallic mining site that are related to the preparation or processing of the mineral aggregates or nonmetallic minerals obtained from the nonmetallic mining site. These processes include, but are not limited to stockpiling of materials, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals, blasting, grading, crushing, screening, scalping and dewatering.

(15) "Nonmetallic mining reclamation" or "reclamation" the rehabilitation of a nonmetallic mining site to achieve a land use specified in a nonmetallic mining reclamation plan approved under this chapter, including removal or reuse of nonmetallic mining refuse, grading of the nonmetallic mining site, removal, storage and replacement of topsoil, stabilization of soil conditions, reestablishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution and if practicable the restoration of plant, fish and wildlife habitat.

(16) "Nonmetallic mining refuse" waste soil, rock and mineral, as well as other natural site material resulting from nonmetallic mining. Nonmetallic mining refuse does not include marketable by-products resulting directly from or displaced by the nonmetallic mining that are scheduled to be removed from the nonmetallic mining site within a reasonable period of time after extraction.

(17) "Nonmetallic mining site" or "site" all contiguous areas of present or proposed mining described in paragraph (a), subject to the qualifications in paragraph (b).

(a) Nonmetallic mining site means the following:

1. The location where nonmetallic mining is proposed or conducted.
2. Storage and processing areas that are in or contiguous to areas excavated for nonmetallic mining.
3. Areas where nonmetallic mining refuse is deposited.
4. Areas affected by activities such as the construction or improvement of private roads or haulage ways for nonmetallic mining.

5. Areas where grading or regrading is necessary.

6. Areas where nonmetallic mining reclamation activities are carried out or structures needed for nonmetallic mining reclamation, such as topsoil stockpile areas, revegetation test plots, or channels for surface water diversion, are located.

(b) Nonmetallic mine site does not include any of the following areas:

1. Those portions of sites listed in paragraph (a) not used for nonmetallic mining or purposes related to nonmetallic mining after August 1, 2001.

2. Separate, previously mined areas that are not used for nonmetallic mineral extraction after August 1, 2001 and are not contiguous to mine sites, including separate areas that are connected to active mine sites by public or private roads.

3. Areas previously mined but used after August 1, 2001 for a non-mining activity, such as stockpiles of materials used for an industrial process unrelated to nonmetallic mining.

(18) "Operator" any person who is engaged in, or who has applied for a permit to engage in, nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.

(19) "Person" means an individual, owner, operator, corporation, limited liability company, partnership, association, county, municipality, interstate agency, state agency or federal agency.

(20) "Registered professional engineer" a person who is registered as a professional engineer pursuant to ss. 443.04 and 443.09, Wisconsin Statutes.

(21) "Regulatory authority" means the following:

(a) Portage County for nonmetallic mine sites located within its jurisdiction, or

(b) A municipality in Portage County which the nonmetallic mining site is located and which ordinance.

(22) "Replacement of topsoil" the replacement or redistribution of topsoil or topsoil substitute material to all areas where topsoil was actually removed or affected by nonmetallic mining reclamation for the purposes of providing adequate vegetative cover and stabilization of soil conditions needed to achieve the approved post-mining land use and as required by the reclamation plan approved pursuant to this chapter.

(23) "Solid waste" any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Chapter 283, Wisconsin Statutes, or source material, special nuclear material or by-product material, as defined in s. 254.31 (1), Wisconsin Statutes.

(24) "Topsoil" the surface layer of soil which is generally more fertile than the underlying soil layers, which is the natural medium for plant growth and which can provide the plant growth, soil stability and other attributes necessary to meet the success standards approved in the reclamation plan.

(25) "Topsoil substitute material" soil or other unconsolidated material either used alone or mixed with other beneficial materials and which can provide the plant growth, site stability and other attributes necessary to meet the success standards approved in the reclamation plan.

(26) (a) "Unreclaimed acre" or "unreclaimed acres" those unreclaimed areas in which nonmetallic mining has occurred after August 1, 2001 and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed under subparagraph 8.28.30. However the term does not include any areas described in paragraph (b).

(b) "Unreclaimed acre" or "unreclaimed acres" do not include:

1. Those areas where reclamation has been completed and certified as reclaimed under subparagraph 7.8.28.30.
2. Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1, 2001.
3. Those portions of nonmetallic mining sites which are included in nonmetallic mining reclamation plan approved pursuant to this chapter but are not yet affected by nonmetallic mining.
4. Areas previously mined but used after August 1, 2001 for a non-mining activity, such as stockpiling of materials used for an industrial activity such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining.
5. For purposes of fees under section 7.8.26, those areas within a nonmetallic mining site which has determined to have been successfully reclaimed on an interim basis in accordance with subparagraph 7.8.28.30.

## **7.8.7 APPLICABILITY**

### **7.8.7.1 OVERALL APPLICABILITY**

The requirements of this chapter apply to all operators of nonmetallic mining sites operating on or commencing to operate after August 1, 2001 and as provided in Sections NR 135.02(1) and (2), Wisconsin Administrative Code except where exempted in subparagraph 7.8.7.2 and except for nonmetallic mining sites located in a city, village or town that has adopted an ordinance pursuant to Section 295.14, Wisconsin Statutes, and Section NR 135.32(2), Wisconsin Administrative Code.

### **7.8.7.2 EXEMPTIONS**

This chapter does not apply to the following activities:

- (1) Nonmetallic mining at a site or that portion of a site that is subject to permit and reclamation

requirements of the Wisconsin Department of Natural Resources under Sections. 30.19, 30.195 or 30.20, Wisconsin Statutes., and complies with Chapter NR 340, Wisconsin Administrative Code.

- (2) Excavations subject to the permit and reclamation requirements of Sections 30.30 or 30.31 Wisconsin Statutes.
- (3) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
- (4) Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the transportation facility.
- (5) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster back to its previous condition.
- (6) Excavations for building construction purposes conducted on the building site.
- (7) Nonmetallic mining at nonmetallic mining sites that affect less than one acre of total area over the life of the mine.
- (8) Any mining operation, the reclamation of which is required in a permit obtained under Chapter 293, Wisconsin Statutes.
- (9) Any activities required to prepare, operate or close a solid waste disposal facility under Chapter 289, Wisconsin Statutes, or a hazardous waste disposal facility under Chapter 291, Wisconsin Statutes, that are conducted on the property where the facility is located, but an applicable nonmetallic mining reclamation ordinance and the standards established in this chapter apply to activities related to solid waste or hazardous waste disposal that are conducted at a nonmetallic mining site that is not on the property where the solid waste or hazardous waste disposal facility is located, such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.
- (10) (a) Nonmetallic mining conducted to obtain stone, soil, sand or gravel for construction, reconstruction, maintenance or repair of a highway, railroad, airport, or any other transportation facility or part thereof, if the nonmetallic mining is subject to the requirements of the Wisconsin Department of Transportation concerning the restoration of the nonmetallic mining site.
  - (b) This exemption only applies to a nonmetallic mining operation with limited purpose and duration where the Wisconsin Department of Transportation actively imposes reclamation requirements and the operator reclaims the nonmetallic mining site in accordance with these requirements. The duration of the exemption shall be specific to the length of the Wisconsin Department of Transportation contract for construction of a specific transportation project.
  - (c) If a nonmetallic mining site covered under paragraphs (a) and (b) is used to concurrently supply materials for projects unrelated to the Wisconsin Department of Transportation project, the exemption in this paragraph still applies, provided that the site is fully reclaimed under Wisconsin Department of Transportation contract and supervision.

(11) Dredging for navigational purposes, to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of spoils from these activities.

### **7.8.8 ADMINISTRATION**

The provisions of this chapter shall be administered by the Portage County Planning and Zoning Department.

### **7.8.9 EFFECTIVE DATE**

The provisions of this chapter shall take effect on June 1, 2001.

## **PART II - STANDARDS**

### **7.8.10 STANDARDS**

All nonmetallic mining sites subject to this chapter shall be reclaimed in conformance with the standards contained below.

#### (1) GENERAL STANDARDS.

(a) REFUSE AND OTHER SOLID WASTES. Nonmetallic mining refuse shall be reused in accordance with a reclamation plan. Other solid wastes shall be disposed of in accordance with applicable rules of the Wisconsin Department of Natural Resources adopted pursuant to Chapters 289 and 291, Wisconsin Statutes.

(b) AREA DISTURBED AND CONTEMPORANEOUS RECLAMATION. Nonmetallic mining reclamation shall be conducted, to the extent practicable, to minimize the area disturbed by nonmetallic mining and to provide for nonmetallic mining reclamation of portions of the nonmetallic mining site while nonmetallic mining continues on other portions of the nonmetallic mining site.

(c) PUBLIC HEALTH, SAFETY AND WELFARE. All nonmetallic mining sites shall be reclaimed in a manner so as to comply with federal, state and local regulations governing public health, safety and welfare.

(d) HABITAT RESTORATION. When the land use required by the reclamation plan approved pursuant to this chapter requires plant, fish or wildlife habitat, it shall be restored, to the extent practicable, to a condition at least as suitable as that which existed before the lands were affected by nonmetallic mining operations.

(e) COMPLIANCE WITH ENVIRONMENTAL REGULATIONS. Reclamation of nonmetallic mining sites shall comply with any other applicable federal, state and local laws including those related to environmental protection, zoning and land use control.

(2) SURFACE WATER AND WETLANDS PROTECTION. Nonmetallic mining reclamation shall be conducted and completed in a manner that assures compliance with the Wisconsin Department of Natural Resources' water quality standards for surface waters and wetlands contained in Chapters NR

102 to NR 105, Wisconsin Administrative Code. Before disturbing the surface of a nonmetallic mining site and removing topsoil, all necessary measures for diversion and drainage of runoff from the site to prevent pollution of waters of the state shall be installed in accordance with the reclamation plans approved pursuant to this chapter. Diverted or channelized runoff resulting from reclamation may not adversely affect neighboring properties.

### (3) GROUNDWATER PROTECTION.

(a) GROUNDWATER QUANTITY. A nonmetallic mining site shall be reclaimed in a manner that does not cause a permanent lowering of the water table that results in adverse effects on surface waters or a significant reduction in the quantity of groundwater reasonably available for future users of groundwater.

(b) GROUNDWATER QUALITY. Nonmetallic mining reclamation shall be conducted in a manner which does not cause groundwater quality standards in Chapter NR 140, Wisconsin Administrative Code to be exceeded at a point of standards application defined in that chapter.

### (4) TOPSOIL MANAGEMENT.

#### (a) REMOVAL .

Topsoil and topsoil substitute material shall be provided as specified in the reclamation plan in order to achieve reclamation to the approved post-mining land use. Removal of on-site topsoil and topsoil substitute material removal, when specified in the reclamation plan, shall be performed prior to any mining activity associated with any specific phase of the mining operation.

(b) VOLUME . The operator shall obtain the volume of soil required to perform final reclamation by removal of on-site topsoil or topsoil substitute material or by obtaining topsoil or substitute material as needed to make up the volume of topsoil as specified in the reclamation plan approved pursuant to this chapter.

(c) STORAGE. Once removed, topsoil or topsoil substitute material shall, as required by the reclamation plan approved pursuant to this chapter, either be used in contemporaneous reclamation or stored in an environmentally acceptable manner. The location of stockpiled topsoil or topsoil substitute material shall be chosen to protect the material from erosion or further disturbance or contamination. Runoff water shall be diverted around all locations in which topsoil or topsoil substitute material is stockpiled.

### (5) FINAL GRADING AND SLOPES

(a) All areas affected by mining shall be addressed in the approved reclamation plan, pursuant to Section NR 135.19, Wisconsin Administration Code to provide that a stable and safe condition consistent with the post-mining land use is achieved. The reclamation plan may designate highwalls or other unmined and undisturbed natural solid bedrock as stable and safe and not in need of reclamation or designate other areas affected by mining including slopes comprised of unconsolidated materials that exceed a 3:1 (three feet horizontal to one foot vertical) slope, whether or not graded, as stable and safe.

(b) For slopes designated as stable under this subsection, the regulatory authority may require that either: a site-specific engineering analysis be performed by a registered professional engineer to demonstrate that an acceptable

slope stability factor is attainable at a steeper slope, or the operator perform a field test plot demonstration to demonstrate that a stable and safe condition will be achieved and that the post-mining land use specified in the reclamation plan will not be adversely affected.

(c) All areas in the nonmetallic mine site where topsoil or topsoil substitute material is to be reapplied shall be graded or otherwise prepared prior to topsoil or topsoil substitute material redistribution to provide the optimum adherence between the topsoil or topsoil substitute material and the underlying material.

(d) Final reclaimed slopes covered by topsoil or topsoil substitute material may not be steeper than a 3:1 (three feet horizontal to one foot vertical), unless found acceptable through one or more of the following: alternative requirements are approved under Section NR 135.26, Wisconsin Administration Code; steeper slopes are shown to be stable through a field plot demonstration approved as part of an approved reclamation plan; or stable slopes can be demonstrated based on site-specific engineering analysis performed by a registered professional engineer. All areas in the nonmetallic mine site where topsoil or topsoil substitute material is to be reapplied shall be graded or otherwise prepared prior to topsoil or topsoil substitute material redistribution to provided the optimum adherence between the topsoil or topsoil substitute material and the underlying material.

(e) When the approved post-mining land use includes a body of water, the approved final grade at the edge of a body of water shall extend vertically 6 feet below the lowest seasonal water level. A slope no steeper than 3:1 (three feet horizontal to one foot vertical) shall be created at a designated location or locations, depending on the size of the water body to allow for a safe exit.

#### (6) TOPSOIL REDISTRIBUTION FOR RECLAMATION

Topsoil or topsoil substitute material shall be redistributed in accordance with the reclamation plan approved pursuant to this chapter in a manner which minimizes compaction and prevents erosion. Topsoil or topsoil substitute material shall be uniformly redistributed except where uniform redistribution is undesirable or impractical. Topsoil or topsoil substitute material distribution may not be performed during or immediately after a precipitation event until the soils have sufficiently dried.

#### (7) REVEGETATION AND SITE STABILIZATION

Except for permanent roads or similar surfaces identified in the reclamation plan approved pursuant to this chapter, all surfaces affected by nonmetallic mining shall be reclaimed and stabilized by revegetation or other means. Revegetation and site stabilization shall be in accordance with the approved reclamation plan and shall be performed as soon as practicable after mining activity has permanently ceased in any part of the mine site.

#### (8) ASSESSING COMPLETION OF SUCCESSFUL RECLAMATION

(a) The criteria for assessing when reclamation is complete and, therefore, when the financial assurance may be released shall be specified in the reclamation plan approved pursuant to this chapter. Criteria to evaluate reclamation success shall be quantifiable.

(b) Compliance with the revegetation success standards in the approved reclamation plan shall be determined by:

1. On-site inspections.

2. Reports presenting results obtained during reclamation evaluations including summarized data on revegetation, photo-documentation or other evidence that the criteria approved in the reclamation plan to ascertain success have been met; or

3. A combination of inspections and reports.

(c) In those cases where the post mining land use specified in the reclamation plan requires a return of the mining site to a pre-mining condition, the operator shall obtain baseline data on the existing plant community for use in the evaluation of reclamation success pursuant to this section.

(d) Revegetation success may be determined by:

1. Comparison to an appropriate reference area;

2. Comparison to baseline data acquired at the mining site prior to its being affected by mining; or

3. Comparison to an approved alternate technical standard.

(e) Revegetation using a variety of plants indigenous to the area is favored.

#### (9) INTERMITTENT MINING

Intermittent mining may be conducted provided that the possibility of intermittent cessation of operations is addressed in an operator's reclamation permit, no environmental pollution or erosion of sediments is occurring, and financial assurance for reclamation pursuant to Section 7.8.13 is maintained covering all remaining portions of the site that have been affected by nonmetallic mining and that have not been reclaimed.

#### (10) MAINTENANCE

During the period of the site reclamation, after the operator has stated that reclamation is complete but prior to release of financial assurance, the operator shall perform any maintenance necessary to prevent erosion, sedimentation or environmental pollution, comply with the standards of this subchapter, or to meet the goals specified in the reclamation plan approved pursuant to this chapter.

### **PART III - PERMITTING**

#### **7.8.11 NONMETALLIC MINING RECLAMATION PERMIT APPLICATION**

##### **7.8.11.1 REQUIRED SUBMITTAL**

The operator of all nonmetallic mining sites that operate on or after August 1, 2001 shall apply for a reclamation permit. All reclamation permit applications under this section shall be accompanied by the following information:

(1) Brief description of the general location and nature of the nonmetallic mine.

(2) Legal description of the property on which the nonmetallic mine is located or proposed, including the parcel identification number.

(3) The names, addresses and telephone numbers of all persons or organizations who are owners, lesser



or operators of the property on which the nonmetallic mining site is located.

(4) Certification by the operator of their intent to comply with the statewide nonmetallic mining standards established in PART II.

### **7.8.11.2 NEW MINES**

The operator of any nonmetallic mine site that engages in or plans to engage in nonmetallic mining that will begin operations after August 1, 2001 or which has not applied for an automatic reclamation permit shall submit an application that meets the following requirements:

(1) Information listed in subparagraph 7.8.11.1.

(2) Plan review and annual fees.

(3) Reclamation Plan.

(4) Certification that the operator will provide as a condition of the reclamation permit, financial assurance as required upon granting the reclamation permit and before mining begins.

### **7.8.12 RECLAMATION PLAN**

#### **7.8.12.1 RECLAMATION PLAN REQUIREMENTS**

All operators of nonmetallic mining sites subject to this chapter shall prepare and submit a reclamation plan that meets the requirements of Section NR 135.19, Wisconsin Administrative Code.

(1) **SITE INFORMATION.** The reclamation plan shall include information sufficient to describe the existing natural and physical conditions of the site, including, by not limited to:

(a) Maps of the nonmetallic mining site including the general location, property boundaries, the aerial extent, geologic composition and depth of the nonmetallic mineral deposit, the distribution, thickness and type of topsoil, the location of surface waters and the existing drainage patterns, the approximate elevation of ground water as determined by existing hydrogeologic information. In specific instances where the existing hydrogeologic information is insufficient for purposes of the reclamation plan, the applicant may supplement such information with the opinion of a licensed professional geologist or hydrologist.

Note: Topsoil or topsoil substitute material if required to support revegetation needed for reclaiming the site to approved post-mining land use can be identified using county soil surveys or other available information including that obtained from a soil scientist of the University of Wisconsin Soil Science Extension Agent or other available information resources.

(2) **RECLAMATION MEASURES.** The reclamation plan shall include a description of the proposed reclamation, including methods and procedures to be used and proposed schedule and sequence for the completion of reclamation activities for various stages of reclamation of the nonmetallic mining site. The following shall be included:

(a) A description of the proposed earthwork and reclamation, including final slope angles, high wall reduction, benching, terracing and other structural slope stabilization measures, and if necessary, a site-specific engineering analysis performed by a registered professional engineer as provided by Section NR 135.10(1) and (2), Wisconsin Administrative Code.

(b) A description of how the reclamation plan addresses the long-term safety of the reclaimed mining site. The description shall include a discussion of site-specific safety measures to be implemented at the site and include measures that address public safety with regard to adjacent land uses.

Note: Safety measures include: visual warnings, physical barriers, slope modifications such as reclamation blasting, scaling of the rock face, creation of benches. Other measures may be employed if found to be equivalent by a registered professional engineer.

#### **7.8.12.2 EXISTING MINES**

The operator of any nonmetallic mining site that submits an automatic permit application in conformance with subparagraph 7.8.11.20 shall submit the reclamation plan required by subparagraph 7.8.12.1 by June 1, 2004.

#### **7.8.12.3 NEW MINES**

The operator of any nonmetallic mining site that applies for a permit in conformance with subparagraph 7.8.11.3 shall submit the reclamation plan required by subparagraph 7.8.12.1 with its application for a reclamation permit.

#### **7.8.12.4 EXISTING PLANS AND APPROVALS**

To avoid duplication of effort, the reclamation plan required by subparagraph 7.8.12.1 may, by reference, incorporate existing plans or materials that meet the requirements of this chapter. Previous approvals for nonmetallic mining sites that apply in accordance with subparagraph 7.8.11.2 shall satisfy the requirements of subparagraph 7.8.12.1 if they meet the requirements of Section NR 135.21(1)(d), Wisconsin Administrative Code.

#### **7.8.12.5 APPROVAL OF RECLAMATION PLAN**

Reclamation plans submitted under this section shall be approved, conditionally approved or denied in writing as part of permit issuance process pursuant to subparagraph 7.8.15.2 for existing mines and subparagraph 7.8.15.4 for new mines. Conditional approvals of reclamation plans shall be made according to subparagraph 7.8.15.7, and denials of reclamation plans made according to Section 7.8.16.

### **7.8.13 FINANCIAL ASSURANCE**

#### **7.8.13.1 FINANCIAL ASSURANCE REQUIREMENTS**

All operators of nonmetallic mining sites shall prepare and submit a proof of financial assurance of successful reclamation that meets the requirements of Section 135.40, Wisconsin Administrative Code.

#### **7.8.13.2 EXISTING MINES**

The operator of any nonmetallic mining that applies for an automatic reclamation permit in conformance with subparagraph 7.8.11.2 shall submit the proof of financial assurance required by subparagraph 7.8.13.1 no later than June 1, 2004.

### **7.8.13.3 NEW MINES**

The operator of any nonmetallic mining site that applies for a reclamation permit in conformance with subparagraph 7.8.11.3 shall submit the proof of financial assurance required by subparagraph 7.8.13.1 as specified in the reclamation permit issued to it under this chapter.

### **7.8.13.4 PUBLIC NONMETALLIC MINING**

The financial assurance requirements of this section do not apply to nonmetallic mining conducted by the State of Wisconsin, a state agency, board, commission or department, or a municipality.

## **7.8.14 PUBLIC NOTICE AND RIGHT OF HEARING**

### **7.8.14.1 NEW MINES**

Portage County shall, except as provided in subparagraph 7.8.14.2, provide public notice and the opportunity for a public informational hearing as set forth below:

#### **(1) PUBLIC NOTICE**

(a) Except as provided in subparagraph (3) for existing mines, when a complete nonmetallic mining reclamation permit application that satisfies subparagraph 7.8.11.3 is received by Portage County, a public notice of the application shall be published no later than 30 days after receipt.

(b) The notice shall briefly describe the mining and reclamation planned at the nonmetallic mining site. The notice shall be published as a class 1 notice pursuant to Section 985.07(2), Wisconsin Statutes, in the official newspaper. The notice shall mention the opportunity for public hearing pursuant to this section and shall give the locations at which the public may review the application and all supporting materials including the reclamation plan.

(c) Copies of the notice shall be forwarded to owners of land within 300 feet of the boundaries of the parcel or parcels of land on which the site is located.

#### **(2) HEARING**

Except as provided in subparagraph (3) for existing mines, an opportunity for a public informational hearing on an application or request to issue a nonmetallic mining reclamation permit shall be provided as follows.

(a) If Portage County conducts a zoning-related hearing on the nonmetallic mine site, an opportunity shall be provided at this hearing to present testimony on reclamation-related matters. This opportunity shall fulfill the requirement for public hearing for a nonmetallic mining reclamation permit required by this section.

Reclamation-related testimony in the zoning-related hearing shall be considered in deciding on a permit application pursuant to this chapter.

(b) 1. If there is no opportunity for a zoning-related hearing on the nonmetallic mine site as described in paragraph (a), opportunity for public hearing required by this section shall be provided as follows. Any person residing within, owning property within, or whose principal place of business is within 300 feet of the boundary of the parcel or parcels of land in which the nonmetallic mining site is located or proposed may request a public informational hearing. A public hearing shall be held if requested by any of these persons within 30 days of the actual date of public notice under subparagraph (1). This public informational hearing shall be held no sooner than 30 days nor later than 60 days after being requested. The hearing shall be conducted as an informational hearing for the purpose of explaining and receiving comment from affected persons on the nature, feasibility and effects of the proposed reclamation.

2. The subject matter and testimony at this informational hearing shall be limited to reclamation of the nonmetallic mine site.

#### **7.8.14.2 EXISTING MINES**

(1) No public notice or informational hearing is required for a nonmetallic mining reclamation permit issued pursuant to subparagraph 7.8.15.2 for an existing mine.

(2) If the regulatory authority accepts a previously approved reclamation plan for that mine as provided in subparagraph 7.8.15.3, no further public notice or informational hearing is required.

(3) If the submittal of a new reclamation plan is required, public notice and the opportunity for public informational hearing shall be provided following the receipt of the reclamation plan in accordance with subparagraph 7.8.14.1. In this case, the subject matter and testimony at that hearing, if held, shall be limited to the new reclamation plan.

#### **7.8.14.3 LOCAL TRANSPORTATION-RELATED MINES**

No public notice or informational hearing is required for a nonmetallic mining reclamation permit issued to a local transportation-related mine pursuant to subparagraph 7.8.15.5.

### **7.8.15 ISSUANCE OF A NONMETALLIC MINING RECLAMATION PERMIT**

#### **7.8.15.1 PERMIT REQUIRED**

Every operator of a nonmetallic mining site who engages in or plans to engage in nonmetallic mining after September 1, 2001 shall obtain a reclamation permit issued under this section, except nonmetallic mining sites exempt from this chapter as provided in subparagraph 7.8.7.2. No person may engage in nonmetallic mining or nonmetallic mining reclamation after September 1, 2001 without a reclamation permit issued pursuant to this chapter.

#### **7.8.15.2 AUTOMATIC PERMIT FOR EXISTING MINES**

An automatic reclamation permit shall be issued to the operator of any nonmetallic mining site that submits an application meeting the requirements of subparagraph 7.8.11.2 as set forth in Section 135.21(1), Wisconsin Administrative Code. The automatic permit shall be issued within 30 days of such application.

#### **7.8.15.3 EVALUATION OF FOLLOW-UP SUBMITTALS FOR EXISTING MINES**

Mines covered by automatic permits issued under subparagraph 7.8.15.2 shall submit a reclamation plan in accordance with subparagraph 7.8.12.2 and proof of financial assurance in accordance with subparagraph 7.8.13.2 by the deadlines established in those subsections. Reasonable extensions to these deadlines may be granted in writing where extenuating circumstances exist. The follow-up submittals required by this subsection shall be evaluated using the criteria and procedures in Sections NR 135.21(1)(d), (e) and (f) Wisconsin Administration Code.

#### **7.8.15.4 PERMIT ISSUANCE FOR NEW MINES**

Applications for reclamation permits for nonmetallic mining sites not permitted under subparagraph 7.8.15.2 that satisfy subparagraph 7.8.11.3 shall be issued or otherwise acted on as provided in Section NR 135.21(2), Wisconsin Administrative Code. The permit shall require compliance with a reclamation plan submitted by the applicant that conforms with subparagraph 7.8.12.3, and provision by the applicant of financial assurance that conforms with subparagraph 7.8.13.3. prior to beginning mining.

#### **7.8.15.5 AUTOMATIC PERMIT FOR LOCAL TRANSPORTATION-RELATED MINES**

An automatic permit shall be issued under this subsection for any borrow site operated to provide material for a locally-administered transportation project that meets the criteria in Section NR 135.23(1)(a), Wisconsin Administrative Code. This automatic permit shall be issued according to the provisions of Sections NR 135.23(1)(b) through (j), Wisconsin Administrative Code.

#### **7.8.15.6 EXPEDITED REVIEW**

Any operator of a nonmetallic mining site may obtain an expedited review of a reclamation permit application by paying the expedited review fee specified in Section 7.8.25. The expedited review shall be carried out according to the provisions of Section NR 135.23(2), Wisconsin Administrative Code. Such expedited review shall not waive, shorten or otherwise affect the public notice and right of hearing pursuant to section 7.8.14.

#### **7.8.15.7 PERMIT CONDITIONS**

Permits issued under this section may include conditions as provided in Section NR 135.21(3), Wisconsin Administrative Code. One required condition shall be that new mines shall obtain financial assurance prior to beginning mining pursuant to Section NR 135.40, Wisconsin Administrative Code.

#### **7.8.16 PERMIT DENIAL**

An application for a nonmetallic mining reclamation permit shall be denied if any of the factors specified in Section NR 135.22, Wisconsin Administrative Code exist.

(1) An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frame for permit issuance specified in section 7.8.15, if it finds any of the following is found:

(a) The applicant has, after being given an opportunity to make corrections, failed to provide an adequate permit application, reclamation plan, financial assurance or any other submittal required by Chapter NR 135, Wisconsin Administrative Code or this chapter.

(b) The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standards contained in this chapter, Chapter NR 135, Wisconsin Administrative Code or subchapter 1 of Chapter 295, Wisconsin Statutes.

(c) 1. The applicant, or its agent, principal or predecessor has, during the course of nonmetallic mining in Wisconsin within 10 years of the permit application or modification request being considered, shown a pattern of serious violations of this chapter or of federal, state or local environmental laws related to nonmetallic mining reclamation.

2. The following may be considered in making this determination of a pattern of serious violations:

a. Results of judicial or administrative proceedings involving the operator or its agent, principal or predecessor.

b. Suspensions or revocations of nonmetallic mining reclamation permits pursuant to this chapter, other reclamation ordinances or Chapter NR 135, Wisconsin Administrative Code.

c. Forfeitures of financial assurance.

(d) A denial under this subsection shall be in writing and shall contain documentation of reasons for denial.

(2) A decision to deny an application to issue a reclamation permit may be reviewed under Section 7.8.21.

## **7.8.17 ALTERNATIVE REQUIREMENTS**

### **7.8.17.1 SCOPE OF ALTERNATIVE REQUIREMENTS APPROVABLE**

An operator of a nonmetallic mining site may request an alternative requirement to any reclamation standard established in Section 7.8.10. Such a request may be made only on the basis of the criteria set forth in Section NR 135.26(1), Wisconsin Administrative Code.

### **7.8.17.2 PROCEDURES**

The operator of a nonmetallic mining site requesting an alternate requirement in subparagraph 7.8.17.1 shall demonstrate all the criteria in Section NR 135.26(1), Wisconsin Administrative Code. This shall be submitted in writing to the Portage County Planning and Zoning Department.

### **7.8.17.3 TRANSMITTAL OF DECISION ON REQUEST FOR ALTERNATE REQUIREMENTS**

The decision on a request for alternative reclamation requirements shall be in writing to the applicant and shall include documentation of why the alternative requirement was or was not approved.

### **7.8.17.4 NOTICE TO WISCONSIN DEPARTMENT OF NATURAL RESOURCES**

Notice shall be provided to the Wisconsin Department of Natural Resources as provided in Section NR 135.26(3)(a), Wisconsin Administrative Code.

#### **7.8.18 PERMIT DURATION**

A nonmetallic mining reclamation permit issued under this chapter shall last through operation and reclamation of the nonmetallic mining site, unless suspended or revoked pursuant to subparagraph 7.8.31.2, or as limited under Section NR 135.27, Wisconsin Administrative Code where the mine operator is not the landowner.

#### **7.8.19 PERMIT TRANSFER**

A nonmetallic mining reclamation permit issued under this chapter shall be transferred to a new owner or operator upon satisfaction of the conditions in Section NR 135.28, Wisconsin Administrative Code.

#### **7.8.20 PREVIOUSLY PERMITTED SITES**

For any nonmetallic mining site which had a reclamation permit previously issued pursuant to Chapter NR 135, Wisconsin Administrative Code that becomes subject to reclamation permitting authority by the previously-issued municipal reclamation permit's terms and conditions shall remain in force until they can be modified pursuant to subparagraph 7.8.22.1.

#### **7.8.21 REVIEW**

Any permitting decision or action made under this chapter may be reviewed as set forth in Section NR 135.30, Wisconsin Administrative Code.

### **PART IV - ADMINISTRATION**

#### **7.8.22 PERMIT MODIFICATION**

##### **7.8.22.1 BY PORTAGE COUNTY**

A nonmetallic mining reclamation permit issued under this chapter may be modified if found that, due to changing conditions, the nonmetallic mining site is no longer in compliance with this chapter. Such modification shall be by an order conforming with the procedures in section 7.8.31 and as provided in Section NR 135.24(1), Wisconsin Administrative Code.

##### **7.8.22.2 AT THE OPERATOR'S OPTION**

If the operator of any nonmetallic mine that holds a reclamation permit issued under this chapter desires to modify such permit or reclamation plan approved under this chapter, it may request such modification by submitting a written application for such modification. The application for permit or plan modification shall be acted on using the standards and procedures of this chapter.

##### **7.8.22.3 REQUIRED BY THE OPERATOR**

The operator of any nonmetallic mine that holds a reclamation permit issued under this chapter shall request a modification of such permit if required under the circumstances set out in Section NR 135.27, Wisconsin Administrative Code. Such application for permit modification shall be acted on using the standards and procedures of this chapter.

#### **7.8.22.4 REVIEW**

All actions on permit modifications requested or initiated under this section are subject to review under section 7.8.21.

### **7.8.23 PERMIT SUSPENSION OR REVOCATION**

#### **7.8.23.1 GROUNDS**

A suspension or revocation of a nonmetallic mining reclamation permit can be issued pursuant to this chapter will occur if Portage County finds the operator has done any of the following:

- (1) Failed to submit a satisfactory reclamation plan within the time frames specified in this chapter.
- (2) Failed to submit or maintain financial assurance as required by this chapter.
- (3) Failed on a repetitive and significant basis to follow the approved reclamation plan.

#### **7.8.23.2 PROCEDURES**

If Portage County finds that the grounds for suspension or revocation of a nonmetallic mining reclamation permit set forth in subparagraph 7.8.23.1 have been met, it may issue a special order suspending or revoking such permit as set forth in subparagraph 7.8.31.2.

#### **7.8.23.3 CONSEQUENCES**

- (1) If Portage County makes any of the findings in subparagraph 7.8.23.1, it may suspend a nonmetallic mining reclamation permit for up to 30 days. During the time of suspension, the operation may not conduct nonmetallic mining at the site, except for reclamation or measures to protect human health and the environment as ordered by the regulatory authority pursuant to Section 7.8. 31.
- (2) If Portage County makes any of the findings in subparagraph 7.8.23.1, it may revoke a nonmetallic mining reclamation permit. Upon permit revocation, the operator shall forfeit the financial assurance it has provided pursuant to this chapter. The County may use forfeited financial assurance to reclaim the site to the extent needed to comply with this chapter and the applicable reclamation ordinance.

### **7.8.24 ANNUAL OPERATOR REPORTING**

#### **7.8.24.1 CONTENTS AND DEADLINE**

Annual reports shall be submitted by the operators of nonmetallic mining sites that satisfy the requirements of Section NR 135.36, Wisconsin Administrative Code. These reports shall be for reclamation during a calendar year,



and submitted in writing within 60 days of the end of each calendar year. Annual reports shall be submitted until reclamation at each nonmetallic mining site is certified as complete under subparagraph 7.8.28.3.

#### **7.8.24.2 INSPECTION IN LIEU OF REPORT**

An inspection may be done to obtain the information required in subparagraph 7.8.24.1 by written documentation of an inspection completed during a calendar year, as set forth in Section NR 135.36(4), Wisconsin Administrative Code.

#### **7.8.24.3 RETENTION OF ANNUAL REPORTS**

Annual reports submitted under this section or inspection records that replace them shall be retained for at least 10 years after the calendar year. These records, or accurate copies of them, shall be made available to the Wisconsin Department of Natural Resources upon written request or during its inspection or audit activities carried out pursuant to Chapter NR 135, Wisconsin Administrative Code.

#### **7.8.25 PLAN REVIEW FEES**

See attached fee schedule.

##### **7.8.25.1 AMOUNT AND APPLICABILITY**

A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under subparagraph 7.8.11.3 shall submit a non-refundable plan review fee as set by the Planning and Zoning Committee. No plan review fee may be assessed under this section for any nonmetallic mine site for which an application for an automatic reclamation permit is submitted that meets the requirements of subparagraph 7.8.11.2 or for any local transportation-related mine issued an automatic permit under subparagraph 7.8.15.5. A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to Section 7.8.22.

##### **7.8.25.2 EXPEDITED PLAN REVIEW FEE**

A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under subparagraph 7.8.11.3 may obtain expedited reclamation plan review by paying double the regular fee. Such fee shall be in addition to that required in subparagraph 7.8.25.1.

##### **7.8.25.3 RELATION TO ANNUAL FEE**

Any reclamation plan review fee or expedited reclamation plan review fee collected under this section shall be added to and collected as part of the first annual fee collected under Section 7.8.26.

#### **7.8.26 ANNUAL FEES**

See attached fee schedule.

##### **7.8.26.1 AREAS SUBJECT TO FEES, PROCEDURES AND DEADLINES**

Annual fees apply to operators of all nonmetallic mining sites subject to reclamation permits issued under this chapter shall pay annual fees. Fees paid under this section shall include both a share for the Wisconsin Department of Natural Resources under subparagraph 7.8.26.2 and a share for Portage County under subparagraph 7.8.26.3 that equals as closely as possible the costs of examination and approval on nonmetallic mining reclamation plans and the inspection of nonmetallic mining reclamation sites. These fees shall be calculated based on the amount of unreclaimed acres of each site, as defined in Section NR 135.39(1), Wisconsin Administrative Code and according to its provisions. Such fees apply to a calendar year or any part of a year in which nonmetallic mining takes place, until final reclamation is certified as complete under section 7.8.28. Fees shall be paid no later than December 31 before the year for which they apply.

#### **7.8.26.2 WISCONSIN DEPARTMENT OF NATURAL RESOURCES SHARE OF FEES**

Fees paid under this section shall include a share for the Wisconsin Department of Natural Resources equal to the amount specified in Section NR 135.39(3), Wisconsin Administrative Code. For sites on which no nonmetallic mining has taken place during a calendar year, fees to be paid under this section for the following year shall be \$15.00.

#### **7.8.26.3 COUNTY FEE**

Fees paid under this section shall also include an annual fee due which shall be DETERMINED ON AN ANNUAL BASIS by the Planning and Zoning Committee to be established on an unreclaimed acre basis, and equal as closely as possible the County cost of administering the reclamation program.

#### **7.8.26.4 REDUCED FEE OF INACTIVE MINES**

Any site on which no nonmetallic activity has taken place in a calendar year shall be assessed a fee for the following calendar year of \$50.00.

### **7.8.27 REGULATORY REPORTING AND DOCUMENTATION**

#### **7.8.27.1 REPORTING**

An annual report shall be sent to the Wisconsin Department of Natural Resources including the information required by Section NR 135.37, Wisconsin Administrative Code.

#### **7.8.27.2 DOCUMENTATION**

Information shall be maintained as set forth in Section NR 135.47(3), Wisconsin Administrative Code, and made it available to the Wisconsin Department of Natural Resources for that agency's audit of the reclamation program pursuant to Section NR 135.47, Wisconsin Administrative Code.

### **7.8.28 COMPLETED RECLAMATION – REPORTING, CERTIFICATION AND EFFECT**

#### **7.8.28.1 REPORTING**

The operator of a nonmetallic mining site may certify completion of reclamation for a portion or all of the nonmetallic mining site pursuant to a reclamation plan prepared and approved pursuant to this chapter and Chapter NR 135, Wisconsin Administrative Code.

#### **7.8.28.2 REPORTING OF INTERIM RECLAMATION**

The operator of a nonmetallic mining site may report completion of interim reclamation as specified in the reclamation plan for the site prepared and approved pursuant to this chapter and Chapter NR 135, Wisconsin Administrative Code. Reporting of interim reclamation shall be done according to the procedures in subparagraph 7.8.28.1.

#### **7.8.28.3 CERTIFICATION OF COMPLETED RECLAMATION**

An inspection of a nonmetallic mining site for which reporting of reclamation or interim reclamation has been submitted pursuant to this subsection will be completed within 60 days of receipt, and a determination made in writing in accordance with Section NR 135.40(7)(c), Wisconsin Administrative Code. If it is determined that interim or final reclamation is complete, including revegetation as specified in a plan that conforms with Section 7.8.12, Portage County shall issue the mine operator a written certificate of completion.

#### **7.8.28.4 EFFECT OF COMPLETED RECLAMATION**

If reclamation is certified as complete under subparagraph 7.8.28.3 for part or all of a nonmetallic mining site, then:

- (1) No fee shall be assessed under section 7.8.26 for the area so certified.
- (2) The financial assurance required by section 7.8.13 shall be released.

#### **7.8.28.5 EFFECT OF INACTION FOLLOWING REPORT OF COMPLETED RECLAMATION**

If no written response as required by subparagraph 7.8.28.3 for an area of the mine site reported as reclaimed or interim reclaimed is given within 60 days of receiving such request, any annual fee under Section 7.8.26 shall be refunded.

#### **7.8.29 PERMIT TERMINATION**

When all final reclamation required by a reclamation plan conforming to Section 7.8.12 and required by this chapter is certified as complete pursuant to section 7.8.27, a written statement shall be sent to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

### **PART V - ENFORCEMENT**

#### **7.8.30 RIGHT OF ENTRY AND INSPECTION**

For the purpose of ascertaining compliance with the provisions of Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, or this chapter, any authorized officer, agent, employee or representative of Portage County may inspect any nonmetallic mining site subject to this chapter as provided in Section 295.17(1), Wisconsin Statutes and Section NR 135.42, Wisconsin Administrative Code.

### **7.8.31 ORDERS AND CITATIONS**

#### **7.8.31.1 ENFORCEMENT ORDERS**

Orders may be issued as set forth in Section 295.19(1)(a), Wisconsin Statutes to enforce Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this chapter, a permit issued pursuant to this chapter or a reclamation plan required by Section 7.8.12 and a permit issued under this chapter. A violation of this chapter, an order or permit issued pursuant to this chapter or a reclamation plan required by Section 7.8.12 and a permit issued under this chapter shall be considered a violation of Subchapter 1 of Chapter 295, Wisconsin Statutes and Chapter NR 135, Wisconsin Administrative Code.

#### **7.8.31.2 SPECIAL ORDERS**

Orders may be issued as a special order as set forth in Sections 295.19(1)(b) and (c), Wisconsin Statutes suspending or revoking a nonmetallic mining reclamation permit pursuant to Section 7.8.23, or directing an operator to immediately cease an activity regulated under Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code or this chapter until the necessary plan approval is obtained.

#### **7.8.31.3 REVIEW OF ORDERS**

An order issued under subparagraph 7.8.31.1 or subparagraph 7.8.31.2 may be reviewed as provided in Section NR 135.43(2), Wisconsin Administrative Code.

#### **7.8.31.4 CITATIONS**

Citations may be issued under s. 66.119, Wisconsin Statutes. and Portage County Ordinance 5.1 to collect forfeitures or require any action needed to enforce Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this chapter, a permit issued pursuant to this chapter or a reclamation plan required by Section 7.8.12 and a permit issued under this chapter. The issuance of a citation under this subsection shall not preclude proceeding under any other ordinance or law relating to the same or any other matter. Proceeding under any other ordinance or law relating to the same or any other matter shall not preclude the issuance of a citation under this subsection.

#### **7.8.31.5 ENFORCEMENT**

Requests for enforcement action shall be submitted for any order issued under Section 7.8.31 to the corporation counsel enforcement as provided in Section 295.19(1)(d), Wisconsin Statutes.

### **7.8.32 PENALTIES**

Any person, firm, company, corporation, agent, contractor or subcontractor who violates any terms of this Ordinance shall be subject to a forfeiture of not less than twenty-five dollars (\$25), nor more than one-thousand dollars (\$1,000), together with the costs of any enforcement action. Each day of violation shall constitute a separate offense. The court may utilize any lawful authority to compel enforcement of this Ordinance, including contempt. Compliance therewith may be enforced by injunctive relief at the suit of the County or the owner or owners of land affected by the regulations of this Ordinance.

Adopted by County Board: May 15, 2001  
 Effective Date: June 1, 2001  
 Revised January 16, 2007

**FEE SCHEDULE  
 NONMETALLIC MINING**

**PORTAGE COUNTY RECLAMATION PLAN REVIEW FEE**

<u>Proposed Mine Site Size</u>	<u>Plan Review Fee</u>	<u>Expedited Fee</u>
1 to < 25 acres	\$400.00	\$ 800.00
> 25 acres	\$800.00	\$1,600.00

**PORTAGE COUNTY ANNUAL FEES**

<u>Mine Size in Unreclaimed Acres</u>		<u>Annual Fee</u>	<u>County Share</u>	<u>DNR Share</u>
1 to < 5	Acres	\$110	\$75	\$35
5 to < 10	Acres	\$220	\$150	\$70
10 to < 15	Acres	\$330	\$225	\$105
15 to < 25	Acres	\$440	\$300	\$140
25 to < 50	Acres	\$540	\$380	\$160
50 >	Acres	\$550	\$375	\$175

<u>Inactive Site Fee</u>	<u>Annual Fee</u>	<u>County Share</u>	<u>DNR Share</u>
	\$ 50.00	\$ 35.00	\$ 15.00

Adopted June 1, 2001  
 Revised January 15, 2006  
 Revised January 16, 2007

[Index for this Chapter](#)

**7.9 PRIVATE SEWAGE SYSTEM ORDINANCE**

**7.9.1 ADOPTION**

A. This Sanitary Ordinance is adopted pursuant to the authorization in Section 59.065 and 145.135 of the Wisconsin Statutes.

B. This Ordinance incorporates by reference the following rules, regulations and laws, as set forth in Wisconsin Statutes and Wisconsin Administrative Code governing the location, construction and use of private sewage systems - Chapters 59, 145, 146, 236 and 968.10, Wisconsin Statutes and administrative codes promulgated thereunder, and NR113 and IND. 52.63 of the Wisconsin Administrative Code. These rules, regulations and laws shall apply until amended or renumbered and then shall apply as amended or renumbered.

- C. The requirements of this Ordinance shall apply to all incorporated and unincorporated areas of the County.
- D. This Ordinance shall be effective after public hearing, adoption by the County Board of Supervisors, and publishing or posting as required by law. The existing Private Sewage System Ordinance for Portage County shall be repealed effective on the date of the enactment of this Ordinance.
- E. Should any part of this Ordinance be declared invalid or unconstitutional for any reason, the remainder of the Ordinance shall not be affected thereby.

### **7.9.2 COMPLIANCE**

- A. All buildings or premises in Portage County that are permanently or intermittently intended for human occupancy, which are not served by a public sewer, shall have an approved private sewage system.
- B. A privy or self contained toilet may be permitted only when the building or premises served is not connected to a water supply. If a water supply is connected to the building, then an acceptable method of sewage disposal other than, or in addition to, a privy or self-contained toilet must be provided.
- C. A holding tank may be permitted only as a last resort if required for disposal of effluent from an existing building to abate a nuisance or health hazard. A holding tank may be permitted for newly constructed buildings subject to appeal as provided in Section 7.9.8 of this Ordinance.
- D. When approved public sewers become available to the building or premises served, the private sewage system shall be disconnected (within the time required by order, but not to exceed one year) and a connection made to the public sewer. Abandonment of the disconnected private sewage system shall be done in accordance with applicable sections of Wisconsin Administrative Code.
- E. No well or water supply shall be connected to a building intended for human occupancy unless there is a sanitary sewer or an existing approved private sewage system serving the building, or unless the owner(s) possess a valid sanitary permit for the construction of an approved system.

### **7.9.3 ADMINISTRATION**

- A. The Portage County Zoning Administrator shall be responsible for the administration of this Ordinance.
- B. The responsibilities of administering this Ordinance may be delegated to personnel (herein referred to as the Administrator) employed by or assigned to the Code Administration Section of the Portage County Planning and Zoning Department.
- C. The Administrator shall, in the administration of this Ordinance, have the following duties and powers:
  - (1) Advise applicants concerning the provisions of this Ordinance and assist them in preparing permit applications.
  - (2) Review and approve plans for conventional private sewage systems for one and two family residences.

- (3) Issue sanitary permits and inspect properties for compliance with this Ordinance and related State Statutes and Administrative Codes.
- (4) Keep records of all permits issued, inspections made and other official actions.
- (5) Report violations of this Ordinance to the District Attorney or Corporation Council.
- (6) Have access to any premises with the permission of the property owner or his agent or upon issuance of a special inspection warrant in accordance with Section 66.122 of the Wisconsin Statutes for the performance of duties. Application for Sanitary Permit is considered, for the purposes of this Ordinance, as the owner's consent to enter the premises.
- (7) Upon reasonable cause or question as to proper compliance, revoke any Sanitary Permit and issue cease and desist orders requiring the cessation of any construction, alteration or use of a Private Sewage System which is in violation of the provisions of applicable State Statutes and Administrative Codes, until compliance is obtained.
- (8) Issue and enforce orders to properly licensed individuals, property owners, their agents or contractors, or the responsible party, to assure proper compliance with provisions of this Ordinance.
- (9) Inspect prior to backfilling all newly installed, repaired, or altered private sewage systems. These inspections shall comply with appropriate sections of Statutes, Wisconsin Administrative Code and this Ordinance.
- (10) Inspect all sewage holding tanks periodically.
- (11) Investigate reports of illegal or improper septage disposal by septic and holding tank pumpers, both licensed and private.
- (12) Issue citations for violations of specific requirements of this Ordinance according to Section 7.9 of Chapter 5, Portage County Zoning Ordinances.

#### **7.9.4 PERMITS AND APPLICATIONS**

##### **A. PERMITS**

- (1) Every private sewage system shall require a separate application and Sanitary Permit.
- (2) A Sanitary Permit shall be obtained by the property owner, his agent or contractor, in the name of the property owner, prior to the construction of any structure which requires a private sewage system. Any property owner, his agent or contractor who starts construction prior to obtaining a Sanitary Permit is in violation and may be subject to the penalties provided for in this Ordinance and/or in Section 7.9 of Chapter 5, Portage County Ordinances.
- (3) A Sanitary Permit shall be obtained by the property owner, his agent or contractor, before any private sewage system may be installed, repaired or altered.
- (4) A Privy Permit shall be obtained prior to constructing a privy.
- (5) A Self-Contained Toilet Permit shall be obtained prior to construction and use of a composting or other waterless toilet.

## B. PERMIT CARDS

- (1) The permit card issued by the Administrator to the property owner or his agent shall serve as the Sanitary Permit, Privy Permit or Self-Contained Toilet Permit.
- (2) The permit card shall be displayed at the site in such a manner that it will be readily visible from a public road abutting the lot during all construction phases.
- (3) The permit card may not be removed until the private sewage system has been installed, inspected and approved by the Administrator.
- (4) Failure to display the permit card shall be considered a violation of this Ordinance and may subject the property owner, his agent or contractor to penalty provisions provided herein or in Section 7.9 of Chapter 5, Portage County Ordinances.

## C. APPLICATION REQUIREMENTS

- (1) The Sanitary Permit application shall include the following, which shall be furnished by the applicant along with all applicable fees:
  - (a) Name(s) and address(es) of the owner(s) of the site and the plumber employed (when applicable).
  - (b) Land Description card.
  - (c) All lot dimensions.
  - (d) A septic tank maintenance agreement (properly signed, notarized and recorded).
- (2) Self-Contained Toilet and Privy Permit applications shall be accompanied by soil data provided by a Certified Soil Tester to a depth of three feet below the proposed pit bottom, or to the depth of estimated high groundwater or bedrock. If the soils have limitations severe enough to require a holding tank if a water flush toilet were used, the application shall be denied pending appeal as specified in Section 7.9.8 of this Ordinance.
- (3) The Administrator will reject incomplete or incorrect permit applications, and/or delay permit issuance until corrected/completed applications are received.

## D. ON-SITE SOIL EVALUATIONS

- (1) An evaluation by the Administrator may be necessary to determine the suitability of a site for a private sewage system. Site evaluations will be done on any sites on which are shown to exist (according to the Portage County Soil Survey) questionable or marginal soils. On other sites this evaluation may be made at the discretion of the Administrator prior to the issuance of the Sanitary Permit. This evaluation will result in one of the following:
  - (a) Issuance of the permit, provided all information on the application is correct and complete.



(b) Holding the application pending clarification of information or new information by the owner, plumber, or Certified Soil Tester.

(c) Denial of the permit if the site does not meet the provisions of this Ordinance and appropriate State Statutes and Administrative Code.

(2) It is recommended that soil test pits be constructed which allow adequate visual observation of the soil profile in place. This is best accomplished by the construction of backhoe pits. The test pits shall be left in such a manner that will permit access to them for the evaluation of the soil profile. Protection should be provided in locations where they would be a hazard if no protection were provided. Bore holes shall be either fenced or closed within 30 days of the date of permit issuance or denial. In case an on-site soil evaluation is required, backhoe pits will be required by the Administrator.

(3) Site evaluations shall be done prior to issuance of permits for alternative private sewage systems.

(4) When an on-site soils evaluation of a proposed private sewage system or pit privy reveals that the site is not in compliance with the requirements of this Ordinance and appropriate State Statutes or requirements of this Ordinance and appropriate State Statutes of Administrative Codes, the permit application shall be denied.

#### E. PERMIT EXPIRATION AND RENEWAL

(1) All Sanitary Permits, Privy Permits and Self-Contained Toilet Permits shall expire two years after the date of issuance.

(2) Permits may be renewed following written application to the Administrator by the property owner, his agent or contractor, prior to the expiration date of the original permit.

(3) There shall be a fee for the renewal of a permit.

(4) The renewal shall be based on requirements in force at the time of renewal.

(5) Changed requirements may impede the renewal.

(6) If a permit has expired and the owner wants to build on the site, a new Sanitary Permit must be obtained.

#### F. PERMITS FOR PRIVATE SEWAGE SYSTEMS REQUIRING STATE APPROVAL

(1) No Sanitary Permit may be issued for a private sewage system which requires State approval until such approval is obtained.

(2) A complete copy of the plans bearing the approving agency's stamp of approval must be provided with all other information required with the sanitary permit application. A photocopy of the approved plans will not be accepted.

#### G. TRANSFER PERMITS

(1) Change of Owners: Transfer of ownership of a property for which a Sanitary Permit has been issued, prior to the installation of the private sewage system, shall be subject to the following:

- (a) The new property owner shall submit the properly completed state transfer form to the Administrator.
- (b) The Sanitary Permit card shall be returned to the Administrator so that a new permit card may be issued.
- (c) Transfer of ownership shall not affect the expiration date of the permit.
- (d) There will be a transfer fee.
- (e) The new Land Description card bearing the owner's name will be required.

(2) Change of Plumbers:

- (a) When an owner wishes to change plumbers, it will be necessary for him to furnish the Administrator with the properly completed state transfer forms signed by the new plumber.
- (b) The transfer of permits shall take place prior to the installation of the private sewage system.
- (c) Sanitary Permits for private sewage systems requiring State approval shall only be transferred from plumber to plumber if the plans bear the seal of a registered architect, engineer or registered plumbing designer.
- (d) There will be a transfer fee.

#### H. PARTIAL APPLICATION

- (1) An individual may request a site evaluation by the Administrator after a soil test has been conducted. This application shall include the Land Description card, a copy of the soil test report, appropriate fee and a partial application form.
- (2) If the site is found to be suitable for a system, the results will be kept on file in the Administrator's office until such time as the applicant wishes to make full application for a Sanitary Permit. When a partial application is denied, alternate courses of action shall be presented.

#### I. PERMIT FEES

- (1) Fees shall be as set by the appropriate governing board and shall be reviewed annually.
- (2) After any Sanitary Permit has been issued, the fees shall not be refunded.
- (3) When a partial application is approved or denied, the fee will not be refunded.

#### J. RECONNECTION

- (1) A Sanitary Permit will be required when an existing private sewage system is intended to serve a building which is to be rebuilt or is to be replaced with a new or different use or building.

(2) Prior to an addition to an existing building which will potentially increase the wastewater load, the condition of the existing private sewage system must be reviewed to determine that the system will be likely to operate effectively after completion of the building changes proposed. Increase in potential wastewater load shall result from the addition of living space exceeding fifty square feet.

(3) When a change in the use of a structure or premises is contemplated, the Administrator shall be contacted to determine if it shall be necessary to conduct an existing private sewage system evaluation.

(4) If a septic tank has failed or collapsed, or if an absorption area has failed, the complete disposal system must be evaluated for compliance with this Ordinance prior to permit issuance and reconstruction.

(5) When applying for a Sanitary Permit for reconnection, the property owner, or his agent or contractor must furnish the following information:

(a) A licensed plumber's written statement regarding the size and condition of the existing system and a proposal for meeting the requirements of this ordinance, should the existing system be substandard. If the existing system is known to be undersized but functioning properly, and no increase in the waste load is anticipated, an Undersized Private Sewage System affidavit may be filed with the Administrator and recorded with the Register of Deeds.

(b) Soil boring data to a depth of three feet below the bottom of the existing system. This data shall be provided by a Certified Soil Tester.

(6) If it is not possible, due to inclement weather, frozen soil profiles, or snow cover, to evaluate a system intended for reconnection, an affidavit may be filed with the Administrator until such time as the site can be evaluated. This affidavit will serve as a substitute for a soil test for a period specified by the Administrator, not to exceed 120 days. Subsequent failure to obtain a soil test will constitute violation of this Ordinance.

(7) Permitted reconnections will be subject to the maintenance requirements as set forth in 7.9.5 of this Ordinance.

#### **7.9.5 MAINTENANCE PROGRAM**

A. All septic tanks hereafter permitted and installed shall be pumped by a licensed septage hauler within three years of the date of installation and at least once every three years thereafter, unless upon inspection the tank is found to have less than one-third of the volume occupied by sludge and scum.

B. Inspection of a private sewage system shall be conducted by a plumber licensed under Chapter 145, State Statutes, a septage hauler licensed under Section 146.20, State Statutes, or the Administrator.

C. The owner of such septic tank shall furnish the Administrator with a copy of the inspection report verifying the condition of the tank and/or evidence of the dates of pumping on a form supplied by the County and signed by the owner and inspector/pumper.

D. The owner of a holding tank shall sign an agreement with the town or municipality where the holding tank is located prior to issuance of a Sanitary Permit to provide the responsible units of government with quarterly and annual pumping reports showing the dates the holding tank was pumped, volumes pumped, disposal site(s) and the name(s) and address(es) of the septage hauler(s).

E. Holding tanks must be pumped when full in accordance with applicable sections of Wisconsin Administrative Code and the septage disposed of in a proper, sanitary manner.

F. Septage must be properly disposed of at a site which complies with applicable sections of the Wisconsin Administrative Code. Disposal at a noncompliant site will constitute a violation of this Ordinance and will subject the septage hauler (either licensed or private) to the penalty in Subsection 7.9.5 of Section IV of Portage County Ordinances.

## **7.9.6 INSPECTIONS**

### **A. NOTICE OF INSPECTIONS**

(1) Notification for final inspection shall be given by the plumber in charge when the private sewage system is complete.

(2) The entire private sewage system shall be left completely open until all parts have been inspected and accepted or until 5:00 pm of the next business day following completion of the system construction or following notification for final inspection, whichever comes later.

(3) Work covered prior to inspection shall be uncovered for inspection at the discretion of the Administrator.

(4) When a private sewage system has been installed and inspected prior to completion of the building sewer, an inspection will be required after completion but before backfilling, subject to 7.9.6(C).

### **B. FINAL INSPECTIONS - SITE CONSTRUCTED TANKS**

(1) All site constructed tanks shall be inspected after the forms have been set and the reinforcing is in place, but before any concrete has been poured.

(2) Concrete may be poured only after it has been determined that the tank, as formed, complies with the State approved plans.

(3) This inspection shall not eliminate the need for an inspection after the installation has been completed.

### **C. REINSPECTIONS**

(1) When a reinspection of a private sewage system is required because the initial inspection disclosed that the installation is incomplete at the time the plumber indicated it would be complete or does not comply with applicable State Statutes, Wisconsin Administrative Code or with the provisions of this Ordinance, a reinspection fee may be required. Each additional reinspection required at the site will require the fee.

(2) The reinspection fee shall be due within ten working days of written notification by the Administrator. Failure to pay this fee within that period shall constitute a violation of this Ordinance.

### **D. PRIVIES**

(1) All privies installed shall be inspected for compliance with this Ordinance and applicable sections of Wisconsin Administrative Code.

(2) The property owner shall notify the Administrator for inspection immediately after the privy has been constructed and prior to any use.

(3) Privies may be inspected periodically after the initial inspection.

#### E. ALTERNATE PRIVATE SEWAGE SYSTEMS

(1) All alternate private sewage systems shall be inspected during construction by a State certified inspector according to requirements of applicable sections of Wisconsin Administrative Code.

(2) The plumber installing the alternate private sewage system shall make an appointment for construction inspection at least three working days in advance of the installation.

(3) If construction of an alternate private sewage system is delayed due to inclement weather, it will be the installer's responsibility to make another appointment for construction inspection.

(4) Inspections will be made at least biannually after operation has commenced, to determine that the system is operating properly.

#### 7.9.7 DEFINITIONS

A. Unless specifically defined in this Section, all words used in this Ordinance shall have the meaning set forth in Wisconsin Statutes and Administrative Code.

B. Definitions:

(1) **Administrator** - A person assigned to administer and enforce this ordinance

(2) **Partial Application** - An application submitted for the purpose of requesting an on-site soils evaluation

(3) **Plumber** - A person licensed by the State of Wisconsin as a Master Plumber or Master Plumber Restricted Sewer

(4) **Privy-Pit** - A privy with earthen side walls and/or bottom

(5) **Privy-Vault** - A privy with a watertight vault consisting of:

(a) Concrete side walls and bottom (poured in place)

(b) A prefabricated, State approved holding tank with no inlet or outlet other than the manhole and vent

(6) **Self-Contained Toilet** - Composting or other waterless toilet

(7) **Septage** - Wastes pumped or otherwise removed from septic tanks, holding tanks, privies, or soil absorption systems

### **7.9.8 APPEALS**

A. The procedure for appeal of any administrative action made in the enforcement of this Ordinance shall be in accordance with Chapter 68, Statutes. Any appeal shall be made in writing to the Administrator within thirty days of the date of that administrative action. Other substantiating evidence will be accepted.

B. The fee for an appeal shall be set by the appropriate governing committee.

### **7.9.9 ENFORCEMENT AND PENALTIES**

The provisions of this Ordinance shall be enforced under the direction of the County Board of Supervisors, through the County Planning and Zoning Committee. Any person, firm, company, corporation, agent, contractor or subcontractor who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance and for which there is no stated penalty provision, shall be subject to a fine of not less than fifty (\$50) dollars nor more than one-thousand (\$1,000) dollars, together with the costs of action and in default of payment thereof, to imprisonment in the County jail for a period of not less than one day nor more than six months, or until such fine and costs be paid, and each day of violation shall be deemed a separate offense. Compliance therewith may be enforced by injunctive order at the suit of the County or the owner or owners of land affected by the regulations of this Ordinance.

ADOPTED: 1967

UPDATED: 1977, 1980 and 1983

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## **7.10 ANIMAL MANURE STORAGE ORDINANCE AND NUTRIENT MANAGEMENT STANDARDS**

### **7.10.1 INTRODUCTION**

#### **A. AUTHORITY**

This Ordinance is adopted under authority granted by Chapters 59 and 92, Wisconsin State Statutes.

#### **B. TITLE**

This Ordinance shall be known as the PORTAGE COUNTY ANIMAL MANURE STORAGE ORDINANCE AND NUTRIENT MANAGEMENT STANDARDS and is hereinafter referred to as the Ordinance.

#### **C. FINDINGS AND DECLARATION OF POLICY**

The Portage County Board of Supervisors finds that storage of animal manure in storage facilities not meeting technical design and construction standards may cause pollution of the surface and groundwater of Portage County, and may result in actual or potential harm to the health of County residents, livestock, aquatic life, and other plants and animals, and to the property tax base of Portage County.

The Portage County Board of Supervisors also finds that improper management of animal manure storage facilities and utilization, including land application, of stored animal manure and other nutrients may cause pollution of ground and surface waters of Portage County.

The Portage County Board of Supervisors further finds that the technical standards developed by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) and adopted by the Portage County Land and Water Conservation Committee (LWCC) provide for effective, practical, and environmentally safe methods of storing and utilizing animal manure and land application of nutrients.

#### D. PURPOSE

The purpose of this Ordinance is to regulate the location, design, construction, installation, alteration, and use of animal manure storage facilities, and the application of manure and nutrients. Portage County intends that such regulation will prevent water pollution and the spread of disease, and thereby promote the health, prosperity, and general welfare of the citizens of Portage County. Portage County also intends by this Ordinance to provide means for its administration and enforcement.

#### E. APPLICABILITY

This Ordinance shall apply to animal manure storage facilities and nutrient applications throughout Portage County.

#### F. 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 Portage County, and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin State Statutes.

#### G. SEVERABILITY CLAUSE

If any portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

### 7.10.2 DEFINITIONS

A. **“Animal Manure”** means livestock excreta, milk house/parlor effluent and other materials such as bedding, rain or other water, soil, hair, feathers, and other debris normally included in animal manure handling operations.

B. **“Animal Manure Storage Facility”** means a concrete, steel, or otherwise fabricated structure, or an excavated or earthen impoundment using earth dikes, pits or ponds for temporary storage of animal manure or other organic materials.

C. **“Applicant”** means any person who applies for a permit under this Ordinance.

D. **“Nutrient Management”** means managing the amount, source, placement, form and timing of the application of nutrients and soil amendments.

E. **“Organic Amendment”** means any material applied to soil to improve crop yield or quality, including but not limited to: manure, sewage sludge, septage, whey and papermill byproducts.

F. **“Permit”** means the signed, written statement issued by the Portage County Planning and Zoning Department, Land and Water Conservation Division (LWCD) authorizing the applicant to construct, install, reconstruct, enlarge, or substantially alter an animal manure storage facility, and to use or dispose of manure from the facility.

G. **“Permittee”** means any person to whom a permit is issued under this Ordinance.

H. **“Person”** means any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, County, or State agency within Wisconsin, the federal government, or any combination thereof.

I. **“Technical Guide”** means the USDA NRCS Technical Guide as adopted by the Portage County Land and Water Conservation Committee on September 8, 1977. The said guide is on file at the Portage County LWCD. Any future amendments to said guide are incorporated into this Ordinance without further action except for Code 313 where the January 2014 version will continue to be applied.

J. **“Transfer Mechanism”** means any components such as conduits, pumps, valves, reception tanks, and other devices to transfer animal manure from buildings and yards to a storage and/or loading area for final disposal.

K. **“Water pollution”** means contaminating or rendering unclean or impure the ground or surface waters of the State, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life.

L. **“Work Day”** shall mean Monday through Friday, except for holidays.

### **7.10.3 ACTIVITIES SUBJECT TO REGULATION**

#### **A. GENERAL REQUIREMENTS**

1. Any person who uses, constructs, installs, reconstructs, replaces the liner, enlarges, or substantially alters an animal manure storage facility or transfer mechanism, or who employs or is employed by another person to do the same, on land subject to this Ordinance, shall be subject to the provisions of this Ordinance.

2. The Portage County LWCD may require upgrading, replacement or closure, in accordance with this Ordinance, of any storage facility that poses an imminent threat to public health, aquatic life or is causing a violation of water quality standards.

#### **B. STATE OF WISCONSIN REQUIREMENTS**

1. Manure, commercial fertilizer and other nutrients shall be applied in conformance with a nutrient management plan using the schedule stated in Wisconsin Administrative Code, Section NR 151.07(4) and the compliance requirements stated in Section NR 151.09(3).

#### **C. COMPLIANCE WITH PERMIT REQUIREMENTS**



A person is in compliance with this Ordinance if he or she follows the procedure of this Ordinance, receives a permit from the Portage County Land and Water Conservation Division (LWCD) of the Planning and Zoning Department before beginning activities requiring permits and complies with the standards of the Ordinance.

#### **7.10.4 STANDARDS**

##### **A. STANDARDS FOR ANIMAL MANURE STORAGE FACILITIES**

1. The standards for design, management and construction of animal manure storage facilities and transfer systems are those in standards and specifications number 313, 634 and 719 of the technical guide.

2. The standard for closure of an animal manure storage facility are those set forth in “Closure of Waste Impoundments”, number 360 of the technical guide.

##### **B. STANDARDS FOR MANAGEMENT AND UTILIZATION OF ANIMAL MANURE AND OTHER NUTRIENTS**

1. The standards for management and utilization of animal manure and other nutrients are those in standards 590 of the technical guide.

2. Nitrogen fertilizer rates shall not exceed recommended rates using the UW-Extension “Nitrogen Source and \$ Rate of Return Calculator”, unless approved by Portage County LWCD. The Portage County LWCD will initially seek compliance with this Section by educating the nutrient management plan writer, operator responsible for Plan implementation and landowner (if not operator) on the Standards contained in this Section.

3. Organic Amendments shall not be allowed to run off areas of concentration or off a field site during or after application.

4. A. Manure irrigation practices are not allowed unless the following conditions are implemented:

- a. 500 foot setback from wetted perimeter to dwelling or occupied building
- b. 250 foot setback from wetted perimeter to dwelling or occupied building if wind direction is parallel to or away from building and manure has been treated to reduce pathogens
- c. No setback required with permission granted by dwelling or building occupant
- d. Night-time applications are not allowed unless manure has been treated to reduce pathogens
- e. Applications are not allowed if wind speed is greater than 15 mph

#### **7.10.5 APPLICATION FOR AND ISSUANCE OF PERMITS**

##### **A. PERMIT REQUIRED**

No person may undertake an activity described in Section 7.10.3(A) of this Ordinance without a permit from the Portage County LWCD. Criteria for issuance of a permit are set forth in LWCD policy and must be met prior to issuance of any permit.

##### **B. EXCEPTION TO PERMIT REQUIREMENTS**

Emergency repairs such as repairing broken pipe or equipment, leaking dikes, the removal of stoppages, or ordinary and required maintenance, may be performed without a permit. If repairs will significantly alter the original design and construction of the facility, a report shall be made to the Portage County LWCD within one (1) work day of the emergency for a determination by the Portage County LWCD on whether a permit will be required for any additional alteration or repair of the facility. The Portage County LWCD determination shall be rendered within two (2) work days of the reporting.

#### C. FEE

The permit fee shall be set by the Land and Water Conservation Committee.

#### D. ANIMAL MANURE STORAGE FACILITY PLAN REQUIRED

Each application for a permit under this section shall include an animal manure storage facility plan. Technical assistance for plan development shall be made available to applicants upon request through the Portage County LWCD or the District Conservationist of the NRCS. The plan components shall be consistent with the information on the permit application necessary to determine if it meets the Portage County Technical Guide specifications as described in established LWCD information policy.

#### E. REVIEW OF APPLICATION

The LWCD shall determine if the proposed facility meets required standards set forth in this Ordinance. Within thirty (30) work days after receiving the completed application and fee, the LWCD shall inform the applicant in writing whether the permit application is approved or disapproved. If additional information is required, the LWCD shall so notify the permit applicant. The LWCD has thirty (30) work days from the receipt of the additional information in which to approve or disapprove the application. If the LWCD fails to approve or disapprove the permit application in writing within thirty (30) work days of the receipt of the permit application or additional information, as appropriate, the application shall be deemed approved and the applicant may proceed as if a permit had been issued. All plans for animal manure storage facilities shall be reviewed and approved by the LWCD. Plans bearing a registered professional engineer seal and certified as meeting the applicable technical standards may be approved by the LWCD within minimum review.

#### F. PERMIT CONDITIONS

All permits issued under this Ordinance shall be issued subject to the following conditions and requirements.

1. Animal manure storage facilities – design, installation, construction, management, and utilization activities as required under the terms of this Ordinance.
2. The permittee shall give two (2) work days notice to the LWCD before starting any construction activities authorized by the permit.
3. Approval in writing must be obtained from the LWCD prior to any modifications to the approved animal manure facility plan.
4. The certification of installation must be provided by an agricultural or civil engineer registered in the State of Wisconsin or a Department of Agriculture, Trade and Consumer Protection engineering practitioner or NRCS engineering practitioner.
5. The permittee shall certify in writing that the facility was installed as planned.

Activities authorized by permit must be completed within one (1) year from the date of issuance after which such permit shall be void. However, a one (1) year extension may be granted by the LWCD.

#### G. PERMIT REVOCATION

The Portage County LWCD may revoke any permit issued under this Ordinance if the holder of the permit has misrepresented any material fact in the permit application or animal manure facility plan, or if the holder of the permit violates any of the conditions of the permit.

### **7.10.6 ADMINISTRATION**

#### A. DELEGATION OF AUTHORITY

Portage County hereby designates the LWCD to administer and enforce this Ordinance.

#### B. ADMINISTRATIVE DUTIES

In the administration and enforcement of this Ordinance, the Portage County LWCD will:

1. Keep an accurate record of all permit applications, animal manure facility plans, permits issued, inspections made, and other official actions.
2. Review permit applications and issue permits in accordance with this Ordinance.
3. Inspect any animal manure facility during construction or installation to insure the facility is being constructed according to plan specifications.
4. Inspect any animal manure facility to document if it poses an imminent threat to public health or fish and aquatic life or is causing a violation of groundwater standards.
5. Investigate complaints relating to compliance with the Ordinance.
6. Perform other duties as specified in this Ordinance.

#### C. INSPECTION AUTHORITY

The Portage County LWCD is authorized to enter upon any lands affected by this Ordinance to inspect the land prior to or after permit issuance to determine compliance with this Ordinance. If permission cannot be received from the landowner, entry by the Portage County LWCD and LWCC shall be according to Section 92.07(14), Wisconsin State Statutes.

#### D. ENFORCEMENT AUTHORITY

The LWCD is authorized to post an order stopping use of a storage facility or work upon land which has had a permit revoked or as to land on which an activity is taking place in violation of this Ordinance. Notice is given by posting upon the land where the violation occurs one or more copies of a poster stating violation, by mailing a copy of the order by certified mail to the person whose activity is in violation of this Ordinance, or by personally serving said person. The order shall specify that the activity must cease or be brought into compliance. Any permit revocation or order stopping work shall remain in effect unless retracted by the Portage County LWCD or by a court of general jurisdiction. The LWCD is authorized to refer any violation of this Ordinance or of an order stopping work issued pursuant to this Ordinance to the District Attorney for commencement of further legal proceedings.

### **7.10.7 VIOLATIONS**

#### **A. PENALTIES**

Any person who violates, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this Ordinance shall be subject to a forfeiture of not less than \$100 or more than \$1000 plus costs of prosecution for each violation. An unlawful violation includes failure to comply with any standard of this Ordinance or with any condition or qualification attached to the permit. Each day that a violation exists shall be a separate offense.

#### **B. ENFORCEMENT BY INJUNCTION**

As a substitute for or in addition to forfeiture actions, Portage County may seek enforcement of any part of this Ordinance by court actions seeking injunctions or restraining orders.

### **7.10.8 APPEALS**

#### **A. AUTHORITY**

Under Chapter 68, Wisconsin State Statutes, the Portage County LWCD is designated to act in accord with Section 68.09(2), Wisconsin State Statutes, to review initial determinations as to the grant or denial, revocation or conditions imposed as regarding any permits under this Ordinance which are deemed to be reviewable in accord with Section 68.02, Wisconsin State Statutes.

#### **B. PROCEDURE**

Persons alleged to have been aggrieved by an initial determination made under this Ordinance shall follow the procedure, both as to time and other requirements, of Chapter 68, Wisconsin State Statutes. The Portage County LWCC is designated as the body under Section 68.11(2), Wisconsin State Statutes, to handle the appeal of an initial determination under this Ordinance.

#### **C. WHO MAY APPEAL**

For the purpose of this section, "Persons" shall be defined in accord with Section 68.06, Wisconsin State Statutes, and only those who qualify under Section 68.01, Wisconsin State Statutes, may seek review of a determination.

### **7.10.9 ENFORCEMENT AND PENALTIES**

The provisions of this ordinance shall be enforced under the direction of the Portage County Board of Supervisors, its Land and Water Conservation Committee and the County Conservationist. Any person, firm, corporation, company, agent, contractor or subcontractor who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any of the provisions of this ordinance, including any failure to obtain an animal waste storage facility permit under Section 7.10.7 of the Ordinance, shall be subject to a forfeiture of not less than \$100.00 (one hundred dollars), together with court and other costs of the action. Default of such payment shall result in imprisonment in the county jail for a period of up to six months or until such costs are paid. Each day of violation shall, as a matter of law, be deemed a separate offense. Compliance and the provisions of this ordinance may be enforced by injunctive order at the suit of the County. Citations may be issued for failure to comply with any provision of this ordinance in order to collect forfeitures pursuant to Chapter 66, Wisconsin State Statutes and Portage County Ordinance, Section 5.1.

Adopted June 17, 1986 by the Land Conservation Committee

Revised December 20, 2005

Revised by Resolution No. 193-2004-2006 on 3-21-06

Revised by Resolution No. 144-2014-2016 on 7-21-2015  
Revised by Resolution No. 117-2016-2018 on 4-18-2017  
Revised by Resolution No. 212-2016-2018 on 12-19-2017

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## **7.11 WELL ABANDONMENT ORDINANCE**

### **7.11.1 TITLE**

This chapter shall be referred to as the **Portage County Well Abandonment Ordinance**.

### **7.11.2 AUTHORITY AND ADOPTION**

- (1) This Ordinance is adopted under the authority granted to the County by ss. 59.70(6) and 280.21, Wis. Stats., and ch. NR 845, Wis. Adm. Code.
- (2) This Ordinance is subject to the provisions of ss. 59.70(6) and 280.21, Wis. Stats., and all rules promulgated thereunder regulating private water systems.
- (3) This Ordinance may not be more lenient nor more stringent than the rules promulgated pursuant to ch. 280, Wis. Stats.
- (4) Failure to comply with any of the provisions of such regulations shall constitute a violation of this Ordinance, actionable according to the penalties provided herein.
- (5) This Ordinance applies to the entire County and includes cities, towns, villages and sanitary districts in the County.

### **7.11.3 JURISDICTION**

The provisions of this Ordinance shall apply to all private water systems within Portage County pertinent to well abandonment and drillhole abandonment.

### **7.11.4 PURPOSE**

The purpose of this Ordinance is to protect the drinking water and groundwater resources of the County by governing access to groundwater through regulating well abandonment and drillhole abandonment.

### **7.11.5 INTENT**

The intent of this Ordinance is to regulate well abandonment and drillhole abandonment and to provide for administration and enforcement of this Ordinance.

### **7.11.6 EFFECTIVE DATE**

This Ordinance shall be effective upon its adoption by the Portage County Board of Supervisors.

### **7.11.7 SEVERABILITY AND NONLIABILITY**

If any section, provision or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected. The County asserts that there is no liability on the part of the County Board of Supervisors, its agencies, or employees for any health hazards or damages that may occur as a result of reliance upon, and compliance with, this Ordinance.

### **7.11.8 REPEAL**

All other County ordinances or parts of ordinances inconsistent or conflicting with this Ordinance, to the extent of the inconsistency only, are repealed.

### **7.11.9 DEFINITIONS**

In this Ordinance:

***Abandonment-*** Filling and sealing.

***Administrator-*** The County employee designated by the County Board of Supervisors to administer ch. NR 812, Wis. Adm. Code, pertinent to well abandonment and drillhole abandonment in the County as authorized by the Department.

***Central Office-*** The Bureau of Drinking Water and Groundwater, located in Madison, Wisconsin, which functions as the coordinating authority for the statewide water supply program.

***Community Water System-*** Designated in s. NR 811.02(7), Wis. Adm. Code.

***County Office Staff-*** County office personnel trained to answer general well abandonment and drillhole abandonment questions.

***Delegation Level-*** Program level, as set forth in s. NR 845.05, Wis. Adm. Code, at which a County is authorized to administer and enforce ch. NR 812, Wis. Adm. Code.

***Department-*** The Wisconsin Department of Natural Resources.

***Existing Installations-*** Designated in ch. NR 812, Wis. Adm. Code.

***Health Hazard-*** A condition which constitutes:

- (a) A violation of ch. NR 812, Wis. Adm. Code, regarding the installation, construction, operation or maintenance of a private well.
- (b) Confirmed bacteriologically-unsafe well water quality.
- (c) A threat to safety or groundwater quality.

**Noncommunity Water System-** A public water supply system that is not a community water system. It serves at least 25 persons per day at least 60 days each year. A noncommunity water system commonly serves a transient population rather than permanent year-round residents. This is typically an individual well serving a restaurant, industry, service station, tavern, motel, campground or church.

**Noncomplying Well-** A private water system not in compliance with all provisions of ch. NR 812, Wis. Adm. Code.

**Person-** An individual, corporation, company, association, cooperative, trust, institution, partnership, state, public utility, sanitary district, municipality or federal agency.

**Personal Interest-** Having a financial interest in a property or being related by marriage or birth to a person having a financial interest in a property.

**Primary Drinking Water Standards-** Those maximum contaminant levels, which represent minimum public health standards, set forth in ch. NR 809, Wis. Adm. Code.

**Private Water System-** The water collection, storage and treatment facilities and all structures, piping and appurtenances by which water is provided for human consumption by other than community water systems. For the purpose of this Ordinance, it includes noncommunity water systems.

**Private Water System Ordinance-** A County ordinance, approved by the Department, regulating private water systems at the County's authorized delegation level.

**Private Well-** Any drilled, driven point, dug, bored or jetted well constructed for the purpose of obtaining groundwater for potable use, including wells constructed in special well casing depth areas and noncommunity wells. It does not include springs, or private or public wells that require written plan approval from the Department.

**Public Water System-** Designated in ch. NR 811, Wis. Adm. Code.

**Reconstruction-** Modifying the original construction of a private well. It includes but is not limited to deepening, lining, installing or replacing a screen, undermining, hydrofracturing and blasting.

**Regional Office-** The Department office located in Spooner, Wisconsin.

**Variance-** Approval issued by the Department under ch. NR 812, Wis. Adm. Code, allowing a private water system to vary from ch. NR 812, Wis. Adm. Code requirements, if Department approved conditions are met, and if strict compliance with ch. NR 812, Wis. Adm. Code, is not feasible.

**Water System-** Water collection, storage, treatment facilities and all structure, piping and appurtenances by which water is provided.

**Well-** Designated in ch. 162, Wis. Stats.

**Well Construction-** Procedures, methods, materials and equipment used during the construction or reconstruction of a private well.

#### **7.11.10 COUNTY RESPONSIBILITY**

It is the County's responsibility to require the proper abandonment (filling and sealing) of wells meeting the criteria of s. NR 812.26(2), Wis. Adm. Code.

#### **7.11.11 COOPERATION**

The County shall cooperate with all other governmental units and agencies in the enforcement of all State and local laws and regulations pertaining to matters in this Ordinance. In municipalities which administer a local well abandonment ordinance, primary responsibility for well abandonment shall rest with the municipality.

#### **7.11.12 ADMINISTRATOR**

The County Water Quality Specialist is designated to act as the Well Abandonment Ordinance Administrator, and is assigned the duties of administering the private water systems program in accordance with Department rules.

The Administrator shall have the power and duty to enforce the provisions of this Ordinance, and all other ordinances, laws and orders of the County and of the State of Wisconsin, which relate to the abandonment of wells and drillholes, at the County's authorized delegation level.

(1) **Qualifications of Administrator.** The Administrator shall be informed on the principles and practices of well abandonment and drillhole abandonment.

(2) **Powers of Administrator.** The Administrator shall have all the powers necessary to enforce the provisions of this Ordinance commensurate with the level or levels of the County's delegated authority including the following:

(a) In the performance of his or her duties, the Administrator or an authorized assistant may enter, with the permission of the property owner or occupant, any building or property upon presentation of the proper credential, during reasonable hours for the purpose of inspecting the private water system for purposes pertinent to well abandonment and drillhole abandonment. If consent to enter a property for inspection purposes is denied, the Administrator may obtain a special inspection warrant under ss. 66.122 and 66.123, Wis. Stats. No person may interfere with the Administrator or an authorized assistant in the performance of his or her duties.

(b) Order any person owning, operating or installing a private water system to abandon it, if the well meets one of the criteria listed in s. NR 812.26(2) or Wis. Adm. Code.

(c) Enforce any County ordinances applicable to private water systems in accordance with Department rules.

(3) **Duties of Administrator.** It shall be the duty of the Administrator to enforce the provisions of this Ordinance and perform the following duties commensurate with the level or levels of the County's delegated authority.

(a) Provide the Department with copies of all abandonment inspection forms and correspondence as required by ch. NR 845, Wis. Adm. Code.

(b) Investigate and record all private water system complaints pertinent to well and drillhole abandonment.

(c) Investigate cases of noncompliance with this Ordinance, ch. NR 812, Wis. Adm. Code, and ch. 280, Wis. Stats.; issue orders to abate the noncompliance, and submit violations to the County Corporation Counsel for enforcement.



(d) Refer complaints and cases of noncompliance believed to be or known to be beyond the scope of the County's delegation level to the Department.

(e) Cooperate with all other government units and agencies in the enforcement of all State and local laws and regulations of matters related to this Ordinance.

(f) Assist the Department as specified in ch. NR 845, Wis. Adm. Code.

(g) Refer variance requests and actions, which require Department approval to the Department.

(h) The Administrator, a trained County inspector or County office staff shall be available for answering questions regarding well abandonment and drillhole abandonment.

### **7.11.13 VIOLATIONS. THE FOLLOWING SHALL CONSTITUTE VIOLATION(S) OF THIS ORDINANCE**

(1) Failure to comply with a properly issued order or directive from the County or Department.

(2) Resisting, obstructing or interfering with actions of the Administrator, or an authorized assistant, or failure to allow these individuals access to a property, undertaken pursuant to this Ordinance.

(3) Failure to comply with any of the following standards:

#### **(A) CRITERIA FOR ABANDONMENT.**

(1) The owner shall permanently abandon a well or a drillhole under any of the following conditions unless the Department approves the continued use of the well or drillhole:

a. The well water is contaminated with biological agents - bacteriological, viral or parasitic - and 3 attempts at batch chlorination fail to eliminate the problem,

b. The well (or drillhole) poses a hazard to health or safety, as determined by the Administrator,

c. The well (or drillhole) construction or well location does not comply with the minimum standards of this chapter,

d. The well (or drillhole) has been taken out of service or has not been used for 3 or more years and is not needed by the owner in the immediate future as a source of water for human consumption, sanitary purposes, commercial use or for stock watering. As an alternative, the owner may temporarily abandon the well according to sub(C), TEMPORARY ABANDONMENT REQUIREMENTS, below.

(2) The Department may require the owner to abandon a well or drillhole under the following conditions:

a. The well water is contaminated with a substance in exceedence of the drinking water standards specified in s. NR 812.06, or

b. The well was not constructed by the well owner or by a licensed well driller, or

c. The well has been temporarily abandoned for 2 or more years.

(3) A well driller or well constructor shall abandon a well or drillhole, which he or she constructed or reconstructed, under the following conditions, except when the Department approves the continued use of the well or drillhole:

a. The well construction or well location does not comply with the minimum standards of this chapter that were in effect at the time the well was constructed, or

b. The drillhole is an unsuccessful attempt to construct or reconstruct a well.

(4) The Department may require any person who has abandoned a well not in compliance with this section to return and take corrective action so that the well is abandoned by him or her in a complying manner.

**(B) REQUIREMENTS FOR WELLS REMOVED FROM SERVICE.**

Any well or drillhole removed from service shall be properly abandoned according to the criteria and procedures in this section except as exempted by s. NR 123.23 (3) (c) or by the Department. Any well or drillhole removed from service shall be properly abandoned prior to any demolition or construction work on the property. A well driller or well constructor who removes a well from service shall inform the well owner that the Department requires that any well removed from service be permanently abandoned according to the requirements of this section. A well driller or well constructor shall report any well he or she removes from service on the well construction report for any replacement well he or she constructs on the property.

**(C) TEMPORARY ABANDONMENT REQUIREMENTS.**

Any well to be temporarily abandoned shall meet the minimum requirements of this chapter and shall be able to produce a bacteriological safe water sample, if the well is potable. When a well is temporarily abandoned, the owner shall notify the County. To temporarily abandon a well, the top of the well casing pipe shall be sealed with a watertight cap threaded onto the top of the well casing pipe or drive pipe or with a steel plate welded watertight to the top of the well casing pipe. If the pump or well seal is watertight, the pump may be left in place.

**(D) WELL OR DRILLHOLE CASING PIPE.**

The well casing pipe or drillhole casing pipe shall be left in place when a well or drillhole is permanently abandoned, except under (1), (2), (3), (4) or (5) below, and only if the well or drillhole is sealed as the well casing pipe is pulled; and if any concrete or neat cement grout that settles in the drillhole is replaced.

(1) The well casing pipe may be removed from a dry drillhole and reinstalled in a well on the same property within 30 days of original drillhole construction,

(2) The well casing pipe may be removed from a well or drillhole as part of reconstruction ordered or requested by the Department. The well casing pipe may only be reinstalled on the same property, if the reconstruction takes place within 120 days of the original construction,

(3) The well casing pipe may be removed from a dewatering well or a drillhole. Such well casing pipe may only be reused for dewatering wells.

(4) The well casing pipe may be removed from a recently constructed well or drillhole and reused, if the well casing pipe is inspected and approved for reuse by a Department representative.

(5) The well casing pipe may be removed from a well or a drillhole, if the well or drillhole is completely filled with the abandonment material before the well casing pipe is pulled.

#### **(E) PRE-ABANDONMENT REQUIREMENTS.**

(1) All debris, pumps, piping, ungrouted liner pipe and any other obstruction, which can be presumed, or is known, to be in the well or drillhole, shall be removed, if possible before the well or drillhole is permanently abandoned.

(2) In a badly fractured or highly permeable geologic formation, sodium bentonite drilling mud may be circulated in the drillhole or in the well prior to commencement of permanent abandonment procedures.

(3) The sealing material to be used in permanently abandoning a well or drillhole between 2-1/2 inches and 30 inches in diameter shall be placed through a conductor (tremie) pipe or by means of a dump bailer except when approved chipped bentonite is used. Conductor (tremie) pipe used shall be any of the following:

a. Metal pipe, or

b. Rubber-covered hose reinforced with braided fiber or steel and rated for at least 300 psi, or

c. For use at depths less than 100 feet, thermoplastic pipe rated for at least 100 psi including:

1. Polyvinyl chloride (PVC)

2. Chlorinated polyvinyl chloride (CPVC),

3. Polyethylene (PE),

4. Polybutylene (PB), and

5. Acrylonitrile butadiene styrene (ABS).

(4) The bottom end of the conductor pipe shall be submerged in the sealing material at all times. A conductor pipe shall also be used for wells or drillholes greater than 30 inches in diameter, if water remains trapped above the sealing material as it is applied.

(5) The flow from a flowing well or drillhole shall be reduced as much as possible with a packer, or by extending the well casing pipe, or by other approved means, before the well is permanently abandoned.

(6) Abandonment of wells or drillholes with inadequate grouting or sealing of the annular space outside the well casing pipe shall be performed to ensure complete sealing of the annular space. Techniques are situation dependent and may include reaming a new annular space outside the well casing pipe, use of pressure grouting methods or perforation of the well casing pipe.

(7) The well casing pipe and abandonment material may be terminated as much as 3 feet below the ground surface or to a depth below any future building foundation at the time of permanent abandonment.

#### **7.11.14 APPEALS**

Appeal of a decision of an authorized agent on the behalf of the Administrator shall be made by written letter of appeal to the Administrator, who may uphold or modify the decision. Appeal of a decision of the Administrator shall be by written letter of appeal to the Planning and Zoning Director, who may uphold or modify the decision. If the decision of the Planning and Zoning Director is not satisfactory to the appellant, the Administrator shall place the appeal on the agenda of the County Planning and Zoning Committee and the appeal shall be given a due process proceeding in accord with s. 59.69(2)(e), Wis. Statutes. The Committee shall decide whether to uphold, uphold with modifications, or reverse the Administrator's decision based upon the terms and intent of this Ordinance and of relevant statutes and administrative rules. No appellate decision of the Committee shall have the effect of approving an existing or proposed condition that would violate this Ordinance or State law or administrative rule. Appeals that may only be approved by the granting of a variance to the requirements of ch. NR 812, Wis. Adm. Code, shall be referred to the Department pursuant to s. NR 845.09(11)(b), Wis. Adm. Code. Appellate decisions shall be made in writing and shall be provided to the appellant and shall be filed in the Planning and Zoning Department office.

#### **7.11.15 ADMINISTRATOR DIRECTIVES AND ORDERS**

(1) **Field Directive.** The Administrator, after investigation and a determination that a violation exists, may issue a written field directive. This field directive may consist of a handwritten note on an inspection report, or similar paper, identifying the violation that has occurred and assigning a date by which the violation must be corrected, and shall include the inspector's name, telephone number and office address.

(2) **Formal Directive.** A formal letter may be issued, which states: the violation, the ordinance (or administrative rule or statutory) section violated, the date the violation was noted, the name of the inspector who noted the violation, and the date by which the correction must be made.

(3) **Correction Order.** Upon discovery and after documentation of a violation, the Administrator may issue a corrective order. The Administrator may use a stepped enforcement procedure by issuing a directive before an order or may proceed directly to issuing a correction order. An order shall include the following:

- (a) The location of the violation (site).
- (b) The names of the parties involved such as the, owner, permittee, well constructor, or pump installer.
- (c) The section of this Ordinance and/or Wisconsin Administrative Code section(s) violated.
- (d) The date of inspection of the site where the violation occurred.
- (e) The name of the person who conducted the inspection which revealed the violation.
- (f) The date by which the correction must be completed.

- (g) The name of the person who must be contacted regarding subsequent inspection to verify compliance.
- (h) A statement that, if the order is not complied with, the Administrator will refer the violation to the County Corporation Counsel with a recommendation to seek injunctive relief and/or forfeitures from the Circuit Court of Portage County. Orders must be signed by the Administrator of the private water system ordinance.
- (i) Orders shall be served on the property owner by first class mail (with affidavit of mailing), certified mail, or, where appropriate, the Administrator may request the Portage County Sheriff to serve any particular order.
- (j) The Administrator shall report all orders, which have not resulted in compliance, to the County Corporation Counsel for enforcement.

### **7.11.16 ENFORCEMENT ACTIONS**

The provisions of this Ordinance shall be enforced under the direction of the County Board of Supervisors, through the County Planning and Zoning Committee, the Administrator, and County law enforcement officers.

(1) An enforcement action may be brought by the County Corporation Counsel against a person or persons for any of the following violations:

- (a) Failure to comply with any provision of this Ordinance.
- (b) Failure to comply with any directive or order issued by the Administrator.
- (c) Resisting, obstructing or interfering with actions of the Administrator, or an authorized assistant, undertaken pursuant to this Ordinance.

(2) The County Corporation Counsel may, for any violation, seek:

- (a) Injunctive relief, and/or,
- (b) Forfeitures of not less than fifty (\$50) dollars per day per violation, nor more than five hundred (\$500) dollars per day per violation, together with the costs of any enforcement action. Each day of violation shall constitute a separate offense. The court may utilize any lawful authority to compel enforcement of this Ordinance, including contempt.

(3) Any person who has the ability to pay any forfeiture entered against him or her under this Ordinance, but refuses to do so, may be confined in the County Jail until such forfeiture is paid, but in no event to exceed thirty (30) days. In determining whether an individual has the ability to pay a forfeiture imposed under this section, all items of income and all assets may be considered regardless of whether or not the income or assets are subject to garnishment, lien or attachment by judgment creditors under the laws of this State.

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