

## CHAPTER 5

### Floodplain-Wetland Code

#### **SEC. 8-5-1 STATUTORY AUTHORIZATION, CONCURRENT JURISDICTION, FINDING OF FACT, STATEMENT OF PURPOSE.**

- (a) **Statutory Authorization.** This Ordinance for floodplain-wetland protection is adopted pursuant to the authorization contained in Sections 61.35, 61.351, 62.23 and 87.30 of the Wis. Stats.
- (b) **Controlling Maps.**  
 The boundaries of all floodplain districts are designated as floodplains or A-Zones on the maps listed below and the revisions in the Village of Hales Corners Floodplain Appendix. Any change to the base flood elevations (BFE) in the Flood Insurance Study (FIS) or on the Flood Insurance Rate Map (FIRM) must be reviewed and approved by the DNR and FEMA before it is effective. No changes to regional flood elevations (RFE's) on non-FEMA maps shall be effective until approved by the DNR. These maps and revisions are on file at the Village Hall in the Village of Hales Corners. If more than one map or revision is referenced, the most restrictive information shall apply.
- (1) United States Geological Survey Quadrangle Maps.
  - (2) Wisconsin Wetland Inventory Maps stamped "Final" on February 22, 1989.
  - (3) Milwaukee County Flood Insurance Rate Map (FIRM), panel numbers (55079C0129E, 55079C0133E, 55079C0134E, 55079C0137E, 55079C0141E, 55079C0142E), dated September 26, 2008; with corresponding profiles that are based on the Milwaukee County Flood Insurance Study (FIS) dated (September, 2008), volume numbers (55079CV001A, 55079CV002A, 55079CV003A, 55079CV004A, 55079CV005A) as amended by a certain FEMA Letter of Map Revision (LOMR) dated December 14, 2009 (and effective on March 22, 2010) from FEMA Case No. 10-05-1009X (amending Panel No. 55079C0133E).
- (c) **Finding of Fact.** The uncontrolled development or use of the floodplain, rivers, streams or wetlands of the Village of Hales Corners, Wisconsin, adversely affects the public health, safety, convenience and general welfare and impairs the tax base of this Village.
- (d) **Statement of Purpose.** The purpose of these rules is to provide a uniform basis for the preparation, implementation and administration of sound floodplain-wetland regulations for all Hales Corners floodplain-wetlands to:
- (1) Protect the public health, safety, convenience and general welfare.
  - (2) Minimize expenditures of public monies for costly flood control projects by maintaining storm and flood water storage capacity.
  - (3) Minimize rescue and relief efforts, generally undertaken at the expense of the general public.
  - (4) Minimize business interruptions.
  - (5) Minimize damage to public facilities in the floodplain such as water mains, sewer lines, streets and bridges.

- (6) Minimize the occurrence of future flood blight areas in floodplains.
- (7) Discourage the victimization of unwary land and home buyers.
- (8) Prohibit certain uses detrimental to the floodplain-wetland area.
- (9) Prevent and control water pollution by preserving wetlands which filter or store sediments, nutrients, heavy metals or organic compounds that will otherwise drain into waters of the state.
- (10) Protect fish spawning grounds, fish, aquatic life and wildlife by preserving wetlands and other fish and aquatic habitat.
- (11) Prevent increases in regional flood heights which could increase damage during floods and which may result in conflicts or litigation between property owners.
- (12) Preserve shore cover and natural beauty by restricting the removal of natural shoreland cover and controlling shoreland-wetland excavation, filling and other earth moving activities.

#### **SEC. 8-5-2 GENERAL PROVISIONS.**

- (a) **Areas to be Regulated.** Areas regulated by this Ordinance include all lands within the corporate limits of the Village of Hales Corners, Wisconsin, that would be inundated by the "regional flood" or "base flood" defined in the "Definitions" Section 8-5-7 of this Chapter. Base flood elevations are derived from the flood profiles in the Flood Insurance Study. Regional flood elevations may be derived from other studies. Areas covered by the base flood are identified as A-Zones on the Flood Insurance Rate Map.
- (b) **District Boundaries.** The general floodplain-wetland district shall include: All lands lying within the A-Zones as shown on the Official Floodplain Zoning Map which is based on Flood Insurance Study Maps or Flood Hazard Boundary Maps showing the river(s) and its tributaries in Hales Corners, Wisconsin, prepared by the Federal Emergency Management Agency (FEMA) dated June 15, 1988, and approved by the Department of Natural Resources; and "Final" Wisconsin Wetland Inventory Maps for the Village of Hales Corners, prepared by the Wisconsin Department of Natural Resources (DNR), dated February 22, 1989. These boundaries may be amended following the procedure outlined in this Ordinance. Within this district, all uses not listed as "permitted uses" shall be prohibited.
  - (1) The floodplain-wetland boundary lines on the map shall be determined by the use of the scale appearing on the map. Where there is a conflict between the floodplain boundary illustrated on the map and actual field conditions, the dispute shall be settled according to Section 8-5-5(e), "mapping disputes" of this Ordinance.
  - (2) Compliance with the provisions of this Ordinance shall not be grounds for the removal of lands from the floodplain-wetland district unless; such lands are filled to a height of at least two (2) feet above the elevation of the "regional flood" for the particular area and are contiguous to other lands lying outside the floodplain district, approval has been granted by the DNR pursuant to this Ordinance, and, where required, an "official letter of map amendment" has been issued by the FEMA.

- (c) **Effect of Floodplain-Wetland District Regulations.** The regulations set forth in this Ordinance shall apply to all floodplain-wetlands mapped on the "official floodplain-wetland zoning map".
- (d) **Compliance.** No new use or change in use of any structure, land or water shall be located, extended, converted or structurally altered and no development as defined in this Ordinance shall commence without full compliance with the terms of this ordinance and other applicable regulations.
- (e) **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.
- (f) **Abrogation and Greater Restrictions.**
  - (1) This Ordinance supersedes provisions of any zoning ordinance relating to floodplain-wetlands. However, any underlying zoning shall remain in full force and effect to the extent that its provisions are more restrictive.
  - (2) It is not otherwise intended by this Ordinance to repeal, abrogate, or impair any existing deed restrictions; however, where this Ordinance imposes greater restrictions the provisions of this Ordinance shall prevail.
- (g) **Interpretation.** In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by Wis. Stats. and NR 116 & 117, Wis. Adm. Codes. If a provision of this Ordinance, required by Ch. NR 116, Wis. Adm. Code, is unclear, the provision shall be interpreted in light of the standards in effect on the date of the adoption of this Ordinance or in effect on the date of the most recent text amendment to this Ordinance.
- (h) **Warning and Disclaimer of Liability.** The degree of floodplain-wetland protection intended to be provided by this Ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Ordinance does not imply that areas outside floodplain-wetland zoning district boundaries or land uses permitted within each district will always be totally free from flooding or flood damages, nor shall this Ordinance create a liability on the part of or a cause of action against the Village of Hales Corners that may result from reliance on this Ordinance.
- (i) **General Development Standards.** The Village of Hales Corners shall review all permit applications to determine whether the proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads; be constructed with materials resistant to flood damage; be constructed by methods and practices that minimize flood

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damages; and be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Subdivisions shall be reviewed for compliance with the above standards. All subdivision proposals (including manufactured home parks) shall include regional flood elevation and floodway data for any development that meets the subdivision definition of this Ordinance.

(j) **Special Provisions Applicable to the General Floodplain-Wetland District.**

- (1) No developments in general floodplain-wetland areas shall materially affect the storage capacity of floodplain, based upon an equal degree of hydrologic encroachment (volume of the storage area which is lost). For the purpose of this subsection, "materially" is defined as any increase in discharge of the regional flood which causes a rise in the water surface profile of 0.01 foot. Such developments may be permitted only if amendments are made to this Ordinance pursuant to Section 8-5-6 herein; provided further that the total cumulative allowable increase in height of the regional flood for any given reach of a stream shall not exceed one (1) foot.
- (2) Utility facilities such as dams, flowage areas, transmission lines, pipelines, and water monitoring devices are permitted subject to regulations pursuant to Chapter 30, Wis. Stats., and applicable federal regulations.
- (3) Navigational and drainage aids such as channels, channel markers, buoys and other such devices are permitted, provided that prior to any alteration or relocation of a watercourse, the Village shall notify adjacent communities, the DNR and the FEMA, and require the applicant to secure necessary permits. The flood carrying capacity within the altered or relocated portion of any watercourse shall be maintained.
- (4) Other water related uses such as docks, piers, wharves, bridges, culverts, and river crossings are permitted subject to any pier or dockline regulations, or any other regulations that are required pursuant to Chapter 30, Wis. Stats., and applicable federal regulations.

(k) **Hydraulic and Hydrologic Analyses.**

- (1) Except as allowed in sub. (3) below, no floodplain development shall:
  - a. Obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or with other development, increasing regional flood height.
  - b. Increase regional flood height due to floodplain storage area lost, which equals or exceeds 0.01 foot.
- (2) The zoning administrator shall deny permits if it is determined the proposed development will obstruct flow or increase regional flood heights 0.01 foot or more, based on the officially adopted FIRM or other adopted map, unless provisions of sub. (3) are met.
- (3) Obstructions or increases equal to or greater than 0.01 foot may be permitted if amendments are made to this Ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with Section 8-5-6.

- (1) **Watercourse Alterations.** No land use permit to alter or relocate a watercourse in a

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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 flood carrying capacity of any altered or relocated watercourse shall be maintained. As soon as is practicable, but not later than six (6) months after the date of the watercourse alteration or relocation, the zoning administrator shall notify FEMA of the changes by submitting appropriate technical or scientific data in accordance with NFIP guidelines that shall be used to revise the FIRM, risk premium rates and floodplain management regulations as required.

(m) **Chapters 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 floodway lines, water surface profiles, BFE's established in the FIS, or other data from the officially adopted FIRM, or other floodplain zoning maps or the floodplain zoning ordinance are made according to Section 8-5-6.

**SEC. 8-5-3 GENERAL FLOODPLAIN-WETLAND DISTRICT.**

(a) **Applicability.** The provisions for this district shall apply to all identified floodplain-wetlands in the Village of Hales Corners, Wisconsin.

(b) **Description of District.** The general floodplain-wetland district shall include:

(1) All A-Zones shown on the Official Floodplain Zoning Map which is based on Flood Insurance Study Maps or Flood Hazard Boundary Maps showing the river(s) and its tributaries in Hales Corners, Wisconsin, prepared by the FEMA dated July 1978; and approved by the DNR.

(2) All wetlands which are five (5) acres or more in area and are shown on the "Final" Wetland Inventory Maps prepared by the DNR, dated February 22, 1989, that have been adopted and made a part of this Ordinance and which are:

a. Within 1,000 feet of the ordinary high water mark of Kelly Lake.

b. Within 300 feet of the ordinary high water mark of navigable rivers or streams or to the landward side of the floodplain, whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the U.S. Geological Survey Quadrangle Map. FEMA floodplain maps and any other subsequent floodplain studies shall be used to determine the extent of floodplain areas.

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

(1) Wetlands.

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

1. Hiking, fishing, trapping, hunting, swimming, snowmobiling and  
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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 cultivation of agricultural crops.
  4. The practice of silviculture including limited temporary water level stabilization measures which are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silvicultural activities if not corrected.
  5. The maintenance and repair of existing drainage systems where permissible under Chapter 30.20, Wis. Stats., to restore pre-existing levels of drainage, including the minimum amount of filling necessary to dispose of dredged spoil, provided that the filling is permissible under Chapter 30, Wis. Stats., and that dredged spoil is placed on existing spoil banks where possible.
  6. The installation and maintenance of sealed tiles for the purpose of draining lands outside the floodplain-wetland zoning district provided that such installation or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the floodplain-wetlands.
- b. Uses which are allowed upon the issuance of a land use permit and any additional permits as required under federal, state or local laws. All construction and maintenance must be done in a manner that will minimize the adverse effect upon the natural function of the wetland.
1. The construction and maintenance of walkways, observation decks and trail bridges built on pilings, including limited excavating and filling necessary for such construction or maintenance.
  2. The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.
  3. The construction and maintenance of roads which are necessary for the continuity of the municipal street system, the provision of essential utility and emergency services, or to provide access to permitted uses.
  4. The construction and maintenance of residential buildings provided that:
    - a) The building is used solely in conjunction with a use permitted in the floodplain-wetland district or for the raising of waterfowl, minnows or other wetland or aquatic animals.
    - b) The building cannot, as a practical matter, be located outside the wetland.
    - c) The building does not exceed 500 square feet in floor area.
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- d) Only limited filling and excavating necessary to provide structural support for the building is allowed.
  5. The establishment and development of public and private parks and

recreational areas, outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms, wildlife preserves and public boat launching ramps.

6. The construction and maintenance of electric and telephone transmission lines and water, gas and sewer lines, and related facilities.

(2) Non-Wetlands Within Floodplain.

- a. Agricultural uses, such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming and wild crop harvesting.
- b. Nonstructural, industrial, commercial uses, such as loading areas, parking areas, airport landing strips.
- c. Nonstructural private and public recreational uses, such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails.
- d. Uses or structures accessory to open space uses.
- e. Extraction of sand, gravel and/or other materials.
- f. Functionally water –dependent uses, such as marinas, boat rentals, docks, piers, wharves, dams, flowage area, culverts, navigational aids and river crossings of transmission lines, and pipelines that comply with Chs. 30, 31, Stats.
- g. Public utilities, streets, bridges and railroads that comply with Section 8-5-3(d)

- (3) All Other Lands. Permitted uses for lands lying within the jurisdiction of this ordinance, but being neither wetlands nor lands within the 100 year floodplain, shall be governed by the underlying zoning.

(d) **Standards for Development in the General Floodplain-Wetland District.**

- (1) All of the provisions of Section 8-5-2(j) shall apply hereto.
- (2) Applicants shall provide the following data to determine the effects of the proposal according to Section 8-5-2(k):
  - a. A cross-section elevation view of the proposal, perpendicular to the watercourse, showing if the proposed development will obstruct flow; or
  - b. An analysis calculating the effects of this proposal on regional flood height.
- (3) The zoning administrator shall deny the permit application if the project will increase flood elevations upstream or downstream 0.01 foot or more, based on the data submitted for sub. (2) above.
- (4) Structures which are accessory to permitted open space use may be permitted,  
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providing the structures:

- a. Are not designed for human habitation.
- b. Have a low flood-wetland damage potential.
- c. Are to be constructed and placed on the building site so as to increase flood

heights less than 0.01 foot and minimally obstruct the flow of flood- waters. Whenever possible, structures will be constructed with the longitudinal axis parallel to the direction of flow of floodwaters, and will be placed with their longitudinal axis approximately on the same line as those of adjoining structures.

- d. Are firmly anchored to prevent them from floating away and restricting bridge openings or other restricted sections of the stream or river.
  - e. Have all service facilities, such as electrical and heating equipment, at or above the flood protection elevations for the particular area.
- (5) Uses permitted by the DNR pursuant to Chapters 30 and 31, Wis. Stats., provided that the necessary permits are obtained and amendments approved by the Village, DNR, and FEMA to the official water surface profiles, floodplain zoning maps and floodplain-wetlands zoning ordinance, or "Final" Wetlands Inventory Map.
- (6) Public utilities, streets and bridges provided that:
- a. Adequate flood proofing measures are provided to the flood protection elevation.
  - b. Construction shall not cause any increase of 0.01 foot or greater in the height of the regional flood, except that reasonable increases up to one (1) foot may be approved if the amendment procedures and all conditions of Section 8-5-6(b) are met.
  - c. The Village, DNR and FEMA amend their water surface profiles, floodplain zoning maps and floodplain zoning ordinance to reflect any changes resulting for such construction.
  - d. The construction, as a practical matter, cannot be located outside the wetland and is designed and constructed to minimize adverse impacts on wetlands.
- (7) Fills or depositions of materials which do not adversely affect wetlands may be permitted provided that;
- a. The provisions of Section 8-5-2(j)(1) are met.
  - b. Fill or disposition of materials does not encroach between the ordinary high water mark on each bank of the stream unless a permit has been granted by the DNR pursuant to Chapter 30, Wis. Stats., and a permit pursuant to Section 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1334 has been issued, if applicable, and the other requirements of this section are met.
  - c. The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling and/or bulkheading sufficient to prevent erosion and leachate.
- (8) All other uses not listed herein as permitted are prohibited, included but not limited to:

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- a. Habitable structures, structures with high flood damage potential, or those not
- b. associated with permanent open-spaces uses;

- c. Storing materials that are buoyant flammable, explosive, injurious to property, water quality, or human, animal, plant, fish or other aquatic life;
- d. Uses not in harmony with or detrimental to uses permitted in the adjoining districts;
- e. Any private or public sewage system, except portable latrines that are moved prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of local ordinances and Ch. COMM 83, Wis. Admin. Code.
- f. 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. Admin. Code;
- g. Any solid or hazardous waste disposal sites;
- h. Any wastewater treatment ponds or facilities, except those permitted under s. NR 110.15(3)(b), Wis. Admin. Code;
- i. 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.

#### **SEC. 8-5-4 NONCONFORMING USES.**

(a) **General.** Insofar as the standards in this Section are not inconsistent with the provisions of Section 62.23(7)(h), Wis. Stats., they shall apply to all nonconforming uses. The existing lawful use of a structure or building or its accessory use which is not in conformity with the provisions of this Ordinance may be continued subject to the following conditions:

(1) No modifications or additions to a nonconforming use shall be permitted unless they are made in conformity with the provisions of this Section. For the purpose of this Section, the words "modification" and "addition" shall include, but not be limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing structure or accessory use. Ordinary maintenance repairs are not considered structural repairs, modifications or additions; such ordinary maintenance repairs include internal and external painting, decorating, paneling, and the replacement of doors, windows and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Ordinary maintenance repairs do not include any costs associated with the repair of a damaged structure. 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.

(2) If a nonconforming use is discontinued for twelve (12) consecutive months, it is no

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longer permitted and any future use of the structure or building shall conform with the appropriate provisions of this Ordinance.

(3) No modifications or additions shall be allowed to any existing structures which are not in compliance with permitted general floodplain standards or uses, unless such

modifications or additions meet all of the following criteria:

- a. The modifications or additions to a structure will not increase the amount of obstruction to flood flows pursuant to Section 8-5-2(j)(1) of this ordinance.
  - b. Any addition to a structure shall be flood proofed, pursuant to Section 8-5-5(g) by means other than the use of fill, to the flood protection elevation.
  - c. No structural repairs, modifications or additions to a structure, which exceed fifty percent (50%) of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming use. The costs for elevating a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this paragraph.
  - d. If any nonconforming structure is destroyed or is substantially damaged that it cannot be practically restored, it cannot be replaced, reconstructed or rebuilt unless permanently changed to a conforming use. For the purpose of this Subsection, restoration is deemed impractical where the total cost of such restoration would exceed fifty percent (50%) of the present equalized assessed value of said structure.
  - e. Mechanical and utility equipment must be elevated or floodproofed to or above the regional flood elevation.
  - f. It must not obstruct the flow of floodwaters or cause any increase in flood levels during the occurrence of the regional flood.
  - g. Its use must be limited to parking and/or limited storage.
  - h. If any nonconforming structure is damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building may be permitted in order to restore it after the nonflood disaster, provided that the nonconforming building will meet all of the requirements under 44 CFR Part 60, or under the regulations promulgated thereunder.
  - i. 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 8-5-3(d) of this Ordinance, flood resistant materials are used, and construction practices and floodproofing that comply with 8-5-5(g) of this Ordinance are used.
  - k. Has been granted a permit or variance which meets all ordinance requirements.
- (4) No new on-site sewage disposal systems, or additions to existing on-site sewage disposal systems, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in the floodplain area. Any replacement, repair or maintenance of an on-site sewage disposal system shall meet the applicable provisions of local ordinances and Wis. Adm. Code.
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- (5) No new well used to obtain water for ultimate human consumption, or modifications to an existing well, shall be allowed in the general floodplain area. Any replacement, repair or maintenance of a well shall meet the applicable provisions of local ordinances and Chapters NR 811 and NR 812, Wis. Adm. Code.
- (6) The municipality shall keep a record which lists all nonconforming uses and

nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent.

(b) **Floodfringe areas.**

- (1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the municipality, and the modification or addition shall be placed on fill or floodproofed to the flood protection elevation in compliance with the standards for that particular use in s. 8-5-3, except where s. 8-5-4(b)(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/Appeals, using the procedures established in s. 8-5-5, 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. 8-5-3(8).
- (3) If neither the provisions of par. (1) or (2) above can be met, one addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in the floodfringe, if the addition:
  - (a) Meets all other regulations and will be granted by permit or variance;
  - (b) Does not exceed 60 square feet in area; and
  - (c) In combination with other previous modifications or additions to the building, does not equal or exceed 50% of the present equalized assessed value of the building.

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- (4) 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 and ch. COMM 83, Wis. Adm. Code.
- (5) All new wells, or addition to, replacement, repair or maintenance of a well shall meet the

applicable provisions of this ordinance and ch. NR 811 and NR 812, Wis. Adm. Code.

#### **SEC. 8-5-5 ADMINISTRATION.**

(a) **Zoning Administrator.** The Building Inspector shall administer the provisions of this Ordinance. The building inspector, for the purposes of this Ordinance, shall be designated the Zoning Administrator. The Zoning Administrator shall exercise the following duties and powers:

- (1) Advise applicants as to the provisions of this Ordinance, assist them in preparing permit applications and assure that the regional flood elevation for the proposed development is shown on all permit applications.
- (2) Issue permits and inspect properties for compliance with this Ordinance and issue a Certificate of Compliance when appropriate.
- (3) Inspect all damaged floodplain structures and perform a substantial damage assessment to determine if substantial damage to the structures has occurred.
- (4) Keep the official records of all water surface profiles, floodplain-wetland zoning maps, floodplain-wetland zoning ordinances, nonconforming uses and changes thereto, permit applications, permits, appeals, variances and amendments related to the floodplain-wetland zoning ordinances.
- (5) Submit copies of any required data, variances, appeals, amendments, annual reports, and any other required information to the DNR. An annual summary showing only the number and types of zoning actions taken by the Village shall be submitted to that department by the Zoning Administrator. Copies of substantial damage assessments performed and all related correspondence concerning the assessments shall be submitted to the DNR.
- (6) Investigate, prepare reports and report violations of the floodplain-wetland zoning ordinance to the appropriate Village committee and to the municipal attorney, with copies to the appropriate regional office of the DNR.
- (7) Submit copies of map or text amendments and annual reports to the FEMA.
- (8) Maintain on file a list of all documentation of certified elevations.
- (9) Notify adjacent communities and the DNR prior to any alteration or relocation of a watercourse or wetland, and submit evidence of such notification to the FEMA.
- (10) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

(b) **Administrative Procedures.**

- (1) Land Use Permit. A land use permit shall be obtained from the Zoning Administrator before any new land use, change in use, or development as defined in Chapter 15 of this Ordinance, subject to the provisions of this Ordinance, may be initiated. An

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application for a land use permit shall be made to the Zoning Administrator upon forms furnished and shall include, for the purpose of proper enforcement of these regulations, the following data:

- a. Names and addresses of the applicant, property owner and contractor.
- b. Legal description of the property, type of proposed use and whether it is new

construction or a modification.

- c. A site plan drawn to scale containing the dimensions of the lot and locations of buildings from lot line, center line abutting highways, high-water mark of any abutting watercourse, location of all mapped wetlands, location and elevation of existing or future access roads, elevation of the lowest floor of proposed buildings and any fill using National Geodetic and Vertical Datum (NGVD), data sufficient to determine the regional flood elevation in NGVD at the location of the development, data to determine if the proposed development will cause obstruction to flow or an increase in regional flood height or discharge, and extent and elevation of floodplain boundaries.
  - d. All information concerning any private water or on site sewage disposal system to be installed, including a sketch showing surveyed location of wells, streams, lakes, buildings, private and septic tank systems within 100 feet of proposed sewage disposal site.
  - e. Specifications and dimensions for areas of proposed wetland alteration.
  - f. The applicant shall provide all survey data and computations required to show the effects of the project on flood heights, velocities and floodplain storage, for all subdivision proposals, as “subdivision” is defined in s. 236, Stats., and other proposed developments exceeding five (5) acres in area or where the estimated cost exceeds \$125,000. The applicant shall provide:
    - 1. An analysis of the effect of the development on the regional flood profile, velocity of flow and floodplain storage capacity;
    - 2. A map showing location and details of vehicular access to lands outside the floodplain; and
    - 3. A surface drainage plan showing how flood damage will be minimized. The estimated cost of the proposal shall include all structural development, landscaping, access and road development, utilities, and other pertinent items, but need not include land costs.
  - g. All permits issued under the authority of this Ordinance shall expire one (1) year after issuance.
- (2) Certificate of Compliance. No development as defined in this Chapter shall take place, no vacant land in the floodplain-wetland shall be occupied or used, and no building hereafter erected, altered or moved, shall be occupied until the applicant obtains a Certificate of Compliance from the Zoning Administrator. 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. The application for such certificate shall be concurrent with the application for a permit. If all Ordinance provisions are met, the certificate of compliance shall be issued within ten (10) days

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after written notification that the permitted work is completed. The Zoning Administrator shall require that the applicant submit a certification by a registered professional engineer or architect that all floodplain-wetland regulatory factors were accomplished in compliance with appropriate floodplain-wetland zoning provisions. The applicant shall submit such certification for all new construction and substantial improvements. Upon written request from the owner, the Zoning Administrator shall

issue a Certificate of Compliance for any building or premises existing at the time of the adoption of this Ordinance certifying, after inspection, the extent and type of use made of the building or premises and whether or not such use conforms to the provisions for this Ordinance.

- (3) Other Permits. It is the responsibility of the applicant to secure all other necessary permits from all appropriate federal, state and local agencies, including those required under Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (c) **Plan Commission.** The Plan Commission shall have the duties and powers to:
- (1) Oversee the functions of the office of the Zoning Administrator.
  - (2) Review and make recommendations to the Village Board on all proposed amendments to the floodplain-wetland zoning ordinances.
  - (3) Maintain a complete public record of all proceedings.
- (d) **Board of Appeals.** The powers of the Board of Appeals shall be pursuant to Chapter 15 of the Village Zoning Code and Section 62.23(7), Wis. Stats.
- (1) Appeals to the Board. Refer to Chapter 15 of the Village Zoning Code.
  - (2) Hearing Appeals. In addition to the procedures outlined in Chapter 15, the following procedures shall be used for appeals within a Floodplain-Wetland district.
    - a. Written notice shall be given to the Southeast Regional Headquarters of the DNR at least (10) days prior to hearings on proposed variances, conditional uses, and appeals for map or text amendments.
    - b. A copy of all decisions by the Board of Appeals shall be mailed to the appropriate regional office of the DNR within ten (10) days of the decision.
- (e) **Mapping Disputes.** The following procedure shall be used by the Zoning Board of Appeals in disputes of a floodplain zoning district boundary:
- (1) Floodplain-wetland district boundaries: when the location of the floodplain-wetland boundary is established by flood maps, wetland maps, or engineering studies pursuant to Section 8-5-3(b) of this Ordinance, the flood elevations or "flood profiles" for the point in question so related to actual ground elevations shall be the governing factor in locating the district boundary. If no elevation or profiles are available to the Board, any other available evidence may be examined.
  - (2) In all cases, the person contesting the location of the district boundary shall be given a reasonable opportunity to present their case to the Zoning Board of Appeals and if so chooses, submit technical evidence. The Board shall not allow deviations from the boundary line as mapped unless the evidence clearly and conclusively establishes that the mapped location of the line is incorrect, approval has been granted by the DNR, and an official letter of map amendment has been issued by the FEMA.

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- (f) **Variance.** Any deviation from the standards of this Ordinance, for which a permit has been denied by the Zoning Administrator, may be allowed only upon written request for a variance submitted to the Zoning Administrator, public hearing, and issuance of a variance by the

Board of Appeals. The Board may authorize in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special

conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship. A variance:

- (1) Shall be consistent with the spirit and intent of this floodplain-wetland zoning ordinance.
  - (2) Shall not permit any change in established flood elevations or profiles.
  - (3) Shall only be granted for lots that are less than one-half acre and are contiguous to existing structures constructed below the RFE.
  - (4) Shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of this Ordinance.
  - (5) Shall not be granted for a use that is common to a group of adjacent lots or premises. (In such case, the zoning ordinance would have to be amended through proper procedures.)
  - (6) Shall not be granted unless it is shown that the variance will not be contrary to the public interest or damaging to the rights of other persons or property values in the area.
  - (7) Shall not be granted for actions which require an amendment to the floodplain-wetland zoning ordinance.
  - (8) Shall not have the effect of allowing or expanding a use or structure which is prohibited in that zoning district by the floodplain-wetland zoning ordinance.
  - (9) Shall not be granted solely on the basis of economic gain or loss.
  - (10) Shall not be granted for a self-created hardship.
  - (11) Shall not grant, extend or increase any use prohibited in the zoning district.
  - (12) Shall not allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.
  - (13) When a floodplain variance is granted the Board shall notify the applicant in writing that it may increase flood insurance premiums and risks to life and property. A copy shall be maintained with the variance record.
- (g) **Flood Proofing.** Flood proofing measures such as the following shall be designated consistent with the flood protection elevation for the particular area as described in Section 8-5-8(xx) to withstand the flood velocities, forces and other factors associated with the flood protection elevation. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood proofing measures are adequately designed to protect to the flood protection elevation for the particular area. All flood proofing shall provide anchorage to resist flotation and lateral movement. Flood proofing shall insure that structural walls and floors are watertight to the flood protection elevation, and the interior remains completely dry during flooding without human intervention. Other flood proofing  
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measures may include:

- (1) Installation of watertight doors, bulkheads, and shutters.
- (2) Reinforcement of walls and floors to resist pressure.
- (3) Use of paint, membranes or mortars to reduce seepage of water through walls.
- (4) Addition of mass or weight to structures to prevent flotation.
- (5) Placement of essential utilities above the flood protection elevation.

- (6) Pump facilities and/or subsurface drainage systems for buildings to relieve external foundation wall and basement floor pressures and lower water levels in structures.
  - (7) Construction of water supply and waste treatment systems to prevent the entrance of floodwaters.
  - (8) Construction to resist rupture or collapse caused by water pressure or floating debris.
  - (9) Cutoff valves on sewer lines or the elimination of gravity flow basement drains.
- (h) **Public Information.**
- (1) Place marks on structures to show depth of inundation during regional flood.
  - (2) All maps, engineering data and regulations shall be available and widely distributed.
  - (3) All real estate transfers shall show what floodplain zoning district any real property is located in.

**SEC. 8-5-6 AMENDMENTS.**

- (a) **General.** The Village Board of the Village of Hales Corners, Wisconsin, may from time to time, alter, supplement or change the boundaries of use districts and the regulations contained in this Ordinance in the manner provided by law. Official amendments are required for any changes in water surface profiles, floodplain zoning maps or floodplain zoning ordinance. Actions which require an amendment include, but are not limited to, the following:
- (1) Any change in the boundary of the floodplain-wetland area.
  - (2) Settlement of conflicts between the water surface profiles and floodplain-wetland zoning maps, in accordance with Section 8-5-5(e) or this Ordinance.
  - (3) Any fill or encroachment that will cause a change equal to or greater than 0.01 foot in the water surface profiles of the regional flood.
  - (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) Any upgrading of floodplain-wetland zoning ordinances required by law.
  - (6) Amendments petitioned by any interested party in accordance with the provisions of Section 62.23 of the Wis. Stats.
  - (7) All channel relocations and changes to the maps to alter floodway lines or to remove an area from the floodway or the flood fringe that is based on a base flood elevation from a FIRM requires prior approval by FEMA.
  - (8) Rezoning Wetlands. Rezoning of a wetland shall require amendment of the "Final" Wisconsin Wetland Inventory Map. No rezoning shall be permitted when the result will have a significant adverse impact upon any of the following:

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- a. Storm and flood water storage capacity.
- b. Maintenance of dry season stream flow or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area or the flow of groundwater through a wetland.
- c. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters.
- d. Shoreland protection against soil erosion.

- e. Fish spawning, breeding, nursery or feeding grounds.
- f. Wildlife habitat.
- g. Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.

(b) **Duties of Zoning Administrator.** The Zoning Administrator shall:

- (1) Require the applicant to submit, at the time of application, two (2) copies of an aerial photograph, or a plan which accurately locates the floodplain-wetland proposal with respect to the floodplain-wetland district limits, channel of stream, existing floodplain developments, together with all pertinent information such as the nature of the proposal, legal description of the property, fill limits and elevations, wetland delineation, building flood elevations and flood proofing measures.
- (2) Require the applicant to furnish any of the following additional information as is deemed necessary by the DNR for evaluation of the effects of the proposal upon flood flows, wetlands and to determine the boundaries of the floodplain-wetland.
  - a. A typical valley cross-section showing the channel of the stream, the floodplain adjoining each side of the channel, cross-section area to be occupied by the proposed development, and high water information.
  - b. Plan (surface view) showing elevations or contours of the ground; pertinent structures, fill or storage elevations; size, location and spatial arrangement of all proposed and existing structures of the site, location and elevations of streets, water supply and sanitary facilities; soil types; and other pertinent information.
  - c. Profile showing the slope of the bottom of the channel or flow line of the stream.
  - d. Specifications for building construction and materials, flood proofing, filling, dredging, channel improvement, storage of materials, water supply, sanitary facilities, and wetland improvements.
- (3) Transmit one (1) copy of the application and additional information required to the DNR along with a written request to have that agency provide technical assistance to establish floodplain-wetland boundaries and, where applicable, provide regional flood elevation. Where the provisions of Section 8-5-2(j)(3) of this Ordinance apply, the applicant shall provide all required information and computations.

(c) **Amendment Procedure.**

- (1) Copies of any amendment proposed to the Village Board shall be referred to the Plan Commission which shall be forwarded by the secretary of the Plan Commission, together with the first notice of the public hearing thereon, to the main office and  

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appropriate regional office of the DNR within five (5) days of the submission to the Village, and to the FEMA. The amendment procedure shall comply with the provisions of Section 62.23, Wis. Stats. No amendment to the text or maps shall become effective until approved by the DNR, the FEMA, and, in the case of map amendments, until an official letter of map amendment has been issued by the FEMA.

- (2) Wetland Rezoning.
  - a. If the regional office of the DNR determines that a proposed rezoning may

have a significant adverse effect on the wetlands, the DNR shall so notify the Village of its determination either prior to or during the public hearing on the proposed amendment.

- b. A copy of the Village Plan Commission recommendation on a rezoning shall be mailed to the regional office of the DNR within ten (10) days of its submission to the Village Board. A copy of the Village Board decision shall be mailed within ten (10) days of the decision.
- c. If the DNR notifies the Village Plan Commission in writing that a proposed amendment may have a significant adverse impact upon any of the wetland criteria, that proposed amendment, if approved by the Village, shall not become effective until more than thirty (30) days have elapsed since written notice of the Village Board approval was mailed to the DNR. If, within the thirty (30) day period, the DNR notifies the Village Board that the DNR intends to adopt a superseding shoreland-wetland zoning ordinance for the Village under Chapter 62.231(6) or 61.351(6), Wis. Stats., the proposed amendment shall not become effective until that ordinance adoption procedure is completed or otherwise terminated. The record of the Village Board decision on the proposed amendment shall advise the petitioner of the provisions of this Section.

#### **SEC. 8-5-7 ENFORCEMENT AND PENALTIES**

Any violation of the provisions of this Ordinance by any person shall be unlawful and shall be referred to the municipal attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the municipality a penalty of not less than \$10.00 and not more than \$400.00, together with the costs of prosecution. Each day of continued violation shall constitute a separate offense. Every violation of this Ordinance is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of the municipality, the state, or any citizen thereof pursuant to s. 87.30, Stats.

#### **SEC. 8-5-8 DEFINITIONS.**

Unless specifically defined below, or in Chapter 16 of the Village Zoning Code, words or phrases used in this Chapter shall be interpreted so as to give them the same meaning as they have in common law and to give this ordinance its most reasonable application.

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- (a) **A-Zones.** A-zones are those areas shown on a community's "Official Floodplain Zoning Map" which could be inundated by the "base flood" or "regional flood" as defined herein. These areas may be numbered as A0, A1 to A30, A99, or be 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.
- (b) **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.
- (c) **Base Flood.** A flood having a one percent (1%) chance of being equaled or exceeded in any

- given year, as published by FEMA as part of a FIS and depicted on a FIRM.
- (d) **Base Flood Elevation.** An elevation equal to that which reflects the height of the base flood.
  - (e) **Basement.** Any enclosed area of a building having its floor sub-grade, i.e., below ground level, on all sides.
  - (f) **Building.** See Structure.
  - (g) **Bulkhead Line.** A geographic line along a reach of a navigable body of water that has been adopted by a municipal ordinance and approved by the DNR pursuant to Chapter 30.11, Wis. Stats., and which allows complete filling between the bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this Ordinance.
  - (h) **Certificate of Compliance.** Certification by the Zoning Administrator that a structure and/or use of development are in compliance with all provisions of this Ordinance.
  - (i) **Channels.** A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.
  - (j) **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.
  - (k) **Deck.** An unenclosed exterior structure that has no roof or sides, but has permeable floor which allows the infiltration of precipitation.
  - (l) **Department or DNR.** Wisconsin Department of Natural Resources.
  - (m) **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.
  - (n) **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.
  - (o) **Encroachment.** Any fill, structure, equipment, building, use or development in the floodway.

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- (p) **Existing Mobile Home Park or Mobile Home Subdivision.** A parcel (or contiguous parcels) of land divided into two (2) or more mobile home lots for rent or sale for which construction of facilities for serving the lot on which the mobile home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed before the effective date of floodplain management regulations adopted by a community.
- (q) **Expansion to Existing Mobile/Manufactured Home Park.** 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.

- (r) **FEMA.** Federal Emergency Management Agency.
- (s) **Filled Wetlands.** Any wetlands which were filled prior to the date on which the Village receives final wetland inventory maps from the DNR in a manner which offsets their characteristics as wetlands and not subject to this Ordinance.
- (t) **Flood or Flooding.** A general or temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters; or the unusual and rapid accumulation or runoff of surface waters from any source; or 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.
- (u) **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.
- (v) **Flood Fringe.** That portion of the floodplain outside of the floodway which is covered by floodwaters during the regional flood and associated with standing water rather than flowing water.
- (w) **Flood Hazard Boundary Map.** A map prepared by the FEMA, designating areas of special flood hazard within a given community. Flood hazard areas are designated as unnumbered A-Zones and do not contain floodway lines or regional flood elevations. Said map forms the basis for both the regulatory and/or the insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.
- (x) **Flood Insurance Rate Map.** A map of a community on which the Federal Insurance Administration has delineated both special flood hazard areas (the floodplain) and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.
- (y) **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  
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Insurance Program, form both the regulatory and the insurance aspects of the National Flood Insurance Program.

- (z) **Flood Profile.** A graph or longitudinal profile showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.
- (aa) **Flood Proofing.** Any combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the purpose of reducing or eliminating flood damage to properties, water and sanitary facilities, structures and contents of buildings in flood hazard areas.
- (bb) **Flood Protection Elevation.** An elevation of two (2) feet of freeboard above the water surface profile designated for the regional flood.

- (cc) **Flood Storage.** Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.
- (dd) **Floodplain, General.** The land which has been or may be hereafter covered by flood water during the regional flood. It includes the floodway and the flood fringe, and may include other designated floodplain areas for regulatory purposes.
- (ee) **Floodplain Island.** A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.
- (ff) **Floodplain Management.** Policy and procedures to insure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.
- (gg) **Floodway.** The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.
- (hh) **Freeboard.** A factor of safety usually expressed in terms of a certain amount of feet above calculated flood level. Freeboard compensates for many unknown factors that contribute to flood heights greater than the height calculated. These unknown factors include, but are not limited to, ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of urbanization on the hydrology of the watershed, loss of flood storage areas due to development and aggradation of the river or stream bed.
- (ii) **Habitable Structure.** Any structure or portion thereof used or designed for human habitation.
- (jj) **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.
- (kk) **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.
- (ll) **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

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a registered historic district; 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.

- (mm) **Increase in Regional Flood Height.** A calculate upward rise in the regional flood elevation, equal to or greater than 0.01 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.
- (nn) **Land Use.** Any use of land and water or development as defined in Section 8-16-1(a)(28) of the Village Zoning Code.

- (oo) **Mobile/Manufactured Home.** A structure transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. For the purpose of this Ordinance, it does not include recreational vehicles or travel trailers.
- (pp) **Mobile Recreational Vehicle.** A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as a 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.”
- (qq) **Municipality or Municipal.** The county, city or village governmental units enacting, administering and enforcing this zoning ordinance.
- (rr) **National Geodetic Vertical Datum or NGVD.** Elevations referenced to mean sea level datum, 1929 adjustment.
- (ss) **Navigable Waters.** Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under section 144.26(2)(d), Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under Sections 61.351 or 62.221, Wis. Stats., and Chapter NR 117, Wis. Adm. Code, do not apply to lands adjacent to farm drainage ditches if:
  - (1) Such lands are not adjacent to a natural navigable stream or river.
  - (2) Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching.
  - (3) Such lands are maintained in nonstructural agricultural use.
- (tt) **New Construction.** For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by this community and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the start of construction commenced on or after the
 

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- effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.
- (uu) **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.
- (vv) **Nonconforming Use.** An existing lawful use of a structure, building or accessory use which is not in conformity with the provisions of the floodplain zoning ordinance for the area of the floodplain which it occupies.
- (ww) **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.
- (xx) **Official Floodplain Zoning Map.** That map, adopted and made part of this Ordinance,

which has been approved by the DNR and the FEMA, and which delineates those areas which would be inundated by the base or regional flood, including but not limited to: numbered and unnumbered A Zones. This map may be a "Flood Hazard Boundary Map", "Flood Insurance Study Map" or approved community floodplain map.

- (yy) **Official Letter of Map Amendment.** Official notification from the FEMA that a Flood Hazard Boundary Map or Flood Insurance Study Map has been amended.
- (zz) **Open Space Use.** Those uses having a relatively low flood damage potential and not involving structures.
- (aaa) **Ordinary High Water Mark.** The point on the bank or shore up to which the present 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.
- (bbb) **Person.** An individual or group of individuals, corporation, partnership, association, municipality or state agency.
- (ccc) **Private Sewage System.** A sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Commerce, 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 structure.
- (ddd) **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.
- (eee) **Reasonably Safe from Flooding.** Means base floodwaters will not inundate the land or damage structures to be removed from the special flood hazard area and that any subsurface waters related to the base flood will not damage existing or proposed buildings.
- (fff) **Regional Flood.** A flood determined to be representative of large floods shown to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics. The flood frequency of the regional flood is once in every 100 years; this means that in any given year there is a one percent (1%) chance that the regional flood may occur or be exceeded, and if depicted on the FIRM, the RFE is equivalent to the BFE.

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- (ggg) **Shorelands.** Lands lying within 1,000 feet from the ordinary high water mark of a lake, pond or flowage, and 300 feet from the ordinary high water mark of a river or stream or to the landward side of the floodplain, whichever distance is greater.
- (hhh) **Start of Construction.** The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start date 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 nt 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.

- (iii) **Storage Capacity of a Floodplain.** The volume of space above an area of floodplain land that can be occupied by flood water or a given storage at a given time, regardless of whether the water is moving.
- (jjj) **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.
- (kkk) **Subdivision.** Has the meaning given in s. 236.02(12). Wis. Stats.
- (lll) **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.
- (mmm) **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.
- (nnn) **Variance.** An authorization by the Board of Appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance.
- (ooo) **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.
- (ppp) **Watershed.** The entire region contributing runoff or surface water to a watercourse or body of water.
- (qqq) **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

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flow. A water surface profile of the regional flood is used in regulating floodplain areas.

- (rrr) **Well.** An excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.
- (sss) **Wetland Alteration.** Any filling, flooding, draining, dredging, ditching, tilling, excavation, temporary water level stabilization measures or dike and dam construction in a wetland area.
- (ttt) **Wetland Maps.** That map, adopted and made a part of this Ordinance, which has been approved by the DNR and stamped "Final" on February 22, 1989. Only those wetlands lying within the 100 year floodplain are controlled by this Ordinance.
- (uuu) **Wetlands.** Those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.