

ARTICLE V: NATURAL RESOURCE PROTECTION REGULATIONS

Section 98-501 Purpose

The purpose of this Article is to set forth the requirements for the mandatory protection of natural resources and permanently protected green space areas within the jurisdiction of this Chapter (see Section 98-009). The provisions of this Article interact closely with the provisions of Section 98-204 (Uses Permitted in Other Permanently Protected Green Space Areas), Subsection 98-206(10) (Natural Resource Disruption and Required Mitigation Standards), Section 98-303 (Required Natural Resources Site Evaluation), and Sections 98-304 and 98-305 which provide residential and nonresidential development standards. Section 98-306 provides a complete overview of the interrelationship between the above-listed Sections. In part, the provisions of this Article are designed to ensure the implementation of the City of Lake Geneva Comprehensive Master Plan, the environmental protection element of the Southeastern Wisconsin Regional Planning Commission's (SEWRPC's) Environmental Corridor Protection Program, and State of Wisconsin Statutes 62.231 and 87.30.

Section 98-502 How to Use this Article

This Article contains the standards which govern the protection, disturbance, and mitigation of disruption of all natural resource and other permanently protected green space areas. The provisions of this Article are intended to supplement those of the City of Lake Geneva, Walworth County, the State of Wisconsin, and the Federal Government of the United States which pertain to natural resource protection. Prior to using the provisions of this Article to determine the permitted disruption of such areas, the requirements provided below should be reviewed. This Article recognizes the important and diverse benefits which natural resource features provide in terms of protecting the health, safety, and general welfare of the community. Each of the following sections is oriented to each natural resource type, and is designed to accomplish several objectives:

- (1) First, a definition of the natural resource is provided.
- (2) Second, the specific purposes of the protective regulations governing each natural resource type are provided.
- (3) Third, the required method of identifying and determining the boundaries of the natural resource area is given.
- (4) Fourth, mandatory protection requirements are identified.

NOTE: Protection requirements for specific land uses and natural resource types designed to minimize disruption of natural resource functions are presented in Subsection 98-206(10).

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(1) General Standards Applicable to all Floodplain Districts

- (a) No development, except as provided in (b), below, shall be allowed in a floodplain areas which will:
 1. Cause an obstruction to flow, defined as any development which physically blocks conveyance of floodwaters by itself or in conjunction with future similar development causing an increase in regional flood height; or
 2. Cause an increase in regional flood height due to floodplain storage area lost which is equal or exceeding 0.01 foot.

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- (b) Obstructions or increase equal or greater than 0.01 foot may only be permitted if amendments are made to this ordinance, the official floodplain zoning maps, including floodway lines and water surface profiles, in accordance with Section 98-903, and only if the total cumulative effect of the proposed development will not increase the height of the regional flood more than 1.0 foot for the affected hydraulic reach of the stream unless a waiver is secured from the Federal Emergency Management Agency (FEMA) for the 1.0 foot maximum increase.
- (c) The Zoning Administrator shall deny permits where it is determined the proposed development will cause an obstruction to flow increase in regional flood height of 0.01 foot or greater.
- (2) **Floodway Overlay Zoning District (FW):** This District is intended to be used to protect people and property from flood damage by prohibiting the erection of structures that would impede the flow of water during periodic flooding. Permitting such use of the floodway would increase damages in the broader floodplain by increasing flood stages. In delineating the FW District, the effects of development within the associated flood fringe shall be computed. No increase in flood stages shall be permitted that is equal to or greater than 0.01 foot unless the City of Lake Geneva has made notification to all affected units of government and made appropriate legal arrangements with all property owners affected by the stage increase, and until all such affected units of government have amended their water surface profiles and floodland zoning maps to reflect the increased flood elevations. No floodway district changes shall be permitted where the cumulative effect of changes increase flood stages by more than 1.0 foot, unless a waiver is obtained from the Federal Emergency Management Agency. In addition to floodways delineated by detailed engineering studies, all "unnumbered A zones" shall be placed in the FW district.
- (a) **Permitted Uses in the FW District**
1. Drainage and movement of water.
 2. Navigation.
 3. Stream Bank Protection.
 4. Water Measurement and Control Facilities.
 5. Any of the following uses are permitted provided that they are permitted uses in the underlying base use district, and further provided that such use shall not involve the erecting or placing of a structure.
 - a. Grazing.
 - b. Horticulture.
 - c. Open Parking and Loading Areas provided that such uses shall not be subject to inundation depths greater than two (2) feet or flood velocities greater than two (2) feet per second.
 - d. Open Markets.
 - e. Open Recreational Uses, such as parks, sport fields, beaches, bathing, hunting, fishing, rinks, golf courses, and driving ranges.
 - f. Outdoor Plant Nurseries.
 - g. Pasturing.

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- h. Sod Farms.
- i. Truck Farming.
- j. Utility poles, towers, and underground conduit for transmitting electricity, telephone, cable television, natural gas, and similar products and services.
- k. Viticulture (grape growing).
- l. Wildlife Preserves.

(b) Conditional Uses in the FW District

1. Open space and related uses for the following uses provided that the applicant shows that such use or improvement will not impede drainage, will not cause ponding, will not obstruct the floodway, will not increase flood flow velocities, will not increase the flood stage, and will not retard the movement of floodwaters. When permitted, all structures shall be floodproofed to the flood protection elevation and constructed so as not to catch or collect debris nor be damaged by floodwaters. All structures shall not be for human habitation. All floodproofed structures shall be securely anchored to protect them from larger floods. All structures shall have a low flood damage potential. Certification of floodproofing shall be made to the Zoning Administrator and shall consist of a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the flood velocities, forces, depths, and other factors associated with the regional flood. All service facilities shall be elevated to the flood protection elevation. the only structures allowed are those associated with a permitted open space use, or are functionally de-pendent on a waterfront location, or are classified as historic structures.
 - a. Navigational structures.
 - b. Public water measuring and control facilities.
 - c. Bridges and approaches.
 - d. Marinas.
 - e. Filling as authorized by the Wisconsin DNR to permit establishment of approved bulkhead lines.
 - f. Other open space uses consistent with the purpose and intent of the district and compatible with uses in adjacent districts, not including structures.
2. Accessory structures provided that all structures, when permitted, are not designed for human occupation, have a low flood damage potential, are constricted and placed to cause an increase of less than 0.01 foot in height and provide minimum obstruction to flood flows (whenever possible, accessory structures shall be placed with their longitudinal axis parallel to the flow of floodwaters), are firmly anchored to prevent them from floating away and restricting bridge openings, and have all service facilities (such as electrical and heating equipment) at an elevation at least two (2) feet above the regional flood. Certification of floodproofing shall be made to the Zoning Administrator and shall consist of a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the flood velocities, forces, depths, and other factors associated with the regional flood.

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- (c) **Structures Designed for Human Habitation Prohibited.** Lands lying within the floodway overlay district shall not be used for structures designed for human habitation, associated with high flood damage potential, or not associated with permanent open-space uses.
- (d) **Dumping and Filling Prohibited.** Lands lying within the floodway overlay district shall not be used for dumping or be filled except as authorized to permit establishment of approved bulkhead lines or to accommodate bridge approaches. Normal earth grading activities to permit utilization of the lands for open space, outdoor recreation, yard, parking, and similar uses are permitted.
- (e) **Dangerous Materials Storage Prohibited.** Lands lying within the floodway overlay district shall not be used for the storage of materials that are buoyant, flammable, explosive, or injurious to property, water quality, human, animal, or plant, fish or other aquatic life.
- (f) **Incompatible Use Prohibited.** Lands lying within the floodway overlay district shall not be used for any solid or hazardous waste disposal site or onsite soil absorption sanitary sewerage system site, or the construction of any well which is used to obtain water for ultimate human consumption. Sewage treatment plants and treatment ponds shall not be constructed in the floodway district.
- (g) **Maintenance of Drainageways.** No development in the floodway overlay district shall adversely effect the channels, floodways, or shorelands of Lake Geneva, White River, Lake Como, Como Creek, Nippersink Creek, any tributary thereto, drainage ditches, or other lands lying outside the floodlands.
- (h) **Mobile Homes Prohibited.** No mobile home, mobile home park, or trailer camp shall be placed or moved onto lands lying in the FW floodway overlay district.
- (i) **Annexations Containing Floodlands.** These shall be governed by the provisions of the Walworth County Floodplain Zoning Ordinance until such time that the Wisconsin Department of Natural Resources (DNR) certifies that amendments to the City of Lake Geneva Zoning Ordinance meet the requirements of Subchapter NR 116 of the Wisconsin Administrative Code.
- (j) **Notice to DNR, when required.** The Plan Commission shall transmit a copy of each application for a conditional use permit in the FW, FP, and FF floodland districts, and the shoreland portion of the shoreland-wetland overlay district to the Wisconsin Department of Natural Resources (DNR) for review and comment at least ten (10) days prior to the public hearing. Final action on the application shall not be taken for thirty (30) days or until the DNR has made its recommendation, whichever comes first. A copy of all decisions granting conditional uses in the floodland districts and the shoreland portion of the shoreland-wetland overlay district shall be transmitted to the DNR within ten (10) days of the effective date of such decision.
- (k) **Floodland District Boundary.** See Section 98-107.
- (l) **Floodland District Boundary Changes Limited.** See Section 98-903(9).
- (m) **Notice of Variance Application to the DNR.** See Section 98-910(9).
- (n) **Mapping Disputes.** See Section 98-934(8).

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(3) **Floodplain Overlay Zoning District (FP):** This District is intended to preserve essentially open space and natural uses lands which are unsuitable for intensive urban development purposes due to poor natural soil conditions and periodic flood inundations. The proper regulation of these areas will serve to maintain and improve water quality, prevent flood damage, protect wildlife habitat, and prohibit the location of structures on soils which are generally not suitable for such use. In delineating the FP district, considerations shall be given to the maintenance of flood storage capacity and preventing significant increases in the flood discharges identified in the City's Flood Insurance Study.

(a) **Permitted Uses in the FP District**

1. Drainage and movement of water
2. Navigation
3. Stream Bank Protection
4. Water Measurement and Control Facilities
5. Any of the following uses are permitted provided that they are permitted uses in the underlying base use district, and further provided that such use shall not involve the erecting or placing of a structure.
 - a. Grazing.
 - b. Horticulture.
 - c. Open Parking and Loading Areas provided that such uses shall not be subject to inundation depths greater than two (2) feet or flood greater than two (2) feet per second.
 - d. Open Markets.
 - e. Open recreational Uses, such as parks, sport fields, beaches, bathing, hunting, fishing, rinks, golf courses, and driving ranges.
 - f. Outdoor Plant Nurseries.
 - g. Pasturing.
 - h. Sod Farms.
 - i. Truck Farming.
 - j. Utility poles, towers, and underground conduit for transmitting electricity, telephone, cable television, natural gas, and similar products and services.
 - k. Viticulture (grape growing).
 - l. Wildlife Preserves.

(b) **Conditional Uses in the FP District**

1. Open space and related uses for the following uses provided that the applicant shows that such use or improvement will not impede drainage, will not cause ponding, will not obstruct the floodway, will not increase flood flow velocities, will not increase the flood stage, and will not retard the movement of floodwaters. When permitted, all structures shall be floodproofed to the flood protection elevation and constructed so as not to catch or collect debris nor be damaged by floodwaters. All structures shall not be for human habitation. All floodproofed structures shall be securely anchored to protect

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- them from larger floods. All structures shall have a low flood damage potential. Certification of floodproofing shall be made to the Zoning Administrator and shall consist of a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the flood velocities, forces, depths, and other factors associated with the regional flood. All service facilities shall be elevated to the flood protection elevation. the only structures allowed are those associated with a permitted open space use, or are functionally de-pendent on a waterfront location, or are classified as historic structures.
- a. Navigational structures.
 - b. Public water measuring and control facilities.
 - c. Bridges and approaches.
 - d. Marinas.
 - e. Filling as authorized by the Wisconsin Department of Natural Resources to permit the establishment of approved bulkhead lines.
 - f. Other open space uses consistent with the purpose and intent of the district and consistent with uses in adjacent districts, not including structures.
2. Accessory structures provided that all structures, when permitted, are not designed for human occupancy, have a low flood damage potential, are constructed and placed to cause an increase of less than 0.01 foot in height and provide minimum obstruction to flood flow (whenever possible, accessory structures shall be placed with their longitudinal axis parallel to the flow of floodwaters), are firmly anchored to prevent them from floating away and restricting bridge openings, and have all service facilities (such as electrical and heating equipment) at an elevation at least two (2) feet above the regional flood. Certification of floodproofing shall be made to the Zoning Administrator and shall consist of a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the flood velocities, forces, depths, and other factors associated with the regional flood.
- (c) **Structures Designed for Human Habitation Prohibited.** Lands lying with the floodway overlay district shall not be used for structures designed for human habitation, associated with high flood damage potential, or not associated with permanent open-space uses.
- (d) **Dumping and Filling Prohibited.** Lands lying within the floodway overlay district shall not be used for dumping or be filled except as authorized to permit establishment of approved bulkhead lines or to accommodate bridge approaches. Normal earth grading activities to permit utilization of the lands for open space, outdoor recreation, yard, parking, and similar uses are permitted.
- (e) **Dangerous Materials Storage Prohibited.** Lands lying within the floodway overlay district shall not be used for the storage of materials that are buoyant, flammable, explosive, or injurious to property, water quality, human, animal, or plant, fish or other aquatic life.
- (f) **Incompatible Use Prohibited.** Lands lying within the floodway overlay district shall not be used for any solid or hazardous waste disposal site or onsite soil absorption sanitary sewerage system site, or the construction of any well which is used to obtain water for ultimate human consumption. Sewage treatment plants and treatment ponds shall not be constructed in the floodway district.

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- (g) **Maintenance of Drainageways.** No development in the floodway overlay district shall adversely effect the channels, floodways, or shorelands of Lake Geneva, White River, Lake Como, Como Creek, Nippersink Creek, any tributary thereto, drainage ditches, or other lands lying outside the floodlands.
- (h) **Mobile Homes Prohibited.** No mobile home, mobile home park, or trailer camp shall be placed or moved onto lands lying in the FW floodway overlay district.
- (i) **Annexations Containing Floodlands.** These shall be governed by the provisions of the Walworth County Floodplain Zoning Ordinance until such time that the Wisconsin Department of Natural Resources (DNR) certifies that amendments to the City of Lake Geneva Zoning Ordinance meet the requirements of Subchapter NR 116 of the Wisconsin Administrative Code.
- (j) **Notice to DNR, when required.** The Plan Commission shall transmit a copy of each application for a conditional use permit in the FW, FP, and FF floodland districts, and the shoreland portion of the shoreland-wetland overlay district to the Wisconsin Department of Natural Resources (DNR) for review and comment at least ten (10) days prior to the public hearing. Final action on the application shall not be taken for thirty (30) days or until the DNR has made its recommendation, whichever comes first. A copy of all decisions granting conditional uses in the floodland districts and the shoreland portion of the shoreland-wetland overlay district shall be transmitted to the DNR within ten (10) days of the effective date of such decision.
- (k) **Floodland District Boundary.** See Section 98-107.
- (l) **Floodland District Boundary Changes Limited.** See Section 98-903(9).
- (m) **Notice of Variance Application to the DNR.** See Section 98-910(9).
- (n) **Mapping Disputes.** See Section 98-934(8).
- (4) **Floodfringe Overlay Zoning District (FF):** This District is intended to provide for and encourage the most appropriate use of land and water in areas subject to periodic flooding and to minimize flood damage to people and property.
- (a) **Permitted Uses in the FF District**
1. Any use of land, except development involving structures, that is permitted in the underlying base use district. Examples of such use would be croplands in an agricultural district; required yards in a residential district; or parking or loading areas in a commercial or industrial district, provided that inundation depths for parking and loading areas do not exceed two feet or that they are not subject to flood velocities greater than two feet per second upon the occurrence of a regional flood.
- (b) **Conditional Uses in the FF District**
1. Residential and commercial structures, provided that the structure is permitted in the underlying base use district, and provided that such floodplain fringe areas shall be filled to an elevation at least two feet above the elevation of the regional flood. Such fill shall extend for at least 15 feet beyond the limits of the structure placed thereon. The finished surface of the lowest floor (excluding basement or crawlway) shall be constructed or placed at an elevation that is at least two feet above the elevation of the regional flood. Basement or crawlway floors may be placed at the regional flood elevation provided that the basement or crawlway is floodproofed to the flood protection elevation. All structures shall be provided with dryland access to lands

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- outside the floodplain. Where existing streets or sewer lines are at elevations which make dryland access impractical, the City may permit development where access roads are at or below the regional flood stage, provided that the City has written assurance from appropriate police and fire departments, and emergency service agencies, that rescue and relief service will be provided to properties in the area by wheeled vehicles during a flood event--or--the City has an adopted natural disaster plan concurred in by the Wisconsin Division of Emergency Government and approved by the Wisconsin DNR. Residential, or commercial structure placed on fill may be removed from the FF District provided that the fill is contiguous to lands lying outside of the floodlands, and further provided that the property owner, or his agent, has complied with all the requirements for amending the zoning map as set forth in this Code.
2. Industrial Structures provided that the structure is permitted in the underlying district and the fill requirements and dryland access requirements for residential structures in the FF District are complied with. However, when the intent and purpose of this Ordinance cannot be fulfilled by filling the floodplain fringe due to existing and committed development, and when the Common Council, upon recommendation of the City Plan Commission, has made a finding to this effect, all new structures and additions to existing structures in the FF District shall be floodproofed to a point two feet above the elevation of the regional flood. All floodproofed structures shall be securely anchored to protect them from larger floods. Certification of floodproofing shall be made to the Zoning Administrator and consist of a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the flood velocities, forces, depths, and other factors associated with the regional flood level for the particular stream reach, structures placed on fill may be removed from the FF District provided that the fill is contiguous to lands lying outside of the floodlands, and provided that the property owner, or his agent, has complied with all the requirements for amending the zoning map as see forth in this Code.
 3. Accessory structures provided that all structures, when permitted, are not designed for human occupancy, have a low flood damage potential, are constructed and placed to provide minimum obstruction to flood flows (whenever possible, accessory structures shall be placed with their longitudinal axis parallel to the flow of floodwaters), are firmly anchored to prevent them from floating away and restricting bridge openings, and have all service facilities (such as electrical and heating equipment) at an elevation at least two feet above the regional flood. Certification of floodproofing shall be made to the Zoning Administrator and shall consist of a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the flood velocities, forces, depths, and other factors associated with the regional flood.
 4. Municipal water supply and sanitary sewerage systems provided the system is floodproofed to an elevation of at least two feet above the regional flood elevation, and is designed to eliminate or minimize infiltration of floodwaters into the system. All floodproofed utilities shall be anchored to prevent flotation. Certification of floodproofing shall be made to the Zoning Administrator and shall consist of a plan or document certified by a registered professional engineer that floodproofing measures are consistent with the flood velocities, forces, depths, and other factors associated with the regional flood level for the particular stream reach.

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5. Filling to remove lands from the FF District provided that such fill shall be to an elevation at least two feet above the elevation of the regional flood and further provided that such lands are contiguous to lands lying outside of the floodlands. No such FF District shall be removed from the Supplementary Floodland Zoning Map until the filling is complete and until the property owner, or his agent, has complied with all the requirements for amending the zoning map as set forth in this Code.
- (c) **Dumping and Filling Prohibited.** Lands lying within the floodway overlay district shall not be used for dumping or be filled except as authorized to permit establishment of approved bulkhead lines or to accommodate bridge approaches. Normal earth grading activities to permit utilization of the lands for open space, outdoor recreation, yard, parking, and similar uses are permitted.
- (d) **Dangerous Materials Storage Prohibited.** Lands lying within the floodway overlay district shall not be used for the storage of materials that are buoyant, flammable, explosive, or injurious to property, water quality, human, animal, or plant, fish or other aquatic life.
- (e) **Incompatible Use Prohibited.** Lands lying within the floodway overlay district shall not be used for any solid or hazardous waste disposal site or onsite soil absorption sanitary sewerage system site, or the construction of any well which is used to obtain water for ultimate human consumption. Sewage treatment plants and treatment ponds shall not be constructed in the floodway district.
- (f) **Maintenance of Drainageways.** No development in the floodway overlay district shall adversely effect the channels, floodways, or shorelands of Lake Geneva, White River, Lake Como, Como Creek, Nippersink Creek, any tributary thereto, drainage ditches, or other lands lying outside the floodlands.
- (g) **Mobile Homes Prohibited.** No mobile home, mobile home park, or trailer camp shall be placed or moved onto lands lying in the FW floodway overlay district.
- (h) **Annexations Containing Floodlands.** These shall be governed by the provisions of the Walworth County Floodplain Zoning Ordinance until such time that the Wisconsin Department of Natural Resources (DNR) certifies that amendments to the City of Lake Geneva Zoning Ordinance meet the requirements of Subchapter NR 116 of the Wisconsin Administrative Code.
- (i) **Notice to DNR, when required.** The Plan Commission shall transmit a copy of each application for a conditional use permit in the FW, FP, and FF floodland districts, and the shoreland portion of the shoreland-wetland overlay district to the Wisconsin Department of Natural Resources (DNR) for review and comment at least ten (10) days prior to the public hearing. Final action on the application shall not be taken for thirty (30) days or until the DNR has made its recommendation, whichever comes first. A copy of all decisions granting conditional uses in the floodland districts and the shoreland portion of the shoreland-wetland overlay district shall be transmitted to the DNR within ten (10) days of the effective date of such decision.
- (o) **Floodland District Boundary.** See Section 98-107.
- (p) **Floodland District Boundary Changes Limited.** See Section 98-903(9).
- (q) **Notice of Variance Application to the DNR.** See Section 98-910(9).
- (r) **Mapping Disputes.** See Section 98-934(8).

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(1) Statutory Authorization, Findings of Fact, and Statement of Purpose:

- (a) **Statutory Authorization:** This Section is adopted pursuant to the authorization in Sections 62.23, 62.231, 87.30 and 144.26, Wisconsin Statutes.
- (b) **Finding of Fact and Purpose:** Uncontrolled use of the shoreland-wetlands and pollution of the navigable waters of the City would adversely affect the public health, safety, convenience and general welfare and impair the tax base. The legislature of Wisconsin has delegated responsibility to all municipalities to:
1. Promote the public health, safety, convenience and general welfare.
 2. Maintain the storm and floodwater storage capacity of wetlands.
 3. Prevent and control water pollution by preserving wetlands which filter or store sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters.
 4. Protect fish, their spawning grounds, other aquatic life and wildlife by preserving wetlands and other aquatic habitat.
 5. Prohibit certain uses detrimental to the shoreland-wetland area.
 6. 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.

(2) General Provisions

- (a) **Compliance:** The use of wetlands and the alteration of wetlands within the shoreland area of the City shall be in full compliance with the terms of this Section and other applicable local, State or federal regulations. However, see Subsection (5) for standards applicable to nonconforming uses. All permitted development shall require the issuance of a zoning permit, unless otherwise expressly excluded by a provision of this Section.
- (b) **Municipalities and State Agencies Regulated:** Unless specifically exempted by law, all cities, villages, towns and counties are required to comply with this Section and obtain all necessary permits. State agencies are required to comply if Section 13.48(13), Wisconsin Statutes, applies. The construction, reconstruction, maintenance and repair of State highways and bridges by the Wisconsin Department of Transportation are exempt when Section 30.12(4)(a), Wisconsin Statutes, applies.
- (c) **Abrogation and Greater Restrictions:**
1. This Section supersedes all the provisions of any City zoning ordinance enacted under Section 62.23 or Section 87.30, Wisconsin Statutes, which relate to floodplains and shoreland-wetlands, except that where another City zoning ordinance is more restrictive than this Section, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
 2. This Section is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this Section imposes greater restrictions, the provisions of this Section shall prevail.

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- (d) **Interpretation:** In their interpretation and application, the provisions of this Section shall be held to be minimum requirements and shall be liberally construed in favor of the City and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this Section is required by a standard in Chapter NR 117, Wisconsin Administrative Code, and where the Section provision is unclear, the provision shall be interpreted in light of Chapter NR 117 standards in effect on the date of the adoption of this Section or in effect on the date of the most recent text amendment to this Section.
- (e) **Severability:** Should any portion of this Section be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of this Section shall not be affected.
- (f) **Annexed Areas:** The Walworth County shoreland zoning provisions in effect on the date of annexation remain in effect administered by the City after May 7, 1982. These annexed lands are described on the City's official zoning map. The Walworth County shoreland zoning provision are incorporated by reference for the purpose of administering this Section and are on file in the office of the City Zoning Administrator.

(3) Definitions:

- (a) For the purpose of administering and enforcing this Section, 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; 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.
- (b) The following terms used in this Section have the meanings indicated:
1. Accessory Structure or Use. A detached subordinate structure or a use which is clearly incidental to and customarily found in connection with the principle structure or use to which it is related and which is located on the same lot as that of the principle structure or use.
 2. Boathouse. (Am. MSC '90) As defined in Section 30.01(1d), Wisconsin Statutes, means a structure used for the storage of watercraft and associated materials which has one or more walls or sides.
 3. Class 2 Public Notice. Publication of a public hearing notice under Chapter 985, Wisconsin Statutes, in a newspaper of circulation in the affected area. Publication is required on 2 consecutive weeks, the last at least 7 days prior to hearing.
 4. Conditional Use. A use which is permitted by this Section, provided that certain conditions specified in this Section are met and that a permit is granted by the City Council.
 5. Department. The Wisconsin Department of Natural Resources.
 6. Development. Any man-made change to improved or unimproved real estate including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials.
 7. Drainage System. One or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.

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8. Environmental Control Facility. Any facility, temporary or permanent, which is reasonably expected to abate, reduce or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste and thermal pollution, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.
9. Fixed Houseboat. (Am. MSC '91) As defined in Section 30.01(1r), Wisconsin Statutes, means a structure not actually used for navigation which extends beyond the ordinary high watermark of a navigable waterway and is retained in place, either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.
10. Navigable Waters.
 - a. 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), Wisconsin Statutes, notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under Section 62.231, Wisconsin Statutes, and Chapter NR 117, Wisconsin Administrative Code, do not apply to lands adjacent to farm drainage ditches if:
 - i. Such lands are not adjacent to a natural navigable stream or river.
 - ii. Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching.
 - iii. Such lands are maintained in nonstructural agricultural use.
 - b. Wisconsin's Supreme Court has declared navigable bodies of water that have a bed differentiated from adjacent uplands and levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis [Muench v. Public Service, 261 Wis. 492 (1952), and DeGaynor and Co., Inc., v. Department of Natural Resources, 70 Wis. 2d 936 (1975)]. For example, a stream which is navigable by skiff or canoe during normal spring high water is navigable, in fact, under the laws of this State though it may be dry during other seasons.
11. Ordinary High Watermark. 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.
12. Planning Agency. The municipal plan commission created under Section 62.23(1), Wisconsin Statutes, a board of public land commissioners or a committee of the municipality's governing body which acts on matters pertaining to planning and zoning.
13. Shorelands. Lands within the following distances from the ordinary high watermark of navigable waters: 1,000' from a lake, pond or flowage and 300' from a river or stream or to the landward side of the floodplain, whichever distance is greater.

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14. Shoreland-Wetland District. The zoning district created in the Section, comprised of shorelands that are designated as wetlands on the wetland inventory maps which have been adopted and made a part of this Section.
15. Unnecessary Hardship. 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 Section.
16. Variance. An authorization granted by the Board of Appeals to construct or alter a building or structure in a manner that deviates from the dimensional standards of this Section.
17. 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.
18. Wetland Alteration. Any filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.

(4) Shoreland-Wetland Zoning District C-2:

(a) **Shoreland-Wetland Zoning Maps:** The following maps are hereby adopted and made part of this Section and are on file in the office of the City Clerk:

1. Wisconsin wetland inventory maps, stamped "final" on December 11, 1986 and "final revised" March 27, 1987.
2. Floodplain zoning maps titled "Firm" (Flood Insurance Rate Map) and dated December 1, 1982.
3. United States Geological Survey maps dated 1976.
4. Zoning map titled "City of Lake Geneva Zoning Map" and dated August 22, 1983.

(b) **District Boundaries:**

1. The Shoreland-Wetland Zoning District includes all wetlands in the City shown on the final wetland inventory map that has been adopted and made part of this Section and which are:
 - a. Within 1,000' of the ordinary high watermark of navigable lakes, pond, flowages. Lakes, ponds or flowages in the City shall be presumed to be navigable if they are shown on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this Section.
 - b. Within 300' of the ordinary high watermark of navigable rivers or streams or to the landward side of the floodplain whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey quadrangle maps or other base maps which have been incorporated by reference and made a part of this Section. Floodplain zoning maps adopted in subsection (4)(a)2. shall be used to determine the extent of floodplain areas.

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2. Determinations of navigability and ordinary high water location shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the appropriate district office of the Department for a final determination of navigability or ordinary high watermark.
 3. When an apparent discrepancy exists between the Shoreland-Wetland District boundary shown on the official zoning maps and actual field conditions at the time the maps were adopted, the Zoning Administrator shall contact the appropriate district office of the Department to determine if the Shoreland-Wetland District boundary as mapped is in error. If Department staff concur with the Zoning Administrator that a particular area was incorrectly mapped as a wetland, the Zoning Administrator shall have the authority to immediately grant or deny a zoning permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors or acknowledge exempted wetlands designated in subsections 4. and 5. below, the Zoning Administrator shall be responsible for initiating a map amendment within a reasonable period.
 4. Wetlands which are filled prior to December 11, 1986, the date on which the City received final wetland inventory maps, in a manner which affects their wetland characteristics to the extent that the area can no longer be defined as wetland are not subject to this Section.
 5. Wetlands located between the original ordinary high watermark and a bulkhead line established prior to May 7, 1982, under Section 30.11, Wisconsin Statutes, are not subject to this Section.
- (c) **Permitted Uses:** The following uses are permitted, subject to the provisions of this Section and of other local, State and federal laws, if applicable:
1. Activities and uses which do not require the issuance of a zoning permit, provided that no wetland alteration occurs:
 - a. Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating.
 - b. 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.
 - c. The practice of silviculture, including the planting, thinning and harvesting of timber.
 - d. The pasturing of livestock.
 - e. The construction and maintenance of duck blinds.
 2. Uses which do not require the issuance of a zoning permit and which may involve wetland alterations only to the extent specifically provided below:
 - a. The practice of silviculture, including limited temporary water level stabilization measures which are necessary to alleviate abnormally wet or dry conditions which would have an adverse impact on the conduct of silvicultural activities if not corrected.
 - b. The cultivation of cranberries, including limited wetland alterations necessary for the purposes of growing and harvesting cranberries.

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- c. The maintenance and repair of existing drainage systems to restore preexisting levels of drainage, including the minimum amount of filling necessary to dispose of dredged spoil, provided that the filling is otherwise permissible and that dredged spoil is placed on existing spoil banks, where possible.
 - d. The construction and maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance.
 - e. The construction and maintenance of piers, docks, walkways, observation decks and trail bridges built in pilings, including limited excavating and filling necessary for such construction or maintenance.
 - f. The installation and maintenance of sealed tiles for the purpose of draining lands outside the Shoreland-Wetland Zoning District, provided that such installation or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the shoreland-wetland listed in Section (14).
 - g. 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. Uses which are allowed upon the issuance of a conditional use permit and which may include wetland alterations only to the extent specifically provided below:
- a. The construction and maintenance of roads which are necessary for the continuity of the City street system, the provision of essential utility and emergency services or to provide access to uses permitted under this subsection, provided that:
 - i. The road cannot, as a practical matter, be located outside the wetland.
 - ii. The road is designed and constructed to minimize adverse impacts upon the natural functions of the wetland listed in Section (14).
 - iii. The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use.
 - iv. Road construction activities are carried out in the immediate roadbed area only.
 - v. Any wetland alteration must be necessary for the construction or maintenance of the road.
 - b. The construction and maintenance of nonresidential buildings, provided that:
 - i. The building is used solely in conjunction with a use permitted in the Shoreland-Wetland District or for the raising of waterfowl, minnows, or other wetland or aquatic animals.
 - ii. The building cannot, as a practical matter, be located outside the wetland.
 - iii. The building does not exceed 500 square feet in floor area.
 - iv. Only limited filling and excavating necessary to provide structural support for the building is allowed.
 - c. The establishment and development of public and private parks and recreation areas, outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and

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animal farms, wildlife preserves and public boat launching ramps, provided that:

- i. Any private development allowed under this subsection shall be used exclusively for the permitted purpose.
 - ii. Only limited filling and excavating necessary for the development of public boat launching ramps, swimming beaches or the construction of park shelters or similar structures is allowed.
 - iii. The construction and maintenance of roads necessary for the uses permitted under this subsection are allowed only where such construction and maintenance meets the criteria in (c)3.a..
 - iv. Wetland alterations in game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms and wildlife preserves shall be for the purpose of improving wildlife habitat or to otherwise enhance wetland values.
- d. The construction and maintenance of electric and telephone transmission lines, water and gas distribution lines and sewage collection lines and related facilities and the construction and maintenance of railroad lines, provided that:
- i. The utility transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland.
 - ii. Only limited filling or excavating necessary for such construction or maintenance is allowed.
 - iii. Such construction or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the wetland listed in Section (14).

(d) Prohibited Uses:

1. Any use not listed in subsection (c), above, is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this Section in accordance with Section (14).
2. The use of a boathouse for human habitation and the construction or placement of a boathouse or fixed houseboat below the ordinary high watermark of any navigable waters are prohibited.

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

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

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- (b) If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, any future use of the building, structure or property shall conform to this Section.
 - (c) Any legal nonconforming use of property which does not involve the use of a structure and which existed at the time of the adoption or subsequent amendment of this Section though such use does not conform with the provisions of this Section. However, such nonconforming use may not be extended.
 - (d) The maintenance and repair of nonconforming boathouses which are located below the ordinary high watermark of any navigable waters shall comply with the requirements of Section 30.121, Wisconsin Statutes.
 - (e) Uses which are nuisances under common law shall not be permitted to continue as nonconforming uses.
- (6) **Zoning Administrator:** The Zoning Administrator shall have the following duties and powers:
- (a) Advise applicants as to the provisions of this Section and assist them in preparing permit applications and appeal forms.
 - (b) Issue permits and certificates of compliance and inspect properties for compliance with this Section.
 - (c) Keep records of all permits issued, inspections made, work approved and other official actions.
 - (d) Have access to any structure or premises between the hours of 8 a.m. and 6 p.m. for the purpose of performing these duties.
 - (e) Submit copies of decisions on variances, conditional use permits, appeals for a map or text interpretation and map or text amendments within 10 days after they are granted or denied to the appropriate district office of the Department.
 - (f) Investigate and report violations of this Section to the appropriate City planning agency and the District Attorney, Corporation Counsel or City Attorney.
- (7) **Zoning Permits:**
- (a) **When Required:** No structure, land, water, or air shall hereafter be used and no structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered without a zoning permit, except minor structures, and without full compliance with the provisions of this chapter and all other applicable local, county, state and federal regulations. Unless another Section of this Chapter specifically exempts certain types of development from this requirement, a zoning permit shall be obtained from the Zoning Administrator before any new development, as defined in Subsection (3)(b), or any change in the use of an existing building or structure is initiated.
 - (b) **Application:** An application for a zoning permit shall be made to the Zoning Administrator upon forms furnished by the City and shall include for the purpose of proper enforcement of these regulations the following information:
 - 1. General Information:
 - a. Name, address and telephone number of applicant, property owner, architect, engineer, and contractor, where applicable.

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- b. Description of the subject site by lot, block, and recorded subdivision or by metes and bounds; address of the subject site; type of structure; existing and proposed operation or use of the structure or site; number of employees; and the zoning district within which the subject site lies.
 - c. Additional information as may be required by the Plan Commission or Zoning Administrator.
 - d. Fee receipt from the City Treasurer in an amount specified in sub. (2) of this section.
 2. Plat of Survey. Plat of survey prepared by a land surveyor registered in Wisconsin showing the location, boundaries, dimensions, uses and size of the following: subject site; existing and proposed structures; existing and proposed easements, streets and other public ways; off street parking, loading areas and driveways; existing highway access restrictions; high water, channel floodway and floodplain boundaries; and existing and proposed street, side and rear yards. In addition, the plat of survey shall show type, slope and boundaries of soils shown on the operations soil survey maps prepared by the USDA Soil Conservation Service for the Southeastern Wisconsin Regional Planning Commission.
 3. Site Development Plan. The site development plan shall be submitted as a part of the permit application and shall contain the following information drawn to scale:
 - a. Dimensions and area of the lot.
 - b. Location of any structures with distances measured from the lot lines and centerline of all abutting streets or highways.
 - c. Description of any existing or proposed on-site sewage systems or private water supply systems.
 - d. Location of the ordinary high watermark of any abutting navigable waterways.
 - e. Boundaries of all wetlands.
 - f. Existing and proposed topographic and drainage features and vegetative cover.
 - g. Location of floodplain and floodway limits on the property as determined from floodplain zoning maps.
 - h. Location of existing or future access roads.
 - i. Specifications and dimensions for areas of proposed wetland alteration.
 4. Fees.
 - a. All applicants shall pay a zoning permit fee as determined by the Common Council from time to time.
 - b. Zoning permit fees do not include and are in addition to building permit fees established in the Municipal Code.
 - c. A double fee may be charged by the Zoning Administrator if work is started before a permit is applied for and issued. Such double fee shall not release the applicant from full compliance with this chapter nor from prosecution for violation of this chapter.

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- (c) **Determination and Expiration:** A Zoning permit shall be granted or denied by the Zoning Administrator in writing within 30 days of application and the applicant shall post such permit in a conspicuous place at the site. The permit shall expire within 4 months unless work equal to 10% of the dollar amount of the permits has been completed or within 18 months after the issuance of the permit if the structure for which a permit issued is not 75% completed as measured by the dollar amount of the permit. The applicant shall reapply for a zoning permit before recommencing work on the structure. Any permit issued in conflict with the provisions of this chapter shall be null and void.

(8) **Certificates of Compliance:**

- (a) Except where no zoning permit or conditional use permit is required, no land shall be occupied or used and no building which is hereafter constructed, altered, added to, modified, rebuilt or replaced shall be occupied until a certificate of compliance is issued by the Zoning Administrator, subject to the following provisions:
1. The certificate of compliance shall show that the building or premises or part thereof and the proposed use thereof conform to the provisions of this Section.
 2. Application for such certificate shall be concurrent with the application for a zoning or conditional use permit.
 3. The certificate of compliance shall be issued within 10 days after notification of the completion of the work specified in the zoning or conditional use permit, providing the building or premises and proposed use thereof conform with all the provision of this Section.
- (b) The Zoning Administrator may issue a temporary certificate of compliance for a building, premises or part thereof pursuant to rules and regulations established by the City Council.
- (c) Upon written request from the owner, the Zoning Administrator shall issue a certificate of compliance for any building or premises existing at the time of the adoption of this Section, certifying after inspection the extent and type of use made of the building or premises and whether or not such use conforms to the provisions of this Section.

(9) **Conditional Use Permits for Shoreland-Wetland Overlay Zoning Districts:**

(a) **Application:**

1. Any use listed as a conditional use in this Section shall be permitted only after an application has been submitted to the Zoning Administrator and a conditional use permit has been granted by the City Council following the procedures in Section 98-905 of this Ordinance.
2. A copy of the notice of public hearing shall be forwarded to the appropriate district office of the Department at least 10 days prior to such hearing date. Also, a copy of the written decision to grant or deny a conditional use permit shall be forwarded to the appropriate district office of the Department within 10 days after the decision is issued.

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- (b) **Conditions:** Upon consideration of the permit application and the standards applicable to the conditional uses designated in Section (4)(c)3. of this Section, the City Council shall attach such conditions to a conditional use permit, in addition to those required elsewhere in this Section, as are necessary to further the purposes of this Section as listed in Section (1). Such conditions may include specifications for, without limitation because of specific enumeration, type of shore cover; erosion controls; increased setbacks; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking areas and signs; and type of construction. To secure information upon which to base its determination, the City Council may require the applicant to furnish, in addition to the information required for a zoning permit, other pertinent information which is necessary to determine if the proposed use is consistent with the purpose of this Section.
- (10) **Fees:** The City Council may, by resolution, adopt fees for the following:
- (a) Zoning permits.
 - (b) Certificate of compliance.
 - (c) Public hearings.
 - (d) Legal notice publications.
 - (e) Conditional use permits.
 - (f) Rezoning petitions.
- (11) **Recording:** Where a zoning permit or conditional use permit is approved, an appropriate record shall be made by the Zoning Administrator of the land use and structures permitted.
- (12) **Revocation:** Where the conditions of a zoning permit or conditional use permit are violated, the permit shall be revoked by the City Council.
- (13) **Board of Appeals for Shoreland-Wetland Overlay Zoning Districts:** The City Mayor shall appoint a Board of Appeals under Section 62.23(7)(e), Wisconsin Statutes, consisting of 5 members, subject to confirmation by the City Council. The Board of Appeals shall adopt rules for the conduct of its business as required by Section 62.23(7)(e)3., Wisconsin Statutes.
- (a) **Powers and Duties:** The Board of Appeals:
1. Shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this Section.
 2. May authorize upon appeal a variance from the dimensional standards of this Section where an applicant convincingly demonstrates that:
 - a. Literal enforcement of the terms of this Section will result in unnecessary hardship for the applicant.
 - b. The hardship is due to special conditions unique to the property and is not self-created or based solely on economic gain or loss.
 - c. Such variance is not contrary to the public interest as expressed by the purpose of this Section.
 - d. Such variance will not grant or increase any use of property which is prohibited in the zoning district.

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- (b) **Appeals to the Board:** Appeals to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the community affected by any order, requirement, decision or determination of the Zoning Administrator or other administrative official. Such appeals shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the official whose decision is in question and with the Board of Appeals a notice of appeal specifying reasons for the appeal. The Zoning Administrator or other official whose decision is in question shall transmit to the Board all the papers constituting the record on the matter appealed.
- (c) **Public Hearings:**
1. Before making a decision on an appeal, the Board of Appeals shall, within a reasonable period of time, hold a public hearing. The Board shall give public notice of the hearing by publishing a Class 2 notice under Chapter 985, Wisconsin Statutes, specifying the date, time and place of the hearing and the matters to come before the Board. A copy of this notice shall be mailed to the parties in interest and the appropriate district office of the Department 10 days prior to the hearing. At the public hearing, any party may present testimony in person, by agent or by attorney.
 2. A copy of the decision shall be mailed to the parties in interest and the appropriate district office of the Department within 10 days after the decision is issued.
- (14) **Amending Shoreland-Wetland Zoning Regulations:** The City Council may alter, supplement or change the district boundaries and the regulations contained in this Section in accordance with the requirements of Section 62.23(7)(d)2., Wisconsin Statutes, Chapter NR 117, Wisconsin Administrative Code, and the following:
- (a) A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the Department within 5 days of submission of the proper amendment to the City planning agency.
 - (b) All proposed text and map amendments to this Section shall be referred to the City planning agency and a public hearing shall be held after a Class 2 notice as required by Section 62.23(7)(d)2., Wisconsin Statutes. The appropriate district office of the Department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.
 - (c) In order to insure that this Section will remain consistent with the shoreland protection objectives of Section 144.26, Wisconsin Statutes, the City Council may not rezone a wetland in a Shoreland-Wetland Zoning District or any portion thereof where the proposed rezoning may result in a significant adverse impact upon any if the following wetland functions:
 1. Storm and floodwater storage capacity.
 2. Maintenance of dry season stream flow or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area or the flow of groundwater through a wetland.
 3. Filtering or storage of sediments, nutrients, heavy metals, or organic compounds that would otherwise drain into navigable waters.
 4. Shoreline protection against erosion.
 5. Fish spawning, breeding, nursery or feeding grounds.
 6. Wildlife habitat.

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7. Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.
- (d) Where the district office of the Department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in Subsection (c), the Department shall so notify the City of its determination, either prior to or during the public hearing held on the proposed amendment.
 - (e) The appropriate district office of the Department shall be provided with:
 1. A copy of the recommendation and report, if any, of the City planning agency on a proposed text or map amendment within 10 days after the submission of those recommendations to the City Council.
 2. Written notice of the action on the proposed text or map amendment with 10 days after the action is taken.
 - (f) If the Department notifies the City planning agency in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in subsection (c), that proposed amendment, if approved by the City Council, shall not become effective until more than 30 days have elapsed since written notice of the City approval was mailed to the Department as required by subsection (e)2., above. If within the 30 day period the Department notifies the City that the Department intends to adopt a superseding shoreland-wetland zoning ordinance for the City as provided by Section 62.231(6), Wisconsin Statutes, the proposed amendment shall not become effective until the ordinance adoption procedure under Section 62.231(6), Wisconsin Statutes, is completed or otherwise terminated.
- (15) **Enforcement and Penalties:** Any development, building or structure or accessory building or structure constructed, altered, added to, modified, rebuilt or replaced or any use or accessory use established after the effective date of this Section in violation of the provisions of this Section by any person, association, corporation, including building contractors or their agents, shall be deemed a violation. The Zoning Administrator shall refer violations to the City planning agency and the District Attorney, Corporation Counsel or City Attorney who shall prosecute such violations. Any person who violates or refuses to comply with any of the provisions of this Section shall be subject to a forfeiture of not less than \$5 nor more than \$500 per offense, together with the taxable costs of such action. Each day of continued violation shall constitute a separate offense. Every violation of this Section is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated by action at suit of the City, State or any citizen thereof pursuant to Section 87.30(2), Wisconsin Statutes.

Section 98-505 Lakeshore Overlay Zoning District

- (1) **Definition:** Lakeshores are the land margins of navigable waters which are identified as "lakes and other water bodies" as shown on Environmental Corridors Composite Maps for the City of Lake Geneva and its environs, prepared by the SEWRPC. Lakeshores are all areas within 100 feet of the ordinary high water mark of such features. Decorative water features shall not be considered "navigable waters" for the purposes of this Section. This meaning of "lakeshores" shall remain distinct from the meaning of the term as employed by the State of Wisconsin Statutes and the DNR.

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- (2) **Purpose of Lakeshore Protection Requirements:** Lakeshores serve to protect land/water margins from erosion due to site disruption. Because of regular contact with wave action, currents, and runoff, such areas are highly susceptible to continuous, and in some cases, rapid erosion. Lakeshore protection also provides a natural vegetation buffer which serves to reduce water velocities and wave energy, and filters significant amounts of water-borne pollutants and sediments. Lakeshores also promote infiltration and groundwater recharging, and provide a unique habitat at the land/water margin.
- (3) **Determination of Lakeshore Boundaries:** General lakeshore boundaries are depicted on the Official Zoning Map. Upon the proposal of development activity on any property which contains a lakeshore depicted on the Official Zoning Map, the petitioner shall prepare a detailed site analysis per the requirements of Section 98-510. This analysis shall depict the location of all lakeshore areas on the subject property as related to the provisions of Subsection (1), above.
- (4) **Mandatory Lakeshore Protection Requirements:** With the exception of the activities permitted below, lakeshores shall remain in an undisturbed state, except for the land uses permitted in Section 98-204 per the requirements of Subsection 98-206(10).
- (a) **Tree Removal:**
1. **Purpose:** The intent and purpose of this subsection is to preserve the City's character as a natural wooded community, maintain property values by improving and preserving the aesthetic appeal of the City through tree regulations, preserve the natural resources of the City and State, reduce the amount of erosion in the City due to tree removal, protect the quality of the waters of the State and the City, and protect and promote the health, safety and welfare of the people by minimizing the amount of sediment and other pollutants carried by runoff to surface waters due to the erosion of land not protected by a naturally wooded environment.
 2. **Scope:** The provisions of this subsection shall not apply to SR-3 and SR-4 Zoning Districts, except planned developments on those districts.
 3. **Clear-Cutting Prohibition:**
 - a. **Shoreland Areas:** In a strip of land 35' wide inland from the bulkhead line, no more than 30' in any 100' shall be clear-cut. Where the lot is less than 100', no more than 30% of this strip shall be clear-cut. Natural shrubbery shall be preserved as far as practicable and, where removed, it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.
 - b. **Tree Preservation Area:** Except for circumstances identified under subsection 4.b., it is prohibited to remove any tree or cause any trees to be removed from the tree preservation area of each lot. During construction, no equipment movement, construction or placement of equipment or material storage shall be permitted in the tree preservation area.
 4. **Cutting Exceptions:**
 - a. Trees may be removed from the building activities area. This area shall be as small as possible, including the entire area affected by building, grading and temporary material storage areas. In no case shall the amount of trees with a 6" tree diameter removed within the building activities area exceed the following:

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- i. 80% of the total such trees on lots of 1/4 acre or less.
 - ii. 60% of the total such trees on lots of 1/4 acre to one acre, except in the CR-5ac and the ER-1 Districts.
 - iii. 40% of the total such trees on lots of one acre, except in the CR-5ac and ER-1 Districts.
 - iv. 20% of the total such trees on lots of 2.5 acres or more, except in the CR-5ac and ER-1 Districts.
 - v. 10% of the total such trees on all lots in the CR-5ac and ER-1 Districts.
- b. Trees removed in excess of the above reasons will require a tree removal permit. Conditions under which a permit may be issued include, but will not be limited to, the following:
- i. The tree is dead, dying or diseased.
 - ii. The tree is damaged or injured to the extent that it is likely to die or become diseased.
 - iii. The removal of the tree will enhance the tree preservation area and the health of the remaining trees.
 - iv. The removal of the tree will avoid or alleviate an economic hardship or hardship of another nature to the property or residences.
 - v. The removal of the tree is consistent with good arboriculture practices.
5. **Replacement Trees:** When in keeping with good arboriculture practices, replacement trees shall be planted for all removed trees. They may be planted in the tree preservation area or in the building activities area after the initial construction activities are completed. All replacement trees shall be planted within 30 days of final grading. The determination of good arboriculture shall be based on tree density and spacing of the table on the following page.

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Small Trees: Trees which have an ultimate height of 20' to 30' and 15' to 25' spread. They should be planted 15' to 20' on center or roughly at a density of 115 trees per acre.			
Apricot	Lilac, Japanese Tree	Redbud	Pear, Bradford
Crabapple, Flowering (sp)	Peach, Flowering	Golden Train Tree	Serviceberry
Hawthorne (sp)	Plum, Purpleleaf	Soapberry	
Medium Trees: Trees which have an ultimate height of 30' to 50' and 30' to 40' spread. They should be planted 25' to 30' on center or approximately 30 trees per acre.			
Ash, Green	Mulberry, Red	Pecan	Persimmon
Hackberry	(fruitless, male)	Birch	Poplar
Honeylocust (Thornless)	Oak, English	Osageorange	Sassafras
Linden or Basswood (sp)	Oak, Red	(Thornless)	
	Pagodatree, Japanese		
Large Trees: Trees which have an ultimate height greater than 50' and over 40' spread. They should be planted 35' to 40' on center or approximately 25 trees per acre.			
American Elm	Kentucky Coffeetree	Sugar Maple	Sycamore
Walnut	Silver Maple	Oaks	Cottonwood

6. **Penalties:** Any person violating any provision of this subsection shall be subject to a penalty per tree illegally cut or removed, which shall be determined by the assessed value of the trees removed. The assessed value shall be determined in accordance with the "Manual for Plant Appraisers," published by the County of Tree and Landscape Appraisers, most recent edition. In addition, a replacement tree shall be planted to replace all trees cut illegally.

Section 98-506 Drainageway Overlay Zoning District

- (1) **Definition:** Drainageways are non-navigable, above-ground watercourses, detention basins and/or their environs which are identified by the presence of one or more of the following:
 - (a) All areas within 75 feet of the ordinary high water mark of a "perennial stream" as shown on Environmental Corridors Composite Maps for the City of Lake Geneva and its environs, prepared by the SEWRPC;
 - (b) All areas within 50 feet of the ordinary high water mark of an "intermittent stream" or "open channel drainageway" as shown on Environmental Corridors Composite Maps for the City of Lake Geneva and its environs, prepared by the SEWRPC.
- (2) **Purpose of Drainageway Protection Requirements:** Drainageways serve in the transporting of surface runoff to downstream areas. As such, drainageways serve to carry surface waters, supplement floodplain, wetland, and lakeshore water storage functions in heavy storm or melt events, filter water-borne pollutants and sediments, promote infiltration and groundwater recharging, and provide a unique habitat at the land/water margin. Drainageway protection requirements preserve each of these functions as well as greatly reducing the potential for soil erosion along drainageways by protecting vegetative

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groundcover in areas which are susceptible to variable runoff flows and moderate to rapid water movement.

- (3) **Determination of Drainageway Boundaries:** General drainageway boundaries are depicted on the Official Zoning Map. Upon the proposal of development activity on any property which contains a drainageway depicted on the Official Zoning Map, the petitioner shall prepare a detailed site analysis per the requirements of Section 98-510. This analysis shall depict the location of all drainageway areas on the subject property as related to the provisions of Subsection (1), above.
- (4) **Mandatory Drainageway Protection Requirements:** Drainageways shall remain in an undisturbed state except for the land uses permitted in Section 98-204 per the requirements in Subsection 98-206(10). Vegetation clearing to maintain drainageway functions is permitted with the written approval of the Director of Public Works. All areas designated as drainageways shall be located within a public easement or dedication for maintenance purposes to preserve proper drainage flow.

Section 98-507 Woodland Overlay Zoning District

- (1) **Definition:** Woodlands are areas of trees whose combined canopies cover a minimum of 80% of an area of one acre or more, as shown on Environmental Corridors Composite Maps for the City of Lake Geneva and its environs, prepared by the SEWRPC.
- (2) **Purpose of Woodland Protection Requirements:** Woodlands provide a wide variety of environmental functions. These include atmospheric benefits such as removing air-borne pollutants, carbon dioxide uptake, oxygen production, and evapotranspiration returns. Water quality benefits include substantial nutrient uptake rates (particularly for nitrogen and phosphorus) and surface runoff reduction in terms of both volumes and velocities. Woodlands provide unique wildlife habitats and food sources. Woodlands are excellent soil stabilizers, greatly reducing runoff-related soil erosion. Woodlands also serve to reduce wind velocities which further reduces soil erosion. Finally, under proper management techniques, woodlands serve as regenerative fuel sources.
- (3) **Determination of Woodland Boundaries:** General woodland boundaries are depicted on the Official Zoning Map. Upon the proposal of development activity on any property which contains a woodland depicted on the Official Zoning Map, the petitioner shall prepare a detailed site analysis per the requirements of Section 98-908(3)(h). This analysis shall depict the location of all woodland areas on the subject property as related to the provisions of Subsection (1), above.
- (4) **Mandatory Woodland Protection Requirements:** Woodlands shall remain in an undisturbed state except for the land uses permitted in Section 98-204 per the requirements of Subsection 98-206(10) and areas subject to the following mitigation requirements. Selective cutting operations are permitted by right in all woodland areas (per the requirements of Section 98-206(2)(f)). Clear cutting is permitted as a conditional use in all woodland areas (per the requirements of Section 98-206(2)(g)).

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- (1) **Definition:** Steep slopes are areas which contain a gradient of 12% or greater, (equivalent to a 10 foot elevation change in a distance of 83 feet or less), as shown on Environmental Corridors Composite Maps for Lake Geneva and its environs, prepared by the SEWRPC.
- (2) **Purpose of Steep Slope Protection Requirements:** Steep slopes are particularly susceptible to damage resulting from site disruption, primarily related to soil erosion. Such damage is likely to spread to areas which were not originally disturbed. Such erosion reduces the productivity of the soil, results in exacerbated erosion downhill, and results in increased sedimentation in drainageways, wetlands, streams, ponds and lakes. Beyond adversely affecting the environmental functions of these resources areas, such sedimentation also increases flood hazards by reducing the flood water storage capacity of hydrological system components, thus elevating the flood level of the drainage system in effected areas. Beyond these threats to the public safety, disruption of steep slopes also increases the likelihood of slippage and slumping--unstable soil movements which may threaten adjacent properties, buildings, and public facilities such as roads and utilities.
- (3) **Determination of Steep Slope Boundaries:** General steep slope boundaries are depicted on the Official Zoning Map. Upon the proposal of development activity on any property which contains a steep slope depicted on the Official Zoning Map, the petitioner shall prepare a detailed site analysis per the requirements of Section 98-510. This analysis shall depict the location of all steep slope areas on the subject property as related to the provisions of Subsection (1), above.
- (4) **Mandatory Steep Slope Protection Requirements:** Steep slopes shall remain in an undisturbed state except for the land uses permitted in Section 98-204 per the requirements of Subsection 98-206(10).