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CHAPTER 72
SHORELAND ORDINANCE

72.01 STATUTORY AUTHORITY. This Ordinance is adopted under the authority of Wis. Stat. §§ 59.69, 59.692, 59.694, 87.30, 236.45, and 281.31.

72.02 FINDING OF FACT. Uncontrolled use of the shorelands and wetlands and pollution of the navigable waters of Sheboygan County will adversely affect the public health, safety, convenience, and general welfare, and impair the tax base. The Wisconsin legislature has delegated to the County responsibility to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect spawning grounds, fish and aquatic life; to control building sites, placement of structures and land uses; to discourage development in erosion hazard areas, particularly along the coast of Lake Michigan; and to preserve shore cover and natural beauty. This responsibility is hereby recognized by Sheboygan County.

72.03 STATEMENT OF PURPOSE. The purpose of this Ordinance is to promote the public health, safety, convenience, and welfare, and promote and protect the public trust in navigable waters in the following manner:

- (1) Furthering the maintenance of safe and healthful conditions and preventing and controlling water pollution through:
 - (a) Limiting structures to those areas where soil and geological conditions will provide a safe foundation;
 - (b) Establishing minimum lot sizes to provide adequate area for private on-site waste treatment systems;
 - (c) Controlling filling and grading to prevent soil erosion problems; and
 - (d) Limiting impervious surfaces to control runoff which carries pollutants;
- (2) Protecting spawning grounds and fish and aquatic life through:
 - (a) Preserving wetlands and other fish and aquatic habitat;
 - (b) Regulating pollution sources; and
 - (c) Controlling shoreline alterations, dredging and lagooning;
- (3) Controlling building sites, placement of structures, and land uses through:
 - (a) Prohibiting certain uses detrimental to the shoreland-wetlands;
 - (b) Setting minimum lot sizes and widths;
 - (c) Setting minimum building setbacks from waterways; and
 - (d) Setting the maximum height of near shore structures;
- (4) Preserving and restoring shoreland vegetation and natural scenic beauty through:
 - (a) Restricting the removal of natural shoreland cover;
 - (b) Preventing shoreline encroachment by structures;

- (c) Controlling shoreland excavation and other earth-moving activities; and
- (d) Regulating the use and placement of boathouses and other structures.

72.04 TITLE. This Ordinance shall be known, cited, and referenced to as: **CHAPTER 72, SHORELAND ORDINANCE, SHEBOYGAN COUNTY, WISCONSIN**. As used herein, it may be referred to as "this Ordinance."

72.05 JURISDICTION. Areas regulated by this Ordinance shall include shorelands and wetlands of all navigable waters, as "navigable waters" is defined in Wis. Stat. § 281.31(2)(d) in the unincorporated areas of Sheboygan County which are:

- (1) Within one thousand feet (1,000') of the OHWM of navigable lakes, ponds, or flowages, or to the outer perimeter of contiguous mapped wetlands which extend beyond the one thousand feet (1,000') above and for which the applicable town board has filed a consent resolution in accordance with Wis. Stat. § 59.69(5) assigning zoning authority to Sheboygan County for the specific shoreland-wetlands identified on a map made a part of that resolution. Upon filing, such maps shall supplement the official shoreland zoning maps described in Section 72.07 of this Ordinance.
- (2) Within three hundred feet (300') of the OHWM of navigable waterways, or to the landward side of a floodplain, whichever is greater, or to the outer perimeter of contiguous mapped wetlands which extend beyond the three hundred feet (300') feet above and for which the applicable town board has filed a consent resolution in accordance with Wis. Stat. § 59.69(5) assigning zoning authority to Sheboygan County for the specific shoreland-wetlands identified on a map made a part of that resolution. Upon filing, such maps shall supplement the official shoreland zoning maps described in Section 72.07 of this Ordinance.

Lakes, ponds, flowages, or waterways in Sheboygan County shall be presumed to be navigable if they are designated on the shoreland and wetland maps described in Section 72.07 of this Ordinance. If evidence to the contrary is presented (i.e. that they are navigable or that they are not navigable), the Department shall make the determination as to whether or not the waters in question are navigable under the laws of Wisconsin. The Department shall also make the determination of the location of the OHWM. The Department may contact the appropriate office of the DNR for assistance in the determination of navigability or the location of the OHWM.

72.06 COMPLIANCE.

- (1) The use of any land or water; the size, shape, and placement of lots; the use, size, type, and location of structures on lots; the installation and maintenance of water supply and waste disposal facilities; the filling, grading, lagooning, and dredging of any lands; the cutting or removal of shoreland vegetation; and, the subdivision of lots on any area within the boundaries of the districts created and regulated by this Ordinance shall be in full compliance with the terms of this Ordinance and all other applicable local, state, or federal regulations. (See Section 72.20 of this Ordinance for standards applicable to pre-existing,

non-conforming uses.) Property owners, builders, and contractors are responsible for all Ordinance and code compliance and for reasonable care in construction or other development.

- (2) 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 Wis. Stat. § 13.48(13). Activities that are carried out under the direction and supervision of the Department of Transportation in connection with highway bridge or other transportation project design, location, construction, reconstruction, maintenance, and repair are not subject to the provisions of this Ordinance, provided the requirements of Wis. Stat. § 30.2022 are complied with. Activity where not exempt under Wis. Stat. § 30.2022 and the activity of County and local highways and bridges shall comply with this Ordinance and follow the procedure established in Wis. Admin. Code Ch. Trans 207, pursuant to an agreement with the DNR, and a Shoreland/Floodplain Zoning Permit shall not be required.

Notwithstanding the above, the permit and hearing fees set may be waived for such governmental applicants or agencies thereof, including special purpose units of government (e.g. sanitary and utility districts, lake management districts, school districts, housing authorities, public utilities).

- (3) Unless specifically exempted or prohibited by law, all maps, plats, or descriptions which are prepared by Sheboygan County or which are prepared by individuals or entities pursuant to this Chapter shall be oriented and referenced to the Sheboygan County Coordinate Grid as defined as the Sheboygan County Coordinate Monumentation System at Section 71.26 of the Sheboygan County Code of Ordinances.

72.07 SHORELAND DISTRICTS AND BOUNDARIES. The areas of Sheboygan County regulated by this Ordinance as described in Section 72.05 are hereby divided into two (2) districts: the Shoreland-Wetland District as defined and described in Section 72.09, and the Shoreland District as defined and described in Section 72.10.

The boundaries of the districts shall follow the boundaries illustrated on the following maps which are hereby adopted and made a part of this Ordinance and which are on file with the Department: "Shoreland Zoning Map, Sheboygan County, Wisconsin" and the supporting Wisconsin Wetland Inventory Maps for Sheboygan County as revised by the DNR and presented to the County in April 2009 and as presented most recently at the public hearing held by the Sheboygan County Planning, Resources, Agriculture, and Extension Committee on July 9, 2009.

72.08 LOCATING BOUNDARIES. Where an apparent discrepancy exists between the boundaries shown on the maps described in Section 72.07 and actual field conditions at the time the maps were adopted, the Department shall contact the appropriate office of the DNR to determine if the boundaries as mapped are in error. If the DNR staff concur with the Department that a particular area was incorrectly mapped, the Department shall have the authority to immediately grant or deny a Shoreland/Floodplain Zoning Permit in accordance with the regulations applicable to the correct zoning district. In order to

correct wetland mapping errors on the zoning map described in Section 72.07, the Department shall be responsible for initiating a map amendment within a reasonable period of time, but not to exceed one (1) year following the determination. Notwithstanding the foregoing, all portions of land subject to this Ordinance depicted on a certain map designated as the "April 8, 2003, Sheboygan County Highway Department Town of Mosel Permanent Easement Right-of-way Project No. 463395 Map" on file in the office of the Department shall be designated as being in the Shoreland District.

72.09 SHORELAND-WETLAND DISTRICT. This District includes all shorelands subject to regulation under Section 72.05 which are designated as wetlands on the wetland inventory maps referred to in Section 72.07 or by application of Section 72.08.

(1) PURPOSE. The purpose of the Shoreland-Wetland District is to maintain safe and healthful conditions, to prevent water pollution, to protect fish spawning grounds and wildlife habitat, to preserve shore cover and natural beauty, and to control building and development in wetlands whenever possible. Development in wetlands should be limited and, when development is permitted, it shall occur in a manner that minimizes the adverse impacts upon the wetland.

(a) Wetlands are seldom suitable as building sites for the following reasons:

1. On-site sewage disposal systems will not function because of high ground water.
2. Water supplies are often polluted by septic tank wastes that have not been adequately absorbed and purified by the soil.
3. Foundations, roads, and other pavements crack due to poor support capabilities and frost action.
4. Flooding is common in spring and other times of high water.

(b) Wetlands provide fish spawning grounds and wildlife habitat, and the natural plant and animal communities found in wetlands provide ecological balance to a watercourse.

(c) Wetlands serve as water storage areas and, therefore, minimize flooding and costly flooding damages.

(d) Wetlands biologically treat and purify water and, therefore, prevent water pollution.

(2) PERMITTED USES. The following uses shall be allowed, subject to the other general shoreland zoning regulations as applicable throughout this Ordinance, the provisions of Wis. Stat. chs. 30 and 31, Wis. Stat. §§ 281.36 and 281.37, and the provisions of other local, state, and federal laws, if applicable.

(a) Activities and uses which do not require the issuance of a Shoreland/Floodplain Zoning Permit, but which must be carried out

without filling, flooding, draining, dredging, ditching, tiling, or excavating except as allowed under Section 72.17(4):

1. Hiking, fishing, trapping, swimming, boating, and hunting, including the construction and maintenance of blinds for water fowling.
 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. Peat mining is prohibited since it involves substantial excavation and may harm wetland values.
 3. The practice of silviculture, including the planting, thinning, and harvesting of timber.
 4. The pasturing of livestock.
 5. The cultivation of agricultural crops.
- (b) Uses which do not require the issuance of a Shoreland/Floodplain Zoning Permit and which may involve filling, flooding, draining, dredging, ditching, tiling, or excavating but only to the extent specifically provided below:
1. Temporary water level stabilization measures necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on silvicultural activities if not corrected.
 2. The cultivation of cranberries including flooding, dike and dam construction, or ditching necessary for the growing and harvesting of cranberries.
 3. The maintenance and repair of existing agricultural drainage systems including ditching, tiling, dredging, excavating, and filling necessary to maintain the level of drainage required to continue the existing agricultural use. This includes the minimum filling necessary for disposal of dredged spoil adjacent to the drainage system provided that dredged spoil is placed on existing spoil banks where possible.
 4. The construction or maintenance of fences for the pasturing of livestock including limited excavating and filling necessary for such construction or maintenance.
 5. The construction or maintenance of piers, docks or walkways built on pilings including limited excavating and filling necessary for such construction and maintenance.

6. The maintenance, repair, replacement, or reconstruction of existing town and county highways and bridges including limited excavating and filling necessary for such maintenance, repair, replacement, or reconstruction.
- (c) Uses which require the issuance of a zoning permit and which may include limited filling, flooding, draining, dredging, tiling, or excavating, but only to the extent specifically provided below:
1. The construction and maintenance of roads which are necessary to conduct silvicultural activities or are necessary for agricultural cultivation provided that:
 - A. The road cannot as a practical matter be located outside the wetland
 - B. The road is designed and constructed to minimize the adverse impact upon the natural functions of the wetland enumerated in Section 72.09(4)(b)1 through 7;
 - C. The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;
 - D. Road construction activities are carried out in the immediate area of the roadbed only.
 2. The construction and maintenance of non-residential buildings provided that:
 - A. The building is essential for and used solely in conjunction with the raising of waterfowl, minnows, or other wetland or aquatic animals or some other use permitted in the Shoreland-Wetland District;
 - B. The building cannot, as a practical matter, be located outside the wetland;
 - C. Such building is not designed for human habitation and does not exceed five hundred (500) square feet in floor area; and
 - D. Filling or excavating is authorized only to that which is necessary to provide structural support for the building.
 3. The establishment of public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves, and animal farms, fish hatcheries, and public boat launching ramps and attendant access roads, provided that:

- A. Any private development is used exclusively for the permitted purpose and the applicant has received a permit or license under Wis. Stat. ch. 29, where applicable;
 - B. Filling or excavating necessary for the construction or maintenance of boat launching ramps or attendant access roads is allowed only where such construction or maintenance meets the criteria of Section 72.09(2)(c); and
 - C. Ditching, excavating, dredging, or dike and dam construction in public and private parks and recreation areas, natural and outdoor educational areas, historic and scientific areas, wildlife refuges, game, bird, and animal farms, and fish hatcheries is allowed only for the purpose of improving wildlife habitat or to otherwise enhance wetland values.
4. The construction or maintenance of electric, gas, telephone, water and sewer transmission and distribution facilities by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power, or water to their members, and the construction or maintenance of railroad lines, provided that:
- A. The transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland; and
 - B. Such construction or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the wetlands enumerated in Section 72.09(4)(b)1 through 7.
- (3) **PROHIBITED USES.** Any use not listed in Section 72.09(2), above, is prohibited, unless the wetland or a portion of the wetland is rezoned by an amendment of this Ordinance in accordance with the requirements of Wis. Stat. § 59.69(5)(e), Wis. Admin. Code Ch. NR 115, and Section 72.09(4).
- (4) **REZONING OF LANDS IN THE SHORELAND-WETLAND DISTRICT.**
- (a) For all proposed text and map amendments to the Shoreland-Wetland District, the appropriate office of the DNR shall be provided with the following:
 - 1. A copy of every petition for a text or map amendment to the Shoreland-Wetland District within five (5) days of the filing of such petition with the County Clerk with a copy to the Department. Such petition shall include a copy of the Wisconsin Wetland

Inventory Map adopted and referred to at Section 72.07 describing the proposed rezoning of a shoreland-wetland;

2. Written notice of the public hearing to be held on a proposed amendment, at least ten (10) days prior to such hearing;
3. A copy of the Department's findings and recommendations on each proposed amendment, within ten (10) days after the submission of those findings and recommendations to the County Board; and
4. Written notice of the County Board's enactment or other action, within ten (10) days after it is issued.

(b) A wetland or a portion thereof in the Shoreland-Wetland District shall not be rezoned if the proposed rezoning may result in a significant adverse impact upon any of the following:

1. Storm and flood water storage capacity;
2. Maintenance of dry season stream flow, the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
3. Filtering or storage of sediments, nutrients, heavy metals, or organic compounds that would otherwise drain into navigable waters;
4. Shoreline protection against soil erosion;
5. Fish spawning, breeding, nursery, or feeding grounds;
6. Wildlife habitat; or
7. Wetlands both within the boundary of designated areas of special natural resource interest and those wetlands which are in proximity to or have a direct hydrologic connection to such designated areas as defined in Wis. Admin. Code § NR 103.04 which can be accessed at the following web site:
<http://www.legis.state.wi.us/rsb/code/nr/nr103.pdf>.

(c) If the DNR has notified the Department that a proposed text or map amendment to the Shoreland-Wetland District may have a significant adverse impact upon any of the criteria listed in Subsection (b), above, that amendment, if approved by the County Board, shall contain the following provision: "This amendment shall not take effect until more than thirty (30) days have elapsed since written notice of the County Board's approval of this amendment was mailed to the DNR. During that

thirty- (30-) day period, the DNR may notify the County Board that it will adopt a superseding shoreland ordinance for the County under Wis. Stat. § 59.692(6). If the DNR does so notify the County Board, the effect of this amendment shall be stayed until the adoption procedure under Wis. Stat. § 59.692(6) is completed or otherwise terminated. If the DNR does not so notify the County Board, the amendment shall take effect upon publication." The Department shall notify the property owner that the amendment has been stayed.

72.10 SHORELAND DISTRICT.

- (1) DESIGNATION. This District includes all shorelands subject to regulation under Section 72.05 which are not designated as wetlands on the "Shoreland Zoning Map" and wetland inventory maps cited in Section 72.07.
- (2) PURPOSE. The purpose of the Shoreland District is to protect waters by providing for safe and orderly shoreland development. In this District, residential, recreational, and conservancy uses are permitted and a limited number of commercial uses are allowed as conditional uses. All permitted uses or conditional uses are subject to the general provisions of this Ordinance and all other applicable laws and regulations.
- (3) PERMITTED USES.
 - (a) Any use permitted under Section 72.09(2), except that if the use requires the issuance of a Shoreland/Floodplain Zoning Permit under Section 72.09, it requires a Shoreland/Floodplain Zoning Permit under this Section as well.
 - (b) Single-family detached dwellings, including mobile homes that meet the definition and standards set forth in Section 72.31(35), provided a Shoreland/Floodplain Zoning Permit under Section 72.23 is issued.
 - (c) Parks and playgrounds, provided a Shoreland/Floodplain Zoning Permit under Section 72.23 is issued.
 - (d) Accessory uses, provided a Shoreland/Floodplain Zoning Permit under Section 72.23 is issued.
 - (e) Boathouses, provided they meet the standards of Section 72.15(2)(a), and provided a Shoreland/Floodplain Zoning Permit under Section 72.23 is issued.
 - (f) Signs that meet the Shoreland setback requirement if approved by the Town in which they are located.
- (4) CONDITIONAL USES. The following uses, if permitted or approved pursuant to the underlying municipal zoning and other land use ordinances, are permitted

upon the issuance of a Conditional Use Permit according to the procedure set forth in Section 72.24.

- (a) All private inland lake access points providing access from more than two (2) dwelling units on back lots or building sites which do not front directly on the lake ("funnel subdivisions"). Such private access points shall have a minimum of fifty feet (50') in width at the OHWM for each of the first two (2) dwelling units served, plus an additional ten feet (10') of width for each additional dwelling unit served. The Resources Committee may attach conditions governing on-site storage of watercraft in length, types, and other specifications. That Committee shall consider the size, shape, depth, present and potential use of the lake, and the effect of the private access on public rights in navigable waters.
- (b) Two- (2-) family dwellings.
- (c) Multiple-family dwellings.
- (d) Planned Unit Developments, planned, designed, and developed in conformance with Section 71.24 of the Sheboygan County Code of Ordinances. The County Board may, at its discretion, upon its own motion or upon petition, approve a Planned Residential Unit Development Overlay District upon finding, after a public hearing, that all of the following facts exist:
 - 1. Area. The area proposed for the Planned Residential Unit Development shall be at least two (2) acres in size or have a minimum of two hundred (200) feet of frontage on navigable water.
 - 2. Lots. Any proposed lot in the Planned Residential Unit Development that does not meet the minimum size standards of Section 72.14 and as otherwise may be required shall be a non-riparian lot.
 - 3. Vegetative buffer zone and preservation of ground cover. The location of lots and the dedication of part of the land for use by the public or residents of the Planned Residential Unit Development shall preserve the vegetative buffer zone and ground cover of the shoreland to enhance scenic beauty of the navigable water, prevent erosion, and provide wildlife habitat. In cases where the vegetative buffer does not exist it shall be re-established. All lands not used for lots and streets shall be dedicated in perpetuity to remain in open space. This may be accomplished by conveyance in common to each of the owners of lots in the development or to a corporation formed by them, or by dedication to the County, Town, or municipality. Lands dedicated to the public must be accepted by action of the governing body of the accepting unit of government. If the land is to be conveyed to

owners of lots in the development, a homeowner's association, or similar legally constituted body shall be created to maintain the open space land. Any restriction placed on platted land by covenant, grant of easement, or any other manner which was required by a public body or which names a public body as grantee, promisee, or beneficiary, shall vest in the public body the right to enforce the restriction at law or in equity against anyone who has or acquires an interest in the land subject to the restriction.

4. Density. The number of platted lots shall not exceed those which would have been possible if the same land were platted in accordance with the minimum lot sizes and widths provided by the applicable provisions of the zoning ordinance. This figure shall be determined by dividing the total area of the subdivision by the minimum lot size requirement by Section 72.14.

5. Lot sizes, widths, setbacks, and vegetation removal. When considering approval of a Planned Residential Unit Development, the governing body shall consider whether proposed lot sizes, widths, and setbacks are of adequate size and distance to prevent pollution or erosion along streets or other public ways and waterways. Increased shoreland setbacks shall be a condition of approval as a way of minimizing adverse impacts of development. Shore cover provisions shall apply, except that maximum width of a lake frontage opening shall be one hundred (100) feet and minimum vegetative buffer depth shall be increased to offset the impact of the proposed development.

- (e) Public, parochial, and private schools.
- (f) Churches and similar places of religious worship.
- (g) Professional offices.
- (h) Governmental and cultural uses such as fire and police stations, community centers, municipal buildings, libraries, cemeteries, and museums.
- (i) Golf courses and country clubs.
- (j) Hotels, resorts [including two (2) or more seasonal dwelling units on a single lot for rent or lease], motels, restaurants, dinner clubs, taverns, and other private or public clubs.
- (k) Recreational camps and campgrounds. Recreational camps shall conform to Wis. Admin. Code Ch. H 75 and campgrounds shall conform to Wis. Admin. Code Ch. H 78.

- (l) Individual gift and retail specialty shops.
- (m) Marinas, boat liveries, bait shops, sports equipment stores, watercraft and marine motor sales and service stores, and fish farms.
- (n) Agricultural uses, provided that the following conditions shall apply in addition to any other conditions that may be established by the Committee:
 - 1. New farm buildings housing animals, and all new barnyards or feedlots, shall be located at least one hundred feet (100') from any navigable water and shall be located so that manure will not drain into any navigable water. (Waste collection and disposal systems may be required to prevent manure from draining into any navigable water.)
 - 2. The floodplain zoning standards set forth in Chapter 73 of the Sheboygan County Code of Ordinances shall apply hereto.
- (o) Warehouses, provided that the underlying zoning is industrial or commercial and that the following conditions shall apply in addition to any other conditions that may be established by the Committee:
 - 1. All structures over one thousand (1,000) square feet in area shall be set back at least one hundred feet (100') from the OHWM of navigable waters.
 - 2. All parking lots, support and accessory facilities, and other impervious surfaces that, in the aggregate, exceed five thousand (5,000) square feet in area shall be set back at least one hundred feet (100') from the OHWM of navigable waters.
 - 3. Stormwater management and erosion control plans (prepared in accordance with Wis. Admin. Code Chs. NR 151 and NR 152 or Chapter 78 of the Sheboygan County Code of Ordinances regardless of whether a permit might otherwise be required, whichever is more restrictive) shall be submitted for developments in which parking lots, support and accessory facilities, and other impervious surfaces, in the aggregate, exceed ten thousand (10,000) square feet in area. Such plans shall discourage direct stormwater discharge to the navigable waters, or shall provide for adequate detention/retention or pretreatment.
 - 4. The storage, processing, or manufacture of any materials hazardous, explosive, or otherwise injurious to humans, animals, vegetation, ground, and surface waters shall be prohibited.
 - 5. Motor vehicle service and repair facilities shall be prohibited.

- (p) Light Industry, provided that the following conditions shall apply in addition to any other conditions that may be established by the Committee:
1. Only previously existing structures or other developments may be converted to light industrial uses.
 2. The underlying municipal zoning is industrial or commercial.
 3. All structures over one thousand (1,000) square feet in area shall be set back at least one hundred feet (100') from the OHWM of navigable waters.
 4. All parking lots, support and accessory facilities, and other impervious surfaces that, in the aggregate, exceed five thousand (5,000) square feet in area shall be set back at least one hundred feet (100') from the OHWM of navigable waters.
 5. Stormwater management and erosion control plans for the site shall be required and implemented. The plans and implementation shall be reviewed and approved by the Department for existing developments in which parking lots, support and accessory facilities, and other impervious surfaces, in the aggregate, exceed ten thousand (10,000) square feet in area. The plans and their implementation shall be based on Best Management Practices (BMPs) and shall be designed and installed to handle the largest storm event possible considering the physical constraints of the existing property prior to the planning and construction of additional impervious surfaces. The plans shall discourage direct stormwater discharge to the navigable waters, or shall provide for adequate detention/retention or pretreatment. In addition, the plans shall include an "Operation and Maintenance Plan" that establishes monitoring and maintenance requirements for the BMPs to ensure the BMPs will operate as designed and thereby protect the waters of the state. BMPs shall be constructed prior to the start of the industrial/manufacturing operation pending soil and weather conditions.
 6. Outdoor storage of raw materials, finished products, and waste materials/process by-products shall be prohibited or otherwise screened from view and covered to prevent off-site migration via wind or water.
 7. The storage, processing, or manufacture of any materials which are hazardous, explosive, or otherwise injurious to

humans, animals, vegetation, ground, and surface waters shall be prohibited.

8. Motor vehicle service and repair facilities shall be prohibited.

(q) Non-metallic mining, provided all provisions of Chapter 78 of the Sheboygan County Code of Ordinances are adhered to regardless of whether a permit is required and provided that the activity has a set-back of three hundred (300') feet from the OHWM.

72.11 LAND DIVISION REVIEW. In addition to the zoning provisions set forth herein, all land divisions involving land in the Shoreland-Wetland District and/or in the Shoreland District are subject to the requirements of Chapter 71 of the Sheboygan County Code of Ordinances, including Section 71.16 thereof.

72.12 *RESERVED.*

72.13 SANITARY REGULATIONS. In addition to the zoning provisions set forth herein, all land in the Shoreland-Wetland District and/or in the Shoreland District are subject to the sanitary regulations of Chapter 70 of the Sheboygan County Code of Ordinances.

72.14 BUILDING SITES AND DIMENSIONS. Any Shoreland/Floodplain Zoning Permit or Conditional Use Permit issued hereunder shall have as applicable these additional requirements:

(1) The dimensions of all building lots hereinafter created shall be subject to Chapter 71 of the Sheboygan County Code of Ordinances, and in addition, in order to afford protection against danger to health, safety, and welfare and protection against pollution of adjacent bodies of water:

(a) "Sewered lots." Lots served by a public sanitary sewer shall have a minimum width of sixty-five feet (65') and ten thousand (10,000) square feet of area. If abutting a navigable waterway, it shall have at least sixty-five feet (65') of frontage at the OHWM.

(b) "Unsewered lots." Lots not served by a public sanitary sewer shall have a minimum width of one hundred feet (100'), and twenty thousand (20,000) square feet of area. If abutting a navigable waterway, it shall also have at least one hundred feet (100') of frontage at the OHWM.

(2) A legally-created lot or parcel that met minimum area and minimum average width requirements when created but does not meet current lot size requirements may be used as a building site if all of the following apply:

(a) The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one (1) parcel;

- (b) The substandard lot or parcel has never been developed with one (1) or more of its structures placed partly upon an adjacent lot or parcel; and
 - (c) The substandard lot or parcel is developed to comply with all other ordinance requirements.
- (3) Except for lots which meet the requirements of Section 72.14(1) and (2), a building permit for the improvement of a lot having lesser dimensions than those stated herein shall be issued only if a variance is granted by the Board of Adjustments.
 - (4) Only one (1) principal structure and one (1) principal use shall be permitted on a single parcel, lot, or tract of land unless expressly approved on an individual basis for such uses as Planned Unit Developments, condominiums, or other clustered projects, in accordance with the provisions of Sections 72.10, 72.11, and 72.13.
 - (5) Accessory structures shall not be constructed or placed until their principal structure is present or under construction.

72.15 SETBACKS. In order to conform to health and safety concerns, preserve natural beauty, reduce flood hazards, and avoid water pollution, any use of property within a Shoreland-Wetland District or a Shoreland District shall have as applicable these additional requirements:

- (1) SETBACKS FROM THE WATER. [NOTE: Setbacks hereunder are to be measured at right angles from lot lines or the OHWM, horizontally, to the closest projection of the structure or integral part thereof, including attached decks, porches, balconies, attached covered stairs and landings, chimneys, such architectural projections as sills, eaves, and belt courses, and attached garages.]
 - (a) Inland Navigable Waters, except if exempt or reduced as hereafter provided.
 - 1. Required Setbacks. All structures, except piers, wharves, boat hoists, boathouses, open fences, bridges, dams, and walkways and stairways which are necessary to provide pedestrian access to the shoreline, shall require a setback of at least seventy-five feet (75') from the OHWM although a greater setback may be required where otherwise regulated by the floodplain provisions of this Ordinance or other more restrictive ordinances.

Structures which require authorization or permits from the DNR pursuant to Wis. Stat. chs. 30 and 31 or which are to be located below the OHWM, namely bridges, dams, culverts, piers, wharves, navigational aids, and waterway crossings of transmission lines shall comply with all applicable federal, state, county, and local regulations, but shall not require the issuance of

a Shoreland/Floodplain Zoning Permit where the standards of this Ordinance are complied with.

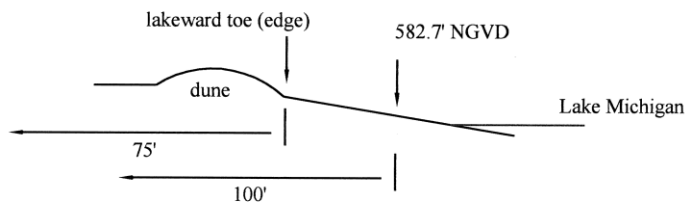
2. Reduced Principal Structure Setback. Existing development pattern means that principal structures exist within two hundred fifty feet (250') of the proposed principal structure in both directions along the shoreline. Where there is an existing development pattern, the shoreland setback for a proposed principal structure may be reduced to the average shoreland setback of the principal structure on each adjacent lot within two hundred fifty feet (250') of the proposed principal structure but no closer than the existing structure. The shoreland setback may not be reduced to less than thirty-five feet (35') from the OHWM of any navigable waters.

(b) Lake Michigan.

1. Findings of Fact. Lake Michigan possesses unique ecological characteristics, water level fluctuations, and erosion hazards, not found on other surface waters in Sheboygan County.
2. Required Setbacks. All structures, except piers, wharves, boat hoists, boathouses, open fences, bridges, dams, and walkways which are necessary to provide pedestrian access to the shoreline, shall be set back at least one hundred feet (100') from the OHWM elevation of 582.7' National Geodetic Vertical Datum (NGVD) or Mean Sea Level (MSL) or 75' from the lakeward toe of the natural primary dune, whichever is less, for the coastal reach extending from the south County line to the south City of Sheboygan limit.

Toe: The lowest point on the slope of a dune or bluff.

Lakeward toe: The toe or edge on the lake side of the dune.



From the north City of Sheboygan limit to the north County line the coast of Lake Michigan consists almost entirely of steep bluffs ± 50 feet in height; long-term recession (erosion) rates of ± 2 feet per year have been recorded along this coastal reach. To protect property and life and minimize costly damage, the setback from the OHWM of Lake Michigan for structures is based upon the long-term recession rate of two feet (2') per year and a fifty- (50-)

year period as the useful life of the structure. In addition, on these steep bluffs it shall also be necessary to determine an additional setback distance based upon a stable slope angle of two and one-half feet (2-1/2') horizontal distance for every one foot (1') vertical distance. [To illustrate, 50-year design life \times 2 feet per year recession rate = 100-foot setback. If on the 50 foot high bluff; 2-1/2 feet (stable slope angle) \times 50 feet (bluff height) = 125-foot setback. TOTAL SETBACK = 225 feet (100 + 125).]

Therefore, to achieve the added degree of protection for major structural investments as described above, all Principal Buildings shall be set back two hundred twenty-five feet (225') from the OHWM for the coastal reach extending from the north City of Sheboygan limit to the north County line. Accessory structures in this area shall be setback 100 feet from the OHWM.

Structures which require authorization or permits from the DNR pursuant to Wis. Stat. chs. 30 and 31 or which are to be located below the OHWM; namely bridges, dams, culverts, piers, wharves, navigational aids, and waterway crossings of transmission lines shall comply with all applicable federal, state, county, and local regulations, but shall not require the issuance of a Shoreland/Floodplain Zoning Permit where the standards of this Ordinance are complied with.

3. Procedure to Reduce Setback of Principal Buildings. For the coastal reach extending from the north City of Sheboygan Limit to the north County line, a lesser setback may be achieved for the principal building on an individual site where it is determined by a registered professional engineer or surveyor that the height of the bluff is less than fifty feet (50') and, therefore, that the stable slope angle setback (2-1/2:1) would be less than the one hundred twenty-five feet (125') established above. Measurement of the stable slope angle setback shall be made from the OHWM perpendicular to the shoreline. There shall be two such measurements for every one hundred feet (100') of shoreline at points not less than fifty feet (50') apart. The setback shall be a line connecting these two points, or such line extended.

The Board of Adjustments may approve, as a variance under the provisions of Section 72.25, a modification of the erosion hazard setback upon presentation by the applicant of acceptable engineering studies documenting:

- A. Lower recession rates;
- B. More stable slope conditions;
- C. Plans for structural protection against wave attack; and
- D. Plans for stabilization of the bluff or shoreline.

- (2) EXEMPT STRUCTURES. All of the following structures are exempt from the setback standards in Subsection (1), above:
- (a) Boathouses located entirely above the OHWM and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation, subject to the following:
1. Boathouses shall be designed and constructed solely for the storage of watercraft and related equipment.
 2. Only one boathouse is permitted on a lot as an accessory structure.
 3. Boathouses shall not be constructed where the existing slope is more than twenty percent (20%).
 4. Boathouses shall not extend below the OHWM or more than thirty feet (30') landward of the OHWM and shall be constructed in conformity with all floodplain zoning standards.
 5. Boathouses shall not exceed three hundred (300) square feet in area.
 6. The height of a boathouse shall not exceed twelve feet (12') as measured from the lowest adjacent grade to the peak of the roof.
 7. Railings shall not be placed on top of the boathouse nor shall boathouse roofs be designed to provide general outdoor living space (i.e. a deck).
- (b) Open-sided and screened structures such as gazebos, decks, patios, and screen houses in the shoreland setback area that satisfy the requirements in Wis. Stat. § 59.692(1v).
1. The part of the structure that is nearest to the water is located at least thirty-five feet (35') landward from the OHWM.
 2. The floor area of all the structures in the shoreland setback area will not exceed two hundred (200) square feet.
 3. The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.
 4. The Department must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least seventy percent (70%) of the half of the shoreland setback area that is nearest to the water.

5. A Department-approved affidavit must be filed by the property owner with the Register of Deeds prior to construction acknowledging the limitations on the vegetation required above which shall run with the land.
 6. The structure must be free-standing and more than five feet (5') from a principal structure.
- (c) Broadcast signal receivers, including satellite dishes or antennas that are one (1) meter or less in diameter and satellite earth station antennas that are two (2) meters or less in diameter, and small, moveable structures at the discretion of Department staff.
 - (d) Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with Wis. Admin. Code Ch. SPS 383, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.
 - (e) Walkways, stairways, landings, or rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of sixty (60) inches in width.
- (3) FLOODPLAIN STRUCTURES. Buildings and structures to be constructed or placed in a floodplain shall be required to comply with Chapter 73 of the Sheboygan County Code of Ordinances.

72.16 VEGETATION

- (1) Purpose. To protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote preservation and restoration of native vegetation, owners of property in shoreland-wetland zones and/or shoreland zones must consider sound forestry and soil conservation practices and the effect of vegetation removal on water quality, including soil erosion, and the flow of effluents, sediments and nutrients.
- (2) Limitations. Land that extends from the ordinary high water mark to a minimum of thirty-five feet (35') inland shall be designated as a vegetative buffer zone and removal of vegetation in the vegetative buffer zone is prohibited except as follows:
 - (a) Routine maintenance of vegetation is allowed.
 - (b) Removal of trees and shrubs in the vegetative buffer zone is allowed to create access and viewing corridors, provided that the combined width of all access and viewing corridors on a riparian lot or parcel may not exceed the lesser of thirty percent (30%) of the shoreline frontage or two hundred feet (200').

- (c) Removal of trees and shrubs in the vegetative buffer zone on a parcel with ten (10) or more acres of forested land consistent with “generally accepted forestry management practices” as defined in Wis. Admin. Code § NR 1.25(2)(b) and described in DNR publication *Wisconsin Forest Management Guidelines* (publication FR-226), provided that vegetation removal be consistent with these practices.
 - (d) Removal of vegetation within the vegetative buffer zone is allowed to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation creating an imminent safety hazard, provided that any vegetation removed under the permit be replaced by replanting in the same area as soon as practicable. The Department may require documentation from a qualified professional supporting the need for removal of the additional vegetation.
 - (e) Additional vegetation management activities in the vegetative buffer zone may be authorized by permit. The permit shall require that all management activities comply with detailed plans approved by the Department and designed to control erosion by limiting sedimentation into the waterbody, to improve the plant community by replanting in the same area, and to maintain and monitor the newly-restored area. The permit also shall require an enforceable restriction to preserve the newly-restored area. The Department may require documentation from a qualified professional supporting the need for additional vegetation management activities.
- (3) Cutting More than Thirty-five Feet (35') Inland. From the inland edge of the thirty-five-foot (35') area to the outer limits of the shoreland, the cutting of vegetation shall be allowed when accomplished using accepted forest management and soil conservation practices which protect water quality.

72.17 FILLING, DREDGING, LAGOONING, GRADING, DITCHING, AND EXCAVATING. Any filling, grading, lagooning, dredging, ditching, and excavating on property within a Shoreland-Wetland District or a Shoreland District shall be permitted only in accordance with the provisions of Wis. Admin. Code § NR 115.04, the requirements of Wis. Stat. chs. 30 and 31 and only if done in a manner designed to minimize erosion, sedimentation, and impairment of fish and wildlife habitat and natural scenic beauty, and these additional requirements:

- (1) GENERAL STANDARDS. Filling, dredging, lagooning, grading, ditching, or excavating which does not require a Shoreland/Floodplain Zoning Permit is allowed, provided that:
 - (a) It is done in a manner designed to minimize erosion, sedimentation, and impairment of fish and wildlife habitat.
 - (b) Filling, dredging, lagooning, grading, ditching, or excavating in a shoreland-wetland area meets the requirements of Section 72.09(2)(b).

- (c) A local, state, or federal permit is obtained if local, state, or federal laws require the issuance of a permit for the filling, dredging, lagooning, grading, ditching, or excavating that is proposed.
 - (d) Any fill placed in the shoreland area is protected against erosion by the use of riprapping, vegetative cover, or a bulkhead.
- (2) PERMIT REQUIRED. Except as provided in Section 72.17(4), a Shoreland/Floodplain Zoning Permit is required:
- (a) For development anywhere in a mapped floodplain under the jurisdiction of Chapter 73 of the Sheboygan County Code of Ordinances.
 - (b) For any filling or grading of any area which is within three hundred feet (300') of the OHWM of a navigable waterway and which has surface drainage toward the water and on which there is either:
 - 1. Any filling or grading on slopes of twenty percent (20%) or more; or
 - 2. Filling or grading of more than one thousand (1,000) square feet on slopes of twelve percent (12%) to twenty percent (20%); or
 - 3. Filling or grading of more than two thousand (2,000) square feet on slopes of twelve percent (12%) or less.
 - (c) For construction or dredging commenced on any artificial waterway, canal, ditch, lagoon, pond, lake, or similar waterway which is within three hundred feet (300') of the OHWM of a navigable body of water or where the purpose is the ultimate connection with a navigable body of water.
- (3) PERMIT CONDITIONS. In granting a permit under Subsection (2), above, the Department shall attach the following conditions, where appropriate, in addition to those provisions specified in Sections 72.23.
- (a) The smallest amount of bare ground shall be exposed for as short a time as feasible.
 - (b) Temporary ground cover (such as mulch or jute netting) shall be used and permanent vegetative cover shall be established.
 - (c) Diversion berms or bales, silting basins, terraces, filter fabric fencing, and other methods shall be used to prevent erosion.
 - (d) Lagoons shall be constructed to avoid fish trap conditions.
 - (e) Fill shall be stabilized according to accepted engineering standards.

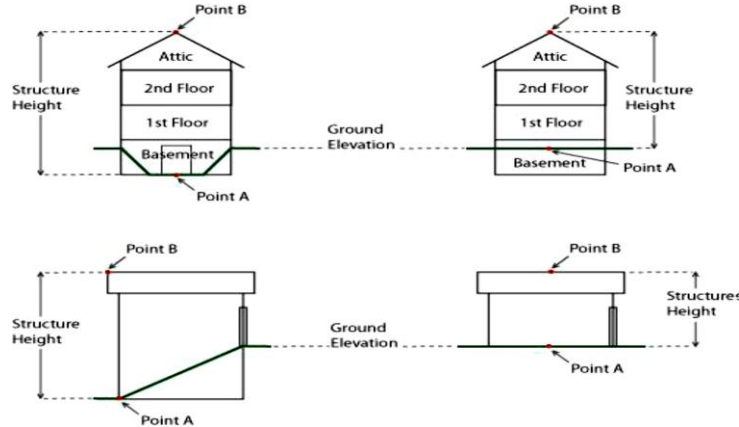
- (f) Filling shall comply with any local floodplain zoning ordinance and shall not restrict a floodway or destroy the flood storage capacity of a floodplain.
 - (g) Channels or artificial watercourses shall be constructed with side slopes of two (2) units horizontal distance to one (1) unit vertical or flatter which shall be promptly vegetated, unless bulkheads or riprap are provided.
- (4) SOIL CONSERVATION PRACTICES AND AGRICULTURAL DRAINAGE MAINTENANCE.
- (a) Soil conservation practices such as tiled terraces, runoff diversions and grassed waterways used for erosion control shall not require a permit when designed and constructed to Natural Resources Conservation Service technical standards.
 - (b) The maintenance of existing agricultural drainage systems shall be permitted in conformity with the following construction standards:
 - 1. The maintenance dredging of farm drainage ditches is limited to reestablishing the original ditch cross section unless a permit under Section 72.17(2) is obtained.
 - 2. Ditch banks shall be constructed at a slope of 2 horizontal to 1 vertical (50% grade) or flatter.
 - 3. Ditch banks shall be maintained in a sod cover and free of woody vegetation.
 - 4. A minimum ten- (10-) foot wide buffer strip of untilled, ungrazed sod cover shall be maintained adjacent to the ditch bank.

72.18 IMPERVIOUS SURFACE STANDARDS.

- (1) PURPOSE. To protect water quality and fish and wildlife habitat and to protect against pollution of navigable waters, these impervious surface standards are established and shall apply to the construction, reconstruction, expansion, replacement, or relocation of any impervious surface within three hundred feet (300') of the OHWM of any navigable waterway. These standards are in addition to and do not supersede any other applicable provisions of this Ordinance.
- (2) CALCULATION OF IMPERVIOUS SURFACE. The percentage of impervious surface shall be calculated by dividing the surface area of existing and proposed impervious surfaces on the portion of a lot or parcel that is within three hundred feet (300') of the OHWM by the total surface area of that portion of the lot or parcel that is within three hundred feet (300') of the OHWM and multiplied by one hundred (100). The Department may require a survey of existing impervious surfaces to be included as part of the permit application.

- (3) IMPERVIOUS SURFACE STANDARD. Up to fifteen percent (15%) of the portion of a lot or parcel that is within three hundred feet (300') of the OHWM may be comprised of impervious surface.
- (4) MAXIMUM IMPERVIOUS SURFACE. More than fifteen percent (15%) but not more than thirty percent (30%) of a lot or parcel that is within three hundred feet (300') of the OHWM may be comprised of impervious surface, but for that portion of the development that exceeds fifteen percent (15%) impervious surface but not more than thirty (30%) impervious surface, a permit shall be required which includes a mitigation plan that meets the standards found in Section 72.21.
- (5) EXISTING IMPERVIOUS SURFACES. For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the impervious surface standards provided herein, the property owner may do any of the following:
 - (a) maintain and repair the existing impervious surfaces;
 - (b) replace existing impervious surfaces with similar surfaces within the existing impervious surface footprint;
 - (c) relocate or modify an existing impervious surface with similar or different impervious surface, provided that the relocation or modification does not result in an increase in the percentage of impervious surface that existed on the effective date of this Ordinance, and the impervious surface meets the applicable setback requirements in Section 72.15. If the relocation or modification results in a change in drainage pattern or reconfiguration of the impervious surface footprint, mitigation that meets the standards found in Section 72.21 is required.
- (6) CONSTRUCTION. This Section of the Ordinance shall not be construed to supersede the other provisions in this Ordinance. Maintenance, reconstruction, relocation, and expansion of existing structures must comply with other provisions in this Ordinance, including the shoreland setback and non-conforming structures provisions.

72.19 HEIGHT. To protect and preserve wildlife habitat and natural scenic beauty, construction shall not be permitted that results in a structure taller than thirty-five feet (35') within seventy-five feet (75') of the OHWM of any navigable waters. Structure height shall be measured as follows: The measurement of the vertical line segment starting at the lowest point of any exposed wall and its intersect with the ground (Point A in the following diagram) to a line horizontal to the highest point of a structure (Point B in the following diagram) unless specified under other Sections of this Ordinance.



72.20 NONCONFORMING USES AND STRUCTURES.

- (1) **PURPOSE.** To protect water quality, fish and wildlife habitat, and natural scenic beauty, some control is needed over the modification and reconstruction of nonconforming structures.
- (2) **GENERAL RULE FOR NONCONFORMING USES AND STRUCTURES.**
Pursuant to Wis. Stat. § 59.692(1s),
 - (a) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained herein shall not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:
 1. The nonconforming structure was damaged or destroyed after October 14, 1997.
 2. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.
 3. A landowner has demonstrated by a permit application and approval the scope, nature, extent of the damage done as well as the dimensions of the damaged structure and proposed restoration.
 - (b) The size of a structure may be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.
- (3) **DISCONTINUED NONCONFORMING USE.** If a nonconforming use is discontinued for a period of twelve (12) months, any future use of the building, structure, or property shall conform to this Ordinance.

- (4) **MAINTENANCE OF NONCONFORMING PRINCIPAL STRUCTURE.** An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback per Section 72.15 may be maintained and repaired within its existing building envelope. Maintenance and repair includes such activities as interior remodeling, plumbing, insulation, and replacement of windows, doors, siding, or roof.
- (5) **VERTICAL EXPANSION OF NONCONFORMING PRINCIPAL STRUCTURE.** An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback per Section 72.15 may be expanded vertically, provided that all of the following requirements are met:
- (a) The use of the structure has not been discontinued for a period of twelve (12) months or more.
 - (b) The existing principal structure is at least thirty-five feet (35') from the OHWM.
 - (c) Vertical expansion is limited to the height allowed in Section 72.19.
 - (d) A permit shall be issued by the Department which will include an approved mitigation plan which will be implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in Section 72.21.
 - (e) All other provisions of this Ordinance shall be met.
- (6) **EXPANSION OF A NONCONFORMING PRINCIPAL STRUCTURE BEYOND SETBACK.** An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under Section 72.15, may be expanded horizontally, landward, or vertically provided that the expanded area meets the building setback requirements of Section 72.15 and that all other provisions of this Ordinance are met. A mitigation plan is not required solely for expansion under this Subsection but may be required under Section 72.18.
- (7) **REPLACEMENT OR RELOCATION OF NONCONFORMING PRINCIPAL STRUCTURE.** An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback per Section 72.15 may be replaced or relocated on the property provided all of the following requirements are met:
- (a) The use of the structure has not been discontinued for a period of twelve (12) months or more.
 - (b) The existing principal structure is at least thirty-five feet (35') from the OHWM.

- (c) No portion of the replaced or relocated structure is located any closer to the OHWM than the closest point of the existing principal structure.
 - (d) The Department determines that no other location is available on the property taking into consideration other site constraints such as vegetation, lot line and road setbacks, and topography and utilities to build a principal structure of a comparable size to the structure proposed for replacement or relocation that will result in compliance with the shoreland setback requirement per Section 72.15.
 - (e) The Department shall issue a permit that requires an approved mitigation plan which shall be implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in Section 72.21 and shall include enforceable obligations of the property owner to establish or maintain measures that the Department determines are adequate to offset the impacts of the permitted construction on water quality, near-shore aquatic habitat, upland wildlife habitat, and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the replaced or relocated structure being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument approved by the Department and recorded by the owner in the office of the Register of Deeds.
 - (f) The permit shall require that all other structures on the lot or parcel that do not comply with the shoreland setback requirement and are not exempt per Section 72.15 shall be removed by the date specified in the permit.
 - (g) All other provisions of this Ordinance shall be met.
- (8) MAINTENANCE OF NONCONFORMING ACCESSORY STRUCTURES. Accessory structures that were legally constructed before the adoption of this Ordinance may be maintained and repaired but may not be expanded or rebuilt unless authorized by Wis. Stat. § 59.692(1s), or unless they are made to conform to all other provisions of this Ordinance.
- (9) WET BOATHOUSES. The maintenance and repair of nonconforming boathouses which extend landward of the OHWM of any navigable waters shall comply with Wis. Stat. § 30.121.

72.21 MITIGATION. Before the Department issues a permit requiring mitigation under Sections 72.18 and 72.20, the property owner must submit, along with the application, a complete mitigation plan that complies with the Sheboygan County Shoreland Mitigation Handbook as has been adopted by the Committee and which may be modified from time to time. The mitigation plan shall include the following:

- (1) A site plan that describes the proposed mitigation measures.

- (a) The site plan shall be designed and implemented to restore natural functions lost through development and human activities.
 - (b) The mitigation measures shall be proportional in scope to the impacts on water quality, near-shore aquatic habitat, upland wildlife habitat, and natural scenic beauty.
- (2) An implementation schedule and enforceable obligation on the property owner to establish and maintain the mitigation measures. The enforceable obligations shall be evidenced by an instrument approved by the Department and recorded by the owner in the office of the Register of Deeds prior to issuance of the permit.

72.22 ADMINISTRATION.

- (1) This Ordinance shall be administered in accordance with Wis. Stat. §§ 59.69, 59.692, and 87.30, as amended, and in conformance with Wis. Admin. Code Ch. NR 115 and NR 116, as amended.
- (2) The duties of administering this Ordinance are assigned to the Planning and Conservation Department (called "Department") employing a full-time professional planner and his/her duly appointed professional planning and zoning administration staff.
- (3) The Department shall have the authority and power to:
- (a) Advise applicants and answer any question about the provisions of this Ordinance.
 - (b) At all times during reasonable hours, enter upon and inspect any private or public premises for compliance, being clearly in the performance of their duty. If entry is refused after presentation of proper identification, a special inspection warrant may be procured in accordance with Wis. Stat. § 66.0119.
 - (c) Issue permits and approvals where appropriate.
 - (d) Keep the official records of all water surface profiles, documentations of certified elevation, shoreland, wetland, or floodplain zoning maps and ordinances, permits and permit applications, appeals, variances, and amendments related to this Ordinance.
 - (e) Report uncorrected violations of this Ordinance or other applicable regulations to the Sheboygan County Corporation Counsel for appropriate enforcement action.
 - (f) Submit copies of any required data, variances, amendments, case-by-case analyses, annual reports, and any other requested information to the DNR.

72.23 PERMITS.

- (1) WHEN REQUIRED. Except where another Section of this Ordinance specifically exempts certain types of development from this requirement, a Shoreland/Floodplain Zoning Permit shall be obtained from the Department.
- (2) APPLICATION. An application for a permit shall be made to the Department upon forms furnished by the Department and shall include for the purpose of proper enforcement of these regulations, the following information:
 - (a) Name and address of applicant and property owner.
 - (b) Legal description of the property and type of proposed use.
 - (c) A to scale drawing of the dimensions of the lot and location of all existing and proposed structures and impervious surfaces relative to the lot lines, center line of abutting highways and the OHWM of any abutting waterways.
 - (d) Location and description of any existing private water supply or sewage system or notification of plans for any such installation.
 - (e) Plans for appropriate mitigation when required.
 - (f) Payment of the appropriate fee.
 - (g) Additional information that may be required by the Department.
- (3) EXPIRATION OF PERMIT. Shoreland/Floodplain Zoning Permits shall expire one (1) year from the date of issue unless substantial work has commenced. If substantial work has commenced and a request for renewal is received by the Department prior to the expiration date, the permit can be renewed for an additional one- (1-) year period. If substantial work has not commenced prior to the expiration date, the permit will not be renewed and a new permit must be issued before work can commence. A permit will not be issued if the proposed development does not comply with the Ordinance in effect at the time of permit application.

72.24 CONDITIONAL USE (a.k.a. SPECIAL EXCEPTIONS) PERMITS.

- (1) APPLICATION. Permission for conditional uses specified in this Ordinance shall be allowed only upon application to the Department, on forms furnished by the Department, and issuance of a Conditional Use Permit by the Department's County Board liaison committee (called "Committee" throughout this Ordinance) following the same notice, hearing, and other procedures set forth for the Board of Adjustments in Wis. Stat. § 59.694 and Chapter 76 of the Sheboygan County Code of Ordinances.

- (2) EVALUATION. In passing upon a proposed conditional use application, the Committee shall evaluate the effect of the proposed use upon:
- (a) Maintenance of safe and healthful conditions.
 - (b) Prevention and control of water pollution, including erosion and sedimentation.
 - (c) Existing topography, drainage, and vegetative cover.
 - (d) Location to floodways and floodplains.
 - (e) Erosion potential based on percent slope, soil type, and vegetative cover.
 - (f) Existing and future access roads.
 - (g) Existing and future traffic and parking needs.
 - (h) Degree of site disturbance and its impact upon adjoining natural resource areas (e.g. wetlands, archaeological features, preserves, wildlife habitat).
 - (i) Compatibility with adjacent uses.
 - (j) Suitability for waste disposal and potable water supply.
 - (k) Natural scenic beauty.
 - (l) Conformance with other applicable codes and ordinances.
- (3) OTHER CONDITIONS. The Committee may attach such conditions, in addition to those required elsewhere in this Ordinance as it deems necessary in furthering the purpose of this Ordinance. Violation of any such established conditions shall be deemed a violation of this Ordinance. Such conditions may include specifications for, without limitation because of specific enumeration:
- (a) Type and extent of shore cover.
 - (b) Increased setbacks and yards.
 - (c) Specific sewage disposal and water supply facilities.
 - (d) Landscaping, planting screens, and buffer yards.
 - (e) Period of operation.
 - (f) Extent and duration of site disturbance.
 - (g) Operational control.
 - (h) Access and parking.
 - (i) Surety bonding.
 - (j) Deed restrictions.
 - (k) Location of structures.
 - (l) Type of construction.
 - (m) Floodproofing measures.
- (4) REQUIRED INFORMATION. As a basis for its determination, the Committee may require the applicant to furnish, in addition to the information required for a permit, the following data:
- (a) A plan map drawn to a reasonable scale showing contours and elevations, soil types, ground water conditions, bedrock, OHWM, slopes, and vegetative cover.
 - (b) Location of existing and proposed buildings, parking areas, access roads, walkways, piers, open spaces, and landscaping.

- (c) Specifications for areas of proposed filling, dredging, lagooning, or grading.
 - (d) Plans of sewage disposal and water supply facilities.
 - (e) Floodproofing measures.
 - (f) Any of the floodplain data described in Chapter 73 of the Sheboygan County Code of Ordinances deemed necessary by the Committee.
- (5) **DEVIATION FROM PERMIT.** When a Committee-approved conditional use is not carried out or does not continue in conformance with the conditions of the original approval, the conditional use shall be terminated and the permit revoked by action of the Committee. Revisions or amendments must be approved by the Committee using the same procedure as was used to obtain the initial conditional use approval.
- (6) **STATE REVIEW.** Written notice must be made to the appropriate office of the DNR at least ten (10) days prior to hearings on proposed conditional uses, and copies of decisions thereon shall be provided to that office within ten (10) days after they are granted or denied.

72.25 **BOARD OF ADJUSTMENTS.** The Sheboygan County Building, Zoning, and Sanitation Board of Adjustments, as established in Chapter 76 of the Sheboygan County Code of Ordinances, pursuant to Wis. Stat. § 59.694 is hereby authorized to administer the appropriate judicial functions set forth in this Ordinance. The said Board shall be referred to as the Board of Adjustments (Board) in this Ordinance.

- (1) **POWERS.** The Board may exercise all of the powers conferred on such Board by Wis. Stat. § 59.694.
- (a) It shall hear and decide appeals where it is alleged there is an error in any order, requirements, decision, or determination made by the Department or by the Committee.
 - (b) Upon application, it may grant a variance from the standards of this Ordinance. To grant a variance from the standards of this Ordinance, an applicant must convincingly demonstrate that:
 1. Literal enforcement of the provisions of the Ordinance will result in unnecessary hardship on the applicant;
 2. The hardship is due to special conditions unique to the property; and
 3. Is not contrary to the public interest.
 - (c) To interpret upon appeal the meaning or intent of a particular provision of this Ordinance or other ordinances of Sheboygan County.

(2) APPEAL TIME. Appeals to the Board of Adjustments may be made by a person aggrieved or by any officer, department, board, or bureau of Sheboygan County or the municipality affected by any decision of the Department. Such appeal shall be made by filing within thirty (30) days after the date of written notice of the decision or order of the Department or by the Committee, a notice of appeal specifying the reasons for appeal. The notice of appeal shall conform with the rules of the Board.

(3) HEARING APPEALS AND ACTIONS UPON VARIANCE APPLICATION.

(a) The Board of Adjustments (Board) shall fix a reasonable time for a hearing on the appeal or application. The Board shall give public notice thereof by publishing a Class 2 notice under Wis. Stat. § 985 specifying the date, time, and place of the hearing and the matters to come before the Board. Notice shall be mailed to the parties in interest. Written notice shall be given to the appropriate office of the DNR at least ten (10) days prior to hearings on proposed shoreland variances and appeals for map or text interpretations.

(b) A decision shall be made as soon as practical. Copies of all decisions on shoreland variances and appeals for map or text interpretations shall be submitted to the appropriate office of the DNR within ten (10) days after they are granted or denied.

(c) In granting a variance, the Board may impose restrictions including the requirement that the applicant obtain a permit, but the Board may not impose restrictions which are more restrictive than any of the specific standards in this Ordinance. Where the Ordinance is silent as to the extent of the restriction, the Board may impose any reasonable permit conditions to effect the purposes of this Ordinance. The applicant has one (1) year from the date of the written decision to obtain any necessary permit or the variance relief shall expire.

(d) At the public hearing, any party may appear in person or by agent or by attorney.

72.26 FEES. All persons, upon filing an application for permits, changes, and amendments, or Board of Adjustments reviews required pursuant to this Ordinance, shall pay a fee to the Department according to the fee schedule on file in the Planning and Conservation Department.

If in the determination of the Department a permit applicant contemplates construction in an amount of no more than Two Thousand Dollars (\$2,000.00) and the Department determines that the expense related to the issuance of the permit does not require the full fee, the Department, in its discretion, may waive all but Seventy-five Dollars (\$75.00) of the fee.

A double fee may be charged if work is started before a permit is applied for and issued.

72.27 VIOLATIONS AND PENALTIES. Any person, firm, association, corporation, or agents thereof who violates, disobeys, neglects, omits, or refuses to comply with any of the provisions of this Ordinance shall be deemed in violation. The Department shall refer violations to the Corporation Counsel who shall expeditiously prosecute violations.

Any person firm, association, or corporation who violates or refuses to comply with any of the provisions of this Ordinance shall, upon conviction, forfeit to the County not less than Twenty Dollars (\$20.00) nor more than Two Thousand Dollars (\$2,000.00), plus the costs of prosecution, for each offense. Each day during which such violation exists shall constitute a separate offense.

Every violation of this Ordinance is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated by action at the suit of the County, the State of Wisconsin, or any citizen thereof pursuant to Wis. Stat. § 59.69(11).

72.28 STATUTE OF LIMITATIONS.

- (1) As required by Wis. Stat. § 59.692(1t) where a building or structure violates the dimensional or use standards of this Ordinance, and the violating building or structure has been in place more than ten (10) years before an enforcement action is initiated, such building or structure shall be treated as a legal non-conforming structure. All provisions of Section 72.20 of this Ordinance shall apply to such non-conforming buildings or structures.
- (2) Any property owner asserting as a defense to a charge of violating this Ordinance that the alleged violation has been in place more than ten (10) years before enforcement action was initiated has the burden of proving that:
 - (a) The building or structure that is in violation has been in place more than ten (10) years before enforcement action was initiated;
 - (b) That the building or structure (and its use, if the use is non-conforming) has remained essentially unchanged for at least ten (10) years;
 - (c) That the use of the building or structure has been active and continual for ten (10) years or more. If the use was discontinued for more than twelve (12) months, that use shall not be considered active and continual.

72.29 ABROGATION AND GREATER RESTRICTIONS.

- (1) This Ordinance supersedes all provisions of any prior Ordinance enacted under Wis. Stat. §§ 59.69, 59.692, and 87.30 which relate to shorelands. However, where another County Ordinance is more restrictive than the provisions contained in this Ordinance, that ordinance shall control to the extent of the greater restrictions and not otherwise.
- (2) This Ordinance shall not require approval or be subject to disapproval by any town or town board.

- (3) If an existing town ordinance relating to shorelands is more restrictive than this Ordinance or any amendments thereto, the town ordinance continues in all respects to the extent of the greater restrictions but not otherwise.
- (4) It is not otherwise intended by this Ordinance to repeal, abrogate, or impair any existing deed restrictions, covenants, or easements; however, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail.
- (5) This Ordinance continues in effect, and shall be administered by the annexing municipality, in any shoreland area annexed by a city or village after May 7, 1982, unless the city or village adopts, maintains, and enforces a zoning ordinance which complies with the requirements of Wis. Stat. § 59.692 and which is at least as restrictive as this Ordinance.
- (6) Notwithstanding the foregoing or any rules of interpretation, no provisions herein shall be interpreted to regulate the location, maintenance, expansion, replacement, repair, or relocation of a nonconforming structure in a manner that is more restrictive than the provisions promulgated by the DNR at Wis. Admin. Code Ch. NR 115, and no provision herein shall be interpreted to regulate the construction of a structure or building or a substandard lot in a manner that is more restrictive than the provisions promulgated by the DNR at Wis. Admin. Code Ch. NR 115.

72.30 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 County and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes.

Where a provision of this Ordinance is required by Wis. Admin. Code Chs. NR 115 or NR 116 and where the Ordinance provision is unclear, the provision shall be interpreted in light of Wis. Admin. Code Chs. NR 115 or NR 116 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.

72.31 DEFINITIONS. Unless specifically defined below, words, terms, or phrases used in this Ordinance or in the administration of this Ordinance shall be as defined in Chapters 70, 71, and 73 of the Sheboygan County Code of Ordinances, Wis. Stat. chs. 29, 30, 31, 144, 236; Wis. Stat. § 59.69, 59.692, and 87.30; and Wis. Admin. Code Chs. NR 115, NR 116, and SPS 383, or, if not defined therein, shall be interpreted so as to give them the same meaning as they have at common law and to give this Ordinance its most reasonable application. Words used in the present tense include the future, words in the singular number include the plural numbers. The word "shall" is mandatory, not permissive. All distances, unless specified otherwise, shall be measured horizontally.

- (1) **ACCESS AND VIEWING CORRIDOR.** A strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.

- (2) **ACCESSORY BUILDING.** A subordinate structure on the same lot as the principal building or use and devoted to a use incidental to the principal use or structure. (See **PRINCIPAL STRUCTURE** and **PRINCIPAL USE**.)
- (3) **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.
- (4) **ARBOR.** A frame structure consisting of vertical posts having beams attached to and connecting the posts at the top of the structure, supporting a roof composed of open joists. Roof or wall enclosures other than lattice or trellis are prohibited.
- (5) **BASEMENT.** Any enclosed area of a building having its floor sub-grade, i.e., below ground level on all sides.
- (6) **BEST MANAGEMENT PRACTICES (BMPs).** The Stormwater Management Technical Standards as defined by the Wisconsin Department of Natural Resources currently posted at <http://dnr.wi.gov/topic/stormwater/>, and any subsequent amendments thereto.
- (7) **BOATHOUSE.** A permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed and has a roof, walls, or any combination of these structural parts.
- (8) **BUILDING.** See **STRUCTURE**.
- (9) **BUILDING ENVELOPE.** The three-dimensional space within which a structure is built.
- (10) **BULKHEAD.** An upright structure to dissipate wave energy or retard erosion which can be placed against the base of a dune or bluff or stand free to have fill placed behind it.
- (11) **BULKHEAD LINE.** A geographic line along a reach of navigable body of water that has been adopted by a municipal ordinance and approved by the DNR pursuant to Wis. Stat. § 30.11 and which allows limited filling between the OHWM and the bulkhead line, except where such filling is prohibited by the floodway and wetland provisions of this Ordinance.
- (12) **CAMPGROUND.** Any parcel of land which is designed, maintained, intended, or used for the purpose of providing sites for nonpermanent overnight use by four (4) or more camping units or which is advertised or represented as a camping area.
- (13) **CAMPING UNIT.** Any portable device, no more than four hundred (400) square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, tent, or other mobile recreational vehicle.

- (14) **CHANNEL.** A natural or artificial watercourse with definite bed and banks to confine and conduct the normal flow of water.
- (15) **CLASS II PUBLIC NOTICE.** Publication of a public hearing notice under Wis. Stat. ch. 985 in a newspaper of circulation in the affected area. Publication is required on two (2) consecutive weeks, the last at least seven (7) days prior to the hearing or event noticed.
- (16) **CONDITIONAL USE.** A use permitted in a particular zoning district only upon showing that such use in a specified location will comply with all the conditions and standards for the location or operation of such use, as specified in this Ordinance and authorized by the Committee. (Also called "special exception.")
- (17) **CRAWLWAYS or CRAWLSPACE.** An enclosed area below the first usable floor of a building, generally less than five feet (5') in height used for limited access to plumbing and electrical utilities.
- (18) **DECK.** An unenclosed exterior structure that has no roof or sides but has a permeable floor which allows the infiltration of precipitation.
- (19) **DEPARTMENT.** The Sheboygan County Planning and Conservation Department.
- (20) **DEVELOPMENT.** Any manmade change to improved or unimproved real estate, including, but not limited to, construction of, or additions or substantial improvements to, buildings, other structures, or accessory uses; the placement of manufactured/mobile homes; mining; dredging; filling; grading; excavating; ditching; lagooning; drilling operations; storage, deposition, or extraction of materials; but excluding tiling for agricultural purposes outside of the Shoreland-Wetland District.
- (21) **DNR.** Wisconsin Department of Natural Resources.
- (22) **DRAINAGE SYSTEM.** One (1) or more artificial ditches, tile drains, or similar devices which collect surface runoff or ground water and convey it to a point of discharge.
- (23) **EXISTING MANUFACTURED/MOBILE HOME PARK OR SUBDIVISION.** A parcel (or contiguous parcels) of land divided into two (2) or more mobile home lots for rent or sale for which the construction of facilities for servicing 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 shoreland and floodplain management regulations adopted by Sheboygan County).
- (24) **EXPANSION TO EXISTING MANUFACTURED/MOBILE HOME PARK.** The preparation of additional sites by the construction of facilities for servicing the lots on which the mobile homes are to be placed. This includes installation of utilities, either final site grading or pouring of pads, or the construction of streets.

- (25) **FLOODPLAIN.** Land which has been or may be hereafter covered by flood water during the regional flood. It includes the floodway and the floodfringe as those terms are defined in Wis. Admin. Code Ch. NR 116.
- (26) **GENERALLY ACCEPTED FORESTRY MANAGEMENT PRACTICES** Forestry management practices that promote sound management of a forest. Generally accepted forestry management practices include those practices contained in the most recent version of the department publication known as Wisconsin Forest Management Guidelines and identified as PUB FR-226.
- (27) **GUESTHOUSE.** An accessory structure comprised only of a bedroom, bathroom, and sitting area but shall not be intended for more than occasional human occupancy.
- (28) **HABITABLE STRUCTURE.** Any structure or portion thereof used or designed for human habitation.
- (29) **HEARING NOTICE.** Publication or posting meeting the requirements of Wis. Stat. ch. 985. For appeals, a Class 1 Notice published once, at least one (1) week [seven (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 of which at least one (1) week [seven (7) days] before the hearing.
- (30) **HISTORIC STRUCTURE.** Any structure that is:
- (a) 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; or
 - (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or
 - (c) Individually listed on a State inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 - (d) 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 directly by the Secretary of the Interior in states without approved programs.
- (31) **IMPERVIOUS SURFACE.** An area that releases as runoff all or a majority of the precipitation that falls on it. Impervious surfaces exclude frozen soil and structures, such as walkways and decks, which do not release, outside of their

footprint, the majority of the precipitation that falls on them, but rather where the precipitation is absorbed by the soil below them. Impervious surfaces include rooftops, sidewalks, driveways, and parking lots unless specifically designed, constructed and maintained to be pervious. Gravel roads are impervious. Arbors, as defined in this Ordinance, private roads serving three (3) or more properties, public roads, rock walls, rip rap, fences, and retaining walls are exempt from impervious surface calculations.

- (32) **LAND USE.** Any development (see definition of).
- (33) **LIGHT INDUSTRY.** Manufacturing which uses predominantly previously prepared materials, finished products, or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products. Light industry does not include basic industrial processing and manufacturing of raw or extracted material and storage of or manufacturing processes using flammable, explosive, offensive, or otherwise potentially hazardous materials.
- (34) **MAINTENANCE AND REPAIR** Such activities as interior remodeling, painting, decorating, paneling, plumbing, insulation, and replacement of windows, doors, wiring, siding, roof, and other nonstructural components; and the repair of cracks in foundations, sidewalks, walkways and the application of waterproof coatings to foundations.
- (35) **MANUFACTURED/MOBILE HOME.** A structure transportable in one or more sections which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. The term "manufactured home" includes a mobile home but does not include a "mobile recreational vehicle."
- (36) **MITIGATION.** Balancing measures that are designed, implemented, and function to restore natural functions and values that are otherwise lost through development and human activities.
- (37) **MOBILE RECREATIONAL VEHICLE.** A vehicle which is built on a single chassis four hundred (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 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 mobile homes do not fall within the definition of "mobile recreational vehicles."
- (38) **NGVD or NATIONAL GEODETIC VERTICAL DATUM (MEAN SEA LEVEL).** Elevations referenced to mean sea level datum, 1929 adjustment.
- (39) **NAVIGABLE WATERS.** Lake Michigan, all natural inland lakes within Sheboygan County, Wisconsin, and all streams, ponds, sloughs, flowages, and other waters within the territorial limits of this County.

However, jurisdiction under this Chapter does not apply to lands adjacent to farm drainage ditches if:

- (a) Such lands are not adjacent to a natural navigable stream or river;
- (b) Those parts of such drainage ditches adjacent to such lands were non-navigable streams before ditching or had no previous stream history; and
- (c) Such lands are maintained in nonstructural agricultural use.

Wisconsin's Supreme Court has declared navigable bodies of water that have a bed differentiated from adjacent uplands and levels or flow sufficient, on an annually recurring basis, to support navigation by a recreational craft of the shallowest draft [*Muench v. Public Service Commission*, 261 Wis. 492 (1952) and *DeGayner & Co., 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 laws of this State though it may be dry during other seasons.

- (40) **NONCONFORMING LOT.** A lot, the area, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of this Ordinance, but which fails thereafter to conform to the requirements of the zoning district. (NOTE: A legally granted "variance" pursuant to Section 72.25 of this Ordinance shall not be deemed to create a "nonconforming lot." When a variance is granted, it becomes a conforming lot.)
- (41) **NONCONFORMING STRUCTURE.** Pursuant to Wis. Stat. § 59.692(2m), a dwelling or other building that existed lawfully before this Ordinance was enacted or amended but that does not conform to one or more of the setback, height, lot coverage, and side yard elements in this current version of this Ordinance (NOTE: A legally granted "variance" pursuant to Section 72.25 of this Ordinance shall not be deemed to create a "nonconforming structure.")
- (42) **NONCONFORMING USE.** Pursuant to Wis. Stat. § 59.69(10), a use of land, a dwelling, or a building that existed lawfully before this Ordinance was enacted or amended but does not conform with the use restrictions in the current version of this Ordinance.
- (43) **ORDINARY HIGH WATER MARK (OHWM).** The point on the bank or shore up to which the presence and action of water is so continuous as to leave a distinctive mark by erosion, destruction, or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristics.

Erosion scars, transitions in vegetation from aquatic to terrestrial types, cobbled beaches below the current waterline, and evidence of even-aged stands of woody vegetation paralleling contours or below the existing water line may all be indicators of current or historic OHWM. Only one (1) OHWM indicator need be

present to establish an OHWM, but a number of indicators may be interpreted together to locate it at a given site. When the bank or shore is of such character that it is difficult or impossible to ascertain the point of OHWM, recourse may be had to the opposite bank of a waterway or to similar places on the shore of a lake or flowage to determine whether a given stage of water is above or below the OHWM.

Notwithstanding the above, and for zoning purposes only, the OHWM for the coastal reach of Lake Michigan extending from the City of Sheboygan south to the south County line shall be determined by an elevation at 582.7 feet NGVD (National Geodetic Vertical Datum, also known as MSL, Mean Sea Level), an elevation equivalent to 581.4 feet IGLD (International Great Lakes Datum), as determined by the Bureau of Water Regulation & Zoning, Wisconsin Department of Natural Resources. Elevations shall be determined by a registered professional surveyor, employing not less than five (5) uniformly distributed points of elevation, tied to a fixed reference point. The OHWM shall be a line connecting these points.

- (44) **PERSON.** An individual, group of individuals, partnership, firm, corporation, association, state, county, city, village, township, sanitary district, or other government corporation.
- (45) **PIER.** A structure extending channelward, or more or less perpendicular out from the shore, with water on both sides, built or maintained for the purpose of providing a berth for watercraft or for loading or unloading cargo or passengers onto or from watercraft. (Generally any construction whose dimensions and accessories go beyond what is reasonably necessary to berth watercraft or load or unload cargo or passengers is not authorized as a pier by statute; see Wis. Stat. ch. 30.)
- (46) **PRINCIPAL BUILDING.** A building in which the principal authorized use of the lot on which it is located is conducted. (See **ACCESSORY BUILDING**.)
- (47) **PRINCIPAL USE.** The primary or predominant use of any lot (e.g. residential, commercial, industrial, conservation, institutional, etc.).
- (48) **PRIVATE SEWAGE SYSTEM.** A sewage treatment and disposal system serving a single structure with a septic tank and soil absorption field located on the same parcel as the structure. This term also means an alternative sewage system approved by the Wisconsin Department of Safety and Professional Services, Safety and Buildings Division, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one (1) structure, or a system located on a different parcel than the structure.
- (49) **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, storm sewer, and natural gas.

- (50) **RECREATIONAL VEHICLE.** A vehicular-type portable structure without permanent foundation, which can be towed, hauled, or driven and primarily designed as temporary living accommodation for recreational, camping, and travel use and including but not limited to travel trailers, truck campers, camping trailers, and self-propelled motor homes.
- (51) **REPLACEMENT.** See *SUBSTANTIAL IMPROVEMENT*.
- (52) **ROUTINE MAINTENANCE OF VEGETATION.** Normally-accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.
- (53) **SHORELAND DISTRICT.** Lands within the following distances from the OWHM of navigable waters: One thousand feet (1,000') from a lake, pond, or flowage, or, where approved, to the outer perimeter of contiguous mapped wetlands, whichever distance is greater; and, three hundred feet (300') from a river or stream, or to the landward side of the floodplain, or, where approved, to the outer perimeter of contiguous mapped wetlands, whichever distance is greater.
- (54) **SHORELAND-WETLAND DISTRICT.** The zoning district, created as a part of this Ordinance, comprised of shorelands that are designated as wetlands on the wetland maps which have been adopted and made a part of this Ordinance.
- (55) **SIGN.** Any device, display, or structure which is used to inform, advertise, identify, display, or direct attention to an object, person, institution, organization, business, product, service, event, or location by means of words, letters, numbers, figures, design, symbols, fixtures, colors, illumination, or projected images.
- (56) **START OF CONSTRUCTION.** The date the building permit was issued provided the actual start of construction, repair, reconstruction, habilitation, addition, placement, or other improvement was within one hundred (180) days of the permit date. The actual start means either the first placement of permanent construction on a site such as the pouring of the slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building whether or not that alteration affects the external dimensions of the building.
- (57) **STRUCTURE.** Anything constructed, erected, or relocated from another premises, that is either permanently or temporarily attached to or resting on or in either the ground, stream, lake bed, or another structure. "**Structures**" shall include, but not be limited to, buildings (regardless of size or use); mobile homes

and manufactured homes and dwellings; patios, stairways, walkways, parking lots, bridges, decks, and gazebos; swimming pools, hot tubs/spas, and playground apparatus; above-ground or underground storage tanks (excluding on-site private sewage disposal systems); and, signs, masts, towers, and satellite dishes [greater than one (1) meter in diameter]. Such small, movable structures as birdhouses, bird feeders, planter boxes, picnic tables, lawn furniture, portable grills, and flagpoles shall be exempt from setback requirements.

- (58) **SUBDIVISION.** Has the meaning given in Wis. Stat. § 236.02(12).
- (59) **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 fifty percent (50%) of the equalized assessed value of the structure before the damage occurred.
- (60) **SUBSTANTIAL IMPROVEMENT.** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the present equalized assessed value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. The term does not, however, include either:
- (a) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
 - (b) Any alteration of a structure or site documented as deserving preservation by the Wisconsin State Historical Society or listed on the National Register of Historic Places.

Ordinary maintenance repairs are not considered structural repairs or alterations. Such ordinary maintenance repairs include internal and external painting, decorating, paneling, and the replacement of doors, windows, and other nonstructural components. For purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

- (61) **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 Ordinance.
- (62) **UTILITIES.** Any public or private facilities, such as water wells, water and sewage pumping stations, waste water collection and/or treatment/disposal systems, and any facilities owned or operated by a public utility as defined by Wis. Stat. § 196.01.

- (63) **VIOLATION.** The failure of a structure or other development to be fully compliant with the Shoreland Zoning Ordinance, a structure or other development without required permits.
- (64) **WATERSHED.** The entire region contributing runoff or surface water to a watercourse or body of water.
- (65) **WELL.** Means an excavation opening in the ground made by digging, boring, drilling, driving, or other methods to obtain groundwater regardless of its intended use.
- (66) **WETLANDS.** Those areas where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.
- (67) **WHARF.** A structure extending along, and more or less parallel to, the shore and generally connected with the uplands throughout its length, built or maintained for the purpose of providing a berth for watercraft or for loading or unloading cargo or passengers onto or from watercraft. (Generally any construction whose dimensions or accessories go beyond what is reasonably necessary to berth watercraft or load or unload cargo or passengers is not authorized as a wharf by statute; see Wis. Stat. ch. 30.)
- (68) **WISCONSIN ADMINISTRATIVE CODE.** The rules of administrative agencies having rule-making authority in Wisconsin published in a loose-leaf, continual revision system as directed by Wis. Stat. §§ 35.93 and Wis. Stat. ch. 227 including subsequent amendments to those rules.

72.32 CHANGES AND AMENDMENTS.

- (1) The County Board of Supervisors 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.
- (2) Amendments to this Ordinance may be made upon petition of any interested party in accordance with the provisions of Wis. Stat. § 59.69(5). Such petitions shall include any necessary data which may be required by Chapter 73 of the Sheboygan County Code of Ordinances.
- (3) Written notice to the appropriate office of the DNR shall be made at least ten (10) days prior to hearings on map or text amendments, and copies of such decisions shall be provided to that office within ten (10) days after they are granted or denied. For floodplain amendments only, no map or text amendment may take effect until approved by the DNR.

72.33 **SEVERABILITY.** Should any part of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

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