

SUBCHAPTER 23-5: NATURAL RESOURCE PROTECTION REGULATIONS

Section 23.501 Purpose

The purpose of this Subchapter is to set forth the requirements for the mandatory protection of natural resources and permanently protected green space areas within the jurisdiction of this Title (see Section 21.009). The provisions of this Subchapter interact closely with the provisions of Section 23.204 (Uses Permitted in Other Permanently Protected Green Space Areas), Subsection 23.206(10) (Natural Resource Disruption and Required Mitigation Standards), Section 23.303 (Required Natural Resources Site Evaluation), and Sections 23.304 and 23.305 which provide residential and nonresidential development standards. Section 23.306 provides a complete overview of the interrelationship between the above-listed Sections. In part, the provisions of this Subchapter are designed to ensure the implementation of the City of Delavan Comprehensive Master Plan, the environmental protection element of the Southeastern Wisconsin Regional Planning Commission's (SEWRPC's) Environmental Corridor Protection Program, and State of Wisconsin Statutes 62.231 and 87.30.

Section 23.502 How to Use this Subchapter

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

- (1) First, a definition of the natural resource is provided.
 - (2) Second, the specific purposes of the protective regulations governing each natural resource type are provided.
 - (3) Third, the required method of identifying and determining the boundaries of the natural resource area is given.
 - (4) Fourth, mandatory protection requirements are identified.
- NOTE: Protection requirements for specific land uses and natural resource types designed to minimize disruption of natural resource functions are presented in Subsection 23.206(10).

Section 23.503 Floodway, Floodfringe, and Floodplain Overlay Zoning Districts (RC-287, 3/9/10)

(1) **GENERAL PROVISIONS**

(a) **AREAS TO BE REGULATED**

This ordinance regulates all areas that would be covered by the regional flood or base flood.

Note: Base flood elevations are derived from the flood profiles in the Flood Insurance Study. Regional flood elevations may be derived from other studies. Areas covered by the base flood are identified as A-Zones on the Flood Insurance Rate Map.

(b) **OFFICIAL MAPS & REVISIONS** (RC-359, 8/11/15)

The boundaries of all floodplain districts are designated as floodplains or A-Zones on the maps listed below and the revisions in the City of Delavan Floodplain Appendix. Any change to the base flood elevations (BFE) in the Flood Insurance Study (FIS) or on the Flood Insurance Rate Map (FIRM) must be reviewed and approved by the DNR and FEMA before it is effective. No changes to regional flood elevations (RFE's) on non-FEMA maps shall be effective until approved by the DNR. These maps and revisions are on file in the office of the Public Works Department, Delavan, Wisconsin. If more than one map or revision is referenced, the most restrictive information shall apply.

(1) **OFFICIAL MAPS:** Based on the Flood Insurance Study (FIS) dated September 3, 2014, Volume number 55127CV000B.

(a) Flood Insurance Rate Map (FIRM), panel numbers 55127C0168D, 55127C0169D, 55127C0190D, 55127C0281D, 55127C0282D, and 55127C0301D dated October 2, 2009; panel number 55127C0302E dated September 3, 2014; all with corresponding profiles that are based on the Flood Insurance Study (FIS) dated September 3, 2014.

(2) **OFFICIAL MAPS:** Based on other studies:

(a) 100-Year Dam Failure Floodplain Map, dated October 2013, prepared by R.A. Smith National. Approved by the DNR, July 11, 2014.

(c) **ESTABLISHMENT OF DISTRICTS**

The regional floodplain areas are divided into three districts as follows:

- (1) The Floodway District (FW) is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters.
- (2) The Floodfringe District (FF) is that portion of the floodplain between the regional flood limits and the floodway.
- (3) The General Floodplain District (GFP) is those areas that have been or may be covered by floodwater during the regional flood.

(d) **LOCATING FLOODPLAIN BOUNDARIES**

Discrepancies between boundaries on the official floodplain zoning map and actual field conditions shall be resolved using the criteria in paragraphs (1) or (2) below. If a significant difference exists, the map shall be amended according to Section 23.503(8). The zoning administrator can rely on a boundary derived from a profile elevation to grant or deny a land use permit, whether or not a map amendment is required. The zoning administrator shall be responsible for documenting actual pre-development field conditions and the basis upon which the district boundary was determined and for initiating any map amendments required under this section. Disputes between the zoning administrator and an applicant over the district boundary line shall be settled according to Section 23.503(7)(c)3 and the criteria in (1) and (2) below.

- (1) If flood profiles exist, the map scale and the profile elevations shall determine the district boundary. The regional or base flood elevations shall govern if there are any discrepancies.
- (2) Where flood profiles do not exist, the location of the boundary shall be determined by the map scale, visual on-site inspection and any information provided by the Department.

Note: Where the flood profiles are based on established base flood elevations from a FIRM, FEMA must also approve any map amendment pursuant to Section 23.503(8)(a)6.

(e) REMOVAL OF LANDS FROM FLOODPLAIN

Compliance with the provisions of this ordinance shall not be grounds for removing land from the floodplain unless it is filled at least two feet above the regional or base flood elevation, the fill is contiguous to land outside the floodplain, and the map is amended pursuant to Section 23.503(8).

Note: This procedure does not remove the requirements for the mandatory purchase of flood insurance. The property owner must contact FEMA to request a Letter of Map Change (LOMC).

(f) COMPLIANCE

Any development or use within the areas regulated by this ordinance shall be in compliance with the terms of this ordinance, and other applicable local, state, and federal regulations.

(g) MUNICIPALITIES AND STATE AGENCIES REGULATED

Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply if s. 13.48(13), Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation is exempt when s. 30.2022, Stats., applies.

(h) ABROGATION AND GREATER RESTRICTIONS

1. This ordinance supersedes all the provisions of any municipal zoning ordinance enacted under ss. 59.69, 59.692 or 59.694 for counties; s. 62.23 for cities; or s. 61.35 for villages; or s. 87.30, Stats., which relate to floodplains. If another ordinance is more restrictive than this ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
2. This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. If this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

(i) INTERPRETATION

In their interpretation and application, the provisions of this ordinance are the minimum requirements liberally construed in favor of the governing body and are not a limitation on or repeal of any other powers granted by the Wisconsin Statutes. If a provision of this ordinance, required by ch. NR 116, Wis. Adm. Code, is unclear, the provision shall be interpreted in light of the standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

(j) WARNING AND DISCLAIMER OF LIABILITY

The flood protection standards in this ordinance are based on engineering experience and scientific research. Larger floods may occur or the flood height may be increased by man-made or natural causes. This ordinance does not imply or guarantee that non-floodplain areas or permitted floodplain uses will be free from flooding and flood damages. Nor does this ordinance create liability on the part of, or a cause of action against, the municipality or any officer or employee thereof for any flood damage that may result from reliance on this ordinance.

(k) SEVERABILITY

Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

(l) ANNEXED AREAS FOR CITIES AND VILLAGES

The Walworth County floodplain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements of ch. NR 116, Wis. Adm. Code and the National Flood Insurance Program (NFIP). These annexed lands are described on the municipality's official zoning map. County floodplain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the municipal zoning administrator. All plats or maps of annexation shall show the regional flood elevation and the location of the floodway.

(m) GENERAL DEVELOPMENT STANDARDS

The community shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads; be constructed with materials resistant to flood damage; be constructed by methods and practices that minimize flood damages; and be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Subdivisions shall be reviewed for compliance with the above standards. All subdivision proposals (including manufactured home parks) shall include regional flood elevation and floodway data for any development that meets the subdivision definition of this ordinance.

(2) GENERAL STANDARDS APPLICABLE TO ALL FLOODPLAIN DISTRICTS

(a) HYDRAULIC AND HYDROLOGIC ANALYSES

1. Except as allowed in par. (3) below, no floodplain development shall:
 - a. Obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or with other development, increasing regional flood height; or
 - b. Increase regional flood height due to floodplain storage area lost, which equals or exceeds 0.01 foot.
2. The zoning administrator shall deny permits if it is determined the proposed development will obstruct flow or increase regional flood heights 0.01 foot or more, based on the officially adopted FIRM or other adopted map, unless the provisions of sub. (3) are met.

3. Obstructions or increases equal to or greater than 0.01 foot may only be permitted if amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with Section 23.503(8).

Note: This section refers to obstructions or increases in base flood elevations as shown on the officially adopted FIRM or other adopted map. Any such alterations must be reviewed and approved by FEMA and the DNR.

(b) **WATERCOURSE ALTERATIONS**

No land use permit to alter or relocate a watercourse in a mapped floodplain shall be issued until the local official has notified in writing all adjacent municipalities, the Department and FEMA regional offices and required the applicant to secure all necessary state and federal permits. The flood carrying capacity of any altered or relocated watercourse shall be maintained.

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

(c) **CHAPTER 30, 31, WIS. STATS., DEVELOPMENT**

Development which requires a permit from the Department, under chs. 30 and 31, Wis. Stats., such as docks, piers, wharves, bridges, culverts, dams and navigational aids, may be allowed if the necessary permits are obtained and amendments to the floodway lines, water surface profiles, BFE's established in the FIS, or other data from the officially adopted FIRM, or other floodplain zoning maps or the floodplain zoning ordinance are made according to Section 23.503(8).

(d) **PUBLIC OR PRIVATE CAMPGROUNDS**

Public or private campgrounds shall have a low flood damage potential and shall meet the following provisions:

- (1) The campground is approved by the State Department of Health Services.
- (2) A land use permit for the campground is issued by the zoning administrator.
- (3) The character of the river system and the elevation of the campground is such that a 72-hour warning of an impending flood can be given to all campground occupants.
- (4) There is an adequate flood warning procedure for the campground that offers the minimum notice required under this section to all persons in the campground. This procedure shall include a written agreement between the campground owner, the municipal emergency government coordinator and the chief law enforcement official which specifies the flood elevation at which evacuation shall occur, personnel responsible for monitoring flood elevations, types of warning systems to be used and the procedures for notifying at-risk parties, and the methods and personnel responsible for conducting the evacuation.
- (5) This agreement shall be for no more than one calendar year, at which time the agreement shall be reviewed and updated - by the officials identified in sub. (4) - to remain in compliance with all applicable regulations, including those of the State Department of Health Services and all other applicable regulations.
- (6) Only camping units are allowed.
- (7) The camping units may not occupy any site in the campground for more than 180 consecutive days, at which time the camping unit must be removed from the floodplain for a minimum of 24 hours.

- (8) All camping units that remain on site for more than 30 days shall be issued a limited authorization by the campground operator, a written copy of which is kept on file at the campground. Such authorization shall allow placement of a camping unit for a period not to exceed 180 days and shall ensure compliance with all the provisions of this section.
- (9) The municipality shall monitor the limited authorizations issued by the campground operator to assure compliance with the terms of this section.
- (10) All camping units that remain in place for more than 180 consecutive days must meet the applicable requirements in either Section 23.503(3) or Section 23.503(4) for the floodplain district in which the structure is located.
- (11) The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when a flood warning is issued.
- (12) All service facilities, including but not limited to refuse collection, electrical service, natural gas lines, propane tanks, sewage systems and wells shall be properly anchored and placed at or floodproofed to the flood protection elevation.

(3) **FLOODWAY DISTRICT (FW)**

(a) **APPLICABILITY**

This section applies to all floodway areas on the floodplain zoning maps and those identified pursuant to Section 23.503(5)(d).

(b) **PERMITTED USES**

The following open space uses are allowed in the floodway district and the floodway areas of the general floodplain district, if

- they are not prohibited by any other ordinance;
- they meet the standards in Section 23.503(3)(c) and Section 23.503(3)(d); and
- all permits or certificates have been issued according to Section 23.503(7)(a):

- (1) Agricultural uses, such as: farming, outdoor plant nurseries, horticulture, viticulture and wild crop harvesting.
- (2) Nonstructural industrial and commercial uses, such as loading areas, parking areas and airport landing strips.
- (3) Nonstructural recreational uses, such as golf courses, tennis courts, archery ranges, picnic grounds, boat ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting, trap and skeet activities, hunting and fishing areas and hiking and horseback riding trails, subject to the fill limitations of Section 23.503(3)(c)4.
- (4) Uses or structures accessory to open space uses, or classified as historic structures that comply with Section 23.503(3)(c) and Section 23.503(3)(d).
- (5) Extraction of sand, gravel or other materials that comply with Section 23.503(3)(c)4.
- (6) Functionally water-dependent uses, such as docks, piers or wharves, dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines that comply with chs. 30, 31, Stats.
- (7) Public utilities, streets and bridges that comply with Section 23.503(3)(c)3.

(c) **STANDARDS FOR DEVELOPMENTS IN FLOODWAY AREAS**

(1) **GENERAL**

- (a) Any development in floodway areas shall comply with Section 23.503(2) and have a low flood damage potential.

- (b) Applicants shall provide the following data to determine the effects of the proposal according to Section 23.503(2)(a):
 - 1. A cross-section elevation view of the proposal, perpendicular to the watercourse, showing if the proposed development will obstruct flow; or
 - 2. An analysis calculating the effects of this proposal on regional flood height.
- (c) The zoning administrator shall deny the permit application if the project will increase flood elevations upstream or downstream 0.01 foot or more, based on the data submitted for par. (b) above.

(2) **STRUCTURES**

Structures accessory to permanent open space uses, classified as historic structures, or functionally dependent on a waterfront location may be allowed by permit if the structures comply with the following criteria:

- (a) The structures are not designed for human habitation and do not have a high flood damage potential;
- (b) The structures are constructed and placed on the building site so as to increase flood heights less than 0.01 foot and minimally obstruct the flow of floodwaters. Structures shall be constructed with the long axis parallel to the flow of floodwaters and on the same line as adjoining structures;
- (c) The structures are properly anchored to prevent them from floating away and restricting bridge openings or other restricted sections of the stream or river; and
- (d) The structures have all service facilities at or above the flood protection elevation.

(3) **PUBLIC UTILITIES, STREETS AND BRIDGES**

Public utilities, streets and bridges may be allowed by permit, if:

- (a) Adequate floodproofing measures are provided to the flood protection elevation; and
- (b) Construction meets the development standards of Section 23.503(2)(a).

(4) **FILLS OR DEPOSITION OF MATERIALS**

Fills or deposition of materials may be allowed by permit, if:

- (a) The requirements of Section 23.503(2)(a) are met;
- (b) No material is deposited in the navigable channel unless a permit is issued by the Department pursuant to ch. 30, Stats., and a permit pursuant to s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344 has been issued, if applicable, and the other requirements of this section are met;
- (c) The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading; and
- (d) The fill is not classified as a solid or hazardous material.

(d) **PROHIBITED USES**

All uses not listed as permitted uses in Section 23.503(3)(b) are prohibited, including the following uses:

- (1) Habitable structures, structures with high flood damage potential, or those not associated with permanent open-space uses;
- (2) Storing materials that are buoyant, flammable, explosive, injurious to property, water quality, or human, animal, plant, fish or other aquatic life;

- (3) Uses not in harmony with or detrimental to uses permitted in the adjoining districts;
- (4) Any private or public sewage systems, except portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of local ordinances and ch. COMM 83, Wis. Adm. Code.
- (5) Any public or private wells which are used to obtain potable water, except those for recreational areas that meet the requirements of local ordinances and chs. NR 811 and NR 812, Wis. Adm. Code;
- (6) Any solid or hazardous waste disposal sites;
- (7) Any wastewater treatment ponds or facilities, except those permitted under s. NR 110.15(3)(b), Wis. Adm. Code;
- (8) Any sanitary sewer or water supply lines, except those to service existing or proposed development located outside the floodway which complies with the regulations for the floodplain area occupied.

(4) **FLOODFRINGE DISTRICT (FF)**

(a) **APPLICABILITY**

This section applies to all floodfringe areas shown on the floodplain zoning maps and those identified pursuant to Section 23.503(5)(d).

(b) **PERMITTED USES**

Any structure, land use, or development is allowed in the floodfringe district if the standards in Section 23.503(4)(c) are met, the use is not prohibited by this or any other ordinance or regulation and all permits or certificates specified in Section 23.503(7)(a) have been issued.

(c) **STANDARDS FOR DEVELOPMENT IN FLOODFRINGE AREAS**

Section 23.503(2)(a) shall apply in addition to the following requirements according to the use requested.

(1) **RESIDENTIAL USES**

Any habitable structure, including a manufactured home, which is to be erected, constructed, reconstructed, altered, or moved into the floodfringe area, shall meet or exceed the following standards;

- (a) The elevation of the lowest floor, excluding the basement or crawlway, shall be at or above the flood protection elevation on fill. The fill shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. The Department may authorize other floodproofing measures if the elevations of existing streets or sewer lines makes compliance with the fill standards impractical;
- (b) The basement or crawlway floor may be placed at the regional flood elevation if it is floodproofed to the flood protection elevation. No basement or crawlway floor is allowed below the regional flood elevation;
- (c) Contiguous dryland access shall be provided from a structure to land outside of the floodplain, except as provided in par. (d).
- (d) In developments where existing street or sewer line elevations make compliance with par. (c) impractical, the municipality may permit new development and substantial improvements where access roads are at or below the regional flood elevation, if:
 - 1. The municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or

2. The municipality has a natural disaster plan approved by Wisconsin Emergency Management and the Department.

(2) ACCESSORY STRUCTURES OR USES

An accessory structure or use not connected to a principal structure shall be constructed with its lowest floor no more than two feet below the regional flood elevation, subject to flood velocities of no more than two feet per second, and shall meet all the provisions of subsections 23.503(3)(c)(2)a, b, c, d, and sub. (6) below.

(3) COMMERCIAL USES

Any commercial structure which is erected, altered or moved into the floodfringe area shall meet the requirements of Section 23.503(4)(c)1. Subject to the requirements of sub. (6), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

(4) MANUFACTURING AND INDUSTRIAL USES

Any manufacturing or industrial structure which is erected, altered or moved into the floodfringe area shall be protected to the flood protection elevation using fill, levees, floodwalls, or other flood proofing measures in Section 23.503(7)(e). Subject to the requirements of sub. (6), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

(5) STORAGE OF MATERIALS

Materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life shall be stored at or above the flood protection elevation or floodproofed in compliance with Section 23.503(7)(e). Adequate measures shall be taken to ensure that such materials will not enter the water body during flooding.

(6) PUBLIC UTILITIES, STREETS AND BRIDGES

All utilities, streets and bridges shall be designed to be compatible with comprehensive floodplain development plans; and

- (a) When failure of public utilities, streets and bridges would endanger public health or safety, or where such facilities are deemed essential, construction of and substantial improvements to such facilities may only be permitted if they are floodproofed in compliance with Section 23.503(7)(e) to the flood protection elevation;
- (b) Minor roads or nonessential utilities may be constructed at lower elevations if they are designed to withstand flood forces to the regional flood elevation.

(7) SEWAGE SYSTEMS

All on-site sewage disposal systems shall be floodproofed, pursuant to Section 23.503(7)(e), to the flood protection elevation and shall meet the provisions of all local ordinances and ch. COMM 83, Wis. Adm. Code.

(8) WELLS

All wells shall be floodproofed, pursuant to Section 23.503(7)(e), to the flood protection elevation and shall meet the provisions of chs. NR 811 and NR 812, Wis. Adm. Code.

(9) SOLID WASTE DISPOSAL SITES

Disposal of solid or hazardous waste is prohibited in floodfringe areas.

(10) DEPOSITION OF MATERIALS

Any deposited material must meet all the provisions of this ordinance.

(11) MANUFACTURED HOMES

- (a) Owners or operators of all manufactured home parks and subdivisions shall provide adequate surface drainage to minimize flood damage, and prepare, secure approval and file an evacuation plan, indicating vehicular access and escape routes, with local emergency management authorities.
- (b) In existing manufactured home parks, all new homes, replacement homes on existing pads, and substantially improved homes shall:
 - 1. have the lowest floor elevated to the flood protection elevation; and
 - 2. be anchored so they do not float, collapse or move laterally during a flood.
- (c) Outside of existing manufactured home parks, including new manufactured home parks and all single units outside of existing parks, all new, replacement and substantially improved manufactured homes shall meet the residential development standards for the floodfringe in Section 23.503(4)(c)1.

(12) MOBILE RECREATIONAL VEHICLES

All mobile recreational vehicles that are on site for 180 consecutive days or more or are not fully licensed and ready for highway use shall meet the elevation and anchoring requirements in Section 23.503(4)(c)(11)(b) and Section 23.503(4)(c)(11)(c). A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.

(5) GENERAL FLOODPLAIN DISTRICT (GFP)

(a) **APPLICABILITY**

The provisions for this district shall apply to all floodplains for which flood profiles are not available or where flood profiles are available but floodways have not been delineated. Floodway and floodfringe districts shall be delineated when adequate data is available.

(b) **PERMITTED USES**

Pursuant to Section 23.503(5)(d), it shall be determined whether the proposed use is located within a floodway or floodfringe area.

Those uses permitted in floodway [Section 23.503(3)(b)] and floodfringe areas [Section 23.503(4)(b)] are allowed within the general floodplain district, according to the standards of Section 23.503(5)(c), provided that all permits or certificates required under Section 23.503(7)(a) have been issued.

(c) **STANDARDS FOR DEVELOPMENT IN THE GENERAL FLOODPLAIN DISTRICT**

Section 23.503(3) applies to floodway areas, Section 23.503(4) applies to floodfringe areas. The remaining entirety of Section 23.503 applies to either district.

(d) **DETERMINING FLOODWAY AND FLOODFRINGE LIMITS**

Upon receiving an application for development within the general floodplain district, the zoning administrator shall:

- (1) Require the applicant to submit two copies of an aerial photograph or a plan which shows the proposed development with respect to the general floodplain district limits, stream channel, and existing floodplain developments, along with a legal description of the property, fill limits and elevations, building floor elevations and flood proofing measures;
- (2) Require the applicant to furnish any of the following information deemed necessary by the Department to evaluate the effects of the proposal upon flood height and flood flows, regional flood elevation and to determine floodway boundaries:

- (a) A typical valley cross-section showing the stream channel, the floodplain adjoining each side of the channel, the cross-sectional area to be occupied by the proposed development, and all historic high water information;
 - (b) Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information;
 - (c) Profile showing the slope of the bottom of the channel or flow line of the stream;
 - (d) Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.
- (3) Transmit one copy of the information described in pars. (1) and (2) to the Department Regional office along with a written request for technical assistance to establish regional flood elevations and, where applicable, floodway data. Where the provisions of Section 23.503(7)(a)(2)(c) apply, the applicant shall provide all required information and computations to delineate floodway boundaries and the effects of the project on flood elevations.

(6) **NONCONFORMING USES**

(a) **GENERAL**

(1) **APPLICABILITY**

If these standards conform with s. 62.23(7)(h), Stats., for cities and villages, they shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this ordinance or any amendment thereto.

- (2) The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this ordinance may continue subject to the following conditions:

(a) No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this ordinance. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Ordinary maintenance repairs are not considered an extension, modification or addition; these include painting, decorating, paneling and the replacement of doors, windows and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Ordinary maintenance repairs do not include any costs associated with the repair of a damaged structure.

The construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.

- (b) If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this ordinance;

- (c) The municipality shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent;
 - (d) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with Section 23.503(4)(c)1. The costs of elevating a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this paragraph;
 - (e) 1. Except as provided in subd. 2., if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition equals or exceeds 50% of the structure's present equalized assessed value.
2. For nonconforming buildings that are damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building may be permitted in order to restore it after the nonflood disaster, provided that the nonconforming building will meet all of the minimum requirements under 44 CFR Part 60, or under the regulations promulgated thereunder.
 - (f) A nonconforming historic structure may be altered if the alteration will not preclude the structures continued designation as a historic structure, the alteration will comply with Section 23.503(3)(c)1, flood resistant materials are used, and construction practices and floodproofing methods that comply with Section 23.503(7)(e) are used.
- (b) **FLOODWAY AREAS**
- (1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a floodway area, unless such modification or addition:
 - (a) Has been granted a permit or variance which meets all ordinance requirements;
 - (b) Meets the requirements of Section 23.503(6)(a);
 - (c) Will not increase the obstruction to flood flows or regional flood height; and
 - (d) Any addition to the existing structure shall be floodproofed, pursuant to Section 23.503(7)(e), by means other than the use of fill, to the flood protection elevation.
 - (2) No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all municipal ordinances and ch. COMM 83, Wis. Adm. Code.

- (3) No new well or modification to an existing well used to obtain potable water shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing well in a floodway area shall meet the applicable requirements of all municipal ordinances and chs. NR 811 and NR 812, Wis. Adm. Code.

(c) **FLOODFRINGE AREAS**

- (1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the municipality, and the modification or addition shall be placed on fill or floodproofed to the flood protection elevation in compliance with the standards for that particular use in Section 23.503(4)(c), except where Section 23.503(6)(c)2 is applicable.
- (2) Where compliance with the provisions of par. (1) would result in unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Board of Adjustment/Appeals, using the procedures established in Section 23.503(7)(c), may grant a variance from those provisions of par. (1) for modifications or additions, using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if:
 - (a) No floor is allowed below the regional flood elevation for residential or commercial structures;
 - (b) Human lives are not endangered;
 - (c) Public facilities, such as water or sewer, will not be installed;
 - (d) Flood depths will not exceed two feet;
 - (e) Flood velocities will not exceed two feet per second; and
 - (f) The structure will not be used for storage of materials as described in s. 4.3(6).
- (3) If neither the provisions of par. (1) or (2) above can be met, one addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in the floodfringe, if the addition:
 - (a) Meets all other regulations and will be granted by permit or variance;
 - (b) Does not exceed 60 square feet in area; and
 - (c) In combination with other previous modifications or additions to the building, does not equal or exceed 50% of the present equalized assessed value of the building.
- (4) All new private sewage disposal systems, or addition to, replacement, repair or maintenance of a private sewage disposal system shall meet all the applicable provisions of all local ordinances and ch. COMM 83, Wis. Adm. Code.
- (5) All new wells, or addition to, replacement, repair or maintenance of a well shall meet the applicable provisions of this ordinance and ch. NR 811 and NR 812, Wis. Adm. Code.

(7) **ADMINISTRATION**

Where a zoning administrator, planning agency or a board of appeals has already been appointed to administer a zoning ordinance adopted under s. 62.23(7), Stats., these officials shall also administer this ordinance.

(a) **ZONING ADMINISTRATOR**

- (1) The zoning administrator is authorized to administer this ordinance and shall have the following duties and powers:
- (a) Advise applicants of the ordinance provisions, assist in preparing permit applications and appeals, and assure that the regional flood elevation for the proposed development is shown on all permit applications.
 - (b) Issue permits and inspect properties for compliance with provisions of this ordinance, and issue certificates of compliance where appropriate.
 - (c) Keep records of all official actions such as:
 - 1. All permits issued, inspections made, and work approved;
 - 2. Documentation of certified lowest floor and regional flood elevations for floodplain development;
 - 3. Records of water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures including changes, appeals, variances and amendments.
 - 4. All substantial damage assessment reports for floodplain structures.
 - (d) Submit copies of the following items to the Department Regional office:
 - 1. Within 10 days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments;
 - 2. Copies of any case-by-case analyses, and any other information required by the Department including an annual summary of the number and types of floodplain zoning actions taken.
 - 3. Copies of substantial damage assessments performed and all related correspondence concerning the assessments.

Note: Information on conducting substantial damage assessments is available on the DNR website –

<http://dnr.wi.gov/org/water/wm/dsfm/flood/title.htm>

- (e) Investigate, prepare reports, and report violations of this ordinance to the municipal zoning agency and attorney for prosecution. Copies of the reports shall also be sent to the Department Regional office.
- (f) Submit copies of text and map amendments and biennial reports to the FEMA Regional office.

(2) **LAND USE PERMIT**

A land use permit shall be obtained before any new development or any repair or change in the use of a building or structure, including sewer and water facilities, may be initiated. Application to the zoning administrator shall include:

(a) **GENERAL INFORMATION**

- 1. Name and address of the applicant, property owner and contractor;
- 2. Legal description, proposed use, and whether it is new construction or a modification;

(b) **SITE DEVELOPMENT PLAN**

A site plan drawn to scale shall be submitted with the permit application form and shall contain:

- 1. Location, dimensions, area and elevation of the lot;
- 2. Location of the ordinary highwater mark of any abutting navigable waterways;
- 3. Location of any structures with distances measured from the lot lines and street center lines;

4. Location of any existing or proposed on-site sewage systems or private water supply systems;
5. Location and elevation of existing or future access roads;
6. Location of floodplain and floodway limits as determined from the official floodplain zoning maps;
7. The elevation of the lowest floor of proposed buildings and any fill using North American Vertical Datum (NAVD);
8. Data sufficient to determine the regional flood elevation in NAVD at the location of the development and to determine whether or not the requirements of Section 23.503(3) or Section 23.503(4) are met; and
9. Data to determine if the proposed development will cause an obstruction to flow or an increase in regional flood height or discharge according to Section 23.503(2)(a). This may include any of the information noted in Section 23.503(3)(c)1.

(c) **DATA REQUIREMENTS TO ANALYZE DEVELOPMENTS**

1. The applicant shall provide all survey data and computations required to show the effects of the project on flood heights, velocities and floodplain storage, for all subdivision proposals, as "subdivision" is defined in s. 236, Stats., and other proposed developments exceeding 5 acres in area or where the estimated cost exceeds \$125,000. The applicant shall provide:
 - a. An analysis of the effect of the development on the regional flood profile, velocity of flow and floodplain storage capacity;
 - b. A map showing location and details of vehicular access to lands outside the floodplain; and
 - c. A surface drainage plan showing how flood damage will be minimized. The estimated cost of the proposal shall include all structural development, landscaping, access and road development, utilities, and other pertinent items, but need not include land costs.

(d) **EXPIRATION**

All permits issued under the authority of this ordinance shall expire 180 days after issuance.

(3) **CERTIFICATE OF COMPLIANCE**

No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a certificate of compliance is issued by the zoning administrator, except where no permit is required, subject to the following provisions:

- (a) The certificate of compliance shall show that the building or premises or part thereof, and the proposed use, conform to the provisions of this ordinance;
- (b) Application for such certificate shall be concurrent with the application for a permit;
- (c) If all ordinance provisions are met, the certificate of compliance shall be issued within 10 days after written notification that the permitted work is completed;
- (d) The applicant shall submit a certification signed by a registered professional engineer, architect or land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or architect that floodproofing measures meet the requirements of Section 23.503(7)(e).

(4) **OTHER PERMITS**

The applicant must secure all necessary permits from federal, state, and local agencies, including those required by the U.S. Army Corps of Engineers under s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344.

(b) **ZONING AGENCY**

- (1) The City of Delavan Planning Commission shall:
 - (a) oversee the functions of the office of the zoning administrator; and
 - (b) review and advise the Governing body on all proposed amendments to this ordinance, maps and text.
- (2) This zoning agency shall not
 - (a) grant variances to the terms of the ordinance in place of action by the Zoning Board of Appeals; or
 - (b) amend the text or zoning maps in place of official action by the Governing body.

(c) **BOARD OF APPEALS**

The Board of Appeals, created under s. 62.23(7)(e), Stats., is hereby authorized or shall be appointed to act for the purposes of this ordinance. The Board shall exercise the powers conferred by Wisconsin Statutes and adopt rules for the conduct of business. The zoning administrator may not be the secretary of the Board.

(1) POWERS AND DUTIES

The Board of Appeals shall:

- (a) Appeals - Hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this ordinance.
- (b) Boundary Disputes - Hear and decide disputes concerning the district boundaries shown on the official floodplain zoning map.
- (c) Variances - Hear and decide, upon appeal, variances from the ordinance standards.

(2) APPEALS TO THE BOARD

- (a) Appeals to the board may be taken by any person aggrieved, or by any officer or department of the municipality affected by any decision of the zoning administrator or other administrative officer. Such appeal shall be taken within 30 days unless otherwise provided by the rules of the board, by filing with the official whose decision is in question, and with the board, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the board all records regarding the matter appealed.

(b) **NOTICE AND HEARING FOR APPEALS INCLUDING VARIANCES**

1. Notice - The board shall:
 - a. Fix a reasonable time for the hearing;
 - b. Publish adequate notice pursuant to Wisconsin Statutes, specifying the date, time, place and subject of the hearing;
 - c. Assure that notice shall be mailed to the parties in interest and the Department Regional office at least 10 days in advance of the hearing.
2. Hearing - Any party may appear in person or by agent. The board shall:
 - a. Resolve boundary disputes according to Section 23.503(7)(c)3.
 - b. Decide variance applications according to Section 23.503(7)(c)4.

- c. Decide appeals of permit denials according to Section 23.503(7)(d).
- (c) **DECISION:** The final decision regarding the appeal or variance application shall:
 1. Be made within a reasonable time;
 2. Be sent to the Department Regional office within 10 days of the decision;
 3. Be a written determination signed by the chairman or secretary of the Board;
 4. State the specific facts which are the basis for the Board's decision;
 5. Either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or grant or deny the variance application;
 6. Include the reasons for granting an appeal, describing the hardship demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the Board proceedings.
- (3) **BOUNDARY DISPUTES**
 The following procedure shall be used by the Board in hearing disputes concerning floodplain district boundaries:
 - (a) If a floodplain district boundary is established by approximate or detailed floodplain studies, the flood elevations or profiles shall prevail in locating the boundary. If none exist, other evidence may be examined.
 - (b) In all cases, the person contesting the boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the Board.
 - (c) If the boundary is incorrectly mapped, the Board should inform the zoning committee or the person contesting the boundary location to petition the governing body for a map amendment according to Section 23.503(8).
- (4) **VARIANCE**
 - (a) The Board may, upon appeal, grant a variance from the standards of this ordinance if an applicant convincingly demonstrates that:
 1. Literal enforcement of the ordinance provisions will cause unnecessary hardship;
 2. The hardship is due to adoption of the floodplain ordinance and unique property conditions, not common to adjacent lots or premises. In such case the ordinance or map must be amended;
 3. The variance is not contrary to the public interest; and
 4. The variance is consistent with the stated purpose of the enabling ordinance.
 - (b) In addition to the criteria in par. (a), to qualify for a variance under FEMA regulations, the following criteria must be met:
 1. The variance may not cause any increase in the regional flood elevation;
 2. Variances can only be granted for lots that are less than one-half acre and are contiguous to existing structures constructed below the RFE;
 3. Variances shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the ordinance.

- (c) A variance shall not:
 1. Grant, extend or increase any use prohibited in the zoning district.
 2. Be granted for a hardship based solely on an economic gain or loss.
 3. Be granted for a hardship which is self-created.
 4. Damage the rights or property values of other persons in the area.
 5. Allow actions without the amendments to this ordinance or map(s) required in Section 23.503(8)(a).
 6. Allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.
- (d) When a floodplain variance is granted the Board shall notify the applicant in writing that it may increase flood insurance premiums and risks to life and property. A copy shall be maintained with the variance record.
- (d) **TO REVIEW APPEALS OF PERMIT DENIALS**
 - (1) The Zoning Agency [Section 23.503(7)(b)] or Board shall review all data related to the appeal. This may include:
 - (a) Permit application data listed in Section 23.503(7)(a)2.
 - (b) Floodway/floodfringe determination data in Section 23.503(5)(d).
 - (c) Data listed in Section 23.503(3)(c)1b2, where the applicant has not submitted this information to the zoning administrator.
 - (d) Other data submitted with the application, or submitted to the Board with the appeal.
 - (2) For appeals of all denied permits the Board shall:
 - (a) Follow the procedures of Section 23.503(7)(c);
 - (b) Consider zoning agency recommendations; and
 - (c) Either uphold the denial or grant the appeal.
 - (3) For appeals concerning increases in regional flood elevation the Board shall:
 - (a) Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases equal to or greater than 0.01 foot may only be allowed after amending the flood profile and map and all appropriate legal arrangements are made with all adversely affected property owners.
 - (b) Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase equal to or greater than 0.01 foot provided no other reasons for denial exist.
- (e) **FLOODPROOFING**
 - (1) No permit or variance shall be issued until the applicant submits a plan certified by a registered professional engineer or architect that the floodproofing measures will protect the structure or development to the flood protection elevation.
 - (2) Floodproofing measures shall be designed to:
 - (a) Withstand flood pressures, depths, velocities, uplift and impact forces and other regional flood factors;
 - (b) Protect structures to the flood protection elevation;
 - (c) Anchor structures to foundations to resist flotation and lateral movement; and
 - (d) Insure that structural walls and floors are watertight to the flood protection elevation, and the interior remains completely dry during flooding without human intervention.

- (3) Floodproofing measures could include:
 - (a) Reinforcing walls and floors to resist rupture or collapse caused by water pressure or floating debris.
 - (b) Adding mass or weight to prevent flotation.
 - (c) Placing essential utilities above the flood protection elevation.
 - (d) Installing surface or subsurface drainage systems to relieve foundation wall and basement floor pressures.
 - (e) Constructing water supply wells and waste treatment systems to prevent the entry of flood waters.
 - (f) Putting cutoff valves on sewer lines or eliminating gravity flow basement drains.

(f) **PUBLIC INFORMATION**

- (1) Place marks on structures to show the depth of inundation during the regional flood.
- (2) All maps, engineering data and regulations shall be available and widely distributed.
- (3) All real estate transfers should show what floodplain zoning district any real property is in.

(8) **AMENDMENTS**

(a) **GENERAL**

The governing body may change or supplement the floodplain zoning district boundaries and this ordinance in the manner provided by law. Actions which require an amendment include, but are not limited to, the following:

- (1) Any change to the official floodplain zoning map, including the floodway line or boundary of any floodplain area.
- (2) Correction of discrepancies between the water surface profiles and floodplain zoning maps.
- (3) Any fill in the floodplain which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain.
- (4) Any fill or floodplain encroachment that obstructs flow, increasing regional flood height 0.01 foot or more.
- (5) Any upgrade to a floodplain zoning ordinance text required by s. NR 116.05, Wis. Adm. Code, or otherwise required by law, or for changes by the municipality.
- (6) All channel relocations and changes to the maps to alter floodway lines or to remove an area from the floodway or the floodfringe that is based on a base flood elevation from a FIRM requires prior approval by FEMA.

Note: Consult the FEMA web site - www.fema.gov - for the map change fee schedule.

(b) **PROCEDURES**

Ordinance amendments may be made upon petition of any interested party according to the provisions of s. 62.23, Stats. Such petitions shall include all necessary data required by subsection 23.503(5)(d) and subsection 23.503(7)(a)2.

- (1) The proposed amendment shall be referred to the zoning agency for a public hearing and recommendation to the governing body. The amendment and notice of public hearing shall be submitted to the Department Regional office for review prior to the hearing. The amendment procedure shall comply with the provisions of s. 62.23, Stats.

- (2) No amendments shall become effective until reviewed and approved by the Department.
- (3) All persons petitioning for a map amendment that obstructs flow, increasing regional flood height 0.01 foot or more, shall obtain flooding easements or other appropriate legal arrangements from all adversely affected property owners and notify local units of government before the amendment can be approved by the governing body.
- (4) For amendments in areas with no water surface profiles, the zoning agency or board shall consider data submitted by the Department, the zoning administrator's visual on-site inspections and other available information. [See Section 23.503(1)(d).]

(9) **ENFORCEMENT AND PENALTIES** (RC-342, 7/8/14)

Any violation of the provisions of this ordinance by any person shall be unlawful and shall be referred to the municipal attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the municipality a penalty of not more than \$50.00, together with a taxable cost of such action. Each day of continued violation shall constitute a separate offense. Every violation of this ordinance is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of the municipality, the state, or any citizen thereof pursuant to s. 87.30, Stats.

(10) **DEFINITIONS**

Unless specifically defined, words and phrases in this ordinance shall have their common law meaning and shall be applied in accordance with their common usage. Words used in the present tense include the future, the singular number includes the plural and the plural number includes the singular. The word "may" is permissive, "shall" is mandatory and is not discretionary.

- 1) "A ZONES" - Those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.
- 2) "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.
- 3) "BASE FLOOD" - Means the flood having a one percent chance of being equaled or exceeded in any given year, as published by FEMA as part of a FIS and depicted on a FIRM.
- 4) "BASEMENT" - Any enclosed area of a building having its floor sub-grade, i.e., below ground level, on all sides.
- 5) "BUILDING" - See STRUCTURE.
- 6) "BULKHEAD LINE" - A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department pursuant to s. 30.11, Stats., and which allows limited filling between this bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this ordinance.

- 7) "CAMPGROUND" - Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by 4 or more camping units, or which is advertised or represented as a camping area.
- 8) "CAMPING UNIT" - Any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, tent or other mobile recreational vehicle.
- 9) "CERTIFICATE OF COMPLIANCE" - A certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this ordinance.
- 10) "CHANNEL" – A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.
- 11) "CRAWLWAYS" OR "CRAWL SPACE" - An enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.
- 12) "DECK" – An unenclosed exterior structure that has no roof or sides, but has a permeable floor which allows the infiltration of precipitation.
- 13) "DEPARTMENT" - The Wisconsin Department of Natural Resources.
- 14) "DEVELOPMENT" - Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.
- 15) "DRYLAND ACCESS" - A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.
- 16) "ENCROACHMENT" - Any fill, structure, equipment, building, use or development in the floodway.
- 17) "EXISTING MANUFACTURED HOME PARK OR SUBDIVISION" - A parcel of land, divided into two or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this ordinance. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.

- 18) "EXPANSION TO EXISTING MOBILE/MANUFACTURED HOME PARK" - The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading, or the pouring of concrete pads.
- 19) "FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)" - The federal agency that administers the National Flood Insurance Program.
- 20) "FLOOD INSURANCE RATE MAP" (FIRM) - A map of a community on which the Federal Insurance Administration has delineated both special flood hazard areas (the floodplain) and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.
- 21) "FLOOD" or "FLOODING" – A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:
- T The overflow or rise of inland waters,
 - T The rapid accumulation or runoff of surface waters from any source,
 - T The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior, or
 - T The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.
- 22) "FLOOD FREQUENCY" - The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average, once in a specified number of years or as a percent (%) chance of occurring in any given year.
- 23) "FLOODFRINGE" - That portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood and associated with standing water rather than flowing water.
- 24) "FLOOD HAZARD BOUNDARY MAP" - A map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A-Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.
- 25) "FLOOD INSURANCE STUDY" - A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A-Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.

- 26) "FLOODPLAIN" - Land which has been or may be covered by flood water during the regional flood. It includes the floodway and the floodfringe, and may include other designated floodplain areas for regulatory purposes.
- 27) "FLOODPLAIN ISLAND" - A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.
- 28) "FLOODPLAIN MANAGEMENT" - Policy and procedures to insure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.
- 29) "FLOOD PROFILE" - A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.
- 30) "FLOODPROOFING" - Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.
- 31) "FLOOD PROTECTION ELEVATION" - An elevation of two feet of freeboard above the water surface profile elevation designated for the regional flood. (Also see: FREEBOARD.)
- 32) "FLOOD STORAGE" - Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.
- 33) "FLOODWAY" - The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.
- 34) "FREEBOARD" - A safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for any factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development and aggregation of the river or stream bed.
- 35) "HABITABLE STRUCTURE" - Any structure or portion thereof used or designed for human habitation.
- 36) "HEARING NOTICE" - Publication or posting meeting the requirements of Ch. 985, Stats. For appeals, a Class 1 notice, published once at least one week (7 days) before the hearing, is required. For all zoning ordinances and amendments, a Class 2 notice, published twice, once each week consecutively, the last at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice, exceeding these minimums.
- 37) "HIGH FLOOD DAMAGE POTENTIAL" - Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.

- 38) "HISTORIC STRUCTURE" - Any structure that is either:
- ✓ The 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,
 - ✓ The 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,
 - ✓ The Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior, or
 - ✓ Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior; or by the Secretary of the Interior in states without approved programs.
- 39) "INCREASE IN REGIONAL FLOOD HEIGHT" - A calculated upward rise in the regional flood elevation, equal to or greater than 0.01 foot, based on a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.
- 40) "LAND USE" - Any nonstructural use made of unimproved or improved real estate. (Also see DEVELOPMENT.)
- 41) "MANUFACTURED HOME" - A structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. The term "manufactured home" includes a mobile home but does not include a "mobile recreational vehicle."
- 42) "MOBILE RECREATIONAL VEHICLE" - A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicles."
- 43) "MUNICIPALITY" or "MUNICIPAL" - The county, city or village governmental units enacting, administering and enforcing this zoning ordinance.
- 44) "NAVD" or "NORTH AMERICAN VERTICAL DATUM of 1988" - Elevations referenced to mean sea level datum, 1988 adjustment.

- 45) "NEW CONSTRUCTION" - For floodplain management purposes, "new construction" means structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by this community and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.
- 46) "NONCONFORMING STRUCTURE" - An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this ordinance for the area of the floodplain which it occupies. (For example, an existing residential structure in the floodfringe district is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.)
- 47) "NONCONFORMING USE" - An existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this ordinance for the area of the floodplain which it occupies. (Such as a residence in the floodway.)
- 48) "OBSTRUCTION TO FLOW" - Any development which blocks the conveyance of floodwaters such that this development alone or together with any future development will cause an increase in regional flood height.
- 49) "OFFICIAL FLOODPLAIN ZONING MAP" - That map, adopted and made part of this ordinance, as described in Section 23.503(1)(b), which has been approved by the Department and FEMA.
- 50) "OPEN SPACE USE" - Those uses having a relatively low flood damage potential and not involving structures.
- 51) "ORDINARY HIGHWATER MARK" - The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.
- 52) "PERSON" - An individual, or group of individuals, corporation, partnership, association, municipality or state agency.
- 53) "PRIVATE SEWAGE SYSTEM" - A sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Commerce, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.
- 54) "PUBLIC UTILITIES" - Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.
- 55) "REASONABLY SAFE FROM FLOODING" - Means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

- 56) "REGIONAL FLOOD" - A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year, and if depicted on the FIRM, the RFE is equivalent to the BFE.
- 57) "START OF CONSTRUCTION" - The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- 58) "STRUCTURE" - Any manmade object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.
- 59) "SUBDIVISION" - Has the meaning given in s. 236.02(12), Wis. Stats.
- 60) "SUBSTANTIAL DAMAGE" - Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the equalized assessed value of the structure before the damage occurred.
- 61) "UNNECESSARY HARDSHIP" - Where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the ordinance.
- 62) "VARIANCE" - An authorization by the board of adjustment or appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance.
- 63) "VIOLATION" - The failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.
- 64) "WATERSHED" - The entire region contributing runoff or surface water to a watercourse or body of water.

- 65) "WATER SURFACE PROFILE" - A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.
- 66) "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.

Section 23.504 Shoreland-Wetland Overlay Zoning District

(1) **Purpose of Shoreland-Wetland Protection Requirements:** This District, which includes floodplain areas, is intended to preserve, protect, and enhance the ponds, streams, and wetland areas of the City of Delavan. The preservation, protection, and enhancement of these areas will serve to maintain safe and healthful conditions; maintain and improve water quality, both ground and surface; prevent flood damage; control storm water runoff; protect stream banks from erosion; protect groundwater recharge and discharge areas; protect wildlife habitat; protect native plant communities; avoid the location of structures on soils which are generally not suitable for use; and protect the water-based recreation resources of the City.

(a) Permitted Uses in the Shoreland-Wetland Overlay Zoning District

1. Hiking, fishing, trapping, swimming, and boating, unless prohibited by other ordinances and laws.
2. The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops.
3. Silviculture: including the planting, thinning, and harvesting of timber.
4. Agricultural cultivation and pasturing, including the construction and maintenance of fences, provided they do not involve extension of or creation of new drainage systems, and further provided they do not substantially disturb or impair the natural fauna, flora, topography, or water regimen.
5. Ditching, tiling, dredging, excavating, or filling done to maintain or repair an existing drainage system only to the extent necessary to maintain the level of drainage required to continue the existing use.
6. The construction and maintenance of piers, docks, and walkways, including those built on pilings.
7. The maintenance, repair, replacement, and reconstruction of existing streets, roads, and bridges.

(b) Conditional Uses in the Shoreland-Wetland Overlay Zoning District

1. The construction of streets which are necessary for the continuity of the City street system, necessary for the provision of essential utility and public safety services, or necessary to provide access to permitted open space uses in the shoreland-wetland overlay district, provided that:
 - a. The street cannot as a practical matter be located outside the shoreland-wetland overlay district;
 - b. The street is designed and constructed to minimize adverse impact upon the natural functions of the wetland as listed in Section 23.504(1) of this Code;
 - c. The street is designed and constructed with the minimum cross-section practical to serve the intended use;
 - d. The street construction activities are carried out in the immediate area of the roadbed only; and
 - e. Any filling, flooding, draining, dredging, ditching, tiling, or excavating that is done must be necessary for the construction or maintenance of the street.
2. The construction and maintenance of non-residential buildings used solely in conjunction with raising of waterfowl, minnows, or other wetland or aquatic animals or used solely for some other purpose which is compatible with wetland preservation, provided that:

- a. The building cannot as a practical matter be located outside the shoreland-wetland overlay district;
 - b. The building is not designed for human habitation and does not exceed 500 square feet in area; and
 - c. Only limited filling or excavating necessary to provide structural support is conducted.
3. The establishment and development of public and private parks and recreation areas, recreation trails, public boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves, and private habitat areas, provided that:
- a. Any private recreation or wildlife habitat area must be exclusively for that purpose;
 - b. No filling is to be done; and
 - c. Ditching, excavating, dredging, dike and dam construction may be done in wildlife refuges, game preserves, and private wildlife habitat areas, but only to improve wildlife habitat or to enhance the value of a wetland or other natural resource.
4. The construction and maintenance of electric, gas, telephone, water and sewer transmission and distribution lines, and related facilities, provided:
- a. The transmission and distribution lines and related facilities cannot as a practical matter be located outside the shoreland-wetland district; and
 - b. Any filling, draining, dredging, ditching, or excavating that is done must be necessary for the construction or maintenance of the utility, and must be done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the conservancy area.
5. The construction and maintenance of railroad lines, provided that:
- a. The railroad lines cannot as a practical matter be located outside the shoreland-wetland overlay district; and
 - b. Any filling, draining, dredging, ditching, or excavating that is done must be necessary for the construction or maintenance of the railroad, and must be done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the conservancy area.
- (c) **Prohibited Uses in the Shoreland-Wetland Overlay Zoning District**
- 1. Any use not listed as a permitted use or a conditional use is prohibited unless the shoreland-wetland overlay district lands concerned are first rezoned into another district.
 - 2. The use of a boathouse for human habitation and the construction or placement of a boathouse or fixed boathouse below the ordinary highwater mark of any navigable water are prohibited.
- (d) **Wetland Nonconforming Uses.** See Section 23.207(7).
- (e) **Shoreland-Wetland Overlay District Boundaries.** See Section 22.107.
- (f) **Amendments to Shoreland-Wetland Overlay Zoning Districts.** See Section 24.903(10).
- (g) **Mapping Disputes.** See Section 24.934(8).
- (h) **Annexations Containing Wetlands Shorelands:** Pursuant to Section 59.971(7) of the Wisconsin Statutes, any annexations of lands after May 7, 1982, which lie within wetland shorelands, as defined herein, shall be governed by the regulations in Subsection 23.504(1)(h)1., below, and the applicable use districts per Subsections 23.504(1)(h)2. and 3, below.

1. **Shoreland Regulations**

- a. Applicability. In addition to any other applicable use or site regulation, as to any lands annexed after May 7, 1982, the following restrictions and regulations shall apply to:
- i. All lands lying within 1,000 feet of the ordinary high water mark of the following lakes:
 - Comus Lake
 - Delavan Lake
 - ii. All lands lying within three hundred (300) feet of the ordinary high-water mark of navigable rivers or streams, or to the landward side of the floodplain, whichever is greater. Rivers and streams in the City of Delavan shall be presumed to be navigable if they are designated as either continuous or intermittent waterway on the United States Geological Survey quadrangle maps or other zoning base maps referenced in this Ordinance. If evidence to the contrary is presented; the Zoning Administrator shall make the initial determination whether or not the river or stream in question is navigable under the laws of this state. The Zoning Administrator shall also make the initial determination of the location of the ordinary high-water mark. When questions arise, the Zoning Administrator shall contact the appropriate district DNR office for a determination of navigability or ordinary high-water mark. Flood Hazard Boundary maps, or Flood Insurance Study maps (or soil maps or other existing county maps used to delineate floodplain areas which have been adopted by the City of Delavan) shall be used to determine the extent of the floodplain of rivers or streams in the City of Delavan.
- b. Tree Cutting, Shrubbery Clearing, and Earth Movements shall be conducted in accordance with the City of Delavan's erosion control standards and, except as provided below, shall require a zoning permit and an erosion control plan. In addition, the Zoning Administrator may, where appropriate, require an applicant to furnish a surety to enable the City to carry out land restoration work in the event of default by the applicant in carrying out an approved erosion control plan. The amount of such surety shall be determined by the Zoning Administrator, and the form and type of all sureties shall be approved by the Plan Commission. The Zoning Administrator may, as appropriate, request a review of the proposed cutting, clearing, or earth movement activity by the Wisconsin Department of Natural Resources, the USDA Soil Conservation Service, or other appropriate agency, and await their comments and recommendations before issuing a zoning permit but not to exceed thirty (30) days. All cutting, clearing, and earth movement activities shall be so conducted as to prevent erosion and sedimentation and preserve the natural beauty of the City. Paths and trails shall not exceed ten (10) feet in width and shall be so designed and constructed as to result in the least removal and disruption of natural ground cover and the minimum impairment of natural beauty. In the strip of land 35 feet wide inland from the ordinary high-water mark, no more than 30 feet in any 100 feet or the same proportion of a smaller lot shall be clear-cut.
- i. Natural shrubbery shall be preserved as far as practicable and, where removed, it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty. These provisions do not apply to the removal of dead or diseased trees.

- ii. Cutting Plan: A special cutting plan allowing greater cutting may be permitted by the Plan Commission by issuance of a Conditional Use Permit. An application for such a permit shall include a survey of the lot providing the following information: location of parking, topography of the land, existing vegetation, proposed cutting, and proposed replanting. The Commission may grant such a permit only if it finds that such special cutting plans:
 - (1) Will not cause undue erosion or destruction of scenic beauty, and
 - (2) Will provide substantial visual screening from the water of dwellings, accessory structures and parking areas. Where the plan calls for replacement plantings the Commission may require the submission of a bond which guarantees the performance of the planned tree or shrubbery replacement by the lot owner.
 - iii. Beyond the thirty-five (35) foot strip, a zoning permit shall be required with erosion control plans for projects within 300 feet of the ordinary high-water mark and which are either (1) on slopes more than 20%, (2) larger than 1,000 square feet on slopes of 12% - 20%, or (3) larger than 2,000 square feet on slopes less than 12%.
 - c. Required setbacks.
 - i. All structure, except piers, wharfs, boat hoists, boathouses, patios, 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 (75) feet from the ordinary high-water mark although a greater setback may be required where otherwise regulated by the floodplain provisions of this ordinance or other more restrictive ordinances.
 - ii. Shoreyards may be reduced to the average of the shoreyards existing on the abutting properties within a distance of 100 feet of the subject site but shall not be reduced to less than forty (40) feet.
 - iii. See regulations as to setbacks for various structures herein after appearing in e., below.
 - d. Structures which require authorization or permits from the DNR pursuant to Chapters 30 and 31, Wisconsin Statutes, or which are to be located below the ordinary high-water mark, namely bridges, dams, culverts, piers, wharfs, shoreland riprap, 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 zoning permit where the standards of this ordinance are complied with.
 - e. Various Structures
 - i. Boathouses: Boathouses shall not extend below the ordinary high-water mark and shall be designed exclusively for the storage of watercraft and related marine equipment and shall not be used for human habitation or commercial purposes. A boathouse with rooms above or within, used for purposes other than the storage of watercraft and related marine equipments, shall not be deemed to be a boathouse. Fireplaces, patio doors, plumbing, heating, cooking facilities, or any features inconsistent with the use of the structure exclusively as a boathouse are not permitted in or on boathouses. The highest point of the roof

- elevation of the boathouse shall not be more than fourteen (14) feet vertical measurement above the ordinary high-water mark, shall not exceed 400 square feet in horizontal area covered, and shall not be closer than three (3) feet to any side lot line. Railings shall not be placed on top of the boathouse, nor shall boathouse roofs be designed to provide general outdoor living space, i.e., as a deck. Only one boathouse is permitted on a lot as an accessory structure.
- ii. Patios: Patios are exempted from the shoreland setback requirements provided that the structure shall be located so as to minimize earth disturbing activities and shoreland vegetation removal during construction. Further, no permanent benches or tables shall be attached to the patio; the patio shall not exceed a height of six (6) inches above the original grade, and canopies, roofs, and railings on such structures are prohibited. The patio must be placed within the 30 in 100 foot area that is allowed to be clear-cut and shall be no more than 150 square feet in area.
 - iii. Stairways, walkways, piers, and wharfs: Stairways and walkways and that portion of piers and wharfs landward of the ordinary high-water mark are exempted from the shoreland setback requirements provided that the structure is necessary to access the shoreline because of steep slopes or wet, unstable soils. Further, the structure shall be located so as to minimize earth disturbing activities and shoreland vegetation removal during construction. The structure shall be no more than forty-two (42) inches wide; open railings are permitted only where required by safety concerns; canopies, roofs, and closed railing/walls on such structures are prohibited; landings for stairways or docks are permitted only where required by safety concerns and shall not exceed twenty-five (25) feet in area.
 - iv. Retaining walls: Retaining walls and terracing shall only be allowed in the shoreline setback area where the applicant can successfully prove to the Plan Commission or the Department of Natural Resources that there is a current erosion problem that cannot be remedied by resloping and revegetation of the area or other means consistent with the natural shoreline aesthetics. Walls and terracing shall only be permitted to the extent that they resolve a continuing erosion problem and shall not be used to provide level outdoor living space in the near-shore area.
 - f. Earth Movements Involving Stream Course Changing, waterway construction or enlargement, channel clearing, removal of stream or lake bed materials, are conditional uses requiring review, public hearing, and approval by the Plan Commission. However, such earth movements having a DNR permit under Chapter 30 of the Wisconsin Statutes are exempt from this provision.
 - g. Prohibited Materials. No waste materials, such as garbage, rubbish, gasoline, fuel oil, flammables, soils, tars, chemicals, greases, industrial or agricultural waste, or any other material of such nature, quantity, obnoxiousness, toxicity or temperature so as to contaminate, pollute or harm the waters shall be so located, stored, or discharged in a way that would be likely to run-off, seep, or wash into surface or ground waters.
 - h. Limited Agricultural Practices. Tillage, Grazing, Livestock Watering, and the Spreading, Stacking and Stockpiling of Manure shall be permitted only when such

uses are conducted in accordance with Walworth County's Conservation Standards, and when such uses do not cause the discharge of animal wastes into drainageways or surface waters. Spreading of manure or fertilizer on frozen ground, stockpiling or stacking of manure, and the establishment and use of feed lots, shall be prohibited when such practice would cause direct run-off of surface waters into a drainageway or watercourse.

- i. Surface Water Practices Limited. Surface Water Withdrawal, Diversion, or Discharge for irrigation, processing, or cooling purposes is prohibited except upon issuance of a special permit by the State of Wisconsin Department of Natural Resources under rules and regulations adopted pursuant to Section 144.25(2) of the Wisconsin Statutes.
2. **Rs-2 Shoreland Single Family Residence District.** The Rs-2 residence district is intended to provide for single-family residential development, at densities not to exceed 2.8 dwelling units per net acre, served by municipal sewer and water facilities and located within a shoreland regulated area.
 - a. Permitted Uses
 - i. Community living arrangements which have a capacity for eight (8) or fewer persons.
 - ii. Essential services.
 - iii. Foster family homes.
 - iv. Single-family dwellings.
 - b. Permitted Accessory Uses. Structures are not permitted within a shoreyard.
 - i. Gardening, tool and storage sheds incidental to the residential use.
 - ii. Off-street parking facilities.
 - iii. Private garages and carports.
 - c. Conditional Uses.
 - i. Community living arrangements which have a capacity for nine (9) or more persons.
 - ii. Home occupations and professional offices.
 - iii. Residential Planned Unit Developments, on a minimum of five acres.
 - iv. Utilities.
 - d. Lot Area, Width, and Coverage.
 - i. Lots shall be a minimum of 15,750 square feet in area and shall be not less than 85 feet in width.
 - ii. Lot coverage shall not exceed 50 percent of the total lot area.
 - e. Building Total Height.
 - i. No building or parts of a building shall exceed 35 feet in height.
 - f. Yards
 - i. A minimum street yard of 25 feet from the right-of-way of all streets shall be required.
 - ii. There shall be minimum side yards of 10 feet each side.
 - iii. There shall be a rear yard of not less than 25 feet.
 - iv. There shall be a shore yard of 75 feet.
3. **Rm-2S Shoreland Multiple Family Residence District.** The Rm-2S residence district is intended to provide for multiple-family residential development, at densities not to exceed 8 dwelling units per net acre, served by municipal sewer and water facilities and located within a shoreland regulated area.

- a. Permitted Uses.
 - i. Community living arrangements which have a capacity for 15 persons or fewer.
 - ii. Essential services.
 - iii. Foster family home unit.
 - iv. Multiple-family dwellings not to exceed sixteen (16) units per structure.
- b. Permitted Accessory Uses. Structures are not permitted within a shore yard.
 - i. Gardening, tool and storage sheds incidental to the residential use.
 - ii. Off-street parking facilities.
 - iii. Private garages and carports.
- c. Conditional Uses.
 - i. Boarding, lodging and rooming houses.
 - ii. Community living arrangements which have a capacity for 16 persons or more.
 - iii. Residential Planned Unit Developments, on a minimum of five acres.
 - iv. Utilities.
 - v. Multiple-family dwellings that exceed sixteen (16) units per structure.
- d. Lot Area, Width, and Coverage.
 - i. Lots shall have the minimum of the larger of 25,000 square feet in area or 5,445 square feet of lot area per dwelling unit.
 - ii. Lots shall not be less than 180 feet in width.
 - iii. Lot coverage shall not exceed 50 percent of the total lot area.
- e. Building Height.
 - i. No building or parts of a building shall exceed 50 feet in height.
- f. Yards.
 - i. A minimum street yard of 35 feet from the right-of-way of all streets shall be required.
 - ii. There shall be minimum side yards required for all structures of 25 feet.
 - iii. There shall be a rear yard of not less than 40 feet.
 - iv. There shall be a shore yard of 75 feet.
 - v. There shall be a perimeter yard on Planned Unit Developments of 50 feet; minimum 75 feet from shoreline.

Section 23.505 Lakeshore Overlay Zoning District

- (1) **Definition:** Lakeshores are the land margins of navigable waters which are identified as "lakes and other water bodies" as shown on Environmental Corridors Composite Maps for the City of Delavan and its environs, prepared by the SEWRPC. Lakeshores are all areas within 75 feet of the ordinary high water mark of such features. Decorative water features shall not be considered "navigable waters" for the purposes of this Section. This meaning of "lakeshores" shall remain distinct from the meaning of the term as employed by the State of Wisconsin Statutes and the DNR.
- (2) **Purpose of Lakeshore Protection Requirements:** Lakeshores serve to protect land/water margins from erosion due to site disruption. Because of regular contact with wave action, currents, and runoff, such areas are highly susceptible to continuous, and in some cases, rapid erosion. Lakeshore protection also provides a natural vegetation buffer which serves to reduce water velocities and wave energy, and filters significant amounts of water-borne pollutants and sediments. Lakeshores also promote infiltration and groundwater recharging, and provide a unique habitat at the land/water margin.
- (3) **Determination of Lakeshore Boundaries:** General lakeshore boundaries are depicted on Sheet 2 of the Official Zoning Map. Upon the proposal of development activity on any property which contains a lakeshore depicted on the Official Zoning Map, the petitioner shall prepare a detailed site analysis per the requirements of Section 23.510. This analysis shall depict the location of all lakeshore areas on the subject property as related to the provisions of Subsection (1), above.
- (4) **Mandatory Lakeshore Protection Requirements:** Lakeshores shall remain in an undisturbed state, except for the land uses permitted in Section 23.204 per the requirements of Subsection 23.206(10).

Section 23.506 Drainageway Overlay Zoning District

- (1) **Definition:** Drainageways are non-navigable, above-ground watercourses, detention basins and/or their environs which are identified by the presence of one or more of the following:
 - (a) All areas within 75 feet of the ordinary high water mark of a "perennial stream" as shown on Environmental Corridors Composite Maps for the City of Delavan and its environs, prepared by the SEWRPC;
 - (b) All areas within 50 feet of the ordinary high water mark of an "intermittent stream" or "open channel drainageway" as shown on Environmental Corridors Composite Maps for the City of Delavan and its environs, prepared by the SEWRPC.

- (2) **Purpose of Drainageway Protection Requirements:** Drainageways serve in the transporting of surface runoff to downstream areas. As such, drainageways serve to carry surface waters, supplement floodplain, wetland, and lakeshore water storage functions in heavy storm or melt events, filter water-borne pollutants and sediments, promote infiltration and groundwater recharging, and provide a unique habitat at the land/water margin. Drainageway protection requirements preserve each of these functions as well as greatly reducing the potential for soil erosion along drainageways by protecting vegetative groundcover in areas which are susceptible to variable runoff flows and moderate to rapid water movement.

- (3) **Determination of Drainageway Boundaries:** General drainageway boundaries are depicted on Sheet 2 of the Official Zoning Map. Upon the proposal of development activity on any property which contains a drainageway depicted on the Official Zoning Map, the petitioner shall prepare a detailed site analysis per the requirements of Section 23.510. This analysis shall depict the location of all drainageway areas on the subject property as related to the provisions of Subsection (1), above.

- (4) **Mandatory Drainageway Protection Requirements:** Drainageways shall remain in an undisturbed state except for the land uses permitted in Section 23.204 per the requirements in Subsection 23.206(10). Vegetation clearing to maintain drainageway functions is permitted with the written approval of the Director of Public Works. All areas designated as drainageways shall be located within a public easement or dedication for maintenance purposes to preserve proper drainage flow.

Section 23.507 Woodland Overlay Zoning District

- (1) **Definition:** Woodlands are areas of trees whose combined canopies cover a minimum of 80% of an area of one acre or more, as shown on Environmental Corridors Composite Maps for the City of Delavan and its environs, prepared by the SEWRPC.
- (2) **Purpose of Woodland Protection Requirements:** Woodlands provide a wide variety of environmental functions. These include atmospheric benefits such as removing air-borne pollutants, carbon dioxide uptake, oxygen production, and evapotranspiration returns. Water quality benefits include substantial nutrient uptake rates (particularly for nitrogen and phosphorus) and surface runoff reduction in terms of both volumes and velocities. Woodlands provide unique wildlife habitats and food sources. Woodlands are excellent soil stabilizers, greatly reducing runoff-related soil erosion. Woodlands also serve to reduce wind velocities which further reduces soil erosion. Finally, under proper management techniques, woodlands serve as regenerative fuel sources.
- (3) **Determination of Woodland Boundaries:** General woodland boundaries are depicted on Sheet 2 of the Official Zoning Map. Upon the proposal of development activity on any property which contains a woodland depicted on the Official Zoning Map, the petitioner shall prepare a detailed site analysis per the requirements of Section 23.510. This analysis shall depict the location of all woodland areas on the subject property as related to the provisions of Subsection (1), above.
- (4) **Mandatory Woodland Protection Requirements:** Woodlands shall remain in an undisturbed state except for the land uses permitted in Section 23.204 per the requirements of Subsection 23.206(10) and areas subject to the following mitigation requirements. Selective cutting operations are permitted as a Special Use in all woodland areas (per the requirements of Section 23.206(2)(f)). Clear cutting is permitted as a Conditional Use in all woodland areas (per the requirements of Section 23.206(2)(g)).

Section 23.508 Steep Slope Overlay Zoning District

- (1) **Definition:** Steep slopes are areas which contain a gradient of 12% or greater, (equivalent to a 10 foot elevation change in a distance of 83 feet or less), as shown on Environmental Corridors Composite Maps for Delavan and its environs, prepared by the SEWRPC.
- (2) **Purpose of Steep Slope Protection Requirements:** Steep slopes are particularly susceptible to damage resulting from site disruption, primarily related to soil erosion. Such damage is likely to spread to areas which were not originally disturbed. Such erosion reduces the productivity of the soil, results in exacerbated erosion downhill, and results in increased sedimentation in drainageways, wetlands, streams, ponds and lakes. Beyond adversely affecting the environmental functions of these resources areas, such sedimentation also increases flood hazards by reducing the flood water storage capacity of hydrological system components, thus elevating the flood level of the drainage system in effected areas. Beyond these threats to the public safety, disruption of steep slopes also increases the likelihood of slippage and slumping--unstable soil movements which may threaten adjacent properties, buildings, and public facilities such as roads and utilities.
- (3) **Determination of Steep Slope Boundaries:** General steep slope boundaries are depicted on Sheet 2 of the Official Zoning Map. Upon the proposal of development activity on any property which contains a steep slope depicted on the Official Zoning Map, the petitioner shall prepare a detailed site analysis per the requirements of Section 23.510. This analysis shall depict the location of all steep slope areas on the subject property as related to the provisions of Subsection (1), above.
- (4) **Mandatory Steep Slope Protection Requirements:** Steep slopes shall remain in an undisturbed state except for the land uses permitted in Section 23.204 per the requirements of Subsection 23.206(10).

Section 23.510 Detailed Site Analysis

- (1) **Purpose:** The detailed site analysis required by this Subchapter is designed to provide the clear identification of permanently protected green space areas on a site which is proposed for development. The detailed survey work required to identify these areas accurately on a map is not required prior to the initiation of development concept plans for an area. A detailed site analysis shall be performed in conjunction with required land division documents or development site plans (see Section 24.908) for any and all properties containing permanently protected natural resource areas.

- (2) **Description:** The detailed site analysis shall be shown on a map of the subject property which depicts the location of all protected natural resource areas, as defined by the provisions of this Subchapter, and as located by an on-site survey. The detailed site analysis shall meet the following requirements:
 - (a) **Scale:** A minimum scale of one inch equals 200 feet shall be used.
 - (b) **Topography:** Topographic information is not required for any property which does not contain steep slopes (as designated on Sheet 2 of the Official Zoning Map). For such properties, topographic information with a minimum contour interval of two feet is required.
 - (c) **Specific Natural Resources Areas:** All natural resource areas which require protection under the provisions of this Chapter shall be accurately outlined and clearly labeled. Particular care as to clarity shall be taken in areas where different resource types overlap with one-another.
 - (d) **Development Pads:**
 1. All site disruption (including selective cutting) proposed to occur within permanently protected natural resource areas shall be limited to development pads. Development pads shall be depicted on the detailed site analysis map, site plans required for development permits, and the recorded Plat of Subdivision or Certified Survey Map.
 2. Beyond visible damage to natural resources, vegetation, soil, and drainage patterns, site disruption activities shall not compact soil covering tree roots, or otherwise damage trees beyond the area from which trees are to be removed. All trees with calipers exceeding 3 inches, whose canopies are located adjacent to disturbed areas, which die within a period of five years following site disruption shall be replaced by the property owner with a 3 inch caliper tree of the same type (canopy or understory). Therefore, care shall be taken to ensure that equipment and actions associated with permitted site disruption activities are limited to the area in which they are permitted. The use of snow fences and other barriers to outline development pads during disruption activity is strongly recommended to limit the extent of inadvertent compaction or other disturbance of earth, and collision damage to vegetation intended for protection. Such barriers should be placed no closer to protected trees than a point on the ground directly under their outer canopy edge.
 - (e) **Mitigation Areas:** All mitigation areas related to the provisions of this Chapter shall be depicted on the detailed site analysis map with notations provided which describe the mitigation techniques employed.

- (3) **Required Procedure for Submission and Review**
 - (a) **Required Timing of Submission:** The detailed site analysis map shall be submitted to the Zoning Administrator for initial review prior to, or concurrently with, the submission of the

Preliminary Plat of Subdivision or the Certified Survey Map; or if the proposed development does not involve a land division, then submittal is required as an attachment to a required site plan (see Section 24.908). A concept plan of the proposed development may be submitted prior to the submission of the detailed site analysis map, however, in no way does the acceptance and/or general approval of the concept plan indicate the approval of natural resource feature locations. A detailed site analysis map prepared for the subject property which has been previously approved by City Staff, may be submitted for any subsequent development activity on the site. However, modifications to such a previously approved map will be required if the analysis is no longer accurate for the subject property.

- (b) **Review by City Staff:** City staff shall review the submitted detailed site analysis map for general compliance with the following data sources:
1. Sheet 2 of the Official Zoning Map;
 2. Applicable SEWRPC Environmental Corridors Composite, Corridor Inventory, and Planned Corridor Maps;
 3. Air photos of the subject property;
 4. USGS Quads and other sources of topographic information;
 5. Applicable FEMA and related floodplain maps;
 6. Applicable Federal and State Wetland Inventory Maps;
 7. The City of Delavan Comprehensive Master Plan; and
 8. Site visits. The Zoning Administrator shall provide the petitioner with a written evaluation of the submitted detailed site analysis map which shall indicate the acceptance by City Staff; or the need for further analysis work, discussion with the petitioner and/or Staff-recognized experts, or a joint site visit.
- (c) **Modification of Detailed Site Analysis Map:** If necessary, as determined by City Staff, revised detailed site analysis maps shall be prepared and submitted for review by City Staff, until a version is deemed acceptable. Staff review of the detailed site analysis map may be appealed to the Board of Zoning Appeals as a matter of Ordinance Interpretation. (See Section 24.934.)
- (d) **Acceptance of Detailed Site Analysis Map:** Upon notification of acceptance by City Staff, (or in case of appeal, by determination of the Board of Zoning Appeals), the petitioner may proceed with the submittal of necessary development documents.
- (4) **Integration of Detailed Site Analysis Information with Required Development and/or Land Division Documents:** Information contained on the detailed site analysis map relating to the boundaries of permanently protected green space areas (including natural resource protection areas, other permanently protected green space areas, and required mitigation areas) shall be clearly depicted on any and all site plans required as a precondition for application for any development permit (such as a Building Permit) and on any proposed Plat of Subdivision or Certified Survey Map. (See also, Section 24.908 regarding required site plans.)