

CHAPTER 18

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18.01 PURPOSE. The purpose of this Code is to bring the City of Boscobel into compliance with Section 62.231 of the Wisconsin Statutes for the purpose of promoting public health, safety, convenience and general welfare; maintaining the storm and flood water storage capacity of all wetlands located within the corporate limits of the City; preventing and controlling water pollution by preserving wetlands within the corporate limits which filter or store sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters; protecting fish, their spawning grounds, other aquatic life and wildlife by preserving wetlands and other aquatic habitat; prohibiting certain uses detrimental to the shoreland-wetland area; and preserving shore cover and natural beauty by restricting the removal of natural shoreland cover and controlling shoreland-wetland excavation, filling and other earth moving activities.

18.02 COMPLIANCE. The use of wetlands and the alteration of wetland within the shoreland area of the ordinance and other applicable local, state or federal regulations. All permitted development shall require the issuance of a zoning permit unless otherwise expressly excluded by a provision of this ordinance. 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 with Section 13.48(13) of the Wisconsin Statutes. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when Section 30.12(4)(a) of the Wisconsin Statutes applies. This ordinance supersedes all the provisions of Chapter 17 of the Municipal Code and the City of Boscobel Floodplain Zoning Ordinance which relate to floodplain and shoreland-wetlands, except where such municipal zoning ordinances are more restrictive than this ordinance, in which case the more restrictive ordinance shall continue in full force and effect to the extent of the greater restrictions therein contained, but not otherwise. This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements, provided however, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. The provisions of this ordinance shall be held by minimum requirements and shall be liberally construed in favor of the City and shall not be deemed a limitation or repeal of any other powers granted to the City by the Wisconsin Statutes. Where a provision of this ordinance is required by a standard in Chapter NR 117 of the Wisconsin Administrative Code, and such provision is ambiguous, such provision shall be interpreted and construed in light of said Administrative Code 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. Should any portion of this ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

18.03 SHORELAND-WETLAND ZONING DISTRICT.

(1) Shoreland-Wetland Zoning Map. The following maps are hereby adopted and made a part of this ordinance and they are on file in the office of the Clerk of the City of

Boscobel and in the office of the Zoning Administrator of the City of Boscobel:

(a) The Wisconsin Wetland Inventory map stamped ~~FINAL~~ by the Department of Natural Resources and dated April 11, 1986.

(b) The City of Boscobel Floodplain Zoning Map prepared by the Federal Emergency Management Agency dated November 4, 1981.

(c) The City of Boscobel Zoning map authorized and created under Chapter 17 of the Municipal Code of the City of Boscobel and dated September 7, 1982.

(d) The United States Department of Interior, United States Geological Survey Map, Boscobel Quadrant, 1983.

(2) District Boundaries. The shoreland-wetland zoning district includes all wetlands in the City of Boscobel, Grant County, Wisconsin, which are shown on the final Wetland Inventory map that has been adopted and made a part of this ordinance and which are:

(a) Within 1,000 feet of the ordinary highwater mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in the City of Boscobel shall be presumed to be navigable if they are listed in the Department of Natural Resources publication entitled ~~A~~Surface Water Resources of Grant County~~@~~ or are shown on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this ordinance;

(b) Within 300 feet of the ordinary highwater mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this ordinance. The floodplain zoning maps incorporated into this Code shall be used to determine the extent of floodplain area.

(3) Boundary Line Determinations. Determinations of navigability and ordinary highwater mark location shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the appropriate district office of the Department of Natural Resources for a final determination of navigability or ordinary highwater mark. When any apparent discrepancy exists between the shoreland-wetland district boundary as shown on the official zoning map and actual field conditions at the time the maps were adopted, the Zoning Administrator shall contact the appropriate district office of the Department of Natural Resources to determine if the shoreland-wetland district boundary as mapped is in error. If the Department

of Natural Resources concurs with the Zoning Administrator that a particular area was incorrectly mapped as a wetland, the Zoning Administrator shall have the authority to immediately grant or deny a zoning permit in accordance with the regulations which apply to the correct zoning district. The correct zoning district shall be the zoning district immediately adjacent to the area determined to have been erroneously placed in the shoreland-wetland zoning district. In order to correct wetland mapping errors shown on the official shoreland-wetland zoning maps, the Zoning Administrator shall file a petition for a map amendment under the procedures of Section 17.86 through 17.90 of the Municipal Code of the City. Such petition for amendment shall be filed within 30 days of the determination that a mapping error exists.

18.04 PERMITTED USES NOT REQUIRING A ZONING PERMIT.

The following activities and uses are permitted within the shoreland-wetland zoning district without a zoning permit, provided that no shoreland or wetland is altered or that no alteration occurs except as specifically permitted in this section:

- (1) Hiking, fishing, trapping, hunting, swimming, skiing, snowmobiling and boating.
- (2) Harvesting of wild crops such as marsh hay, ferns, moss, grasses, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops.
- (3) The practice of silviculture, including the planting, thinning and harvesting of timber; and including limited temporary water level stabilization measures which are necessary to alleviate abnormally wet or dry conditions that would have adverse impact on the conduct of silvicultural activities if not corrected.
- (4) The pasturing of livestock, including the construction and maintenance of fences for pasturing of livestock and including limited excavating and filling necessary for such construction maintenance.
- (5) The cultivation of agricultural crops; and the cultivation of cranberries, including limited wetland alterations necessary for the purpose of growing and harvesting cranberries.
- (6) The construction and maintenance of duck blinds.
- (7) The maintenance and repair of existing drainage systems to restore pre-existing levels of drainage, including the minimum amount of filling necessary to dispose of dredged spoil, provided that the filling is otherwise permissible and that dredged spoil is placed on existing spoil banks where possible.

(8) The construction and maintenance of piers, docks, walkways, observation decks and trail bridges built on pilings, including limited excavating and filling necessary for such construction and maintenance.

(9) The installation and maintenance of sealed tiles for the purpose of draining lands outside the shoreland-wetland zoning district, provided that such installation or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the shoreland-wetland including storm and flood water storage capacity; maintenance of dry season stream flow or the discharge of ground water to a wetland and the recharge of ground water from a wetland to another area or the flow of ground water through a wetland; filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters; shoreline protection against erosion, fish spawning, breeding, nursery or feeding grounds; wildlife habitat; or areas of special recreational, scenic or scientific interests, including scarce wetland types and habitat of endangered species.

(10) The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.

18.05 PERMITTED USES REQUIRING A ZONING PERMIT.

The following uses are allowed upon the issuance of a zoning permit, but may include wetland alterations only to the extent specifically provided herein.

(1) The construction and maintenance of roads which are necessary for the continuity of the City street system, necessary for the provision of essential utility and emergency services, or necessary to provide access to uses permitted under this Section and Section 18.04, provided that:

- (a) The road cannot, as a practical matter be located outside of the wetland;
- (b) The road is designed and constructed to minimize the adverse impact upon the natural functions of the wetland listed in Section 18.04(9);
- (c) The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;
- (d) Road construction activities are carried out in the immediate area of the roadbed only; and
- (e) Any filling, flooding, draining, dredging, ditching, tiling or excavating that

is done must be necessary for the construction or maintenance of the road.

(2) The construction and maintenance of railroad lines provided that such lines cannot as a practical matter be located outside the wetland and any filling, excavating, ditching or draining necessary for such construction or maintenance is done in the manner designed to minimize the adverse impact upon the natural functions of the wetland listed under Section 18.04(9).

(3) The construction and maintenance of nonresidential buildings provided that:

(a) The building is used only in conjunction with the raising of water fowl, minnows or other wetland or aquatic animals or used solely for some other purpose which is compatible with wetland preservation;

(b) The building cannot as a practical matter be located outside the wetland;

(c) The building does not exceed 500 square feet in size; and

(d) No filling, flooding, draining, dredging, ditching, tiling or excavating is done, except limited filling and excavating necessary to provide structural support for the building.

(4) The establishment and development of public and private parks and recreation areas, outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game farms and wildlife preserves, and public boat launching ramps, provided that:

(a) No filling or excavating is done except for limited filling and excavating necessary for the development of boat launching ramps, swimming beaches or the construction of park shelters or similar structures;

(b) Any private development allowed under this paragraph shall be used exclusively for the permitted purpose;

(c) The construction and maintenance of roads necessary for the uses permitted under this paragraph may be permitted if the requirements of Section 18.04(9) are met;

(d) Ditching, excavating, dredging, dike and dam construction may be allowed in game refuges and closed areas, fish and wildlife habitat improvement projects, game farms and wildlife areas, provided they are done for the purpose of improving wildlife

habitat or otherwise enhance wetland values.

(5) The construction and maintenance of electric and telephone transmission lines and water, gas and sewer distribution lines, and related facilities provided that such lines cannot as a practical matter be located outside the wetland and any filling, excavating, ditching or drainage necessary for such construction or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the wetland listed under Section 18.04(9). Major electrical generating facilities and high voltage transmission lines that have a certificate of public convenience and necessity under Section 196.491 of the Wisconsin Statutes are not subject to the requirements of this ordinance.

(6) The maintenance, repair, replacement, and reconstruction of existing county and city highways and bridges.

(7) The maintenance and repair of existing nonagricultural drainage ditches, where permissible under Section 30.20 of the Wisconsin Statutes or of other existing nonagricultural drainage systems to restore pre-existing levels of drainage, including the minimum amount of filling necessary to dispose of dredge spoil, provided that the filling is permissible under Chapter 30 of the Wisconsin Statutes and that dredged spoil is placed on existing spoil banks were possible.

18.06 PROHIBITED USES.

Any uses not listed in Sections 18.04 and 18.05 of this Chapter are prohibited in the shoreland-wetland zoning district unless the wetland, or a portion thereof, is rezoned by amendment of the City shoreland-wetland zoning ordinance in accordance with Section 62.23(7)(d)2. of the Wisconsin Statutes, and Section 17.85 through 17.89 and 18.08 of the Municipal Code.

18.07 NONCONFORMING USES AND STRUCTURES.

(1) The lawful use of a building, structure or property which existed at the time of this ordinance, or an applicable amendment to this ordinance, took effect and which is not in conformity with the provisions of the ordinance, including the routine maintenance of such a building or structure, may be continued, subject to the following conditions. Notwithstanding Section 62.23(7)(h) of the Wisconsin Statutes, the repair, reconstruction, renovation, remodeling or expansion of a legal nonconforming structure in existence at the time of the adoption or subsequent amendment of this ordinance adopted under Section 62.231 of the Wisconsin Statutes, or of an environmental control facility in existence on May 7, 1982, related to that structure, is permitted under Section 62.231(5) of the Wisconsin Statutes. Section 62.23(7)(h) of the Wisconsin Statutes applies to any environmental control facility that was not in existence on

May 7, 1982, but was in existence on the effective date of this ordinance or amendment.

(2) If nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, any future use of the building, structure or property shall conform to this ordinance.

(3) Any legal nonconforming use of property which does not involve the use of a structure and which existed at the time of the adoption or subsequent amendment of this ordinance adopted under Section 62.231 of the Wisconsin Statutes, may be continued although such use does not conform with the provisions of the ordinance. However, such nonconforming use shall not be extended.

(4) The maintenance and repair of nonconforming boat houses which are located below the ordinary highwater mark of any navigable waters shall comply with the requirements of Section 30.121 of the Wisconsin Statutes.

(5) Uses which are nuisances under common law or under the provisions of the Municipal Code shall not be permitted to continue as nonconforming uses.

18.08 AMENDMENTS TO THESE REGULATIONS.

(1) Amendments to this Chapter are required for all changes to shoreland-wetland regulations. Such amendments shall be made in accordance with the provisions of Section 62.23(7)(d)2 of the Wisconsin Statutes.

(2) A copy of each proposed text or map amendment to this Chapter shall be submitted to the appropriate district office of the Department of Natural Resources within five days of the submission of the proposed amendment to the City Plan Commission.

(3) All proposed text and map amendments to this Chapter shall be referred to the City Plan Commission and a public hearing shall be held as required by Section 62.23(7)(d)2 of the Wisconsin Statutes and Section 17.88 of the Municipal Code. In addition, the appropriate district office of Department of Natural Resources shall be provided with written notice of the public hearing at least 10 days before the hearing.

(4) In order to insure that the shoreland protection objectives in Section 144.26 of the Wisconsin Statutes will be accomplished by this ordinance, no rezoning of a wetland in the shoreland-wetland district, or any portion thereof, shall occur if the proposed rezoning may result in a significant adverse impact upon any of the following:

(a) Storm and flood water storage capacity;

(b) Maintenance of dry season stream flow or the discharge of ground water to a wetland, the recharge of ground water from a wetland to another area, or the flow of ground water through a wetland.

(c) The filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;

(d) Shoreline protection against soil erosion;

(e) Fish spawning, breeding, nursery or feeding grounds;

(f) Wildlife habitat or areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.

(5) The appropriate district office of the Department of Natural Resources shall be provided with a copy of the recommendation and report, if any, of the City Plan Commission on the proposed text or map amendment within 10 days after the submission of those recommendations to the Common Council and written notice of the Common Council's action on the proposed text or map amendment within 10 days after the action is taken.

(6) If the Department of Natural Resources notifies the City Plan Commission, either prior to or during any public hearing held on a proposed text or map amendment, that the amendment may have a significant adverse impact on any of the criteria listed in subsections (4)(a) through (f) of this section, the amendment shall not become effective until more than 30 days have elapsed from the time the City has mailed written notice of the adoption of the amendment to the Department of Natural Resources under subsection (5) of this section. If within the 30 day period the Department notifies the City that the Department intends to adopt a superseding shoreland-wetland zoning ordinance for the municipality as provided by Section 62.231(6) of the Wisconsin Statutes, the proposed amendment shall not become effective until the ordinance adoption procedure under that section of the statutes is completed or otherwise terminated.

18.09 ZONING ADMINISTRATOR.

The Zoning Administrator appointed under Section 17.12 of the Municipal Code shall advise all applicants for zoning permits as to the provisions of this ordinance and assist applicants in preparation of permit application and, in the case of an appeal, appeal forms. He shall issue permits and certificates of compliance and inspect properties for compliance with this ordinance. He shall keep records of all permits issued, inspections made, work approved and other official action. The Zoning Administrator shall have access to any structure or premises between the hours of 8 a.m. and 6 p.m. for the purpose of performing these duties. The

Administrator shall submit copies of decisions on variances, conditional use permits, appeals, or map or text interpretation, and map or text amendments within 10 days after they are granted or denied to the appropriate district office of the Department of Natural Resources. He shall investigate and report violations of this ordinance to the City Attorney.

18.10 ZONING PERMITS.

No new use of land shall commence and no building or structure shall be constructed or erected in the shoreland-wetland zoning district without a permit having been issued therefore by the Zoning Administrator, except those uses or structures described in Section 18.04 of this Chapter.

18.11 ZONING PERMIT APPLICATIONS.

In addition to the information required under Section 17.14 of the Municipal Code, an application for a zoning permit for a use or structure within the shoreland-wetland zoning district shall contain the following information:

- (1) Location of any structures with distances measured from the lot lines and center line of all abutting streets or highways.
- (2) The description of any existing or proposed on-site sewer systems or private water supply systems.
- (3) The location of the ordinary highwater mark of any abutting navigable waterways, the boundaries of all wetlands the existing and proposed topographic and drainage features and vegetative cover, the location of floodplain and floodway limits on the property as determined from the floodplain zoning maps, the location of existing or future access roads and the specifications and dimensions for areas of proposed wetland alteration.

18.12 ADMINISTRATION AND ENFORCEMENT.

- (1) Inspections. After issuing a zoning permit, the administrator shall regularly inspect work in progress to insure that construction techniques and the building, structure or other development is in compliance with all applicable regulations hereunder.
- (2) Certificates of Compliance. Except where no zoning permit is required, no land shall be occupied or used, and no building which is hereafter constructed altered, added to, modified, rebuilt or replaced shall be occupied, until a certificate of compliance is issued by the Zoning Administrator subject to the following provisions:

(a) The certificate of compliance shall show the building or premise or part thereof, and the proposed use thereof, conform to the provisions of this ordinance.

(b) Application for such certificate shall be concurrent with the application for a zoning permit.

(c) The certificate shall be issued within 10 days after notification of the completion of the work specified in the zoning permit, providing the building or premise and proposed use thereof conform with all provisions of this ordinance.

Upon written request from the owner, the Zoning Administrator shall issue a certificate of compliance for any building or premise existing at the time this ordinance becomes effective, certifying after inspection, the extent and type of use made of the building or premises and whether or not such use conforms to the provisions of this ordinance. The Zoning Administrator shall keep records of all permits issued, inspections made, work approved and other official actions. He shall investigate and report violations of this Chapter to the Plan Commission and the City Attorney.

(3) Board of Zoning Appeals.

(a) The Board of Zoning Appeals established under Section 17.78 of this code shall herein decide all appeals where it is alleged there is error in any order, requirement, decision or determination made by the Administrator or other City official or agency in the course of enforcing these regulations.

(b) The Board shall have the power to grant appeals for variances. Variances may be granted by the Board when the conditions under Sections 17.78(2) and 17.81 of this Code have been met. An unnecessary hardship as used in Section 17.78(2) shall mean those circumstances or special conditions not created by the applicant which affect a particular property and make strict conformance with the restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of this Chapter.

(c) Appeals to the Board shall be governed by Section 17.79 of this Code and hearings on appeal shall be governed by Section 17.80 to Section 17.82 of the Code. A copy of the notice of public hearing shall be mailed to the appropriate Department of Natural Resources district office at least 10 days before the public hearing provided in said Section. Review of Board decision shall be by certiorari as provided in Section 17.81. A copy of all decisions of hearings held before the Board of Zoning Appeals shall be mailed to the Department of Natural Resources district office within 10 days of the rendering of such decisions.

(4) Records. The Zoning Administrator shall keep copies of all zoning permit applications, zoning permits issued, decisions of the Board of Appeals and variances granted by the Board of Appeals.

(5) Revocation of permits. The Zoning Administrator shall revoke any zoning permit whenever the conditions thereof have been violated.

(6) Penalty for violation; equitable relief. Any person found to be in violation of the provisions of this Chapter shall be subject to a forfeiture as provided in Section 25.04 of this Code. The City, through its attorney, Zoning Administrator, Plan Commission, Board of Zoning Appeals, Common Council, or other appropriate official or body may enforce any provision of this ordinance by application to the Circuit Court for Grant County, Wisconsin, for injunction or other appropriate equitable relief. In addition, any private person owning property which is adjacent to or in the neighborhood of any property subject to this Chapter, who is or would be specially damaged by a violation of any provision of this Chapter, may apply to the Circuit Court for Grant County, Wisconsin, for injunction or other appropriate equitable relief.

18.13 Definitions.

(1) **Accessory Structure or Use** means a detached subordinate structure or a use which is clearly incidental to, and customarily found in connection with, the principal structure or use to which it is related and which is located on the same lot as that of the principal structure or use.

(2) **Boathouse** as defined in Section 30.121(1) of the Wisconsin Statutes means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls, or any combination of structural parts.

(3) **Development** means any manmade change to improve or change real estate, including, but not limited to the construction of buildings, structures, or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of building or structures; digging, lagooning, dredging, filling, grading, paving, excavating or drilling; and the deposit or extraction of earth and materials.

(4) **Drainage System** means one or more artificial ditches, tile drains or similar devices which collect surface runoff or ground water and convey it to a point of discharge.

(5) **Environmental Control Facility** means any facility, temporary or permanent which is reasonably expected to abate, reduce, or aid in the prevention, measurement, control or

monitoring of noise, air or water pollutants, solid waste and thermal pollution, radiation or other pollutants, including facilities installed principally to supplement or replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.

(6) **Fixed Houseboat** means a structure not actually used for navigation which extends beyond the ordinary highwater mark of a navigable waterway and is retained in place either by cable to the shoreline or by anchors or spudpoles attached to the bed of the waterway.

(7) **Navigable Waterways** means all natural inland lakes within the City of Boscobel, and all streams, ponds, sloughs, flowages and other waters within the territorial limits of the City, which are navigable under the laws of this State. Under Section 144.26(2)(d) of the Wisconsin Statutes, and notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under Section 62.231 of the Wisconsin Statutes and Chapter NR117 of the Wisconsin Administrative Code, do not apply to lands adjacent to agricultural drainage ditches if such land are not adjacent to a natural navigable stream or river, those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching, and such lands are maintained in nonstructural agricultural use. Navigable bodies of water are those bodies of water that have a bed differentiated from adjacent uplands and levels or flow of water sufficient to support navigation by a recreational craft of the shallowest draft of an annually recurring basis.

(8) **Ordinary Highwater Mark** means a point on the bank or shore up to the presence and action of surface water is so continuous as to leave a distinctive mark such as erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

(9) **Shoreland** means lands within the following distances from the ordinary highwater mark of navigable waters: 1,000 feet from a lake, pond or flowage; 300 feet from a river or stream or to the land ward side of the floodplain, whichever distance is greater.

(10) **Shoreland-Wetland District** means the zoning district created in this Chapter, comprised of shorelands that are designated as wetlands on the wetlands inventory map which is adopted and incorporated into this ordinance.

(11) **Wetlands** means those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

(12) Wetland Alteration=means any filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.