



Proposal:

**An Ordinance Repealing Article XV. Shoreland Regulations and Provisions, of the Village of Weston Zoning Code and amending, renumbering and recreating a new Article XV Shoreland Regulations and Provisions.**

Proposed By:

**Jennifer Higgins, Director of Planning and Development**

Committee Action:

Prior Consideration:

**None. In 2013, [2013 Wisconsin Act 80](#), was adopted by the State which repeals the requirement that a county shoreland zoning ordinance continues to apply to a shoreland area that was annexed to a city or village after May 7, 1982, and any shoreland area that was part of a town that incorporated as a city or village after April 30, 1994. Instead, Act 80 requires municipalities to enact shoreland zoning ordinances, by July 1, 2014, that apply to any shoreland area annexed by a city or village after May 7, 1982, and to any shoreland area that was subject to a county shoreland zoning ordinance prior to being incorporated after April 30, 1994. Such ordinances must meet certain minimum standards specified in Act 80.**

**Under the Act, a county shoreland zoning ordinance that was applicable to shorelands prior to annexation or incorporation continues in effect until the city or village enacts its own shoreland zoning ordinance.**

**League attorneys, with consultation from the Department of Natural Resources, have developed a model ordinance for implementing the requirements of Act 80. In preparation for the Village's new zoning code and to ensure we meet the requirements of the new Act 80, Village P&D staff updated our current shoreland ordinance based on the DNR model ordinance. The amended ordinance was then sent to the local DNR office for their comments and approvals.**

**A few minor corrections were needed based on DNR review and those have been made and DNR approvals of the ordinance were received on 7/24/14 via an email from staff member Michael Wenholz. The ordinance amendment is now ready for consideration by the Plan Commission and adoption by the Village Board. It will be updated then in our current code and included in the new zoning code draft which will go to public hearing later this year.**

Recommendation:

**Staff recommends the Plan Commission make a motion to recommend the Village Board approve the ordinance amendment as proposed.**

**VILLAGE OF WESTON, MARATHON COUNTY, WISCONSIN  
AN ORDINANCE REPEALING ARTICLE XV OF THE ZONING CODE OF THE VILLAGE  
OF WESTON ENTITLED “SHORELAND REGULATIONS AND PROVISIONS” AND  
AMENDING, RENUMBERING AND RECREATING A NEW ARTICLE XV OF THE ZONING  
CODE NAMED “SHORELAND REGULATIONS AND PROVISIONS”**

The Village Board of the Village of Weston, Marathon County, Wisconsin, do ordain as follows:

**SECTION 1:** Article XV of the Village Of Weston Zoning Ordinance entitled *Shoreland Regulations and Provisions* is hereby repealed, amended, renumbered and recreated to provide as follows:

**Article XV: SHORELAND REGULATIONS AND PROVISIONS**

**94.223 Shoreland overlay district.**

**94.224 Statutory Authorization**

This ordinance is adopted pursuant to the authorization in Wis. Stat. Sec. 61.35 and 61.353.

**94.225 Finding of Fact and Purpose**

Uncontrolled use of shorelands and pollution of the navigable waters of the Village of Weston would adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The Legislature of Wisconsin has delegated responsibility to all municipalities to:

- a. Promote the public health, safety, convenience and general welfare;
- b. Limit certain land use activities detrimental to shorelands; and
- c. Preserve shore cover and natural beauty by controlling the location of structures in shoreland areas and restricting the removal of natural shoreland vegetation.

**94.226 Jurisdiction**

The jurisdiction of this Ordinance shall include all lands and waters within the corporate limits of the Village of Weston.

**94.227 Compliance**

The use of shorelands within the shoreland area of the Village of Weston shall be in full compliance with the terms of this 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.

**94.228 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 required permits. State agencies are required to comply if Section 13.48(13) of the Wisconsin Statutes applies. The construction/reconstruction, maintenance/repair of state highways and bridges by the Wisconsin Department of Transportation are exempt from compliance when Section 30.12(4)(a) of the Wisconsin Statutes applies.

**94.229 Abrogation and Greater Restrictions**

This Ordinance supersedes all provisions of any other applicable municipal ordinance except that where another municipal ordinance is more restrictive than this Ordinance, that ordinance shall continue in full force and effect of the greater restrictions, but not otherwise.

- a. This Ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail.

**94.230 Terms of Article**

The following are terms of Article: Village shall mean Village of Weston, Plan Commission shall mean the Village of Weston Plan Commission, Village Board shall mean the Village of Weston Village Board, Zoning Board of Appeals shall mean the Village of Weston Zoning Board of Appeals.

**94.231 Interpretation**

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Village of Weston and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes or Wisconsin Constitution.

**94.232 Severability**

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.

**94.233 Applicability of Shoreland District Regulations**

The Shoreland Zoning District regulations apply only to the following shorelands:

1. A shoreland that was annexed by the Village of Weston after May 7, 1982, and that prior to annexation was subject to a County Shoreland Zoning Ordinance under Wis. Stat. Sec. 59.692; and
  2. A shoreland that before incorporation by the Village of Weston was part of a town that was subject to a County Shoreland Zoning Ordinance under Wis. Stat. Sec. 59.692 if the date of incorporation was after April 30, 1994.
- a. *District Boundaries.* The Shoreland District areas regulated by this Ordinance shall include all the lands (referred to herein as shorelands) in the Village of Weston that

are:

1. Within 1,000 feet of the ordinary highwater mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources Surface Water Data viewer, available on the DNR website, or are shown on United States Geological Survey quadrangle maps or other zoning base maps.
  2. 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 continuous waterways or intermittent waterways on United States Geological Survey quadrangle maps. Flood hazard boundary maps, flood insurance rate maps, flood boundary-floodway maps, county soil survey maps or other existing county floodplain zoning maps shall be used to delineate floodplain areas.
  3. 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 Wisconsin Department of Natural Resources for a final determination of navigability or ordinary highwater mark.
  4. Pursuant to Wis. Stat. Sec. 61.353(7) or 62.233, the Shoreland Zoning District does not include lands adjacent to an artificially constructed drainage ditch, pond, or retention basin if the drainage ditch, pond or retention basin is not hydrologically connected to a natural navigable water body.
- b. *Effect of existing land division, sanitary, zoning and other regulations.* The lands within the Shoreland Zoning District are subject to all applicable provisions of the Village of Weston Municipal Code. Where the provisions of this Ordinance are more restrictive than other regulations in the Municipal Code, the provisions of this Ordinance shall apply.

#### **94.234 Administration and Enforcement of Code**

The Zoning Administrator or their designee(s) are hereby designated as the administrative and enforcement officer(s) for the provisions of this Ordinance. The duty of the Zoning Administrator's designees shall be to interpret and administer this Ordinance and to issue, after on-site inspection, all permits required by this Ordinance. They shall further:

- a. Maintain records of all permits issued, inspections made, work approved, and other official actions.
- b. Record the lowest floor elevations of all structures erected, moved, altered, or improved in the floodland districts.
- c. Establish that all necessary permits that are required for floodland uses by State and

Federal law have been secured.

- d. Inspect all structures, lands, and waters as often as necessary to assure compliance with this Ordinance.
- e. Investigate all complaints made relating to the location of structures and the use of structures, lands, and waters, give notice of all violations of this Ordinance to the owner, resident, agent, or occupant of the premises, and report uncorrected violations to the Village Attorney.
- f. Assist the Village Attorney in the prosecution of Ordinance violations.
- g. Be permitted access to premises and structures during reasonable hours to make those inspections as deemed necessary by them to ensure compliance with this Ordinance. If, however, they are refused entry after presentation of their identification, they may procure a special inspection warrant in accordance with Section 66.0119 of the Wisconsin Statutes.
- h. Prohibit the use or erection of any structure, land or water until they have inspected and approved such use or erection.
- i. Request assistance and cooperation from the Village Police Department and Village Attorney as deemed necessary.
- j. Attend all meetings of the Plan Commission and the Zoning Board of Appeals.

#### **94.235**

#### **Building Permit Required**

No structure shall hereafter be located, erected, moved, reconstructed, extended, enlarged, or structurally altered until after the owner or his agent has secured a building permit from the Building Inspector, unless otherwise exempted pursuant to Section 14.308 of this Ordinance. Applications for building permit shall be made in duplicate to the Village on forms furnished by the Village and shall include the following where applicable:

- a. Name and addresses of the applicant, owner of the site, architect, professional engineer, and contractor.
- b. Description of the subject site by lot, block and recorded subdivision, or metes and bounds; address of the subject site; type of structure; existing and proposed operation or use of the structure or site; number of employees; and the zoning district within which the subject site lies.
- c. Plat of survey prepared by a registered land surveyor showing the location, boundaries, dimensions, elevations to Marathon County datum, uses, and sizes of the following: subject site; existing and proposed structures; existing and proposed easements, streets, and other public ways; off-street parking, loading areas and drive-ways; existing highway access restrictions; and existing and proposed street, side, and rear yards. In addition, the plat of survey shall show the location, elevation, and use of any abutting

lands and their structures within 40 feet of the subject site.

- i. When it is proposed to construct an addition to an existing structure, or construct an accessory structure, the Village Building Inspector may accept a location sketch drawn to scale in lieu of a plat of survey. The location sketch shall contain all information and dimensions required on the plat of survey.
  - ii. The Village Building Inspector may waive the requirement for elevations on either a plat of survey or a location sketch when the development is neither located within nor adjacent to a floodplain or wetland.
- d. Proposed sewage disposal plan if municipal sewerage service is not available. This plan shall include a copy of the permit issued by the Marathon County Health Department for the installation of a Private On-site Wastewater Treatment System (POWTS), or other appropriate means of waste disposal. The Village Engineer shall certify that satisfactory, adequate, and safe sewage disposal is possible on the site as shown in the private sewage disposal plan.
  - e. Proposed water supply plan if municipal water service is not available. This plan shall be in accordance with Chapter NR-812 of the Wisconsin Administrative Code and shall be approved by the Village Engineer who shall certify in writing that an adequate and safe supply of water will be provided.
  - f. Additional information as may be required by the Village Plan Commission, Zoning Administrator or their designees.
  - g. A building permit shall be granted or denied in writing by the Village Building Inspector within 30 days. The permit shall expire within six (6) months unless substantial work has commenced. Any permit issued in conflict with the provisions of this Ordinance shall be null and void.

#### **94.236**

#### **Occupancy Permit Required**

- a. No vacant land shall be occupied or used; and no building or premises shall be erected, altered, or moved, or create change in use; and no nonconforming use shall be maintained, renewed, changed, or extended until an occupancy permit shall have been issued by the Village Building Inspector. Such permit shall show that the building or premises or part thereof is in compliance with the provisions of this Ordinance. Such permit shall be applied for at the time of occupancy of any land and/or building.
- b. No land within the Floodland Districts shall be developed, occupied or used, and no structure hereafter erected, altered, or moved shall be occupied until the applicant submits to the Building Inspector a certification by a registered professional engineer or land surveyor that he floodplain regulations set forth in this Ordinance have been fully complied with. Such certification shall include the elevations of the lowest opening and the lowest floor of any structure erected on the site.
- c. No building located in a business or industrial zone and used for business or industrial

purposes shall be occupied by a new tenant or a new owner or shall have the use changed without the issuance of a new occupancy permit by the Building Inspector. Such permit shall show that the building or premises, or part thereof, is in compliance with the provisions of the Zoning Ordinance, Uniform Dwelling Code, Electrical Code, Fire Prevention Code and the Plumbing Code of the Village and State of Wisconsin. Such occupancy permit for the occupation of a previously existing building by a new tenant or use shall be applied for at the time of any remodeling of the building or prior to the occupancy for the new use or by the new owner. Application for an occupancy permit shall be made in the same manner as for a building permit pursuant to Section 14.320 of this Ordinance.

**94.237 Conditional Use Permit Required**

See Article VI *Conditional Uses* Section 94.140.

**94.238 Sign Permit Required**

See Article IX *Signs* Section 94.156

**94.239 Other Permits**

It is the responsibility of the permit applicant to secure all other necessary permits required by any State, Federal, or local agency. This includes, but is not limited to, a water use permit pursuant to Chapter 30 of the Wisconsin Statutes or a wetland fill permit pursuant to Section 404 of the Clean Water Act.

**94.240 Site Restrictions**

No land shall be used or structure erected where the land is unsuitable for such use or structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, unfavorable topography, low percolation rate or bearing strength, erosion susceptibility, or any other feature likely to be harmful to the health, safety, prosperity, aesthetics, and general welfare of this community. The Zoning Administrator or their designee, in applying the provisions of this section, shall in writing recite the particular facts upon which they base their conclusion that the land is not suitable for certain uses. The applicant shall have an opportunity to present evidence contesting such unsuitability if they so desire. Thereafter, the Plan Commission may affirm, modify, or withdraw the determination of unsuitability. In addition:

- a. All lots shall abut upon a public street, and each lot shall have a minimum frontage as defined by Sec. 94.174 *Zoning district numerical regulations*, in Article XI *District Regulations*.
- b. All principal structures shall be located on a lot; and only one principal structure shall be located, erected, or moved onto a lot in single-family and two-family residential districts. The Plan Commission may permit more than one structure per lot in other districts where more than one structure is needed for the orderly development of the parcel. Where additional structures are permitted, the Plan Commission may impose

additional yard requirements, landscaping requirements, or parking requirements, or require a minimum separation distance between principal structures.

- c. No building permit shall be issued for a lot which abuts a public street dedicated to only a portion of its proposed width and located on that side thereof from which the required dedication has not been secured.
- d. Lots abutting more restrictive district boundaries shall provide side and rear yards not less than those required in the more restrictive abutting district. The street yards on the less restrictive district shall be modified for a distance of not more than 50 feet from the district boundary line so as to equal the average of the street yards required in both districts.
- e. *Buffering.* The Plan Commission may require the construction of a buffer between dissimilar zoning districts or dissimilar uses to screen the dissimilar activities from view. The buffer may consist of a landscaped buffer yard, a landscaped berm, a screening fence or wall, or a combination of buffering/screening elements. The specific design of which shall be approved by the Plan Commission in order to sufficiently provide attractive visual screening and in a maintained fashion during all seasons if landscaped or with attractive view and design from adjacent properties and right-of-way if screened by architectural wall or fence.

#### **94.241**

#### **Use Restrictions**

The following use restrictions and regulations shall apply:

- a. Permitted Uses: Only those permitted uses specified for a district, their essential services, and the following uses shall be permitted in that district.
- b. Accessory uses and structures are permitted in accordance with Section 94.123 of this Ordinance in any district but not until their principal structure is present or under construction. Residential accessory uses shall not involve the conduct of any business, trade, or industry except home occupations and professional home offices as defined in this Ordinance.
- c. Conditional Uses and their accessory uses are considered as special uses requiring review, public hearing, and approval by the Plan Commission in accordance with Section 94.237 of this Ordinance.
- d. Legal Non-Conforming Uses are considered as special uses that at one time were legally approved and met the standards of the code, but now for various reasons no longer conform to the code. Some of these uses may be granted Legal Non-Conforming Conditional Use status to allow for the expansion and/or modification of said use.
- e. Temporary Uses are uses in accordance with Section 94.123(d) of this Ordinance that an approved permitted or conditional use desires to add to their operations for a limited time and a limited scope, but would not necessarily be a permitted or conditional use

of its own accord. The Plan Commission shall give great weight to the protection of public safety and welfare when considering the appropriateness of Temporary Uses.

#### **94.242 Shoreland Regulations**

In addition to any other applicable use, site, or sanitary restrictions and regulations, the following regulations shall apply to all shorelands, as defined in Section 94.243 of this Ordinance.

- a. *Tree Cutting and Shrubbery Clearing.* Tree cutting and shrubbery clearing within 100 feet of the ordinary high water mark of all navigable waters is prohibited except for home site development; park site development; access roads; path and trail construction; timber stand improvement; customary trimming; dead tree removal; and managed timber harvesting under a State District Forester's Plan. Such tree cutting and shrubbery clearing shall not involve the clear cutting of more than 30 feet in any 100 feet, as measured along the ordinary high water mark, and shall be so regulated as to prevent erosion and sedimentation, preserve and improve scenic qualities, and during foliage substantially screen any development from stream or lake users. 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 shoreland cover and the minimum impairment of natural beauty.
- b. A shoreland that was annexed by the Village after May 7, 1982, and prior to annexation, was subject to a County Shoreland Zoning Ordinance shall be subject to the following additional provisions:
  1. Any person who owns shoreland property that contains vegetation shall maintain that vegetation in a vegetative buffer zone along the entire shoreline of the property and extending 35 feet inland from the ordinary high-water mark of the navigable water, except as provided in (2).
  2. If the vegetation, in a vegetative buffer zone, contains invasive species or dead or diseased vegetation, the owner of the shoreland property may remove such vegetation, except that if the owner removes all of the vegetation, as described herein, within the vegetative buffer zone, the owner shall reestablish vegetation within the vegetative buffer zone.
  3. A person who is required to maintain or establish a vegetative buffer zone under (1) or (2) shall be allowed to remove all of the vegetation in a part of that zone in order to establish a viewing or access corridor that is no greater than 30 feet wide per every 100 feet of shoreline frontage and that extends no more than 35 feet inland from the ordinary high-water mark.
  4. For the purposes of this section, vegetative buffer zone is defined as land that extends from the ordinary high-water mark to 35 feet inland.
- c. Earth movements, such as construction, altering or enlargement of waterways, removal of stream or lake bed materials, channel clearing, dredging, lagooning,

grading, topsoil removal, filling, road cutting, ditching, and soil and water conservation structures are conditional uses in accordance with Section 94.237 of this Ordinance in addition to any permit required from the state agency having jurisdiction under Sections 30.11, 30.12, 30.19, 30.195, and 30.20 of the Wisconsin Statutes.

- d. Shoreland Setback. Areas within shorelands as defined by this Ordinance shall be subject to the following:
  1. Within the shoreland area, no structure, except navigational aids, piers and boat launching facilities, shall be closer than 75 feet to the ordinary highwater mark of a navigable body of water and two feet above the experienced highwater mark unless a smaller setback is approved by the Plan Commission. A shoreland that was annexed by the Village after May 7, 1982, and prior to annexation was subject to a County Shoreland Zoning Ordinance shall be subject to the following additional provisions:
    - i. A shoreland setback area of at least 75 feet from the ordinary high-water mark, except as provided in (ii).
    - ii. Construction or placement of a structure within the shoreland setback area established under (i) shall be allowed if all of the following apply:
      1. The principal building is constructed or placed on a lot or parcel of land that is immediately adjacent on each side to a lot or parcel of land containing a principal building.
      2. The structure is constructed or placed within a distance equal to the average setback of the structure on the adjacent lots or 35 feet from the ordinary high-water mark, whichever distance is greater.
  2. For purposes of this section, structures shall include: fences, ice fishing shanties, accessory structures other than boathouses, minor structures, and retaining walls not approved by the Wisconsin Department of Natural Resources (DNR).
  3. For purposes of this section, principal building means the main building or structure on a single lot or parcel of land and includes any attached garage or attached porch.
- e. Tillage, grazing, livestock watering and feeding, and application of fertilizers shall be prohibited unless conducted in accordance with applicable County, State and Federal laws and regulations and unless conducted in such a manner as to safeguard the health, safety and welfare of individuals, animal and aquatic life, in the surrounding environment.

- f. Surface water withdrawal and diversion, or discharge for irrigation, processing, cooling or other purposes are conditional uses in accordance with Section 94.237 of this Ordinance. The Plan Commission shall then advise the state agency having jurisdiction under Section 30.18 and Chapter 281 Subchapter II of the Wisconsin Statutes of its findings, prior to the issuance of the required state permits.
- g. Crop production on lands with an erosion factor of three or more is prohibited and such lands shall be planted to permanent vegetation.
- h. Shoreland regulations do not apply to lands adjacent to an artificially constructed drainage ditch, pond, or storm water retention basin if the drainage ditch, pond, or retention basin is not hydrologically connected to a natural navigable water body.
- i. “Shorelands” has the meaning given in Wis. Stat. Sec. 59.692(1)(2).
- j. “Shoreland setback” has the meaning given in Wis. Stat. Sec. 59.692(1)(bn).

**94.243 Restriction or Joint Use**

No lot, yard, parking area, building area, or other space shall be reduced in area or dimension so as not to meet the provisions of this Ordinance. No part of any lot, yard, parking area, or other space required for a structure or use shall be used for any other structure or use.

**SECTION 2:**

If any provision of this Ordinance is invalid or unconstitutional, or if the application of this Ordinance to any person or circumstances is found invalid or unconstitutional by a Court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the provisions or application of this Ordinance which can be given effect without the invalid or unconstitutional provision or application.

**SECTION 3:**

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

**SECTION 4:**

This Ordinance shall take effect and be in full force and effect from and after its passage and publication or posting as required by law.

VILLAGE BOARD, VILLAGE OF WESTON

By: \_\_\_\_\_  
Loren White, Village President

ATTEST:

\_\_\_\_\_  
Sherry Weinkauff, Village Clerk

APPROVED BY THE PLAN COMMISSION: \_\_\_\_\_

ADOPTED: \_\_\_\_\_

PUBLISHED: \_\_\_\_\_