

TITLE X

Chapter 45

SHORELAND ZONING ORDINANCE

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45.01 STATUTORY AUTHORITY, FINDINGS AND PURPOSE:

- (1) Statutory Authorization. This ordinance is adopted pursuant to the authorization in sections 62.23, 62.231, 62.233, and 281.31, Wis. Stats. and NR 117, Wis. Adm. Code.
- (2) Finding of Fact. Uncontrolled use of the shorelands and pollution of the navigable waters of the City of Blair will adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The legislature of Wisconsin has delegated responsibility to the Cities to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; and to preserve shore cover and natural beauty. This responsibility is hereby recognized by the City of Blair, Wisconsin.
- (3) Purpose. For the purpose of promoting the public health, safety, convenience and welfare, and promote and protect the public trust in navigable waters this ordinance has been established to:
 - (a) Promote the public health, safety, convenience and general welfare;
 - (b) Maintain the storm and flood water storage capacity of wetlands;
 - (c) Prevent and control water pollution by preserving wetlands which filter or store sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
 - (d) Protect fish, their spawning grounds, other aquatic life and wildlife by preserving wetlands and other aquatic habitat;
 - (e) Prohibit certain uses detrimental to the shoreland-wetland area;
 - (f) Preserve shore cover and natural beauty by restricting the removal of natural shoreland cover.

(g) Protect fish habitat, prevent and control water pollution by setting minimum building setbacks from waterways.

- (4) Title. This Chapter shall be known as, referred to or cited as the "Shoreland Code, City of Blair, Wisconsin."

45.02 GENERAL PROVISIONS:

- (1) Compliance. All permitted development shall require the issuance of a zoning permit unless otherwise expressly excluded by a provision of this ordinance.
- (2) Regulation of Municipalities and State Agencies. 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 section 13.48(13), Wis. Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when section 30.2022(1), Wis. Stats., applies.
- (3) Abrogation and Greater Restrictions.
- (1) This ordinance supersedes all the provisions of any municipal zoning ordinance enacted under sections 62.23 or 87.30, Wis. Stats., which relate to floodplains, except that where another municipal zoning 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. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.
- (4) Interpretation. In the interpretation and application, the provisions of this ordinance shall be liberally construed in favor of the municipality and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this ordinance is required by a standard in sections 62.23, 62.231, 62.233, and 281.31, Wis. Stats. and NR 117, Wis. Adm. Code, and where the ordinance provision 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.
- (5) 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.

45.03 DEFINITIONS:

- (a) "Accessory Building" has the meaning given in section 46.02(1) of the Zoning Code for the City of Blair.

- (b) "Class 2 public notice" means publication of a public hearing notice under chapter 985, Wis. Stats., in a newspaper of circulation in the affected area. Publication is required on two consecutive weeks, the last at least seven days prior to the hearing.
- (c) "Conditional use" has the meaning given in section 46.01(21) of the Zoning Code for the City of Blair.
- (d) "Drainage system" means one or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.
- (e) "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 to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.
- (f) "Lot" has the meaning given in section 46.01(47) of the Zoning Code for the City of Blair.
- (g) "Navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin, and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state.

Wisconsin's Supreme Court has declared navigable bodies of water that have a bed differentiated from adjacent uplands and levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis [Muench v. Public Service Commission, 261 Wis. 492 (1952) and DeGaynor and Co., Inc., v. Department of Natural Resources, 70 Wis. 2d 936 (1975)]. For example, a stream which is navigable by skiff or canoe during normal spring high water is navigable, in fact, under the laws of this state though it may be dry during other seasons."
- (h) "Nonconforming Structure" has the meaning given in section 46.01(59) of the Zoning Code for the City of Blair.
- (i) "Ordinary high water mark" means 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.
- (j) "Permitted Use" has the meaning given in section 46.01(66) of the Zoning Code for the City of Blair.

- (k) "Principal Building" has the meaning given in section 46.01(15) of the Zoning Code for the City of Blair.
- (l) "Shorelands" means lands within the following distances from the ordinary high water mark of navigable waters; 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.
- (m) "Shoreland wetland district" means the zoning district, created in this shoreland wetland zoning ordinance, comprised of shorelands that are designated as wetlands on the wetlands inventory maps which have been adopted and made a part of this ordinance
- (n) "Structure" has the meaning given in section 46.02(78) of the Zoning Code for the City of Blair.
- (o) "Wetlands" means those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytes vegetation and which have soils indicative of wet conditions.
- (p) "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.
- (q) "WDNR" means the Wisconsin Department of Natural Resources.
- (r) "Zoning District" has the meaning given in section 46.02(95) of the Zoning Code for the City of Blair.

45.04 DISTRICT BOUNDARIES:

The shoreland zoning district includes all the lands (referred to as shorelands) in the City of Blair that are:

- (a) Within one thousand (1,000) feet of the ordinary high-water mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in the municipality shall be presumed to be navigable if they are shown on the WDNR's Surface Water Data Viewer or other zoning base maps which have been incorporated by reference and made a part of this ordinance.
- (b) 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 distance is greater. Rivers and streams shall be presumed to be navigable if they are shown as a waterway on WDNR's Surface Water Data Viewer or other zoning base maps which have been incorporated by reference and made a part of this ordinance. Floodplain zoning maps adopted in Chapter 50 of the City of Blair Code shall be used to determine the extent of floodplain areas.
- (c) All shoreland-wetlands in the City of Blair which are shown on the most recent version of the Wisconsin Wetland Inventory as depicted on the WDNR's Surface. (Water Data

View <http://dnr.wi.gov/topic/SurfaceWater/swdv/> and located within the shoreland zone as described in 45.04(a)(b).)

(1) Determinations of Navigability and Discrepancies.

- (a) Determinations of navigability and ordinary high-water mark location shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the appropriate district office of the WDNR for a final determination of navigability or ordinary high-water mark.
- (b) When an apparent discrepancy exists between the shoreland-wetland district boundary shown on the Wisconsin Wetland Inventory as depicted on the WDNR's Surface Water Data View and actual field conditions at the time the maps were adopted, the Zoning Administrator shall contact the appropriate office of the WDNR to determine if the shoreland-wetland district boundary as mapped, is in error. If WDNR 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 applicable to the correct zoning district.

(2) Exempted Areas.

- (a) Pursuant to section 62.233(7), Wis. Stat. 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) Wetlands which receive approval to be filled and are filled prior to the effective date of this shoreland-wetland ordinance, in a manner which affects their wetland characteristics to the extent that the area can no longer be defined as wetland, are not subject to this ordinance.
- (c) Pursuant to s. 281.31 (2) (d), Stat. the Shoreland Zoning District does not apply to lands adjacent to farm drainage ditches if;
 - 1) Such lands are not adjacent to a natural navigable stream or river;
 - 2) Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
 - 3) Such lands are maintained in nonstructural agricultural use.

(3) District Maps. The following maps are hereby adopted and made part of this ordinance and are available online or are on file in the office of the municipal Clerk:

- a) The most recent version of the Wisconsin Wetland Inventory as depicted on the WDNR's Surface Water Data Viewer is made part of this ordinance. The maps can be viewed at:

[http://dnrmaps.wi.gov/SL/Viewer.html?Viewer=SWDV&runWorkflow=Wetland.](http://dnrmaps.wi.gov/SL/Viewer.html?Viewer=SWDV&runWorkflow=Wetland)

b) Floodplain zoning maps titled and dated.

c) Zoning maps titled and dated.

45.05 SHORELAND STANDARDS:

(1) Setbacks from the Water.

(a) Except as provided in subsection (b), all structures shall be set back at least 50 feet from the ordinary high-water mark.

(b) Setback averaging: A setback less than that required by subsection (1). may be allowed for principal buildings if all of the following apply:

1) On each side of the proposed principal building there are existing principal buildings on the adjacent lots. The principal building is constructed or placed within a distance equal to the average setback of the principal buildings on the adjacent lots or 35 feet from the ordinary high-water mark, whichever distance is greater.

2) Where there is an existing principal structure on an adjacent lot in only one direction, the setback shall equal and average of the distance the existing structure is setback from the ordinary high water mark and the required 50 foot setback. However, average setback shall not be reduced to less than 35 feet from the ordinary high water mark.

45.06 SHORELAND-WETLAND STANDARDS:

(1) Wetland Functions.

The physical, chemical and biological components of wetlands provide important benefits to people and the natural world. Consistent with the purposes of shoreland protection in section 281.31, Wis. Stats., and this ordinance, the natural functions wetlands provide are:

(a) Storm and flood water storage capacity;

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

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

(d) Shoreline protection against erosion;

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

(f) Wildlife habitat; and

(g) Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.

(2) Permitted Uses in Shoreland-Wetlands.

The following uses are permitted subject to the provisions of chapters 30 and 31, Wis. Stats., and the provisions of other local, state and federal laws, if applicable:

- (a) Activities and uses which do not require the issuance of a zoning permit, provided that no wetland alteration occurs:
 - (1) Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating;
 - (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) The planting, thinning and harvesting of timber in the practice of silviculture;
 - (4) The pasturing of livestock;
 - (5) The cultivation of agricultural crops; and
 - (6) The construction and maintenance of duck blinds.
- (b) Uses which do not require the issuance of a zoning permit and which may involve wetland alterations only to the extent specifically provided below:
 - (1) Limited temporary water level stabilization measures which are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silvicultural activities if not corrected;
 - (2) The cultivation of cranberries, including limited wetland alterations necessary for the purpose of growing and harvesting cranberries;
 - (3) 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;
 - (4) The construction and maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance;
 - (5) 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 or maintenance;
 - (6) The installation and maintenance of sealed tiles for the purpose of draining lands outside the shoreland-wetland zoning district provided that such installation or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the shoreland-wetland listed in subsection (1) of this section; and

- (7) The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.
- (c) Uses which are allowed upon the issuance of a permit and which may include wetland alterations only to the extent specifically provided below:
 - (1) The construction and maintenance of roads which are necessary for the continuity of the municipal street system, the provision of essential utility and emergency services or to provide access to uses permitted under subsection (2)(b), of this section, provided that:
 - (i) The road cannot, as a practical matter, be located outside the wetland;
 - (ii) The road is designed and constructed to minimize adverse impacts upon the natural functions of the wetland listed in section 45.06(1) of this ordinance;
 - (iii) The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;
 - (iv) Road construction activities are carried out in the immediate area of the roadbed only; and
 - (v) Any wetland alteration must be necessary for the construction or maintenance of the road.
 - (2) The construction and maintenance of nonresidential buildings provided that:
 - (i) The building is used solely in conjunction with a use permitted in the shoreland-wetland district or for the raising of waterfowl, minnows or other wetland or aquatic animals;
 - (ii) The building cannot, as a practical matter, be located outside the wetland;
 - (iii) The building does not exceed 500 square feet in floor area; and
 - (iv) Only limited filling and excavating necessary to provide structural support for the building is allowed.
 - (3) The establishment and development of public and private parks and recreation areas, outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms, wildlife preserves and public boat launching ramps, provided that:
 - (i) Any private development allowed under this paragraph shall be used exclusively for the permitted purpose;
 - (ii) Only limited filling and excavating necessary for the development of public boat launching ramps, swimming beaches or the construction of park shelters or similar structures is allowed;

(iii) The construction and maintenance of roads necessary for the uses permitted under this paragraph are allowed only where such construction and maintenance meets the criteria in section (c)(1) of this section; and (iv) Wetland alterations in game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms and wildlife preserves shall be for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

(4) The construction and maintenance of electric and telephone transmission lines, water and gas distribution lines and sewage collection lines and related facilities and the construction and maintenance of railroad lines provided that:

(i) The utility transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland;

(ii) Only limited filling or excavating necessary for such construction or maintenance is allowed; and

(iii) Such construction or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the wetland listed in section 6.1 of this ordinance.

(3) Prohibited Uses:

Any use not listed in section 45.06(2) of this ordinance is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this ordinance in accordance with section 8.4 of this ordinance.

45.07 NONCONFORMING STRUCTURES AND USES:

(1) Maintenance of a Nonconforming Structure

The lawful use of a building, structure or property which existed at the time 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.

(2) Nonconforming Structures to the Shoreland Wetland Standards

The shoreland-wetland provisions in section 45.06 of this ordinance do not limit the repair, reconstruction, renovation, remodeling, or expansion of structures or environmental control facilities in existence on the effective date of this ordinance.

(3) Nonconforming Structures to the Shoreland Setback

A structure that was lawfully placed when constructed but that does not comply with the required shoreland setback in Section 45.05 of this ordinance or any structure that received a variance prior to the effective date of this ordinance to construct within the shoreland setback in Section 5.0 may do all of the following:

- (a) Maintain, repair, replace, restore, rebuild or remodel if the activity does not expand the footprint of the structure.
- (b) Expand vertically unless the vertical expansion would extend more than 35 feet above grade level.
- (c) Any other expansion, beyond what is allowed under 45.07(3)(b), is prohibited unless the City determines the expansion is necessary to comply with applicable state or federal requirements, such as building codes.

(4) Other Nonconforming Uses and Structures

All other nonconforming uses and structures shall comply with the provisions of the section 46.06 of the Zoning Code for the City of Blair.

45.08 ADMINISTRATIVE PROVISIONS

(1) Zoning Administrator

In addition to the duties and powers described in Chapter 46, section 46.12 of the Zoning Code of the City of Blair, the Zoning Administrator for the City of Blair shall:

- (a) Advise applicants as to the provisions of this ordinance and assist them in preparing permit applications and appeal forms.
- (b) For areas or actions that are covered by this ordinance the City shall submit copies of decisions on variances, conditional use permits, appeals for a map or text interpretation, and map or text amendments, within 10 days after they are granted or denied, to the appropriate office of the WDNR.

(2) Conditional Use Permits

Conditional use permits shall follow the requirements and process outlined in section 46.05 of the Zoning Code for the City of Blair.

(3) Board of Appeals

Appeals to the Board of Appeals for the City of Blair shall follow the process and procedures outlined in Chapter 47 of the Zoning Code for the City of Blair. Any appeals to the standards or provisions of this ordinance shall also require the Board to:

- (a) Publish a class 2 notice under ch. 985, Wis. Stats of the public hearing and shall furnish such noted to the appropriate office of the WDNR at least 10 days prior to the public hearing.
- (b) A copy of such decision shall be mailed to the interested parties and the appropriate office of the WDNR within 10 days prior after the decision is issued.

(4) Amendment to the Shoreland Ordinance

All proposed text and map amendments to this ordinance shall follow the process and procedures outlined in section 46.13 of the Zoning Code for the City of Blair and all of the following:

- (a) The City Council may alter, supplement or change the district boundaries and the regulations contained in this ordinance only in accordance with the requirements of section sections 62.23, 62.231, 62.233, and 281.31, Wis. Stats. and NR 117, Wis. Adm. Code,
- (b) A copy of each proposed text or map amendment shall be submitted to the appropriate office of the WDNR within 5 days of the submission of the proposed amendment to the Plan Commission;
- (c) The appropriate office of the WDNR shall be provided with:
 - (1) A copy of the recommendation and report, if any, of the Planning Commission on a proposed text or map amendment, within 10 days after the submission of those recommendations to the City Council.
 - (2) Written notice of the action on the proposed text or map amendment within 10 days after the action is taken.
- (d) The City Council may not rezone a wetland in the shoreland-wetland zoning district, or any portion there, if the rezoning will be inconsistent with the objectives of section 281.31, Wis. Stats. and may result in a significant adverse impact upon any of the following wetland functions identified in section 45.06(1) of this ordinance.
- (e) Where the WDNR determines that a proposed rezoning may have a significant adverse impact upon any of the natural wetland functions identified in section 6.1 of this ordinance, the WDNR shall notify the municipality of its determination either prior to or during the public hearing held on the proposed amendment.
- (f) If the WDNR notifies the Planning Commission in writing that a proposed amendment may have a significant adverse impact upon any of the wetland functions listed in section 6.1, of this ordinance, that proposed amendment, if approved by the City Council, shall not become effective until more than 30 days have elapsed since written notice of the approval was mailed to the WDNR, as required by section 45.08(4)(c) of this ordinance. If within the 30 day period, the WDNR notifies the municipality that the WDNR intends to adopt a superseding shoreland wetland zoning ordinance for the municipality as provided by section 62.231(6), Wis. Stats., the proposed amendment shall not become effective until the ordinance adoption procedure under section 62.231(6), Wis. Stats., is completed or otherwise terminated.

45.09 ENFORCEMENT AND PENALTIES.

Any development, building or structure or accessory building or structure constructed, altered, added to, modified, rebuilt or replaced or any use or accessory use established after the effective date of this ordinance in violation of the provisions of this ordinance, by any person, firm, association, corporation (including building contractors or their agents) shall be deemed a violation.

Enforcement of this ordinance shall follow the process and procedures outlined in section 46.11 of the Zoning Code for the City of Blair.