

Chapter 74

Planning*

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***Cross References** - Any ordinance establishing or amending the zoning map or rezoning property saved from repeal, § 1-10(8); Administration, Chapter 2; Environment, Chapter 30; Floods, Chapter 38; Floodplain Zoning Code, § 38-31 et seq.; Manufactured Homes and Trailers, Chapter 58; Streets, Sidewalks and Public Places, Chapter 82; Subdivisions, Chapter 86; Utilities, Chapter 98; Zoning, Appendix A; PD, Planned Development District, Appendix A, § 17.29.

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Article I. In General

Section 74-1. Variances.

- (a) When, in the judgment of the common council it would be inappropriate to apply literally a provision of this chapter, because a subdivision is located outside the corporate limits or because extraordinary hardship would result, it may waive or vary such provisions so that substantial justice may be done and the public interest secured; provided, that in no event shall the requirement of filing and recording the plat be waived.
- (b) Before acting on any such variance, the council shall first refer the matter to the planning and zoning committee for its study and recommendation. The planning and zoning committee shall make its recommendation within 30 days after referral by the council.

(Ordinance Number 1991-6, § 18.01(1), 7-2-1991)

Section 74-2 – 74-30. Reserved.

Article II. Board of Zoning Appeals*

Section 74-31. Membership.

The board of zoning appeals shall consist of five members, plus alternates, appointed by the mayor subject to confirmation by the common council pursuant to Wisconsin Statute § 62.23(7) (e).

(Code 1989, § 1.04(7); Ordinance Number 1989-3)

Section 74-32. Powers and Duties.

- (a) The board of appeals:
 - (1) Shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this article.
 - (2) May hear and decide applications for zoning permits.
 - (3) May authorize, upon appeal in specific cases, such variance from the dimensional terms of this article as shall not be contrary to the public interest, where owing to special conditions unique to a property, a literal enforcement of this article will result in unnecessary hardship as defined in Section 74-93(b). In the issuance of a variance, the purpose of this article shall be observed and substantial justice done. The granting of a variance shall not have the effect of granting or extending any use of property which is prohibited in the zoning district by this article.
- (b) Appeals to the board of appeals may be taken by any person aggrieved or by an officer, department, board or bureau of the community affected by any order, requirement, decision or determination of the zoning administrator or other administrative official. Such appeals shall be taken within a reasonable time as provided by the rules of the board by filing with the official whose decision is in question, and with the board of appeals, a notice of appeal specifying the reasons for the appeal.

***Cross References** – Boards, Commissions and Committees, § 2-191 et seq.; Zoning, Appendix A.

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The zoning administrator or other official whose decision is in question shall transmit to the board all the papers constituting the record on the matter appealed.

(c) Public Hearings.

(1) Before making a decision on an appeal or application, the board of appeals shall, within a reasonable period of time, hold a public hearing. The board shall give public notice of the hearing by publishing a Class 2 Notice under Wisconsin Statute, Chapter 985, specifying the date, time and place of the hearing and the matters to come before the board. At the public hearing, any party may present testimony in person, by agent or by attorney.

(2) A copy of such notice shall be mailed to the parties in interest and the appropriate district office of the department at least ten days prior to all public hearings on issues involving shore-land - wetland zoning.

(d) The final disposition of an appeal or application for a zoning permit before the board of appeals shall be in the form of a written decision, made within a reasonable time after the public hearing and signed by the board chairperson. Such decision shall state the specific facts which are the basis of the board's determination and shall either affirm, reverse or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or prosecution or grant the application for a permit.

(Code 1989, § 16.05)

Cross Reference – Administration, Chapter 2.

Sections 74-33 – 74-60. Reserved.

Article III. Planning and Zoning Commission*

Section 74-61. Membership.

The planning and zoning commission shall consist of the mayor who shall be its presiding officer, the president of the park board, an alderperson and four citizens appointed by the mayor subject to confirmation by the council pursuant to Wisconsin Statute § 62.23.

(Code 1989, § 1.04(6))

Sections 74-62 – 74-90. Reserved.

Article IV. Shore-Land Zoning**

Division 1. Generally

Section 74-91. Title.

The title of this article shall be “Shore-Land - Wetland Zoning Ordinance for the City of Tomahawk, Wisconsin”.

(Code 1989, § 16.01(3))

***Cross References** – Board, Commissions, and Committees, § 2-191 et seq.; Zoning, Appendix A.

****Cross Reference** – Zoning, Appendix A

Section 74-92. Statutory Authorization; Findings of Fact and Purpose.

- (a) This article is adopted pursuant to the authorization in Wisconsin Statutes §§ 62.23, 62.231, 87.30 and 281.31.
- (b) Uncontrolled use of the shore-land - wetlands and the pollution of the navigable waters of the city would adversely affect the public health, safety, convenience and general welfare and impair the tax base. The state legislature has delegated responsibility to all municipalities to:
 - (1) Promote the public health, safety, convenience and general welfare.
 - (2) Maintain the storm and flood-water storage capacity of wetlands.
 - (3) 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.
 - (4) Protect fish, their spawning grounds, other aquatic life and wildlife by preserving wetlands and other aquatic habitat.
 - (5) Prohibit certain uses detrimental to the shore-land - wetland area.
 - (6) Preserve shore cover and natural beauty by restricting the removal of natural shore-land cover and controlling shore-land - wetland excavation, filling and other earth moving activities.

(Code 1989, § 16.01(2))

Section 74-93. Definitions.

- (a) For the purpose of administering and enforcing this article, the terms or words used in this article shall be interpreted as follows: words used in the present tense include the future; words in the singular number include the plural number; words in the plural number include the singular number. The word “shall” is mandatory, not permissive. All distances, unless otherwise specified, shall be measured horizontally.
- (b) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, unless the context clearly indicates a different meaning:

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

Boathouse 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.

Class 2 Public Notice means publication of a public hearing under Wisconsin Statute, Chapter 985, in a newspaper of circulation in the affected area. Publication is required for two consecutive weeks, the last at least seven days prior to the hearing.

Department means the state department of natural resources.

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Development means any manmade 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 substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials.

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.

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 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.

Fixed Houseboat means a structure not actually used for navigation which extends beyond the ordinary high water mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spud-poles attached to the bed of the waterway.

Navigable Waters means Lake Superior, Lake Michigan, all natural inland lakes within the state, and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the state portion of boundary waters, which are navigable under the laws of this state. Under Wisconsin Statute § 281.31(2m), notwithstanding any other provision of law or administrative rule promulgated thereunder, wetland ordinances required under Wisconsin Statutes §§ 61.351 or 62.231, and Wisconsin Administrative Code, NR Chapter 117, do 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.
- (3) Such lands are maintained in nonstructural agricultural use.

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.

Planning Agency means the municipal planning and zoning commission created under Wisconsin Statute § 62.23(1), a board of public land commissioners or a committee of the municipality's governing body which acts on matters pertaining to planning and zoning.

Shore-Land - Wetland District means the zoning district created in this article, comprised of shore-lands that are designated as wetlands on the wetlands inventory maps which have been adopted and made a part of this article.

Shore-Lands 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. If the navigable water is a glacial pothole lake, this distance shall be measured from the high-water mark of the lake.

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Unnecessary Hardship means that circumstances where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of this article.

Variance means an authorization granted by the board of appeals to construct or alter a building or structure in a manner that deviates from the dimensional standards of this article.

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

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.

(Code 1989, § 16.07)

Cross Reference – Definitions, Generally, § 1-2.

Section 74-94. Compliance with this Article and Other Local, State or Federal Regulations.

The use of wetlands and the alteration of wetlands within the shore-land area of the city shall be in full compliance with the terms of this article and other applicable local, state or federal regulations. However, see Section 74-151 for standards applicable to nonconforming uses. All permitted development shall require the issuance of a zoning permit unless otherwise expressly excluded by a provision of this article.

(Code 1989, § 16.02(1))

Section 74-95. Municipalities and State Agencies Regulated.

Unless specifically exempted by law, all cities, villages, towns and counties are required to comply with this article and obtain all necessary permits. State agencies are required to comply if Wisconsin Statute § 13.48(13) applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the state department of transportation are exempt when Wisconsin Statute § 30.12(4) (a) applies.

(Code 1989, § 16.02(2))

Section 74-96. Abrogation and Greater Restrictions.

(a) This article supersedes all the provisions of any municipal zoning ordinance enacted under Wisconsin Statutes §§ 62.23 or 87.30, which relate to floodplains and shore-land - wetlands, except that where another municipal zoning ordinance is more restrictive than this article, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

(b) This article is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this article imposes greater restrictions, the provisions of this article shall prevail.

(Code 1989, § 16.02(3))

Section 74-97. Interpretation.

The provisions of this article shall, in their interpretation and application, be held to be minimum requirements, shall be liberally constructed in favor of the municipality and shall not be deemed a limitation or repeal of any other powers granted by the state statutes. Where a provision of this article is required by a standard in Wisconsin Administrative Code, NR Chapter 117, and where the provision is unclear, the provision

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shall be interpreted in light of the Wisconsin Administrative Code, NR Chapter 117, standards in effect on the date of the adoption of this article or in effect on the date of the most recent text amendment to this article. (Code 1989, § 16.02(4))

Section 74-98. Administrative Provisions.

(a) *Zoning Administrator.* The zoning administrator shall have the following duties and powers:

- (1) Advise applicants as to the provisions of this article and assist them in preparing permit applications and appeal forms.
- (2) Issue permits and certificates of compliance and inspect properties for compliance with this article.
- (3) Keep records of all permits issued, inspections made, work approved and other official actions.
- (4) Have access to any structure or premises between the hours of 8:00 A.M. and 6:00 P.M. for the purpose of performing these duties.
- (5) Submit copies of decisions on variances, conditional use permits, appeals for a map or text interpretation, and map or text amendments within ten days after they are granted or denied, to the appropriate district office of the department.
- (6) Investigate and report violations of this article to the appropriate municipal planning agency and the district attorney, corporation counsel or municipal attorney.

(b) *Zoning Permits.*

- (1) *When Required.* Unless another section of this article specifically exempts certain types of development from this requirement, a zoning permit shall be obtained from the zoning administrator before any new development or any change in the use of an existing building or structure is initiated.
- (2) *Application.* An application for a zoning permit shall be made to the zoning administrator upon forms furnished by the municipality and shall include, for the purpose of proper enforcement of these regulations, the following information:

(a) General Information.

- (1) Name, address and telephone number of applicant, property owner and contractor, where applicable.
- (2) Legal description of the property and a general description of the proposed use or development.
- (3) Whether or not a private water supply or sewage system is to be installed.

(b) Site Development Plan. The site development plan shall be submitted as part of the permit application and shall contain the following information drawn to scale:

- (1) Dimensions and area of the lot.

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- (2) Location of any structures with distances measured from the lot lines and centerline of all abutting streets or highways.
 - (3) Description of any existing or proposed on-site sewage systems or private water supply systems.
 - (4) Location of the ordinary high water mark of any abutting navigable waterways.
 - (5) Boundaries of all wetlands.
 - (6) Existing and proposed topographic and drainage features and vegetative cover.
 - (7) Location of floodplain and floodway limits on the property as determined from floodplain zoning maps.
 - (8) Location of existing or future access roads.
 - (9) Specifications and dimensions for areas of proposed wetland alteration.
- (3) *Expiration.* All permits issued under the authority of this article shall expire six months from the date of issuance.

(c) *Certificates of Compliance.*

- (1) 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 that the building or premises, or part thereof, and the proposed use thereof, conform to the provisions of this article.
 - (b) Application for such certificate shall be concurrent with the application for a zoning or conditional use permit.
 - (c) The certificate of compliance shall be issued within ten days after notification of the completion of the work specified in the zoning or conditional use permit, providing the building or premises, and proposed use thereof, conform with all the provisions of this article.
- (2) The zoning administrator may issue a temporary certificate of compliance for a building, premises, or part thereof, pursuant to rules and regulations established by the municipal governing body.
- (3) Upon written request from the owner, the zoning administrator shall issue a certificate of compliance for any building or premises existing at the time of ordinance adoption, 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 article.

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(d) *Fees.* The municipal governing body may, by resolution, adopt fees for the following:

- (1) Zoning Permits.
- (2) Certificates of Compliance.
- (3) Public Hearings.
- (4) Legal Notice Publications.
- (5) Rezoning Petitions.

(e) *Recording.* Where a zoning permit is approved, an appropriate record shall be made by the zoning administrator of the land use and structures permitted.

(f) *Revocation.* Where the conditions of a zoning permit are violated, the permit shall be revoked by the board of appeals.

(g) *Board of Appeals.* Appeals under this article shall be taken to the city board of zoning appeals created under Section 74-31.

(Ordinance Number 1989-4, 7-11-1989)

Section 74-99. Amending Shore-Land – Wetland Zoning Regulations.

The municipal governing body may alter, supplement or change the district boundaries and the regulations contained in this article in accordance with the requirements of Wisconsin Statute § 62.23(7)(d)2., Wisconsin Administrative Code, NR Chapter 117, and the following:

- (1) A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the department within five days of the submission of the proposed amendment to the municipal planning agency.
- (2) All proposed text and map amendments to the shore-land – wetland zoning regulations shall be referred to the municipal planning agency and a public hearing shall be held as required by Wisconsin Statute § 62.23(7)(d)2. The appropriate district office of the department shall be provided with written notice of the public hearing at least ten days prior to such hearing.
- (3) In order to ensure that this article will remain consistent with the shore-land protection objectives of Wisconsin Statute § 281.31, the municipal governing body may not rezone a wetland in a shore-land – wetland zoning district, or any portion thereof, where the proposed rezoning may result in a significant adverse impact upon any of the following wetland functions:
 - (a) Storm and floodwater 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.

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- (d) Shoreline protection against erosion.
- (e) Fish spawning breeding, nursery or feeding grounds.
- (f) Wildlife habitat.
- (g) Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.

(4) Where the district office of the department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in subsection (3) of this section, the department shall so notify the municipality of its determination either prior to or during the public hearing held on the proposed amendment.

(5) The appropriate district office of the department shall be provided with:

- (a) A copy of the recommendation and report, if any, of the municipal planning agency on a proposed text or map amendment, within ten days after the submission of those recommendations to the municipal governing body.
- (b) Written notice of the action on the proposed text or map amendment within ten days after the action is taken.

(6) If the department notifies the municipal planning agency in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in subsection (3) of this section, that proposed amendment, if approved by the municipal governing body, shall not become effective until more than 30 days have elapsed since written notice of the municipal approval was mailed to the department, as required by subsection (5) b of this section. If, within the 30-day period, the department notifies the municipality that the department intends to adopt a superseding shore-land – wetland zoning ordinance for the municipality as provided by Wisconsin Statutes §§ 62.231(6) and 61.351(6), the proposed amendment shall not become effective until the ordinance adoption procedure under Wisconsin Statutes §§ 62.231(6) or 61.351(6), is completed or otherwise terminated.

(Code 1989, § 16.06(1))

Section 74-100. Enforcement and Penalties.

Any development, building, 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 article in violation of the provisions of this article, by any person shall be deemed a violation. The zoning administrator shall refer violations to the municipal planning agency and the district attorney, corporation counsel or municipal attorney who shall prosecute such violations. Any person who violates or refuses to comply with any of the provisions of this article shall be subject to a forfeiture of not less than \$10.00 nor more than \$50.00 per offense, together with the taxable costs of such action. Each day of continued violation shall constitute a separate offense. Every violation of this article is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated by action at suit of the municipality, the state or any citizen thereof, pursuant to Wisconsin Statute § 87.30(2).

(Code 1989, § 16.10)

Sections 74-101 – 74-120. Reserved.

Division 2. District

Section 74-121. Shore-Land – Wetland Zoning Maps.

The following maps are hereby adopted and made part of this division and are on file in the office of the city clerk:

- (1) Wisconsin wetland inventory maps stamped “Final” on August 28, 1985.
- (2) Floodplain zoning maps titled “The City of Tomahawk Flood Insurance Rate Map”, dated September 4, 1985.
- (3) The most current United States Geological Survey maps at the date of adoption of this chapter.
- (4) City zoning maps, dated July 10, 1979.
(Code 1989, § 16.03(1))

Section 74-122. Boundaries.

- (a) The shore-land – wetland zoning district includes all wetlands in the city which are five acres or more and are shown on the final wetland inventory map that has been adopted and made a part of this division and which are:
 - (1) Within 1,000 feet of the ordinary high water mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in the city shall be presumed to be navigable if they are listed in the department publication Surface Water Resources of Lincoln 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 division.
 - (2) Within 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 designed 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 division. Floodplain zoning maps adopted in Section 74-121(2) shall be used to determine the extent of floodplain areas.
- (b) 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 department for a final determination of navigability or ordinary high water mark.
- (c) When an apparent discrepancy exists between the shore-land – wetland district boundary shown on the official zoning maps and actual field conditions at the time the maps were adopted, the zoning administrator shall contact the appropriate district office of the department to determine if the shore-land – wetland district boundary, as mapped, is in error. If department staff concur 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. In order to correct wetland mapping

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errors shown on the official shore-land – wetland zoning maps, the zoning administrator shall be responsible for initiating a map amendment within a reasonable period.
(Code 1989, § 16.03(2))

Section 74-123. Permitted Uses.

The following uses are permitted subject to the provisions of Wisconsin Statute, Chapters 30 and 31, and the provisions of other local, state and federal laws, if applicable:

- (1) Activities and uses which do not require the issuance of a zoning permit, provided that no wetland alteration occurs:
 - (a) Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating.
 - (b) 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.
 - (c) The practice of silviculture, including the planting, thinning and harvesting of timber.
 - (d) The pasturing of livestock.
 - (e) The cultivation of agricultural crops.
 - (f) The construction and maintenance of duck blinds.
- (2) Uses which do not require the issuance of a zoning permit and which may involve wetland alterations only to the extent specifically provided below:
 - (a) The practice of silviculture, including 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 silviculture activities if not corrected.
 - (b) The cultivation of cranberries, including limited wetland alterations necessary for the purpose of growing and harvesting cranberries.
 - (c) The maintenance and repair of existing drainage systems to restore preexisting 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.
 - (d) The construction and maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance.
 - (e) 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.
 - (f) The installation and maintenance of sealed titles for the purpose of draining lands outside the shore-land – 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 shore-land – wetland listed in Section 74-99(3).

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- (g) The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.
- (3) Uses which are allowed upon the issuance of a permit and which may include wetland alterations only to the extent specifically provided below:
- (a) 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 this section.
 - (1) The road cannot, as practical matter, be located outside the wetland.
 - (2) The road is designed and constructed to minimize adverse impacts upon the natural functions of the wetland listed in Section 74-99(3).
 - (3) The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use.
 - (4) Road construction activities are carried out in the immediate area of the roadbed only.
 - (5) Any wetland alteration must be necessary for the construction or maintenance of the road.
 - (b) The construction and maintenance of nonresidential buildings provided that:
 - (1) The building is used solely in conjunction with a use permitted in the shore-land – wetland district or for the raising of waterfowl, minnows or other wetland or aquatic animals.
 - (2) The building cannot, as a practical manner, be located outside the wetland.
 - (3) The building does not exceed 500 square feet in floor area.
 - (4) Only limited filling and excavating necessary to provide structural support for the building is allowed.
 - (c) 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:
 - (1) Any private development allowed under this subsection shall be used exclusively for the permitted purpose.
 - (2) 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.
 - (3) The construction and maintenance of roads necessary for the uses permitted under this subsection are allowed only where such construction and maintenance meets the criteria in subsection (3) a of this section.

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(4) 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.

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

(1) The utility transmission, distribution facilities and railroad lines cannot, as a practical manner, be located outside the wetland.

(2) Only limited filling or excavating necessary for such construction or maintenance is allowed.

(3) Such construction or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the wetland listed in Section 74-99(3).

(Code 1989, § 16.03(3))

Section 74-124. Prohibited Uses.

(a) Any use not listed in Section 74-123 is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this article in accordance with Section 74-99.

(b) The use of a boathouse for human habitation and the construction or placement of a boathouse or fixed houseboat below the ordinary high water mark of any navigable waters are prohibited.

(Code 1989, § 16.03(4))

Sections 74-125 – 74-150. Reserved.

Division 3. Nonconforming Structures and Uses

Section 74-151. Enumerated.

(a) The lawful use of a building, structure or property which existed at the time of this article, or an applicable amendment to this article, took effect and which is not in conformity with the provisions of this article, including the routine maintenance of such a building or structure, may be continued, subject to the following conditions:

(1) Notwithstanding Wisconsin Statute § 62.23(7)(h), the repair, reconstruction, renovation, remodeling, or expansion of a legal nonconforming structure in existence at the time of adoption or subsequent amendment of this article adopted under Wisconsin Statute § 62.231, or of an environmental control facility in existence on May 7, 1982, related to that structure, is permitted under Wisconsin Statute § 62.231(5). Wisconsin Statute § 62.23(7) (h) 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 article or amendment.

(2) If a 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 article.

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- (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 article adopted under Wisconsin Statutes §§ 62.231 or 61.351, may be continued although such use does not conform with the provisions of this article. However, such nonconforming use may not be extended.
 - (b) The maintenance and repair of nonconforming boathouses which are located below the ordinary high water mark of any navigable waters shall comply with the requirements of Wisconsin Statute § 30.121.
 - (c) Uses which are nuisances under common law shall not be permitted to continue as nonconforming uses.
- (Code 1989, § 16.04)