

**AMENDMENT NO. 139 TO PEPIN COUNTY ORDINANCE 179
CHAPTER 16 – SHORELAND PROTECTION ORDINANCE**

**THAT THE CODE OF ORDINANCE BE AMENDED BY REPEALING AND REPLACING
CHAPTER 16, SHORELAND PROTECTION ORDINANCE**

BE IT ORDAINED BY THE COUNTY BOARD OF SUPERVISORS OF PEPIN COUNTY:

16.01 STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE AND TITLE

- (1) STATUTORY AUTHORIZATION. This ordinance is adopted pursuant to the authorization in ss. 59.692 Wis. Stats to implement 59.692, and 281.31.
- (2) FINDING OF FACT. Uncontrolled use of the shorelands and pollution of the navigable waters of Pepin County 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 counties 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 reserve shore cover and natural beauty. This responsibility is hereby recognized by Pepin County, Wisconsin.
- (3) PURPOSE AND INTENT. (§281.31(1), Wis. Stat, §59.692(1c), Wis. Stat., and NR115.01) To promote and protect the public trust in navigable waters and to the effect the purposes of §281.31 Wis. Stat., by aiding in the fulfillment of the state's role as trustee of its navigable waters; limiting the direct and cumulative impacts of shoreland development, and promoting the public health, safety, convenience and general welfare, this ordinance has been established to:

(a) FURTHER THE MAINTENANCE OF SAFE AND HEALTHFUL CONDITIONS AND PREVENT AND CONTROL WATER POLLUTION THROUGH:

1. Limiting structures to those areas where soil and geological conditions will provide a safe foundation.
2. Establishing minimum lot sizes to provide adequate area for private on-site waste treatment systems.
3. Controlling filling and grading to prevent soil erosion problems.
4. Limiting impervious surfaces to control runoff which carries pollutants.

(b) PROTECT SPAWNING GROUNDS, FISH AND AQUATIC LIFE THROUGH:

1. Preserving wetlands and other fish and aquatic habitat.
2. Regulating pollution sources.
3. Controlling shoreline alterations, dredging and lagooning.

(c) CONTROL BUILDING SITES, PLACEMENT OF STRUCTURES AND LAND USES THROUGH:

1. Prohibiting certain uses detrimental to the shoreland-wetlands.
2. Setting minimum lot sizes and widths.
3. Setting minimum building setbacks from waterways.
4. Setting the maximum height of near shore structures.

(d) RESERVE SHORELAND COVER AND NATURAL SCENIC BEAUTY THROUGH:

1. Restricting the removal of natural shoreland cover.
2. Preventing shoreline encroachment by structures.
3. Controlling shoreland excavation and other earth moving activities.
4. Regulating the use and placement of boathouses and other structures.

(4) TITLE. Shoreland Protection Ordinance for Pepin County, Wisconsin.

16.02 GENERAL PROVISIONS.

(1) **AREAS TO BE REGULATED.** Areas regulated by this ordinance shall include all the lands (referred to herein as shorelands) in the unincorporated areas of Pepin County which are:

(a) Within one thousand (1,000) feet of the ordinary high-water mark of navigable lakes, ponds or flowages. (NR 115.03(8)) or within one thousand (1,000) feet of the high water mark of navigable glacial pothole lakes (59.692(1)(b)(1)). Lakes, ponds, or flowages in Pepin County shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources publication FH-800 2009 "Wisconsin Lakes" book available electronically at the following website:

<http://dnr.wi.gov/lakes/lakebook/wilakes2009bma.pdf> or are shown on United States Geological Survey quadrangle maps (1:24:000 scale), or other zoning base maps.

(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. (NR 115.03(8)). Rivers and streams in Pepin County shall be presumed to be navigable if they are designated as perennial waterways or intermittent waterways on United States Geological Survey quadrangle maps (1:24,000). Flood hazard boundary maps, flood insurance rate maps, flood boundary-floodway maps, county soil survey maps, or other existing county floodplain maps shall be used to delineate floodplain areas.

(c) The provisions of this chapter apply to the regulation of the use and development of unincorporated shoreland areas. Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with, and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance or repair of state highways and bridges carried out under the direction and supervision of the Wisconsin Department of Transportation is not subject to local shoreland zoning ordinances if s. 30.2022 (1m), Stats., applies. (NR 115.02). Shoreland zoning requirements in annexed or incorporated areas are provided in s. 61.353 and s. 62.233, Stats.

(d) Determinations of navigability and ordinary high-water mark location shall initially be made by the zoning administrator. When questions arise, the zoning administrator may contact the appropriate office of the Department for a final determination of navigability or ordinary high-water mark. The county may work with surveyors with regard to s. 59.692(1h).

(e) Under s. 281.31(2m) Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, this shoreland zoning ordinance does not apply to:

1. Lands adjacent to farm drainage ditches if:
 - (a) Such lands are not adjacent to a natural navigable stream or river;
 - (b) Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and

2. Lands adjacent to artificially constructed drainage ditches, ponds or stormwater retention basins that are not hydrologically connected to a natural navigable water body.

(2) COMPLIANCE. (NR 115.04) The use of any land, the size, shape and placement of lots, the use, size, type and location of structures on lots, the filling, grading, lagooning, dredging of any lands, the cutting of shoreland vegetation, the subdivision of lots, shall be in full compliance with the terms of this ordinance and other applicable local, state or federal regulations. Buildings, other structures, and land disturbances (including filling and grading, etc.) shall require a permit unless otherwise expressly excluded by a provision of this ordinance. Property owners, builders and contractors are responsible for compliance with the terms of this ordinance.

(3) MUNICIPALITIES AND STATE AGENCIES REGULATED. Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply when s. 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 s. 30.2022 Wis. Stats., applies.

(4) ABROGATION AND GREATER RESTRICTIONS. (s. 59.692(5) Wis. Stats.) The provisions of this ordinance supersede any provisions in a county zoning ordinance that solely relate to shorelands. In other words, if a zoning standard only applies to lands that lie within the shoreland and applies because the lands are in shoreland, then this ordinance supersedes those provisions. However, where an ordinance adopted under a statute other than s. 59.692, Wis. Stats., does not solely relate to shorelands and is more restrictive than this ordinance, for example a floodplain ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions.

(a) (s. 59.692(2)(a), Wis. Stats.) This ordinance shall not require approval or be subject to disapproval by any town or town board.

(b) (s. 59.692(2)(b), Wis. Stats.) If an existing town ordinance relating to shorelands is more restrictive than this ordinance or any amendments thereto, the town ordinance continues in all respects to the extent of the greater restrictions but not otherwise.

(c) 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.

(d) (s. 59.692(2)(c), Wis. Stats.) This ordinance shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable, so far as practicable.

(e) (s. 59.692(1d)(b), Wis. Stats.) This ordinance may establish standards to regulate matters that are not regulated by a shoreland zoning standard under NR 115.05(1) and that further the purposes of shoreland zoning as described in Section 16.01(3) of this ordinance,

(f) (s. 59.692(1k)(a)3, Wis. Stats.) This ordinance may not require any inspection or upgrade of a structure before the sale or other transfer of the structure may be made.

(5) SEVERABILITY. If any portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

16.03 SHORELAND-WETLAND DISTRICT. (NR 115.04)

(1) **PURPOSE.** This district is created to maintain safe and healthful conditions, to prevent water pollution, to protect fish spawning grounds and wildlife habitat, to preserve shore cover and natural beauty and to control building and development in wetlands within the shoreland zone. When development is permitted in a wetland, the development should occur in a manner that minimizes adverse impacts upon the wetland.

(2) **DESIGNATION.** This district shall include all wetlands shown in the most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer.

(3) **SHORELAND-WETLAND MAPS.** The most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer is made part of this ordinance. The maps can be viewed at:
<https://dnrmaps.wi.gov/H5/?Viewer=SWDV>.

(a) **LOCATING SHORELAND-WETLAND BOUNDARIES.** (NR 115.04(2)(b)2.note)

Where an apparent discrepancy exists between the shoreland-wetland district boundary shown on the Wisconsin Wetland Inventory and actual field conditions, the county shall contact the Department to determine if the map is in error. If the Department determines that a particular area was incorrectly mapped as wetland or meets the wetland definition but was not shown as wetland on the map, the county shall have the authority to immediately grant or deny a shoreland zoning permit in accordance with the applicable regulations based on the Department determination as to whether the area is wetland. In order to correct wetland mapping errors on the official zoning map, an official zoning map amendment must be initiated within a reasonable period of time, not to exceed one year following the determination.

(4) **PERMITTED USES.** (NR 115.04(3)) NR 115 currently contains absolute standards for permitted uses in shoreland wetlands which cannot be made more or less restrictive. NR 115 does not prohibit counties to protect wetlands outside of the shoreland jurisdictional area.

The following uses shall be allowed, subject to general shoreland zoning regulations contained in this ordinance:

(a) Activities and uses which do not require the issuance of a zoning permit, but which must be carried out without any filling, flooding, draining, dredging, ditching, tiling or excavating:

1. Hiking, fishing, trapping, hunting, swimming, 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 pasturing of livestock and the construction and maintenance of fences;
4. The cultivation of agricultural crops;
5. The practice of silviculture, including the planting, thinning, and harvesting of timber; and
6. The construction or maintenance of duck blinds.

(b) Uses which require the issuance of a zoning permit and must be carried out without any filling, flooding, draining, dredging, ditching, tiling or excavating:

1. The construction or maintenance of piers, docks or walkways built on pilings.
2. The construction or maintenance of nonresidential buildings, provided that all of the following apply:
 - a. The building is essential for and used solely in conjunction with the raising of waterfowl, minnows or other wetland or aquatic animals; or used solely for a purpose that is compatible for wetland preservation;
 - b. The building cannot, as a practical matter, be located outside the wetland;
 - c. Such building is not designed for human habitation and does not exceed 500 sq. ft. in floor area; and
3. The establishment and development of public and private parks and recreation areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves and private wildlife habitat areas, provided:
 - a. No filling is done.
 - b. Any private wildlife habitat area is used exclusively for that purpose.
 - c. Any ditching, excavating, dredging, dike and dam construction shall be allowed in wildlife refuges, game preserves, and private wildlife habitat areas for the purpose of improving wildlife habitat or to otherwise enhance wetland values. Any of these activities shall comply with the floodplain ordinance and secure all other required permit related to dike and dam construction.

(c) Uses which do not require the issuance of a zoning permit, but which may include filling, flooding, draining, dredging, ditching, tiling, or excavating as necessary but only to the extent specifically provided below:

1. The cultivation of cranberries including flooding, dike and dam construction or ditching necessary for the growing and harvesting of cranberries;
2. The maintenance and repair of existing agricultural drainage systems such as ditching and tiling necessary to maintain the level of drainage required to continue the existing agricultural use.
3. The maintenance, repair, replacement or reconstruction of existing town and county highways and bridges.

(d) Uses which require the issuance of a zoning permit and which may include filling, flooding, draining, dredging, ditching, tiling or excavating as necessary, but only to the extent specifically provided below:

1. The construction and maintenance of roads which are necessary to conduct silvicultural activities or agricultural cultivation, provided that:
 - a. The road cannot as a practical matter be located outside the wetland;
 - b. The road is designed and constructed to minimize adverse impact upon the natural functions of the wetland enumerated in Section 16.03(6)(b);
 - c. The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use; and
 - d. Road construction activities are carried out in the immediate area of the roadbed only.
 - e. The construction of a road for silvicultural activities for temporary water level stabilization measures necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on silvicultural activities if not corrected.

2. The construction or maintenance of electric, gas, telephone, water and sewer transmission and distribution facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members provided:
 - a. Such construction or maintenance is done in a manner designed to minimize flooding and adverse impact upon the natural functions of the wetland enumerated in Section 16.03(6)(b).
3. The construction or maintenance of railroad lines provided:
 - a. The railroad lines cannot, as a practical matter, be located outside the wetland;
 - b. Such construction or maintenance is done in a manner designed to minimize flooding and adverse impact upon the natural functions of the wetland enumerated in Section 16.03(6)(b).

(5) PROHIBITED USES. NR 115.04(4) Any activity or use not listed in Sections 16.03(4) is prohibited, unless the wetland or portion of the wetland has been rezoned by amendment of this ordinance in accordance with Section 16.03(6) of this ordinance and s. 59.69(5)(e), Wis. Stats.

(6) REZONING OF LANDS IN THE SHORELAND-WETLAND DISTRICT (NR 115.04(2))

(a) For all proposed shoreland wetland rezoning requests under this ordinance, the appropriate office with the Department shall be provided with the following:

- (1) A copy of every proposed petition for a shoreland wetland rezoning request under this ordinance, within 5 days of the filing of such petition with the county clerk.
- (2) Written notice of the public hearing to be held on a proposed amendment at least 10 days prior to such hearing;
- (3) A copy of the county zoning agency's findings and recommendations on each proposed amendment within 10 days after the submission of those findings and recommendations to the county board; and
- (4) Written notice of the county board's decision on the proposed amendment within 10 days after it is issued.

(b) (NR 115.04(2)(c)4) A wetland, or a portion thereof, in the shoreland-wetland district shall not be rezoned if the proposed rezoning may result in a significant adverse impact upon any of the following:

- (1) Storm and flood water storage capacity;
- (2) Maintenance of dry season stream flow, 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;
- (3) Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
- (4) Shoreline protection against soil erosion;
- (5) Fish spawning, breeding, nursery or feeding grounds;
- (6) Wildlife habitat; or
- (7) Areas of special recreational, scenic, or scientific interest, including scarce wetland types.

(c) If the Department notifies the county zoning agency that a proposed shoreland wetland rezoning request under this ordinance may have a significant adverse impact upon any of the criteria listed in Section 16.03(6)(b) of this ordinance, that shoreland wetland rezoning request, if approved by the county board, shall contain the following provision:

"This shoreland wetland rezoning shall not take effect until more than 30 days have elapsed after written notice of the county board's approval of this shoreland wetland rezoning is mailed to the Department of Natural Resources. During that 30-day period the Department of Natural Resources may notify the county board that it will adopt a superseding shoreland ordinance for the county under s. 59.692(6), Wis. Stats. If the Department does so notify the county board, the effect of this amendment shall be stayed until the s. 59.692(6) adoption procedure is completed or otherwise terminated."

16.04 MINIMUM LOT SIZE FOR CONFORMING LOTS (NR 115.05(1))

(1) PURPOSE (NR115.05(1)(a)) Minimum lot sizes in the shoreland area have been established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water. In calculating the minimum area or width of a lot, the beds of navigable waters shall not be included.

(2) SEWERED LOTS. (NR 115.05(1)(a)1.) For each lot served by public sanitary sewer the minimum lot area shall be 10,000 sq. ft. and the minimum average lot width shall be 65 feet with at least 65 feet of frontage width at the ordinary high water mark.

(3) UNSEWERED LOTS. (NR 115.05(1)(a)2.) For each lot not served by public sanitary sewer the minimum lot area shall be 20,000 sq. ft. and the minimum average lot width shall be 100 feet with at least 100 feet of frontage width at the ordinary high water mark.

16.05 SUBSTANDARD LOTS (NR 115.05(1)(a)3.)

(1) A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following apply:

- (a) The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.
- (b) The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
- (c) The substandard lot or parcel is developed to comply with all other ordinance requirements.

(2) OTHER SUBSTANDARD LOTS. Except for lots which meet the requirements of Sections 16.05(4) a building permit for the improvement of a lot having lesser dimensions than those stated in Sections 16.05(2) and 16.05(3) shall be issued only if a variance is granted by the board of adjustment.

16.06 ILLEGALLY CREATED LOTS

(1) An illegally created lot is one that was created in violation of the required minimum area and minimum average width requirements of the County's shoreland zoning ordinance at the time of creation. Illegally created lots shall not be used for construction purposes without the granting of a variance.

16.07 SETBACKS. (NR 115.05(1)(b))

(1) PURPOSE (NR 115.05(1)(b)) Setbacks within the shoreland area have been established to conform to health, safety, and welfare requirements, preserve natural beauty, reduce flood hazards, protect against water pollution, and otherwise limit the direct and cumulative impacts of shoreland development of the adjacent water body.

(2) SIDE YARDS. There shall be a side yard setback for each principal structure. The minimum width of the side yard setback shall be 10 feet from each adjacent lot for each principal structure.

(3) SHORELAND SETBACK. (§59.692(1n)(am) Wis. Stat. and NR115.05(1)(b)1.) A setback of 75 feet from the ordinary high-water mark of any navigable water to the nearest part of a building or structure shall be required.

(4) REDUCED SHORELAND SETBACK FOR A NEW PRINCIPAL STRUCTURE.

(a) EXISTING PRINCIPAL STRUCTURES IN BOTH DIRECTIONS (I.E. TWO-SIDED AVERAGING) (s.59.692(1n)(b), Wis. Stats) Where there are existing principal structures in both directions of a new proposed principal structure, a shoreland setback less than the required 75-foot setback from the ordinary high water mark of section 16.07(3) shall be permitted for a new proposed principal structure provided all of the following are met:

1. Both of the existing principal structures are located on lots immediately adjacent to the lot of the proposed new principal structure.
2. Both of the existing principal structures are located within 250 feet of the proposed new principal structure.
3. Both of the existing principal structures are the closest principal structure on their respective lots to the new proposed principal structure.
4. Both of the existing principal structures are located less than 75 feet from the ordinary high water mark.
5. The reduced shoreland setback shall equal the average of the distances that the two existing principal structures are set back from the ordinary high water mark.
6. The reduced shoreland setback shall not be reduced to less than 35 feet from the ordinary high water mark.

(b) EXISTING PRINCIPAL STRUCTURES IN ONLY ONE DIRECTION (I.E. ONE-SIDED AVERAGING) (s.59.692(1n)(bm), Wis. Stats) Where there is an existing principal structure in only one direction of a new proposed principal structure, a shoreland setback less than the required 75 foot setback from the ordinary high water mark of 16.07(3) may be permitted for a new proposed principal structure provided that all of the following are met:

1. The existing principal structures is located on a lot immediately adjacent to the lot of the proposed new principal structure.
2. The existing principal structure is located within 250 feet of the proposed new principal structure.
3. The existing principal structure is the closest principal structure on its lot to the new proposed principal structure.
4. The existing principal structure is located less than 75 feet from the ordinary high water mark.
5. The reduced shoreland setback shall equal the average of 75 feet and the

distance that the existing principal structure is set back from the ordinary high water mark.

6. The reduced shoreland setback shall not be reduced to less than 35 feet from the ordinary high water mark.

(5) EXEMPT STRUCTURES IN THE SHORELAND SETBACK AREA (§59.692(1n)(d) Wis Stats., § 59.692(1k)(a)(6). Wis. Stats., NR 115.05(1)(b)1m) All of the following structures are exempt from the shoreland setback standards in Section 16.07(3):

(a) **DRY BOATHOUSES.** Boathouses located entirely above the ordinary high-water mark and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation § 59.692(1o), Wis. Stats.

- a. Boathouses shall be designed and constructed solely for the storage of boats and related equipment.
- b. Boathouses shall be constructed in conformity with local floodplain zoning standards.
- c. Boathouses shall not exceed one story and 450 square feet of floor area.
- d. The main door shall face the water.
- e. Patio doors, fireplaces, and other features inconsistent with the use of the structure exclusively as a boathouse are not permitted.
- f. The roof of a boathouse may be used as a deck provided that:
 - a) The boathouse has a flat roof.
 - b) The roof has no side walls or screens.
 - c) The roof may have a railing that meets the Department of Safety and Professional Services standards.

(b) **NO SIDED, OPEN SIDED AND SCREENED STRUCTURES.** (§59.692(1v), Wis. Stats.) No side, open sided, and screened structures such as gazebos, decks, patios and screen houses in the shoreland setback area, provided the following requirements of §. 59.692(1v), Stats., are met:

- a. The part of the structure that is nearest to the water is located at least 35 feet landward from the ordinary-high water mark.
- b. The total floor area of all the structures in the shoreland setback area will not exceed 200 square feet. Boathouses shall be excluded from the calculation.
- c. The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.
- d. The county must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least 70% of the half of the shoreland setback area that is nearest to the water.
- e. An enforceable affidavit must be filed with the register of deeds prior to construction acknowledging the limitations on vegetation.

(c) **FISHING RAFTS.** Fishing rafts that are authorized on the Wolf river and Mississippi river under s. 30.126, Wis. Stats.

(d) **BROADCAST SIGNAL RECEIVERS.** Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are 2 meters or less in diameter.

(e) **UTILITY STRUCTURES.** Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pump house covers, and private on-site wastewater treatment systems that comply with ch. SPS 383, Wis. Adm. Code, and other utility

structures that have no feasible alternative location outside of the minimum setback and that are constructed and placed using best management practices to infiltrate or otherwise control storm water runoff from the structure.

(f) WALKWAY, STAIRWAY, OR RAIL SYSTEM. Walkway, stairway or rail system that is necessary to provide pedestrian access to the shoreline and is a maximum of 60-inches in width.

(g) DEVICES OR SYSTEMS USED TO TREAT RUNOFF FROM IMPERVIOUS SURFACES. (§59.692(1k)(a)6, Wis. Stats., and §59.692(1k)(am)1 Wis. Stats.) Devices or systems used to treat runoff from impervious surfaces, provided the requirements of §59.692(1k)(a)6, Wis. Stats., and §59.692(1k)(am)1 Wis. Stats, are met.

(h) FENCES. (§59.692(1n)(d)7 Wis. Stats.) A fence along a roadway that meets all of the following requirements:

1. Is not taller than 15 feet
2. Is located not less than 2 feet landward of the ordinary high water mark.
3. Is located entirely outside of a highway right of way.
4. Is located not less than 10 feet from the edge of a roadway and not more than 40 feet from the edge of a roadway or highway right-of-way, whichever is greater.
5. Is generally perpendicular to the shoreline.

(i) BRIDGES. A bridge for which the department has issued a permit under §30.123 Wis. Stats.

16.08 STRUCTURES IN THE FLOODPLAIN (NR 115.05(1)(b)2.)

(1) Buildings and structures to be constructed or placed in a floodplain shall be required to comply with any applicable floodplain zoning ordinance.

16.09 VEGETATION (NR 115.05(1)(c))

(1) PURPOSE. (NR 115.05(1)(c)1.) To protect natural scenic beauty, fish and wildlife habitat, and water quality, vegetation removal shall be regulated in a manner to protect water quality and reduce soil erosion and the flow of effluents, sediments, and nutrients.

(2) ACTIVITIES ALLOWED WITHIN A VEGETATIVE BUFFER ZONE. (§59.692(1f)(b) Wis. Stats. NR 115.05(1)(c)2). A vegetative buffer zone is maintained or created to protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote preservation and restoration of native vegetation. The vegetative buffer zone is the area that extends from the ordinary high water mark to 35 feet landward. Removal or destruction of vegetation in the vegetative buffer zone shall be prohibited except as follows:

- (a) Routine maintenance of vegetation, which means normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.
- (b) The removal or destruction of vegetation for the creation of an access and viewing corridor provided the following requirements are met.
 1. The access and viewing corridor remains a strip of vegetated land for the purpose of providing safe pedestrian access to the shore through the vegetative buffer zone.
 2. The access and viewing corridor may be 35% of the shoreline frontage, but in no case shall it be less than 10 feet or greater than 200 feet.

3. The viewing corridor may run contiguously for the entire maximum width based on the shoreline frontage owned.
- (c) The removal of trees and shrubs on a parcel with 10 or more acres of forested land consistent with “generally accepted forestry management practices” as defined in s. NR 1.25 (2)(b), and described in Department publication “Wisconsin Forest Management Guidelines” (publication FR-226), provided that vegetation removal be consistent with these practices.
- (d) The removal of vegetation within the vegetative buffer zone to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation creating an imminent safety hazard, provided that any vegetation removed be replaced by replanting in the same area with native species as soon as practicable.
- (e) The county may authorize by permit additional vegetation management activities in the vegetative buffer zone such as prescribed burns or other vegetation management or removal activities where there is a demonstratable need for the additional management activity. Any permit issued by the County under this section shall include an enforceable restriction to preserve the newly restored area. Prior to issuing a permit under this section, the county shall require the following information to be provided by the permittee:
1. Detailed plans documenting the need and purpose are submitted and approved by the county.
 2. Sufficient information with the plans showing that it is designed to:
 - a. Control erosion by limiting sedimentation into the waterbody
 - b. Improve the plant community by replanting in the same area
 - c. Maintain and monitor the newly restored area.

16.10 FILLING, GRADING, LAGOONING, DREDGING, DITCHING AND EXCAVATING (NR115.05(1)(d))

(1) **PURPOSE** To protect natural scenic beauty, fish and wildlife habitat, and water quality, land disturbances may be allowed and authorized only if done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat and natural scenic beauty.

(2) **APPLICABILITY**. Filling, grading, lagooning, dredging, ditching, and excavating may be authorized by permit according to sections 16.10(3) and 16.10(4), and only if done in a manner that meets the purpose of section 16.10(1).

(3) **GENERAL REQUIREMENTS**. In order to implement section 16.10(2), a permit for filling, grading, lagooning, dredging, ditching or excavating within the shoreland area may be granted provided that:

- (a) A permit is required to be issued for filling, grading, lagooning, dredging, ditching or excavating within 300 feet of the ordinary high water mark of navigable waters.
- (b) It is not done within the vegetative buffer zone unless necessary for establishing or expanding the vegetative buffer or for the construction of an exempt structure under section 16.07(5).
- (c) It is done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.
- (d) Filling, grading, lagooning, dredging, ditching or excavating in a shoreland-wetland

district meets the requirements of section 16.03.

(e) All applicable federal, state, and local authority is obtained in addition to a permit under this ordinance.

(f) Any fill placed in the shoreland area is protected against erosion by the use of vegetative cover or stabilized in another acceptable and approved manner.

(4) **PERMIT CONDITIONS.** In granting a permit under Section 16.10(3)(a), attach any of the following conditions, as appropriate:

(a) The smallest amount of bare ground shall be exposed for as short a time as feasible.

(b) Temporary ground cover (such as mulch or jute netting) shall be used and permanent vegetative cover shall be established.

(c) Diversion berms or bales, silting basins, terraces, filter fabric fencing, and other methods shall be used to prevent erosion.

(d) Lagoons shall be constructed to avoid fish trap conditions.

(e) Fill shall be stabilized according to accepted engineering standards.

(f) Filling shall comply with any local floodplain zoning ordinance and shall not restrict a floodway or destroy the flood storage capacity of a floodplain.

(g) Construction associated with land disturbances are encouraged to incorporate slopes of two (2) units horizontal distance to one (1) unit vertical or flatter which shall be promptly vegetated and stabilized.

(h) Other project related conditions may be considered.

16.11 IMPERVIOUS SURFACE STANDARDS. (NR 115.05(1)(e))

(1) **PURPOSE.** Impervious surface standards shall be established to protect water quality, fish and wildlife habitat, and to protect against pollution of navigable waters.

(2) **APPLICABILITY.** (NR 115.05(1)(e)(1) Impervious surface standards shall apply to the construction, reconstruction, expansion, replacement, or relocation of any impervious surface that is or will be located within 300 feet of the ordinary high water mark of any navigable waterway on any of the following:

(a) A riparian lot or parcel

(b) A non-riparian lot or parcel that is located entirely within 300 feet of the ordinary high water mark of any navigable waterway.

(3) **CALCULATION OF IMPERVIOUS SURFACE.** (NR 115.05(1)(e)1m., Wis. Stats. 59.692(1k)(am)1) Percentage of impervious surface shall be calculated by dividing the surface area of the existing and proposed impervious surfaces on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark by the total surface area of that lot or parcel, and multiplied by 100. Impervious surfaces described in 16.11(4) and 16.11(5) shall be excluded from the calculation of impervious surface on the lot or parcel. If an outlot lies between the ordinary high water mark and the developable lot or parcel and both are in common ownership, the lot or parcel and the outlot shall be considered one lot or parcel for the purposes of calculating the percentage of impervious surface.

(4) TREATED IMPERVIOUS SURFACES (NR115.05(1)(e)3m. and Wis. Stats. 59.692(1k)(am)1)

Impervious surfaces that can be documented to meet either of the following standards shall be excluded from the impervious surface calculations under Section 16.11(3).

- (a) The impervious surface is treated by devices such as stormwater ponds, constructed wetlands, infiltration basins, rain gardens, bio-swales or other engineered systems.
- (b) The runoff from the impervious surface discharges to an internally drained pervious area that retains the runoff on or off the parcel and allows infiltration into the soil.

(5) ROADWAYS & SIDEWALKS (Wis. Stats. 59.692(1k)(am)3). Roadways defined in §340.01(54) Wis. Stats. and sidewalks defined in §340.01(58), Wis. Stats. shall be excluded from the impervious surface calculation under section 16.11(3).

(6) GENERAL IMPERVIOUS SURFACE STANDARD. (NR 115.05(1)(e)2.) The percentage of impervious surface allowed on a lot or parcel described under section 16.11(2) and as calculated under section 16.11(3) shall not exceed 15%.

(7) MAXIMUM IMPERVIOUS SURFACE STANDARD. (NR 115.05(1)(e)3.) A lot or parcel may exceed the impervious surface standard under section 16.11(6) provided the following standards are met:

- (a) A lot or parcel described under section 16.11(2), calculated under section 16.11(3), and under the general impervious surface standard of section 16.11(6) may have greater than 15% impervious surface but not more than 30% impervious surface.
- (b) For lots or parcels that exceed the standard under Section 16.11(6) but do not exceed the maximum standard under Section 16.11(7)(a), a permit can be issued for development with a mitigation plan that meets the standards found in Section 16.18.

(8) EXISTING IMPERVIOUS SURFACES. (NR 115.05(1)(e)4.) For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the impervious surface standard in Section 16.11(6) or the maximum impervious surface standard in section 16.11(7), the property owner may do any of the following:

- (a) Maintain and repair the existing impervious surfaces;
- (b) Replace existing impervious surfaces with similar surfaces within the existing building envelope;
- (c) Relocate or modify an existing impervious surface with similar or different impervious surface, provided that the relocation or modification does not result in an increase in the percentage of impervious surface that existed on the effective date of the county shoreland ordinance, and the impervious surface meets the applicable setback requirements in Sections 16.07.

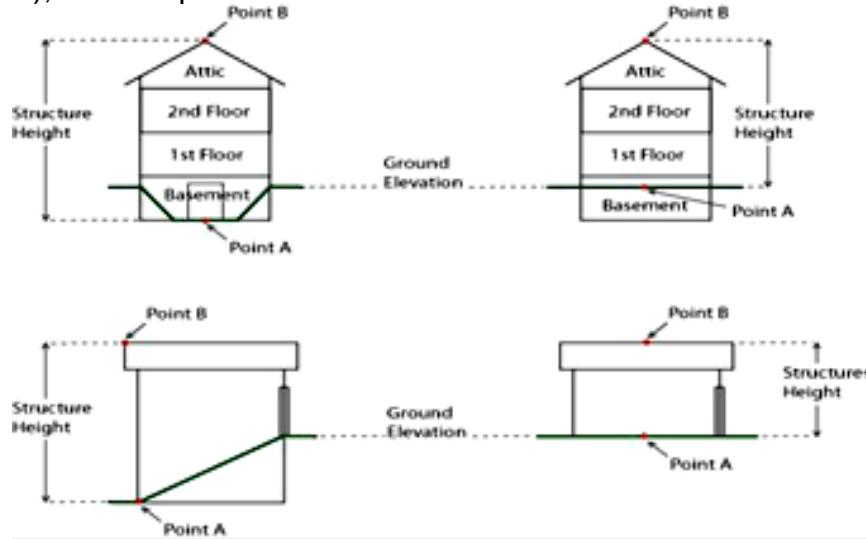
16.12 HEIGHT. (NR 115.05(1)(f))

(1) PURPOSE. To protect and preserve wildlife habitat and natural scenic beauty.

(2) HEIGHT STANDARD. A structure taller than 35 feet within 75 feet of the ordinary high water mark of any navigable waters is prohibited.

(3) MEASURING HEIGHT. Structure height is the measurement of the vertical line segment starting at the lowest point of any exposed wall and it's intersect with the ground (Point A in

the following diagram) to a line horizontal to the highest point of a structure (Point B in the following diagram), unless specified under other sections of this code.



16.13 **NONCONFORMING USES** (NR 115.05(1)(g) 1-3, Wis. Stats 59.69(10))

(1) **APPLICABILITY.** This section applies to a use of a dwelling, building, or parcel of land that existed lawfully before the existing zoning ordinance was enacted or amended, but that does not conform to the allowed uses in the current ordinance. (Wis. Stats. 59.69(10)(am)).

(2) **GENERAL RULE.** (Wis. Stats. 59.69(10))

- (a) The continuance of the lawful use of any building, premises, structure, or fixture for any trade or industry for which such building, premises, structure, or fixture is used at the time the ordinance takes effect may not be prohibited. (Wis. Stats 59.69(10)(am), NR 115.05(1)(g)1).
- (b) The alteration of, or addition to, or repair in excess of 50 percent of its assessed value of any existing building, premise, structure, or fixture for the purpose of carrying on any prohibited trade or new industry within the district where such buildings, premises, structures, or fixtures are located, may be prohibited. (Wis. Stats 59.69(10)(am)).
- (c) The county may prohibit the continuance of the nonconforming use of a temporary structure. (NR 115.05(1)(g)2)
- (d) If the nonconforming use is discontinued for a period of 12 months, any future use of the building, structure or property shall conform to the ordinance. (NR 115.05(1)(g)3.)
- (e) A manufactured home community licensed under Wis. Stats 101.935, that is a nonconforming use continues to be a nonconforming use notwithstanding the occurrence of any of the following activities within the community: (Wis Stats 59.69(10)(at)).
 - 1. Repair or replacement of homes.
 - 2. Repair or replacement of infrastructure.

16.14 **NONCONFORMING STRUCTURES** (NR 115.05(1)(g) 4-6, Wis. Stats 59.692(1k)(a)2, 4 and b)

(1) APPLICABILITY. This section applies to an existing principal or accessory structure that was lawfully placed when constructed but that does not comply with the current required ordinary high water mark setback of a navigable waterway.

(2) MAINTENANCE, REPAIR, REPLACEMENT OR VERTICAL EXPANSION OF NONCONFORMING STRUCTURES. [s. 59.692(1k)(a)2, 4 and (b), Wis. Stats.] A structure that was lawfully placed when constructed but that does not comply with the required shoreland setback per section 16.07 may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the nonconforming structure. Further, an existing structure that was lawfully placed when constructed but that does not comply with the required shoreland setback may be vertically expanded unless the vertical expansion would extend more than 35 feet above grade level. Counties may allow expansion of a structure beyond the existing footprint if the expansion is necessary to comply with applicable state or federal requirements.

(3) LATERAL EXPANSION OF NONCONFORMING PRINCIPAL STRUCTURE WITHIN THE SETBACK. (NR 115.05(1)(g)5.) An existing principal structure that was lawfully placed when constructed but that does not comply with the required shoreland setback per Section 16.07 may be expanded laterally, provided that all of the following requirements are met:

- (a) The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.
- (b) The existing principal structure is at least 35 feet from the ordinary high-water mark.
- (c) Lateral expansions are limited to a maximum of 200 square feet over the life of the structure. No portion of the expansion may be any closer to the ordinary high-water mark than the closest point of the existing principal structure.
- (d) Issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in Section 16.18.
- (e) All other provisions of the shoreland ordinance shall be met.

(4) EXPANSION OF A NONCONFORMING PRINCIPAL STRUCTURE BEYOND SETBACK. (NR 115.05(1)(g)5m.) An existing principal structure that was lawfully placed when constructed, but that does not comply with the required shoreland setback under Section 16.07, may be expanded horizontally, landward or vertically provided that the expanded area meets the shoreland setback requirements per Section 16.07 and that all other provisions of the shoreland ordinance are met. A mitigation plan is not required solely for expansion under this paragraph but may be required per Section 16.11(7).

(5) RELOCATION OF NONCONFORMING PRINCIPAL STRUCTURE. (NR 115.05(1)(g)6.) An existing principal structure that was lawfully placed when constructed but that does not comply with the required shoreland setback per Section 16.07 may be relocated on the property provided all of the following requirements are met:

- (a) The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.
- (b) The existing principal structure is at least 35 feet from the ordinary high-water mark.
- (c) No portion of the relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.

- (d) The county determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for relocation that will result in compliance with the shoreland setback requirement per Section 16.07.
- (e) The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in Section 16.18 include enforceable obligations of the property owner to establish or maintain measures that the county determines are adequate to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the replaced or relocated structure being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the County Register of Deeds.
- (f) All other provisions of the shoreland ordinance shall be met.

16.15 MAINTENANCE, REPAIR, REPLACEMENT OR VERTICAL EXPANSION OF STRUCTURES THAT WERE AUTHORIZED BY VARIANCE (s. 59.692(1k)(a)2., 4, and (b), Wis. Stats.)

(1) A structure of which any part has been authorized to be located within the shoreland setback area by a variance granted before July 13, 2015 may be maintained, repaired, replaced, restored, rebuilt, or remodeled if the activity does not expand the footprint of the authorized structure. Additionally, the structure may be vertically expanded unless the vertical expansion would extend more than 35 feet above grade level. Counties may allow expansion of a structure beyond the existing footprint if the expansion is necessary to comply with applicable state or federal requirements.

16.16 MAINTENANCE, REPAIR, OR REPLACEMENT OF AN EXISTING EXEMPT STRUCTURE IN THE SHORELAND SETBACK AREA. (s. 59.692(1k)(a)2m, s 59.692(1k)(a)6, s 59.692(1k)(b), and s. 59.692(1k)(bm), Wis. Stats.

(1) All or any part of an existing exempt structure under 16.07(5) (s. 59.692(1n)(d) Wis. Stats.) may be maintained, repaired, replaced, restored, rebuilt, or remodeled provided that the activity does not expand the footprint and does not go beyond the three dimensional building envelope of the existing structure.

(2) An activity allowed under 16.16(1) shall be allowed to expand the footprint of the structure provided it is the minimal expansion necessary to comply with applicable state or federal requirements.

16.17 MAINTENANCE, REPAIR, OR REPLACEMENT OF A BUILDING OR STRUCTURE IN VIOLATION OF A COUNTY SHORELAND ZONING ORDINANCE THAT MAY NOT BE ENFORCED. (s. 59.692(1t) and s. 59.692(1k)(a)2.c Wis. Stats)

(1) An enforcement action may not commence against a person who owns a building or structure that is in violation of a shoreland zoning standard or this shoreland zoning ordinance if it has been in place for more than ten years.

(2) A building or structure that is in violation of a shoreland zoning standard or this shoreland zoning ordinance but has been in place for more than ten years may be maintained, repaired, replaced, restored, rebuilt, or remodeled if the activity does not expand the footprint of the authorized structure. However, the structure may not be vertically or laterally expanded.

16.18 MITIGATION. (s. 59.692(1v), Wis. Stats, NR 115.05 (1)(e)3., (g)5d., (g)6e.)

(1) PURPOSE. The purpose of mitigation is to establish and maintain measures adequate to offset the impacts of development on water quality, near-shore aquatic habitat, upland wildlife habitat, and natural scenic beauty.

(2) APPLICABILITY. When a permit requiring mitigation under Sections 16.11(7)(b), 16.14(3)(d), and 16.14(5)(e) is issued the property owner shall submit a complete permit application that is reviewed and approved by the county. The application shall include the following:

- (a) A site plan that describes the proposed mitigation measures.
 - 1. The site plan shall be designed and implemented to restore natural functions lost through development and human activities
 - 2. The mitigation measures shall be proportional in scope to the impacts on water quality, near shore aquatic habitat, upland wildlife habitat, and natural scenic beauty.
- (b) An implementation schedule and enforceable obligation on the property owner to establish and maintain the mitigation measures.
 - 1. The enforceable obligations shall be evidenced by an instrument recorded in the office of the Register of Deeds.

(3) MITIGATION OPTIONS:

(a) All mitigation shall be designed and installed as specified in the most current Pepin County Shoreland Mitigation Guide as approved by the Land Conservation & Planning Committee. A summary of mitigation requirements and options is provided below:

Mitigation points are required for developing property under the following conditions:

- Impervious surface coverage is greater than 15%, but less than 20% - 3 points
- Impervious surface coverage is from 20% to 30% - 5 points
- Lateral expansion of a non-conforming principal structure within the shoreland setback - 4 points
- Relocation of nonconforming principal structure within the shoreland setback area – 2 points

Opportunities to earn mitigation points include:

- Removal of a structure within the shoreland setback – up to 3 points
- Installation of a rain garden – up to 3 points
- Replace impervious surfaces with permeable pavement products – up to 3 points
- Maintain a compliant shoreland buffer – 2 points
- Increasing depth of an existing compliant shoreland buffer – 2 points for every 15 feet increase
- Reducing width of allowable view and access corridor(s) – 2 points for every 15 feet reduction
- Landscaping with native plants – 1 point per 30 plants
- Establishing aquatic plants in adjacent body of water – 1 point per 30 plants
- Lot size is larger than mandated minimum – 1 point per every 10,000 sq. ft.

- Install and maintain natural bank or stream stabilization measures – 3 points
- Increased shoreland setback of proposed principal structure – 1 point for every 15 feet increase
- Maintaining code compliant septic system on property – 1 point
- Any other mitigation that is deemed appropriate by the Zoning Administrator may be used to meet the mitigation requirement of Section 16.18.

16.19 LAND DIVISION REVIEW (NR 115.05(2))

(1) Pursuant to s. 236.45, Wis. Stats., all land divisions in shoreland areas which create 3 or more parcels or building sites of 5 acres each or less shall be reviewed within a 5-year period. All of the following factors shall be considered during such a review:

- (a) Hazards to the health, safety or welfare of future residents.
- (b) Proper relationship to adjoining areas.
- (c) Public access to navigable waters, as required by law.
- (d) Adequate stormwater drainage facilities.
- (e) Conformity to state law and administrative code provisions.

16.20 PLANNED UNIT DEVELOPMENT (PUD). NR 115.05(1)(a)(4)

(1) PURPOSE. The Planned Unit Development is intended to permit smaller non-riparian lots where the physical layout of the lots is so arranged as to better assure the control of pollution and preservation of ground cover than would be expected if the lots were developed with the normal lot sizes and setbacks and without special conditions placed upon the Planned Unit Development at the time of its approval.

(2) REQUIREMENTS FOR PLANNED UNIT DEVELOPMENT. A Planned Unit Development may be approved upon finding, after a public hearing, that all of the following facts exist:

- (a) AREA. The area proposed for the Planned Unit Development shall be at least 2 acres in size and have a minimum of 200 feet of frontage on a navigable water.
- (b) INDIVIDUAL LOTS.
 1. Riparian lots need to meet the requirements of Sections 16.04(2) and 16.04(3).
 2. Non-riparian lots may be less than the required minimums found in Sections 16.04(2) and 16.04(3). The zoning committee shall consider whether the proposed lot sizes and widths provide adequate building area after considerations of all setbacks and required impervious surface percentages are met as well as reviewing potential impacts to prevent pollution, erosion, and impacts to natural scenic beauty.
- (c) SHORELAND SETBACK. In exchange for the allowance of reduced non-riparian lots, the shoreland setback shall be greater than 75 feet from the ordinary high water mark. Recommended setbacks of 100-150 feet from the ordinary high water mark shall help offset the impacts of the reduced lots on habitat, water quality and natural scenic beauty. An increased shoreland setback shall be a condition of approval.

- (d). **VEGETATIVE BUFFERS.** The vegetative buffer on a lot within a proposed planned unit development shall be greater than 35 feet landward of the ordinary high water mark. Recommended buffers of 50 to 70 feet shall help offset the impacts of the reduced lots on habitat, water quality, and natural scenic beauty. An increased vegetative buffer shall be a condition of approval.
- (e) **IMPERVIOUS SURFACE REQUIREMENTS.** All impervious surface requirements shall be met. There is no relaxation for required impervious surface ratio maximums.

(3) APPLICATION AND PERMIT REQUIREMENTS.

- (a) An application for a conditional use permit shall be required.
- (b) Information on the total area of the lot, to-scale map showing the location and size of all proposed lots, any preserved open space, number and type of dwelling units, other buildings and other requested information to describe the project.
- (c) Proposed greater shoreland setback and greater vegetative buffer that offsets the development impacts for committee consideration.
- (d) Location of shoreland-wetlands.
- (e) A recorded plat or certified survey map is required prior to any construction activities.
- (f) No construction activities shall commence without the issuance of a regular zoning permit for each structure.

16.21 SANITARY REGULATIONS (NR 115.05(3))

(1) **PURPOSE.** Sanitary regulations for the protection of health and the preservation and enhancement of water quality shall be adopted.

(2) Where public water supply systems are not available, private well construction shall be required to conform to ch. NR 812, Wis. Adm. Code.

(3) Where a public sewage collection and treatment system is not available, design and construction of private on-site waste treatment system shall, prior to July 1, 1980, be required to comply with ch. SPS 383, Wis. Adm. Code, and after June 30, 1980 be governed by a private sewage system ordinance adopted by the county under s. 59.70(5), Wis. Stats.

16.22 ADMINISTRATIVE AND ENFORCEMENT PROVISIONS. (NR 115.05(4))

(1) In order to establish, maintain, implement, and enforce this shoreland zoning ordinance each of the following shall be required:

- (a) The appointment of zoning administrator and such additional staff as the workload may require.
- (b) The creation of a zoning agency as authorized by §59.69(2), Wis. Stats, a board of adjustments as authorized by §59.694, Wis. Stats., and a county planning agency as defined in §236.02 Wis. Stats, and required by §59.692(3) Wis. Stats.
- (c) A system of permits for establishing uses, land disturbances, new construction, development, reconstruction, structural alterations, or moving of buildings and structures, unless prohibited by §59.692(1k), Wis. Stats.

- (d) Regular inspection of permitted work in progress to ensure compliance of finished structures or completed land disturbance activities with the terms of the ordinance.
- (e) A variance procedure which authorizes the board of adjustment to grant such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of the shoreland zoning ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship as long as the granting of a variance does not have the effect of granting or increasing any use of property which is prohibited in that zoning district by the shoreland zoning ordinance.
- (f) A special exception permit procedure in which a permit states that a use permitted as a special exception may be established, expanded, or enlarged subject to any conditions placed on the authorization and the provisions of this ordinance. The exceptions should not be contradictory to the purposes of this ordinance as identified in 16.01(3).
- (g) The county shall keep a complete record of all proceedings before the board of adjustment, zoning committee, and/or planning agency.
- (h) Written notice to the appropriate department staff at least 10 days prior to any hearing on a proposed variance, special exception, administrative appeal for a map or text interpretation, and map or text amendment.
- (i) Submission of copies of all proposed land divisions to the appropriate department staff within 10 days after they are submitted to the county for review under section 16.19.
- (j) Submission to the appropriate department staff, within 10 days after grant or denial, copies of any decision on a variance, special exception, or conditional use permit, or appeal for a map or text interpretation, and any decision to amend a map or text of an ordinance.
- (k) Development and maintenance of an official map of all mapped zoning district boundaries, amendments, and recordings. The official map for the shoreland-wetland zoning is the Wisconsin Wetland Inventory found on the department's Surface Water Data Viewer.
- (l) The establishment of appropriate penalties for violations of various provisions of the ordinance, including forfeitures. Compliance with the ordinance shall be enforceable by appropriate forfeitures utilizing citation authority and by the use of injunctions to prevent or abate a violation as provided in Wis. Stats. 59.69(11).
- (m) Pursuing the prosecution of violations of the shoreland ordinance
- (n) Shoreland wetland zone (map amendment) procedures according to NR 115.04. Every petition for a shoreland-wetland map amendment filed with the county clerk shall be referred to the county zoning agency and shall follow section 16.03(6).

(2) PERMITS.

- (a) WHEN REQUIRED. Except where another section of this ordinance specifically exempts certain types of development from this requirement, a permit shall be obtained from the zoning administrator before any new development.
- (b) APPLICATION. An application for a permit shall be made to the zoning administrator upon forms furnished by the county and shall include for the purpose of proper

enforcement of these regulations, the following information:

1. Name and address of applicant and property owner.
2. Legal description of the property and type of proposed use.
3. A to scale drawing of the dimensions of the lot and location of all existing and proposed structures, sanitary systems, wetlands, and impervious surfaces relative to the lot lines, center line of abutting highways and the ordinary high-water mark of any abutting waterways.
4. A complete set of floor plans including room labels and elevation views of the proposed structure; elevation views shall include waterside and side-yard views
5. Impervious surface calculation worksheet
6. Plans for appropriate mitigation when required.
7. Payment of the appropriate fee.
8. Additional information required by the zoning administrator.

(c) EXPIRATION OF PERMIT. Zoning permits shall expire 12 months from date issued if no substantial work has commenced.

(d) CERTIFICATES OF COMPLIANCE

1. No land or building shall be occupied or used until a certificate of compliance is issued by the zoning administrator.
 - a. The certificate of compliance shall certify that the building or premises 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 of compliance shall be issued within 10 days after notification of the completion of the work specified in the zoning permit, if the building or premises or proposed use thereof conforms with all the provisions of this ordinance.

(3) RELAXATION OF STANDARDS FOR PERSONS WITH DISABILITIES. The Zoning Administrator may issue a special permit to provide reasonable accommodations from the standards of this ordinance as required by provisions of federal and state law. Such reasonable accommodations shall be the minimum necessary to be consistent with federal guidelines for accommodation of persons with disabilities and shall, where practicable, be terminated when the facility is no longer used by the disabled person. A person applying for a permit for construction under this section shall establish the nature and extent of the disability and that the accommodation requested is the minimum necessary to provide reasonable use of the facility. A deed restriction or affidavit for the reasonable accommodation shall be filed Register of Deeds.

(4) SPECIAL EXCEPTION PERMITS.

(a) APPLICATION FOR A SPECIAL EXCEPTION PERMIT. Any use listed as a special exception in this ordinance shall be permitted only after an application has been submitted to the zoning administrator and a special exception permit has been granted by

the Board of Adjustment. To secure information upon which to base its determination, Zoning staff may require the applicant to furnish, in addition to the information required for a zoning permit, the following information:

1. A plan of the area showing surface contours, soil types, ordinary high-water marks, ground water conditions, subsurface geology and vegetative cover.
2. Location of buildings, parking areas, traffic access, driveways, walkways, piers, open space and landscaping.
3. Plans of buildings, sewage disposal facilities, water supply systems and arrangement of operations.
4. Specifications for areas of proposed filling, grading, lagooning or dredging.
5. Other pertinent information necessary to determine if the proposed use meets the requirements of this ordinance.
6. Rationale for why the proposed special exception meets all of the special exception criteria listed in the ordinance

(b) NOTICE, PUBLIC HEARING AND DECISION. Before deciding whether to grant or deny an application for a special exception permit, the board of adjustment shall hold a public hearing. Notice of such public hearing, specifying the time, place and matters to come before the Board of Adjustment shall be given as a Class 2 notice under ch. 985, Wis. Stats. Such notice shall be provided to the appropriate office of the Department at least 10 days prior to the hearing. The Board of Adjustment shall state in writing the grounds for granting or denying a special exception permit.

(c) STANDARDS APPLICABLE TO ALL SPECIAL EXCEPTIONS. In deciding a special exception application, the Board of Adjustment shall evaluate the effect of the proposed use upon:

1. The maintenance of safe and healthful conditions.
2. The prevention and control of water pollution including sedimentation.
3. Compliance with local floodplain zoning ordinances and opportunity for damage to adjacent properties due to altered surface water drainage.
4. The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover.
5. The location of the site with respect to existing or future access roads.
6. The need of the proposed use for a shoreland location.
7. Its compatibility with uses on adjacent land.
8. The amount of liquid and solid wastes to be generated and the adequacy of the proposed disposal systems.
9. Location factors under which:
 - a. Domestic uses shall be generally preferred;
 - b. Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source; and
 - c. Use locations within an area tending to minimize the possibility of pollution

shall be preferred over use locations tending to increase that possibility. Additional standards such as parking, noise, etc. maybe refer to the applicable part of their ordinance.

(d) CONDITIONS ATTACHED TO SPECIAL EXCEPTIONS. Such conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of parking and signs; and type of construction. Upon consideration of the factors listed above, the Board of Adjustment shall attach such conditions, in addition to those required elsewhere in this ordinance, as are necessary to further the purposes of this ordinance. Violations of any of these conditions shall be deemed a violation of this ordinance.

In granting a special exception permit, the Board of Adjustment may not impose conditions which are more restrictive than any of the specific standards in the ordinance. Where the ordinance is silent as to the extent of restriction, the board may impose any reasonable permit conditions to affect the purpose of this ordinance.

(e) RECORDING. When a special exception permit is approved, an appropriate record shall be made of the land use and structures permitted. Such permit shall be applicable solely to the structures, use and property so described. A copy of any decision on a special exception permit shall be provided to the appropriate office of the Department within 10 days after it is granted or denied.

(f) REVOCAATION. Where the conditions of a special exception permit are violated, the special exception permit shall be revoked.

(5) VARIANCES.

(a) VARIANCE CRITERIA TO BE MET. The board of adjustment may grant upon appeal a variance from the standards of this ordinance where an applicant convincingly demonstrates that:

1. literal enforcement of the provisions of the ordinance will result in unnecessary hardship on the applicant;
2. the hardship is due to special conditions unique to the property;
3. the request is not contrary to the public interest; and
4. the request represents the minimum relief necessary to relieve unnecessary burdens.

(b) NOTICE, HEARING AND DECISION. (s. 59.694(6), Wis. Stats.) Before deciding on an application for a variance, the board of adjustment shall hold a public hearing. Notice of such hearing specifying the time, place and matters of concern, shall be given a Class 2 notice under ch. 985, Wis. Stats. Such notice shall be provided to the appropriate office of the Department at least 10 days prior to the hearing. The board shall state in writing the reasons for granting or refusing a variance and shall provide a copy of such decision to the appropriate Department office within 10 days of the decision.

(6) BOARD OF ADJUSTMENT. (s. 59.694 Wis. Stats.) The chair of the county board shall appoint a board of adjustment consisting of 5 members under s. 59.694, Wis. Stats. The county board shall adopt such rules for the conduct of the business of the board of adjustment as required by s. 59.694(3), Wis. Stats.

(a) POWERS AND DUTIES. (s. 59.694 Wis. Stats.)

1. The board of adjustment shall adopt such additional rules as it deems necessary and may exercise all of the powers conferred on such boards by s. 59.694, Wis. Stats.
2. It shall hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by an administrative official in the enforcement or administration of this ordinance.
3. It shall hear and decide applications for special exception permits pursuant to Section 16.22(4).
4. It may grant a variance from the dimensional standards of this ordinance pursuant to Section 16.22(5).
5. In granting a variance, the board may not impose conditions which are more restrictive than any of the specific standards in the ordinance. Where the ordinance is silent as to the extent of restriction, the board may impose any reasonable permit conditions to effect the purpose of this ordinance.

(b) APPEALS TO THE BOARD. (s. 59.694 Wis. Stats.) Appeals to the board of adjustment may be made by any person aggrieved or by an officer, department, board or bureau of the county affected by any decision of the zoning administrator or other administrative officer. Such appeal shall be made within 30 days, as provided by the rules of the board, by filing with the officer whose decision is in question, and with the board of adjustment, a notice of appeal specifying the reasons for the appeal. The zoning administrator or other officer whose decision is in question shall promptly transmit to the board all the papers constituting the record concerning the matter appealed.

(c) HEARING APPEALS AND APPLICATIONS FOR VARIANCES AND SPECIAL EXCEPTION PERMITS. (s. 59.694(6), Wis. Stats.)

1. The board of adjustment shall fix a reasonable time for a hearing on the appeal or application. The board shall give public notice thereof by publishing a Class 2 notice under ch. 985, Wis. Stats, specifying the date, time and place of the hearing and the matters to come before the board. Notice shall be mailed to the parties in interest. Written notice shall be given to the appropriate office of the Department at least 10 days prior to hearings on proposed shoreland variances, special exceptions, administrative appeals for map or text interpretations, and map or text amendment.
2. A decision regarding the appeal or application shall be made as soon as practical. Copies of all decisions on shoreland variances, special exceptions, administrative appeals for map or text interpretations, and map or text amendment shall be submitted to the appropriate office of the Department within 10 days after they are granted or denied.
3. The final disposition of an appeal or application to the board of adjustment shall be in the form of a written resolution or order signed by the chairman and

secretary of the board. The final disposition of an appeal or application to the board of adjustment shall be in the form of a written decision document signed by the chairman and the secretary of the board. The decision document shall either affirm, deny, vary or modify the appeal and list the specific reasons for the determination.

4. At the public hearing, any party may appear in person or by agent or by attorney.

(d) JUDICIAL REVIEW. If your variance request is denied, you may appeal the decision to Circuit Court as provided in Wisconsin Statute s. 59.694(10). Even if approved, a variance may be appealed to circuit court by an aggrieved party. All appeals must be filed within 30 days after the decision is filed with Pepin County Zoning. For this reason, you may want to delay construction of your project until the appeal period has expired.

(7) FEES. (ss. 59.69, 59.694, 59.696, 59.697, Wis. Stats.) The county board may, by resolution, adopt fees for the following:

- (a) Zoning permits.
- (b) Certificates of compliance.
- (c) Planned Unit Development reviews.
- (d) Public hearings.
- (e) Legal notice publications.
- (f) Special exception permits.
- (g) Variances.
- (h) Administrative appeals.
- (i) Other duties as determined by the county board.

(8) CHANGES AND AMENDMENTS. Ordinance amendments may be made by the county or upon petition of any party according to the provisions s. 59.69(5)(e) and 59.692, Wis. Stats., and Wis. Admin. Code Ch NR115. All amendments shall be certified by the Department in accordance with statute and code.

(9) ENFORCEMENT AND PENALTIES (NR 115.05(4)(j)) Any development, any building or structure constructed, moved or structurally altered, or any 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. The zoning administrator or the county zoning agency may refer violations to the Corporation Counsel, who shall expeditiously prosecute violations. Any person, firm, association or corporation who violates or refuses to comply with any of the provisions of this ordinance shall be subject to a forfeiture of not less than ten (\$10.00) dollars nor more than two hundred (\$200.00) dollars per offense, together with the taxable costs of action. Each day which the violation exists shall constitute a separate offense. Every violation of this ordinance is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated pursuant to s. 59.69(11), Wis. Stats.

- (a) Penalty: Any person, firm or corporation, including those doing work for others, who violates any of the provisions of this Ordinance shall, upon conviction of such violation, be subject to a penalty as described in §25.04 of the Pepin County Code of Ordinances.
- (b) Injunction: Any use or action which violates the provisions of this Ordinance shall be subject to a court injunction prohibiting such violation.
- (c) Responsibility for Compliance: It shall be the responsibility of the applicants as

well as their agent or other persons acting on their behalf to comply with the provisions of this Ordinance. Any person, firm or corporation, causing a violation or refusing to comply with any provision of this Ordinance will be notified in writing of such violation by the County Zoning Administrator or other zoning staff. Each day a violation exists shall constitute a distinct and separate violation of this ordinance and, as such, forfeitures shall apply accordingly. Every violation of this ordinance is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated pursuant to Section 59.69(11), Wisconsin Statutes.

- (d) **Suspension of Permit:** Whenever the Zoning Administrator or other zoning staff determines there are reasonable grounds for believing there is a violation of any provision of this Ordinance, the Zoning Administrator or other zoning staff give notice to the owner of record as hereinafter provided. Such notice shall be in writing and shall include a statement of the reason for the suspension of the permit. It shall allow 30 days for the performance of any act it requires. If work cannot be completed in the 30-day period, an extension may be granted if reason of hardship prevails and can be verified. Such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been sent by registered mail to owner's last known address or when the owner has been served by such notice by any method authorized by the laws of Wisconsin.

16.23 DEFINITIONS.

(1) **PURPOSE.** For the purpose of administering and enforcing this ordinance, the terms or words used herein shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; and 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.

(2) The following terms used in this ordinance mean:

- (a) "Access and viewing corridor" (NR 115.03(1d)) means a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.
- (b) "Accessory Structure" (s. 59.692(1)(e), Wis. Stats.) means a subordinate structure which is devoted to a use incidental to the principal use of the property. Accessory structures include, but are not limited to, a detached garage, shed, barn, boathouse, gazebo, patio, deck, swimming pool, hot tub, fence, retaining wall, driveway, parking lot, sidewalk, walkway, detached stairway and lift.
- (c) "Boathouse" (NR 115.03(1h)) 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 these structural parts.
- (d) "Building envelope" (NR 115.03(1p)) means the three dimensional space within which a structure is built.
- (e) "County zoning agency" (NR 115.03(2)) means that committee or commission created or designated by the county board under s. 59.69(2)(a), Wis. Stats, to act in all matters pertaining to county planning and zoning.
- (f) "Department" (NR 115.03(3)) means the Department of Natural Resources.

(g) "Development" means any artificial change to improved or unimproved real estate, including, but not limited to the construction of buildings, structures, or accessory structures; the construction of additions or substantial improvements to buildings, structures, or accessory structures; the placement of buildings or structures; mining, dredging, grading, paving, excavation, or drilling operations; and the storage, deposition, or extraction of materials.

(h) "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.

(i) "Existing development pattern" (NR 115.03(3m)) means that principal structures exist within 250 feet of a proposed principal structure in both directions along the shoreline.

(j) "Facility" means any property or equipment of a public utility, as defined in s. 196.01 (5), or a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, or power to its members only, that is used for the transmission, delivery, or furnishing of natural gas, heat, light, or power.

(k) "Floodplain" (NR 115.03(4)) means the land which has been or may be hereafter covered by flood water during the regional flood. The floodplain includes the floodway and the flood fringe as those terms are defined in ch. NR 116, Wis. Adm. Code.

(l) "Footprint" The land area covered by a structure at ground level measured on a horizontal plane. The footprint of a residence or building includes the horizontal plane bounded by the furthest exterior wall and eave if present, projected to natural grade. For structures without walls (decks, stairways, patios, carports) a single horizontal plane is bounded by the furthest portion of the structure projected to natural grade.

(m) "Generally accepted forestry management practices" (NR 1.25(2)(b)) means forestry management practices that promote sound management of a forest. Generally accepted forestry management practices include those practices contained in the most recent version of the department publication known as Wisconsin Forest Management Guidelines and identified as PUB FR-226.

(n) "Impervious surface" (NR 115.03(4g)) means an area that releases as runoff all or a majority of the precipitation that falls on it. "Impervious surface" excludes frozen soil but includes rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed, constructed, and maintained to be pervious. Roadways as defined in s. 340.01(54), Wis. Adm. Code or sidewalks as defined in s. 340.01(58), Wis. Adm. Code, are not considered impervious surfaces. "Roadway" means that portion of a highway between the regularly established curb lines or that portion which is improved, designed, or ordinarily used for vehicular travel, excluding the berm or shoulder. In a divided highway the term "roadway" refers to each roadway separately but not to all such roadways collectively. "Sidewalk" means that portion of a highway between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, constructed for use of pedestrians.

(o) "Lot" means a continuous parcel of land, not divided by a public right-of-way, and sufficient in size to meet the lot width and lot area provisions of this ordinance.

(p) "Lot area" means the area of a horizontal plane bounded by the front, side, and rear lot lines of a lot, but not including the area of any land below the ordinary high water mark of navigable waters.

(q) "Lot of record" means any lot, the description of which is properly recorded with the Register of Deeds, which at the time of its recordation complied with all applicable laws, ordinances, and regulations.

(r) "Maintenance and repair" (NR 115.05(1)(g)4.) includes such activities as interior remodeling, exterior remodeling, and the replacement or enhancement of plumbing or electrical systems, insulation, windows, doors, siding, or roof within the existing building envelope.

(s) "Mitigation" (NR 115.03(4r)) means balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.

(t) "Navigable waters" (NR 115.03(5)) 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. Under s. 281.31(2)(m), Wis. Stats, notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Wis. Stats, and ch. NR 115, Wis. Adm. Code, do not apply to lands adjacent to:

- (1) Farm drainage ditches where such lands are not adjacent to a natural navigable stream or river and such lands were not navigable streams before ditching; and
- (2) Artificially constructed drainage ditches, ponds or stormwater retention basins that are not hydrologically connected to a natural navigable water body

(u) "Ordinary high-water mark" (NR 115.03(6)) 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 characteristics.

(v) "Previously developed" means a lot or parcel that was developed with a structure legally placed upon it.

(w) "Regional Flood" (NR 115.03(7)) means a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics, once in every 100 years.

(x) "Routine maintenance of vegetation" (NR 115.03(7m)) means normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.

(y) "Shoreland" (NR 115.03(8)) 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.

(z) "Shoreland setback" also known as the "Shoreland setback area" in s. 59.692(1)(bn) means an area in a shoreland that is within a certain distance of the ordinary high-water mark in which the construction or placement of structures has been limited or prohibited under an ordinance enacted under section 59.692, Wis. Stats.

(aa) "Shoreland-wetland zoning district" (NR 115.03(9)) means a zoning district, created as a part of a county zoning ordinance, comprised of shorelands that are designated as wetlands on the Wisconsin wetland inventory as depicted on the Department of Natural Resources Surface Water Data Viewer.

(ab) "Special exception (conditional use)" means a use which is permitted by this ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the board of adjustment or, where appropriate, the planning and

zoning committee or county board.

(ac) "Structure" (s.59.692(1)(e), Stats.) means a principal structure or any accessory structure including a garage, shed, boathouse, sidewalk, stairway, walkway, patio, deck, retaining wall, porch or fire pit.

(ad) "Substandard lots" means any legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot area requirements for a new lot.

(ae) "Unnecessary hardship" (NR 115.03(11)) means that circumstance 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 ordinance.

(af) "Variance" means an authorization granted by the board of adjustment to construct, or alter a building or structure in a manner that deviates from the dimensional standards of this ordinance.

(ag) "Wetlands" (NR 115.03(13)) means those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

EFFECTIVE DATE. This ordinance becomes effective upon the passage by the County Board of Supervisors and publication by the County Clerk as required by § 59.14, Wis. Stats.

Date of Publication: January 23, 2025

RECOMMENDED BY THE PEPIN COUNTY LAND CONSERVATION, PLANNING AND EXTENSION COMMITTEE:

COMMITTEE MEMBERS VOTE

/s/ Kevin Kosok, Committee Vice Chair

In favor-5 Oppose-0 Absent-0 Abstain-0

COUNTY BOARD ACTION:

ADOPTED by the Pepin County Board of Supervisors on this 15th day of January 2025.

In favor – 11 Oppose – 0 Absent – 1 Abstain – 0

/s/ Audrey Bauer
County Clerk

/s/ Tom Milliren
County Board Chair