



## REPORT TO CITY PLAN COMMISSION

**Plan Commission Informal Public Hearing Meeting Date:** June 23, 2014

**Common Council Public Hearing Meeting Date:** July 16, 2014

**Item:** Zoning Ordinance Text Amendment – Creating Article XIX. Shoreland Zoning Ordinance and the Official Shoreland District Map of Chapter 23 of the Municipal Code.

**Case Manager:** Don Harp

### STAFF ANALYSIS

---

#### Background

On December 12, 2013 Governor Scott Walker signed into law 2013 Wisconsin Act 80 regarding local control of shoreland zoning into law. Shoreland means land up to 1,000 feet from a navigable lake or pond, or up to 300 feet from a navigable river or stream (or any defined floodplain area that extends beyond the shoreland), measured from the ordinary high water mark. The new law now provides incorporated municipalities the control and enforcement of shoreland regulations.

As a result, the Appleton Public Works Department has requested Article XIX. Shoreland Zoning Ordinance and the Official Shoreland District Map of Chapter 23 of the Municipal Code be scheduled for an Informal Public Hearing.

#### Prior Law – Application of County Shoreland Zoning to Incorporated Areas

If land was annexed after May 7, 1982 previous shoreland law required County zoning to continue to regulate development within the shoreland.

Within Outagamie, Calumet, and Winnebago Counties, regulation of shoreland area development within the City for areas annexed after May 7, 1982, meant a minimum building setback of 75 feet from the ordinary high water mark of a navigable stream, floodplain, or wetland. It also meant meeting county zoning lot sizes and other setback standards, often much more restrictive than City zoning development standards.

#### 2013 Wisconsin Act 80

Wisconsin Act 80 shifts control of shoreland zoning to incorporated municipalities if the municipality adopts its own shoreland zoning ordinance before July 1, 2014. If not adopted by then, County shoreland zoning continues to be enforced.

Furthermore, the new law provides minimum criteria that must be in the new local shoreland ordinance.

The criterion includes:

- A principal building within the shoreland must have a minimum setback of 50 feet from the ordinary high water mark (with the presumption the principal building cannot be built within a floodplain or wetland if the floodplain or wetland extends beyond 50 feet from the ordinary high water mark).
- An exception to the 50 foot setback if existing neighboring structures have a lesser setback. The new building setback may equal an average of the neighboring setbacks, but not less than 35 feet (this provision applies mostly to older development along lakes).
- A provision that existing vegetation must be maintained as a buffer 35 feet from the ordinary high mark, or require re-establishment of the vegetative buffer if removed; invasive species or dead or diseased vegetation can be removed.
- A portion of the vegetative buffer may be removed to create a viewing or access corridor no wider than 30 feet for every 100 feet of shoreline.

In addition, the new state law states that a city or village shoreland zoning ordinance does not apply to lands adjacent to artificially constructed ditches, ponds or stormwater basins if not hydrologically connected to the natural navigable water body.

**RECOMMENDATION PRENDING PUBLIC HEARING TESTIMONY:**

Create Article XIX. Shoreland Zoning and Official Shoreland District Map of Chapter 23 of the Municipal Code pursuant to the attached ordinance language and map, **BE APPROVED.**

**AN ORDINANCE CREATING ARTICLE XIX OF CHAPTER 23 OF THE MUNICIPAL CODE OF THE CITY OF APPLETON, RELATING TO SHORELAND ZONING.**

(City Plan Commission – XX-XX-XX (Date))

The Common Council of the City of Appleton does ordain as follows:

**Section 1:** That Article XIX of Chapter 23 of the Municipal Code of the City of Appleton, relating to shoreland zoning, is hereby created to read as follows:

**ARTICLE XIX. SHORELAND ZONING**

**Sec. 23-750. Statutory authorization.**

(a) This ordinance is adopted pursuant to the authorizations in §62.233 of the Wisconsin Statutes for villages and cities.

(b) The Appleton Common Council determines that uncontrolled development and use of the shorelands of this municipality would impair the public health, safety, convenience, general welfare and tax base.

**Sec. 23-751. Definitions.**

As used in this article of the zoning ordinance, the following terms shall have the meanings indicated:

*Navigable waters* means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under s. 281.31(2)(d) Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder shoreland ordinances required under s. 59.692, Stats., and this chapter do not apply to 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 nonnavigable streams before ditching or had no previous stream history; and
- (c) 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. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.

**Principal building** means a building which contains the primary use of the lot, as contrasted to accessory structure, building or use. In any residential zone a dwelling shall be deemed to be the principal building on the lot.

**Shorelands** has the meaning given in §59.692(1)(b) of the Wisconsin Statutes.

**Shoreland setback area** has the meaning given in §59.692(1)(bn).

**Shoreland zoning district** means a zoning district comprised of shorelands that are subject to the provisions of Sec. 23-752.

#### **Sec. 23-752. Jurisdiction.**

The jurisdiction of this chapter shall include all the Shorelands of the City which are:

(a) 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 Wisconsin Department of Natural Resources' publication "Surface Water Resources of Outagamie County" or shown on U.S. Geological Survey Quadrangle maps. If evidence to the contrary is presented, the Director of Public Works shall make the initial determination whether or not the lake, pond, or flowage in question is navigable under the laws of the State. The Director of Public Works shall also make the initial determination of the location of the Ordinary High Water Mark.

(b) Within 300 feet of the ordinary high water mark of navigable rivers or streams. For the purposes of this subsection, rivers and streams in the City shall be presumed to be navigable if they are designated under one of the following categories on the Official Shoreland Zoning District Map:

- (1) Navigable Stream
- (2) Probable Navigable Stream
- (3) Probable Non-Navigable Stream

If evidence is presented that the stream is Non-Navigable, then the Director of Public Works shall make the initial determination of whether or not the stream is navigable under the laws of the State. The Director of Public Works shall also make the initial determination of the location of the Ordinary High Water Mark.

#### **Sec. 23.753. Shoreland zoning district boundaries.**

The Official Shoreland Zoning District Map is hereby adopted and made part of this chapter. The boundaries of the Shorelands shall be depicted on this map as defined in Section 23-751. Copies of the map shall be available for public viewing in the Department of Public Works.

**Sec. 23-754. Requirements.**

(a) There shall be established a shoreland setback area of at least fifty (50) feet from the ordinary high water mark (this could be greater than fifty (50) feet).

(b) The principal building may be constructed or placed within the shoreland area if all of the following apply:

(1) The principal building is constructed or placed on a lot or parcel of land that is immediately adjacent on each side to a lot or parcel of land containing a principal building.

(2) The principal building is constructed or placed within a distance equal to the average setback of the principal building on the adjacent lots or thirty-five (35) feet from the ordinary high water mark, whichever distance is greater.

(c) A person who owns shoreland property that contains vegetation, shall maintain that vegetation in a vegetative buffer zone along the entire shoreline of the property and extending thirty-five (35) inland from the ordinary high water mark of a navigable water, except as provided in subsection (2).

(d) If the vegetation in a vegetative buffer zone contains invasive species or dead or diseased vegetation the owner of the shoreland property may remove the vegetation, except that if the owner removes all of the vegetation in the vegetative buffer zone, the owner shall establish a vegetative buffer zone with new vegetation.

(e) The person who is required to maintain or establish a vegetative buffer zone under paragraph (c) above, may remove all of the vegetation in a part of that zone in order to establish a viewing or access corridor that is no more than thirty (30) feet wide for every one hundred (100) feet of shoreland frontage and that extends no more than thirty-five (35) feet inland from the ordinary high water mark.

**Sec. 23-755. Zoning agency.**

(a) The Director of Public Works shall:

(1) Review and advise the Governing body on all proposed amendments to this article, maps and text.

(b) This Director of Public Works shall not

(1) Grant variances to the terms of the ordinance in place of action by the Board of Appeals; or

(2) Amend the text or zoning maps in place of official action by the governing body.

### **Sec. 23-756. Interpretation.**

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements and shall be liberally construed in favor of the city and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this chapter is required by a standard in Wis. Admin. Code ch. NR 115 and where the meaning of the chapter provision is unclear, the provision shall be interpreted in light of the Wis. Admin. Code ch. NR 115 standards in effect on the date of the adoption of the ordinance from which this chapter is derived or in effect on the date of the most recent text amendment to this chapter.

### **23-757. Rules for interpretation of district boundaries.**

Where uncertainty exists as to the boundary of the Shoreland District as shown on the Official Zoning Map, the following rules shall apply:

(a) Boundaries indicated as approximately following the centerlines of streets, highways or alleys shall be construed to follow such centerlines;

(b) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;

(c) Boundaries indicated as approximately following City limits shall be construed as following such City limits;

(d) Boundaries indicated as following railroad lines shall be construed to be the centerline of the railroad right-of-way;

(e) Boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such centerlines;

(f) Boundaries indicated as parallel to or extensions of features indicated in subsections (a) through (e) above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;

(g) Boundaries indicated as dividing a lot or plot of land shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;

(h) Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections (a) through (g) above, the Director of Public Works shall interpret the district boundaries.

### **23-758. Applicability.**

This article does not apply to lands annexed to the City prior to May 7, 1982.

**Section 2:** This ordinance shall be in full force and effect from and after its passage and publication.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Timothy M. Hanna, Mayor  
J:\Attorney\WORD\Jamie\Ordinances\2014 Ords\Shoreland Zoning.doc

\_\_\_\_\_  
Wendy Helgeson, Deputy City Clerk

# City of Appleton Official Shoreland Zoning District Map

## Stream Status

-  Navigable Stream (Shoreland Zoning)
-  Non-Navigable Stream (No Shoreland Zoning)
-  Probably Navigable (Shoreland Zoning)
-  Probably Non-Navigable (Shoreland Zoning)
-  USGS Quad Drainageway
-  River
-  1000' Pond Buffer
-  300' Stream Buffer
-  Shoreland Zoning Parcels
-  Annexation After May 7, 1982
-  City Limits

