



FRANKLIN CITY HALL CHAMBERS
9229 W. LOOMIS ROAD
FRANKLIN, WISCONSIN

PLAN COMMISSION MEETING AGENDA
Thursday, August 3, 2023 at 7:00 P.M.

- A. **Call to Order and Roll Call**
- B. **Approval of Minutes**
 - 1. Approval of regular meeting of July 20, 2023.
- C. **Public Hearing Business Matters**
(Action may be taken on all matters following the respective Public Hearing thereon)

None.
- D. **Business Matters**
 - 1. **Unified Development Ordinance (UDO) Rewrite Task Force.** Session with project consultant Houseal Lavigne Associates and Birchline Planning, LLC regarding Article 7: Natural Resource Standards.
- E. Adjournment

The YouTube channel "City of Franklin WI" will be live streaming the Plan Commission meeting so that the public will be able to watch and listen to the meeting. <https://www.youtube.com/c/CityofFranklinWIGov>. Any question regarding items on this agenda may be directed to the Department of City Development's office at 414-425-4024, Monday through Friday, 8:30 AM – 5:00 PM.

Notice is given that a quorum of other governmental bodies may be present at this meeting to present, discuss and/or gather information about a subject over which they have decision-making responsibility, although they will not take formal action thereto at this meeting.

Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information, contact the City Clerk's office at (414) 425-7500.

REMINDERS:

Next Regular Plan Commission Meeting: August 17, 2023.

City of Franklin
Plan Commission Meeting
July 20, 2023
Minutes

unapproved

A. Call to Order and Roll Call

Acting Chair Alderwoman Courtney Day called the July 20, 2023 regular Plan Commission meeting to order at 7:00 p.m. in the Council Chambers at Franklin City Hall, 9229 West Loomis Road, Franklin, Wisconsin.

Present were acting Chair Alderwoman Courtney Day, City Engineer Glen Morrow and Commissioners Kevin Haley and Patrick Léon. Also present were Associate Planner Marion Ecks and City Attorney Jesse Wesolowski. Absent were Mayor John Nelson and Commissioner Patricia Hogan.

B. Approval of Minutes – Regular Meeting of June 22, 2023

Commissioner Léon moved and Commissioner Haley seconded a motion to approve the June 22, 2023 meeting minutes. On voice vote, all voted 'aye'; motion carried (4-0-1).

C. Public Hearing Business Matters

1. DUNKIN' DONUTS AND BASKIN-ROBBINS RESTAURANT WITH DRIVE-THROUGH DEVELOPMENT. Special Use for a Dunkin' Donuts and Baskin-Robbins restaurant in a single building with a drive-through (the drive-through requires a Special Use approval), parking, and shared stormwater facilities with the adjoining Sendik's, at the property located at 5444 West Rawson Avenue (Lot 2 of a Certified Survey Map to divide this parcel into three lots, which was recorded on May 12, 2023), such property being zoned M-1 Limited Industrial District and OL-2 General Business Overlay District.

Applicant: Kardo Rasha, Kardo Group, Devo Properties/Rawson LLC, property owner,
Subject property: Approximately 5444 W. Rawson Avenue.

Associate Planner Marion Ecks presented this item and stated that this project is a permitted use within the M-1 zoning district and drive throughs require Special Use approval. The applicant is required to respond to Ordinances regarding what type of impact this development might have with surrounding developments. Planning is recommending approval without any specific conditions.

Steven Kolber of Kolbrook Design, Inc. represented the applicant.

No public comments

City Engineer Morrow expressed concern regarding the store front and glazing system and asked for nicer features such as masonry, as opposed to aluminum.

Associate Planner Ecks commented this item is specific to the Special Use and Site Plan will come to Plan Commission and the discussion around architecture will be held during site plan review.

Commissioner Leon noted that when Jilly's Car Wash Special Use was at Plan Commission neighbors to the North had questions and concerns and asked have we received any questions or comments from neighboring properties for this particular proposal.

Associate Planner Ecks responded the City has not received any new comments or requests related to this property. This property does not share a property line with any residential property.

Commissioner Léon moved and Commissioner Haley seconded a motion to recommend approval of a Resolution imposing conditions and restrictions for the approval of a Special Use for a Dunkin' Donuts and Baskin-Robbins restaurant in a single building, with a drive-through which wraps the building, upon property located at 5444 West Rawson Avenue. On voice vote, all voted 'aye'; motion carried (4-0-1).

- 2. JAMES W. JOSKO AND SUSAN N. JOSKO SINGLE-FAMILY RESIDENCE INGROUND POOL INSTALLATION.** Area Exception from Table 15-3.0203 of the Unified Development Ordinance to allow for the installation of an inground pool exceeding the 15 percent maximum lot coverage standard by approximately 2.3 percent for property located at 4351 West Hunting Park Drive, zoned R-3 Suburban/Estate Single-Family Residence District; Tax Key No. 834-0025-006.

Applicant: James W. Josko and Susan N. Josko; 4351 West Hunting Park Drive.

Associate Planner Marion Ecks presented this item explaining the request for an increase over the standard allowance of lot coverage. The applicant is proposing a lot coverage of 17.95 percent that is just under the maximum for an increase for an Area Exception. Staff is recommending approval, herein this item will go before the Board of Zoning and Building Appeals.

Applicant James Josko stated he hopes the Commission grants approval for the proposed pool and he believes that it meets all rules and regulations in order to do so. The applicant also expressed they have lived in Franklin for 20 years and are now downsizing with a goal to install a pool which would be used by their children and grandchildren.

No public comments during the public hearing.

Commissioner Léon asked for confirmation if this item will go to the next Board of Zoning and Building Appeals meeting which is scheduled for August 16, 2023. Staff will confirm.

Commissioner Léon moved and commissioner Haley seconded a motion to recommend approval of an application for an Area Exception to allow for a maximum lot coverage of 17.3 percent (4,428 square feet) [application requests an Area Exception from table 15-3.0203 of the Unified Development Ordinance to exceed the R-3 Suburban/Estate Single-Family Residence District maximum lot coverage standard of 15 percent (3,822 square feet) by approximately 2.3 percent] to allow for the installation of an inground pool, for property located at 4351 West Hunting Park Drive. On voice vote, all voted 'aye'; motion carried (4-0-1).

D. Business Matters

- 1. A HAPPY THOUGHT INDEED MARKET MANAGEMENT INDOOR RE:CRAFT AND RELIC MARKET, A TICKETED SHOPPING EVENT AT THE MILWAUKEE COUNTY SPORTS COMPLEX** to allow for a Temporary Use for a two-day indoor event at 6000 West Ryan Road, for three periods. Fall Market held November 11-12, 2023, Winter Market held January 27-28, 2024 and Spring Market held April 27-28, 2024.

Applicant: Susan M. Smith

Subject property: 6000 West Ryan Road

Associate Planner Marion Ecks presented this item and elaborated on the details of the event and expressed this is the fourth time it has come before this Commission and has been previously approved.

No comments from the Commission.

Commissioner Léon moved and Commissioner Haley seconded a motion to adopt a Resolution imposing conditions and restrictions for the approval of a Temporary Use for a Re:craft and Relic market ticketed, curated shopping event for property located at 6000 West Ryan Road (Milwaukee County Sports Complex). On voice vote, all voted 'aye'; motion carried (4-0-1).

E. Adjournment

Commissioner Léon moved and Commissioner Haley seconded to adjourn the meeting at 7:23 p.m. On voice vote, all voted 'aye'; motion carried (4-0-1).



Reorganized & Amended Natural Resource Protection Standards

CURRENT SECTIONS of the UDO incorporated into the draft of Article 7

- 15-3.0500 – 3.0502 Calculation of the Area of Natural Resources to Be Protected
- 15-4.0101 Natural Resource Protection Standards
- 15-4.0102 Natural Resource Features Determination
- 15-4.0103 Natural Resource Features Mitigation & Mitigation Calculation Worksheet
- 15-7.0201 Natural Resource Protection Plan Requirements
- 15-7.0506 Natural Resource Protection Plan Required
- 15-9.0100 Applications for a Special Exception to stream, shore buffer, navigable water-related, wetland, wetland buffer, and wetland setback provisions, and for improvements or enhancements to a natural resource feature
- 15-10.0208 Special Exceptions to Stream, Shore Buffer, Navigable Water-Related, Wetland, Wetland Buffer and Wetland Setback Provisions, and Improvements or Enhancements to a Natural Resource Feature

ADDITIONAL GUIDANCE and STANDARDS:

NEW Stand Alone Shoreland Wetland Ordinance

NEW City of Franklin Natural Resource Mitigation Guidance (including mitigation worksheet)

'RELOCATED' City of Franklin Site Intensity Calculation Worksheet (will be within UDO)

In the draft, items that refer to sections of the UDO are shown in **[bracket highlight]**. Final references will be inserted once the full UDO draft has been reviewed by the City.



Article 7. Natural Resource Protection Standards

15-07.01 Natural Resource Protection Standards Established

A) Establishment

The Natural Resource Protection Standards set forth in this Article, and requirements for preparation and approval of a Natural Resource Protection Plan, are established herein. Guidance documents including but not limited to application forms and checklists are incorporated into this Article 7 by reference.

B) Purpose and Intent

- 1) **Protection of Natural Resource Features.** It is the purpose of this Article to ensure the protection and enhancement of specific **Natural Resource Features**, as defined in this Ordinance, within the City of Franklin as the City develops. This Article further recognizes that landforms, parcel size and shape, and natural resource features vary from site to site and that development regulations must take into account these variations.
- 2) **Natural Resource Protection Plan.** It is the further purpose of this Article to set forth requirements and standards for preparation of a Natural Resource Protection Plan by any applicant for development on a parcel within the City of Franklin containing **Natural Resource Features**, as defined herein.
- 3) **Surface Water Protection Standards.** It is the further purpose of this Article to provide for the protection and improvement of surface waters and wetlands in the City of Franklin. It is the intent of this Article to lead to the protection, establishment and maintenance of natural areas, topography and vegetation along the City's surface waters in order to reduce hazards from flooding, prevent erosion, and maintain the natural functions of surface waters and wetlands. It is the further intent of these standards to limit the extent of land disturbance and creation of new impervious surfaces within or adjacent to surface waters and wetlands, and to minimize, as feasible, the impact of existing culverts, driveways and roads, drainage features, and impervious surfaces thereon.
- 4) **Mitigation.** The City of Franklin recognizes that, under certain circumstances, the orderly development of the City and the provision of essential services may necessitate limited impacts on protected Natural Resource Features as defined in this Ordinance. The intent of this Article is not to provide for or allow mitigation under all circumstances, but rather to set specific standards to be applied only under certain circumstances when the extent of or the nature of the Natural Resource Features on a site, when balanced against the benefit of the proposed development to the



community, considering practicable alternatives available for the development, render strict application of these standards impractical or counter-productive, to allow for mitigation approach, so that the functions and values of Natural Resource Features in the City will be preserved or enhanced.

C) Applicability

Except as specifically provided in this Subsection, all development in the City of Franklin occurring on a parcel or parcels where Natural Resource Features are present shall comply with the standards set forth in this Article.

- 1) **Disturbance of Protected Areas Prohibited.** Except where provided in this Article, any area containing Natural Resource Features required to be protected under this Article (hereinafter a “Protected Area”) shall remain undisturbed and in a natural state except where impact, modification, or mitigation is specifically allowed or approved.
- 2) **Tree and vegetation cutting, clearing, and removal.**
 - (a) The clearing, cutting, or removal of trees or vegetation within a Protected Area as defined in this Article is subject to these natural resource protection standards and to the City’s [TREE STANDARDS REF]. Application for cutting, clearing, or removal of vegetation and trees in an area of protected features shall require authorization under the procedures this Article to ensure that required protection levels are met.
 - (b) Removal of dead, diseased, or invasive species from a woodland or forest. Notwithstanding any provision of this Article, the clearing and removal of dead or diseased trees, and the removal of invasive species listed as “prohibited,” “prohibited/restricted,” or “restricted” by the Wisconsin Department of Natural Resources, pursuant to NR 40, shall be permitted within any woodland or forest area only upon issuance of a Zoning Permit from the City of Franklin.
 - (c) The City Forester may be consulted in the issuance of any such permits.
 - (d) The City Forester may condition or limit the removal of dead or diseased trees and the removal of invasive species in accordance with best practices for forest and invasive species management.
- 3) **Construction of Public Streets, Sidewalks, and Trails.** Impacts to Natural Resource Features from the construction of public streets, sidewalks, or trails shall be permitted subject to the following limitations and conditions:
 - (a) The City Forester has inspected the plan and the site, including review of trees or wooded areas to be cut or disturbed, and has made a positive recommendation



- as to the plan's compatibility with the continued health of forest resources and trees within the City of Franklin.
- (b) Crossings of wetlands, surface waters, and associated buffer areas are designed to minimize the distance and extent of disturbance, with crossings designed as close to a ninety-degree (90°) angle as is practicable for the particular site and segment.
 - (c) The City Engineer has inspected the plan and has made a positive recommendation as to the plan's compatibility with City engineering standards for surface water crossings.
 - (d) Prior to commencement of construction, all other required governmental permits and approvals related to surface waters and wetlands have been issued, including but not limited to those required by the Wisconsin Department of Natural Resources and United States Army Corps of Engineers.
 - (e) Any areas of construction-related disturbance within a Protected Area shall be restored pursuant to Section [RESTORATION] of this Article 7 immediately following construction.
- 4) **Single- and two-family residential development on existing lots exempted.** The provisions of this Article shall not apply to the construction of single-family and two-family residential development located on non-divisible existing lots of record within existing platted Subdivisions (with an approved Final Plat), Certified Survey Maps, and Condominiums existing as of August 1, 1998, or for which a Natural Resource Protection Plan was filed on or before August 1, 1998.
- 5) **Applicability to Floodplain/Floodway Lands.** Floodplains and floodways as defined and regulated in Division 15-8 of this Ordinance shall not constitute a separate category of Natural Resource Features for purposes of determining required mitigation under this Article.
- 6) **Essential Services and Associated Easements Exempted.** The standards in this Article shall not be applicable to essential services and easements associated therewith, as defined in [former § 15-11.0103] of this Ordinance. However, any areas of construction-related disturbance within a Protected Area shall be restored to the restoration standards of [RESTORATION] of this Article immediately following the construction of the essential service(s).
- 7) **Exceptions for Accessory Uses and Site Modifications.**



- (a) The modification of approved buildings, sites, or structures, and the addition of new accessory structures, shall not require review for Natural Resource Protection impacts provided all of the following conditions are met:
 - (i) The total impervious surface area on the parcel is not increased by more than 50% or 2,500 square feet, whichever is smaller.
 - (ii) Any new or modified impervious surface area is located at least one hundred feet (100') at its closest point from the boundary of any Protected Area as defined in the applicable Natural Resource Protection Plan.
- (b) Notwithstanding the provisions of (a), where the Plan Commission or City Engineer (as applicable) determines that the modification or addition is likely to result in impacts to the Protected Area or will be inconsistent with the conditions of the Natural Resource Protection Plan, a new or modified Natural Resource Protection Plan may be required to be prepared. Any such determination may be appealed under the provisions of [Appeals procedure] of this Ordinance.

NOTE: Sections 8 and 9 are legacy requirements that applied to past survey maps, which (presumably) contain the language that would trigger a requirement for an NRPP if the underlying site is modified. **Request City Attorney to consider whether these sections are necessary or could be addressed with a footnote to the UDO.

8) Institutional Properties Divided by Public Street or Utility Extensions.

- (a) A Natural Resource Protection Plan shall not be required with an application for certified survey map approval where a single property zoned I-1 Institutional District is divided as a result of a public work of improvement for street extension purposes, with related public sanitary sewer and water work for which special assessment was made, into two or more parcels through the property fee acquisition by the City for the extension of the public street. The foregoing exclusions from Natural Resource Protection Plan submission requirements for certified survey map applications shall only be available upon the conditions that:
 - (i) in lieu of the Plan submission requirement, the certified survey map application shall be accompanied by the "best available information" as to the existence of any natural resource features, such as existing topographical maps, wetland inventories, and other such inventories as may be available; and
 - (ii) that a Natural Resource Protection Plan must be submitted upon any further development of any portion of the mapped property.
- (b) A Natural Resource Protection Plan shall also not be required with an application for certified survey map approval where lots are being created from a larger



surrounding parcel, with the larger in area in relation to the lots created remnant parcel being vacant, or already having being developed by the existence of a principal structure and not being the subject of current further development application, and with the only natural resources within the map area being upon the remnant parcel and being more than 500 feet away from the lots being created. The foregoing exclusion from Natural Resource Protection Plan submission requirement for certified survey map applications shall only be available upon the conditions that

- (i) in lieu of the Natural Resource Protection Plan submission requirement, the Certified Survey Map application shall show upon its face the existence of any natural resource features, as identified in § 15-4.0102, located on the parcels of the Certified Survey Map based upon the "best available" information;
- (ii) that a Natural Resource Protection Plan must be submitted upon any further development of the "remnant" parcel; and
- (iii) the following note shall be placed upon the face of such Certified Survey Map: "The Natural Resource Features identified herein are not based upon field surveys. In the event of further land division or development of a parcel herein with any such Natural Resource Feature, a complete NRPP with field surveys is required for said parcel" For the purposes of this section, the Zoning Administrator shall not require that the "best available" information be a "first source" of information, as identified in § 15-4.0102A., B., C., D.

9) Lands Adjoining Tax Increment Districts. A Natural Resource Protection Plan (and related requirements, such as the submission of conservation easements, etc.) shall not be required with an application for certified survey map approval for the purpose of providing additional land to an adjoining tax incremental district mixed-use development including industrial and commercial uses, where lots are being created from a parcel or parcels, upon which there exists an established residential dwelling building use, such established use parcel or parcels not being the subject of current further development application, for such remaining established residential dwelling building use parcel or parcels only, provided with regard to such remaining established residential dwelling building use parcel or parcels that:

- (a) in lieu of the Natural Resource Protection Plan submission requirement, the Certified Survey Map application shall show upon its face the existence of any natural resource features, as identified in § 15-4.0102, located on the parcels of the Certified Survey Map based upon the "best available" information;
- (b) that a Natural Resource Protection Plan must be submitted upon any further development of the "remaining established residential dwelling building use parcel or parcels"; and



(c) the following note shall be placed upon the face of such Certified Survey Map:
"The Natural Resource Features identified herein upon lot[s] [number[s]] are not based upon field surveys. In the event of further land division or development of lot[s] [number[s]] with any such Natural Resource Feature, a complete NRPP with field surveys is required for said parcel."

D) Enforcement.

Any person or entity violating any provision of this Article 7 and any property owner upon whose property there exists or occurs a violation of this Article 7, shall be subject to the penalty and remedy provisions of [penalty and remedy] of this Ordinance. In addition, the provisions of this Article 7 may be enforced by the City by way of all other legal and equitable remedies and the undertaking by the City to cure any violations or complete any plans, work or measures in furtherance thereof, with the costs of such undertaking to be assessed against the property owner and entered upon the tax roll pursuant to the procedures for a special charge under § 66.0627, Wis. Stats. Any violation of this Article 7 is hereby declared to be a public nuisance.

15-07.02 **Natural Resource Features** Determination

A) Protected **Natural Resource Features**. The following natural resources are protected under the provisions of this Article 7.

- 1) **Steep Slopes**. Steep slopes shall be as defined in Division [DEFINITIONS] of this Ordinance.
- 2) **Woodlands**. Woodlands shall be as defined in [DEFINITIONS] of this Ordinance.
- 3) **Surface Waters**. Surface waters shall include lakes, ponds, and streams. Lakes and ponds are to be determined through the use of the definitions of "Lake" and "Pond" as set forth in Division 15-11.0100 of this Ordinance. **Streams** shall be as defined in [DEFINITIONS] of this Ordinance or as determined by a field survey.
- 4) **Surface Water and Wetland Buffers**.
 - (a) Surface water and wetland buffers, as defined in [DEFINITIONS] of this Ordinance, shall be established or maintained as demarcated, vegetated, and minimally disturbed land areas within the area extending horizontally from the ordinary high water mark of lakes and ponds, from the centerline of streams, or from the boundary of wetlands as determined under subsection (5) below, with the following widths: **NOTE: These widths are proposed & open to policy direction**



ZONING DISTRICT	BUFFER WIDTH
Residential Districts: RC-1, R-1, R-2	50 feet
Residential Districts: R-MF, V-R	30 feet
Non-Residential Districts	30 feet
Area of parcel at time of application:	
<1 acre	10 feet
1 acre – 2 acres	20 feet
2 acres – 3 acres	25 feet
More than 3 acres	30 feet

- (b) Land Combination. In an application for land combination or certified survey map, the proposed total area of all parcels to be combined shall determine the required width of the buffer.
- (c) Notwithstanding subsection (a) above, surface water and wetland buffers shall be applied to the area of land adjacent to any stream segment that is fully and permanently enclosed within a drainage structure, such as a pipe or culvert, as of the Effective Date of this Ordinance.
- 5) **Wetlands and Shoreland Wetlands.** Wetlands and shoreland wetlands as defined in [NEW SHORELAND WETLAND] of the Franklin Municipal Code.
- 6) **Primary and Secondary Environmental Corridors and Isolated Natural Resource Areas Defined by SEWRPC.** Those areas on the [CITY OF FRANKLIN MAP] of areas designated by the Southeastern Wisconsin Regional Planning Commission (SEWRPC) as Primary Environmental Corridors, Secondary Environmental Corridors, or Isolated Natural Resource Areas shall be Protected Areas for purposes of this Article. The City of Franklin Map, as most recently amended, shall be used to determine the extent of such areas to be protected under the standards of this Article 7.
- B) Measurement of Natural Resource Features and Protected Area.
- 1) The area containing one or more Natural Resource Features shall be delineated and its total area calculated in acres and square feet to establish the area and location of the Protected Area. Any Protected Area containing two or more Natural Resource Features shall indicate which resources are present within the Protected Area
 - 2) All land area within a proposed development, Certified Survey Map, Subdivision Plat, or Condominium consisting of the natural resource features defined in this Ordinance shall be accurately measured using the following sources, scales, and approaches.



- 3) Measurement of Specific Natural Resource Features
- (a) **Steep slopes.** Steep slopes are to be determined through the use of the following sources and/or methods in the order indicated below. If the first source is considered inaccurate or inappropriate, as determined by the Zoning Administrator, the second source shall be used:
- (i) Topographic survey prepared by and certified by a Wisconsin registered land surveyor at a contour interval of not less than two feet.
 - (ii) Large scale one inch equals 100 feet City of Franklin topographic maps.

NOTE: The definition of “woodland” includes but is not limited to “forests” as defined in Wisconsin law. A definition of “woodland” for protection needs to be finalized with the City Forester, staff, and task force.

- (b) **Woodland.** The determination of woodland boundaries shall be based on the sources in the order indicated below. If the first source is considered inaccurate or inappropriate, as determined by the Zoning Administrator, the succeeding source shall be used:
- (i) For all woodland areas within 100 linear feet of an area to be disturbed on a site, and for all trees (other than diseased, dead, or invasive species) greater than eight inches diameter at breast height lying outside a natural resource area, a field survey of trees compiled by a registered land surveyor based on identification by a landscape architect, forester, arborist, ecologist, or botanist.
 - (ii) For all areas planned to be left undisturbed on a site during construction and upon completion, which are more than 100 linear feet from an area of disturbance, the boundary of the woodland or forested area.
 - (iii) One inch equals 400 feet aerial photographs prepared by the Southeastern Wisconsin Regional Planning Commission (SEWRPC) and available from SEWRPC (most recent date only).
- (c) **Lakes, Ponds, and Streams.** The ordinary high water mark of lakes and ponds, and the centerline of streams, shall be determined through the use of the definitions of "Lake," "Pond," and "Stream" as set forth in [DEFINITIONS] of this Ordinance and the sources in the order indicated below. If the first source is considered inaccurate or inappropriate, as determined by the Zoning Administrator, the succeeding source shall be used:
- (i) Topographic survey prepared by and certified by a Wisconsin registered land surveyor at a contour interval of not less than two feet.
 - (ii) Large scale one inch equals 100 feet City of Franklin topographic maps.



- (iii) U.S.G.S. 7.5-minute topographic quadrangle maps.
- (d) Wetlands, Shoreland Wetlands, and Wetland Buffers.** Wetlands shall be delineated in accordance with Chapter NR 103, Wis. Adm. Code; Chapter NR352, Wis. Adm. Code; and the 1987 US Army Corps of Engineers Wetland Delineation Manual.
 - (i) The area of wetlands, shoreland wetlands, and wetland buffers (in square feet and acres) shall be measured and graphically delineated on the "Natural Resource Protection Plan based on a delineation prepared in accordance with the Wisconsin DNR 2019 Wetland Screening and Delineation Procedures (https://dnr.wisconsin.gov/sites/default/files/topic/Wetlands/2019_Wetland_Screening_and_Delineation_Procedures.pdf)
 - (ii) Wetland and wetland buffer delineation shall be prepared by a consultant certified as a Wisconsin DNR Assured Delineator (<https://dnr.wisconsin.gov/topic/Wetlands/assurance.html#s1>). Submittal of a certification consistent with Wisconsin DNR standards shall be required with the submittal.
 - (iii) Duration of delineation.
 - (i) No delineation shall be valid for any purpose required under this Article after the expiration of five years from the date the delineation was performed.
 - (ii) While delineations performed within the five years preceding the submission may be submitted for purposes of this Article, a current re-delineation may be required where there exists extrinsic evidence of or cause to reasonably believe that such original delineation is incorrect or that the wetland boundary has changed substantially, considering the size and quality of the wetland and the circumstances of any proposed development impact upon the wetland, since the original delineation.
 - (iii) Notwithstanding the foregoing, surface water buffers shall not be required to be designated or protected for artificial or degraded wetlands as defined under subsections (D)(1) and (D)(2) below.
- (e) Surface Water Buffers.**
 - (i) Surface water buffers shall be measured at a consistent horizontal distance following the ordinary high water mark of a lake or pond, or the center line of a stream.
- (f) Primary and Secondary Environmental Corridors and Isolated Natural Resource Areas Defined by SEWRPC** shall be based on the most current City of Franklin Map thereof.



C) Relationship to Floodplain and Flood Hazard Area Impacts

- 1) Floodplain, floodway, and flood hazard areas shall not constitute a separate category of natural resources for purpose of this Article.
- 2) Any areas defined as a floodplain, floodway, or flood hazard area pursuant to Article 8 of this Ordinance shall require review and approval under the provisions of Article 8.
- 3) Notwithstanding the foregoing, any impacts to a Natural Resource Feature as defined in this Article shall be subject to the provisions of this Article, regardless of location within a floodplain, floodway, or flood hazard area.

D) Exemptions

- 1) **Exemption of Artificial Wetlands.** The following artificial wetlands are exempt from the wetland provisions of this Article unless the Wisconsin Department of Natural Resources determines, under the provisions set forth under NR 103.06(4) of the Wisconsin Administrative Code, that the artificial wetland has significant functional values or uses under NR 103.03 (1)(e), (f) or (g) of the Wisconsin Administrative Code:
 - (a) Sedimentation and stormwater detention basins and associated conveyance features operated and maintained only for sediment detention and flood storage purposes.
 - (b) Active sewage lagoons, cooling ponds, waste disposal pits, fish rearing ponds and landscape ponds.
 - (c) Actively maintained farm drainage and roadside ditches.
 - (d) Artificial wetlands within active nonmetallic mining operations.
- 2) **Exemption of Degraded Wetlands; Mitigation Required**
 - (a) In the event a wetland delineation prepared pursuant to this Article demonstrates conclusively that wetland resources on the site are degraded, as defined under Subsection (c) below, the degraded wetland areas shall not require protection under the provisions of this Article, unless located within a SEWRPC Primary or Secondary Environmental Corridor or Isolated Natural Area as defined under Subsection (B)(7) above.
 - (i) Where a degraded wetland is located within the boundaries of a SEWRPC Isolated Natural Resource Area, exemption of the degraded wetland shall require a written determination from SEWRPC that loss of the degraded wetland shall not contribute to a loss of protected natural resource functions.
 - (ii) In the absence of such a determination from SEWRPC, the requirements of this Article related to wetlands and wetland buffers shall apply.



- (b) No Special Exception approval, waiver, or demonstration of avoidance shall be required to permit disturbance or land development within a degraded wetland.
- (c) Notwithstanding subsection (b), this provision shall not relieve any applicant of the obligation to secure all applicable state and federal wetland permits as apply to a site or development.
- (d) Any applicant proposing to impact a degraded wetland shall complete on- or off-site mitigation at the ratio specified in Table [MITIGATION] by completing one of the following site improvements in conjunction with the impact:
 - (i) The inclusion of green stormwater management features, as defined in the [STORMWATER ORDINANCE], providing capture of the first one inch of runoff over all new or expanded impervious areas on the site; or
 - (ii) The use of deep-rooted vegetation native to Southeastern Wisconsin in the landscape plan, in an area equal or greater in size to the degraded wetland, with fencing or other barriers to prevent routine mowing or abuse of the plantings; or
 - (iii) Supplemental tree planting in excess of the requirements of [LANDSCAPE 15.XXX] or any mitigation required by Section [mitigation] of this Article, with a projected tree canopy area at maturity equivalent or greater to the total area of the degraded wetland; or
 - (iv) Any combination of (ii) and (iii) above equivalent to [1.5 TIMES] the area of the degraded wetland. **NOTE:** 1.5 times is suggested; needs City direction
- (e) Demonstration of Degraded Condition. An applicant seeking exemption under this Section shall demonstrate through a site-specific analysis prepared by a qualified wetland delineator that:
 - (i) Site conditions exhibit impacts to topography, soils, native vegetation or hydrology that have degraded a wetland and are not likely to be reversible.
 - (ii) The project, including its landscaping plan, does not involve the planned introduction of non-native or invasive wetland plants.
 - (iii) In the opinion of the City Engineer, removal or filling of the degraded wetland will not result in the creation of adverse drainage or flooding impacts on City streets or adjacent properties.
 - (iv) Removal or filling of the wetland will not:
 - (1) involve any activities in navigable waters with prior history as a stream
 - (2) cause significant adverse impacts to a cold water community, as defined in s. NR 102.04 (3)(a).
 - (3) cause significant obstruction of fish passage to existing spawning areas.
 - (4) cause significant adverse impacts to state threatened or endangered resources.
 - (5) cause significant adverse impacts to historical or cultural resources and will comply with s. 44.40, Stats.



- (f) Positive finding required; remedy. In the event an applicant fails to demonstrate to the **satisfaction of the Plan Commission** that the area meets all of the standards for exemption and mitigation under this Section, the wetland shall be regulated as a Natural Resource Feature under (B)(5) above.
- E) **Surface Water and Wetland Buffer Standards.** Within a Wetland and Stream Buffer, as defined in this Article:
- 1) Unless authorized as a Special Exception under **[Section 15-XXX]** of this Ordinance, no new or expanded impervious surface or building area shall be established or expanded within a Wetland and Stream Buffer.
 - 2) The expansion of pre-existing structures within Wetland and Stream Buffers shall be permitted only in accordance with the approval standards for **non-conforming structures in Section 15-XXX** of this Ordinance.
 - 3) No part of any new residential lot shall be established within a Surface Water and Wetland Buffer after the effective date of this Ordinance.
 - 4) Any approvals issued for land disturbance or land development on a site containing a Surface Water and Wetland Buffer, other than for modification of a single-family or two-family dwelling on a non-divisible lot existing as of the effective date of this Ordinance, shall include provisions to demarcate, with sturdy plantings, fencing, or a combination thereof, a boundary line along the edge of the Surface Water and Wetland Buffer on the site. Guidance from the City of Franklin Natural Resource Mitigation Guide shall be used to determine the sufficiency of proposed measures.
 - 5) All lands within a Surface Water and Wetland Buffer shall be left in an undisturbed, naturally vegetated condition. Supplemental planting and landscaping shall be permitted but may not include turf, sod, or other lawn grass; nor any invasive plant species on the Wisconsin Chapter 40 NR Invasive Species List.
 - 6) The clearing of trees that are not dead, diseased, or invasive, and the clearing of any other vegetation other than invasive species on the Wisconsin Chapter 40 NR Invasive Species List, is permitted only upon application to and **approval of the Zoning Administrator under Section 15-XXX.**
 - 7) All Surface Water and Wetland Buffers established in conjunction with approvals under this Article shall be protected through a deed restriction and a conservation easement.

15-07.03 Natural Resources Protection and Mitigation Plans

- A) Natural Resource Protection Plan Required



If any Natural Resource Feature as defined and described in [15-07.02] of this Article is present on the property for which a Site Plan review, Certified Survey Map (except as otherwise provided for by the exclusions as identified in § 15-3.0501C.), Subdivision Plat, or Condominium is requested, a Natural Resource Protection Plan drawn to the same scale as the Site Plan, Certified Survey Map, Preliminary Plat, or Condominium submission shall be prepared in accordance with the measurement methods and sources outlined in Subsection (B) below. The Natural Resource Protection Plan shall show the following:

- 1) Sheet 1 – Existing Conditions
 - (a) Proposed Name. The proposed name of the development, project, Certified Survey Map, Subdivision Plat, or Condominium.
 - (b) Location. The location of the proposed development, project, Certified Survey Map, Subdivision Plat, or Condominium.
 - (c) Contact Information. The names, addresses, telephone numbers, and email addresses of the Owners, Subdividers, Lessee and/or Developer.
 - (d) Date. Date of the "Natural Resource Plan" submittal and all applicable revision dates.
 - (e) Scale, North Arrow, and Contours, at a maximum two-foot contour interval.
 - (f) Site Boundary. The boundary line of the site with dimensions and bearings, indicated by a solid line.
 - (g) Site Acreage. The total area of the site.
 - (h) Lot Lines, Right-of-Way Lines, and Easements. The location of all proposed lot lines, right-of-way lines, and easements.
 - (i) Existing Features. The location, ownership, widths, and names (if available) of all existing and previously platted streets, rights-of-way, parks, and other public or open spaces located within or adjacent to the subject property.
 - (j) Easements and Neighboring Property Boundaries. The location and dimensions of all permanent easements on the subject property boundary lines and adjacent to the site.
 - (k) Tree species and locations. The plan shall indicate the location and species of all trees (other than invasive plant species on the Wisconsin Chapter 40 NR Invasive Species List) greater than eight inches (8") diameter at breast height that are located outside a Protected Area as defined in this Article.
 - (l) Degraded or artificial wetlands. The location and area of all degraded or artificial wetlands, as defined under Section (X) above.
 - (m) Existing Natural Resource Features. The location, extent, and area in square feet and acres of all existing Natural Resource Features, as defined and described in Section 15-6.02(A), shall be indicated, including the following:
 - (i) Areas of steep slopes, indicating the location of slopes of 10% to 19%, 20% to 30%, and greater than 30%.



- (ii) The boundaries of all existing woodland or forest areas
 - (iii) The Ordinary High Watermark of all lakes and ponds
 - (iv) The top of bank and centerline of all streams
 - (v) The location and approximate width of any portion of a stream that is fully enclosed within a culvert or pipe
 - (vi) The extent of floodplain, floodway, and flood hazard areas.
 - (vii) The boundary of all delineated wetlands or shoreland wetlands
 - (viii) The boundary of all SEWRPC Primary and Secondary Environmental Corridors and Isolated Natural Resource Areas
 - (ix) For all areas not within the boundaries of a Natural Resource Area, the types and extents of existing land cover and vegetation.
 - (x) Shading or other means of indicating where natural resource boundaries overlap or coincide.
- 2) Sheet 2 – Proposed Construction Disturbance
- (a) The perimeter of the area of all Natural Resource Features as enumerated in Subsection (1)(l, k, and m) above.
 - (b) Scale, North Arrow, and Contours, at a maximum two-foot contour interval.
 - (c) The location of all trees to be preserved and removed (other than diseased, dead, or invasive trees, in accordance with 15.0601(C)(3)) located outside of natural resource protection areas.
 - (d) The proposed limits of construction disturbance, including but not limited to all areas for stockpiling, equipment storage, temporary or permanent stormwater management features, cutting, and grading, clearly indicating where any such disturbance will take place within a natural resource area, with the area of the disturbance indicated in square feet.
 - (e) Clear indication of all areas of proposed disturbance. A table shall be included on the sheet indicating the area of disturbance of each Natural Resource Feature, and the area and extent of any overlapping Natural Resource Features to be affected.
 - (f) Indication of any disturbance proposed to support Essential Services, as defined in this Ordinance, or public roads, paths, and trails, as described in 15.0601(C)(4).
 - (g) Indication of all areas where post-construction mitigation is proposed.
- 3) Sheet 3 – Proposed Final Conditions
- (a) The proposed location and area of all buildings and site improvements, including all building footprints, impervious surfaces, utilities, easements, and rights-of-way
 - (b) Scale, North Arrow, and Contours, at a maximum two-foot contour interval.
 - (c) The boundaries of all proposed residential lots, where applicable



- (d) The proposed boundaries of all Protected Areas, indicating the type of Natural Resource Feature or Features within each area.
 - (e) The location and horizontal width of all proposed surface water buffers
 - (f) The type and location of landscaping, fencing, or other means of permanent demarcation of surface water buffers in accordance with the standards in [REF] below.
 - (g) Proposed stormwater management features, including all vegetated stormwater management measures, ponds, and swales or other conveyances.
 - (h) The landscaping plan, including the location of all trees to be planted or preserved and the types of vegetative cover proposed outside natural resource protection areas.
- 4) Sheet 4 – Mitigation Plan (where applicable). A mitigation plan for all Natural Resource Features proposed to be affected and mitigated, utilizing the City of Franklin Natural Resource Mitigation Guide, including the following:
- (a) Locations and dimensions of the site(s) where mitigation will be implemented.
 - (b) Where applicable, a signed attestation from the owner(s) of any other sites where mitigation is proposed to be implemented, indicating the owner’s concurrence with the proposed plan and willingness to accept a permanent deed restriction and conservation easement for the area where mitigation will occur
 - (c) Planting plans, soil specifications, and depths and dimensions of planting areas
 - (d) Other information as required to determine conformance with the standards of this Article.
- 5) Supporting Information
- (a) Memoranda, surveys, illustrations, or studies regarding woodlands, surface waters, and wetlands
 - (b) Where applicable, a wetland delineation report, including as applicable documentation of degraded wetlands.
 - (c) Tables and worksheets demonstrating the extent of natural resource areas present on site, extent of natural resource areas to be impacted and mitigated during construction, the final extent of mitigation required, and how conformance with the required mitigation ratios is achieved.
 - (d) Sample documents indicating the form of easements, covenants, or other legal mechanism proposed for the protection of natural resources.
 - (e) Other information as needed to demonstrate compliance with the standards in this Article.
- B) Calculation of Impact and Required Mitigation



- 1) Table 15-XX shall be used to determine the required mitigation area for each Natural Resource Feature approved to be mitigated.
- 2) Areas where Natural Resource Features coincide shall be clearly noted, measured, and indicated in Table 15-XX.
- 3) All areas of proposed temporary (i.e., construction-phase) disturbance and permanent (i.e., post-construction) disturbance of each Natural Resource Feature shall be measured and clearly indicated in Table 15-XX.
- 4) The acreage of each natural resource feature shall be multiplied by its respective natural resource protection standard to determine the amount of mitigation required, if any.
- 5) Overlapping areas.
 - (a) Where the boundary of a Protected Area includes more than one Natural Resource Feature, the highest mitigation factor of all of the resources found within the area shall be utilized to determine the required area of mitigation.
 - (b) Notwithstanding (a) above, if a Protected Area contains a Surface Water and Wetland Buffer that is not proposed to be disturbed in construction or post-construction phases, the next highest mitigation factor may be utilized.



TABLE 15-X: City of Franklin Natural Resources Mitigation Ratios – policy direction!

	A	B	C	D	E	F = (D + (.5*E))*A
	Mitigation Factor	Total Area on Site (SF)	Proposed Area of Construction Disturbance (SF)	Permanent Impact Area (SF)	Proposed Area of Post-Construction Mitigation (SF)	Mitigation Required (SF)
SEWRPC Primary Environmental Corridor	1.0	10,000	2,000	500	1,500	[(500)+(1,500*.5)] * 1.0 =1,250 x 1 = 1,250 SF
SEWRPC Secondary Environmental Corridor	.75	2,000	1,000	750	250	[(750) + (250 * .5)] * .75 = 875 SF
SEWRPC Isolated Natural Resource	1.0					
Steep Slopes, 10-19%	.25					
Steep Slopes, 20-30%	.75					
Steep Slopes, >30%	1.0					
*Surface Water Buffers	1.25					
Woodland	.75					
Degraded Wetland	1.5					
*Wetland	1.5					
**OVERLAPPING AREAS	Use highest Mitigation Factor of all resources present within the area					
*Lakes and Ponds	1.0					
Total Mitigation Required						

*Direct impacts to Surface Water and Wetland Buffers, Wetlands, Lakes, and Ponds allowed only with special exception under Section **X**.

**Where Natural Resource Features other than delineated wetlands and surface waters overlap, use the highest mitigation factor of the resources found within the protection area.

***If Surface Water and Wetland Buffers are present but undisturbed during construction and post-construction phases, mitigation is not required and the highest mitigation factor of an impacted/affected resource shall apply.



15-07.04 Standards for Natural Resource Feature Mitigation

- A) **Mitigation Guidance Incorporated by Reference.** The City of Franklin Natural Resource Mitigation Guide, as amended, shall guide the design and review of any proposed mitigation.
- B) **Surety Required.** The Plan Commission or Common Council may require a Letter of Credit or another surety, as approved by the City Attorney, to ensure the completion and establishment of Natural Resource Feature mitigation and any conditions imposed pursuant to this Article 7.
- C) For all mitigated Natural Resource Features, deed restrictions, conservation easements, and landowner agreements permanently conserving the land shall be required in a form acceptable to the City Attorney.
- D) All conserved or mitigated areas, whether on or off site, shall be demarcated with a combination of fencing, planting, and signs to prevent mowing, snow storage, or other abuse of the area.
- E) **Off Site Mitigation**
- 1) Off-site mitigation may be permitted by the Plan Commission provided:
 - (a) The Plan Commission determines that off-site mitigation is a desirable alternative to mitigation on-site and will achieve greater overall benefit to the City of Franklin and the Natural Resource Features to be mitigated.
 - (b) All off-site mitigation shall occur within the City of Franklin.
 - 2) All off-site mitigation shall require the recording of deed restrictions and conservation easements for the area of the property on which mitigation occurs, in a form acceptable to the City Attorney.
- F) **Mitigation of Specific Natural Resources.** In its review and approval of a Natural Resource Protection Plan and any mitigation measures, the Plan Commission shall be guided by the following:
- 1) **Steep slopes.** Impacts to steep slopes shall be mitigated with any combination of:
 - (a) Supplemental on- or off-site tree planting in excess of the requirements of [15-xx LANDSCAPE] and subsections (2) and (3) below.
 - (b) Enhancement or establishment of Surface Water or Wetland buffers in accordance with subsection (8) below.



- (c) Mitigation of wetlands or shoreland wetlands in accordance with subsections (5) and (7) below.

2) Woodland.

- (a) Mitigation plans for woodlands shall follow the City of Franklin Natural Resource Mitigation Guidelines.
- (b) Species of trees and plants used in the mitigation of woodland and forests shall be subject to review by the City Forester to ensure that species selected for mitigation are likely to be successful within the area of the City where proposed, and represent an equal or greater value in promoting the health and integrity of the City's forest resources relative to the resources impacted by the project.
- (c) Surety or other financial instrument sufficient to replace the required plantings shall be retained by the City for a period of two (2) years after planting to ensure establishment and plant growth.
 - (i) The surety may be released after 2 years provided the City Forester has inspected the site and determined that plant establishment has occurred.
 - (ii) If the City Forester has determined that remedial planting is required, the surety shall be extended for another 2 years after the date of remedial planting.
- (d) No tree cutting or removal, subsequent to the adoption of this Ordinance, shall reduce the woodland/forest natural resource features protection requirements of this Ordinance, other than removal of invasive plant species on the Wisconsin Chapter 40 NR Invasive Species List.

3) Trees outside natural resource areas

- (a) Existing trees with a caliper of 8 inches or greater diameter at breast height (other than removal of invasive plant species on the Wisconsin Chapter 40 NR Invasive Species List) that are removed shall be replaced one-for-one on the site, in addition to any woodland area mitigation required.
- (b) In the event the City Forester determines that replanting is not advisable on the site, the applicant shall pay the City a fee in lieu per tree based on the City's established fee schedule at the the time a [WHAT KIND OF] permit is obtained.
- (c) Cutting of or damage to trees planted as mitigation shall constitute a violation of this Article and shall be subject to enforcement under [SECTION].

NOTE: Need policy direction on when and at what step fees should be paid

4) SEWRPC Primary and Secondary Resource Corridors and Isolated Natural Areas

- (a) Mitigation of impacts to SEWRPC Primary and Secondary Resource Corridors and Isolated Natural Areas shall be based on the nature of the Natural Resource



Features in the affected area, as documented in the Natural Resource Protection Plan. Mitigation may include, but not be limited to:

- (i) Tree planting in accordance with the standards in (XX) above
 - (ii) Stream and Wetland Buffer restoration or establishment along surface waters or wetlands with inadequate or no buffering, in accordance with Subsection
 - (iii) Restoration of eroded or impacted stream channels
 - (iv) Wetland restoration or enhancement, where consistent with Wisconsin DNR standards.
- (b) The land upon which the mitigation is to take place shall be protected with a deed restriction and a conservation easement.
- (c) Off-site mitigation
- (i) At the discretion of the Plan Commission, applicants may provide for the permanent protection of an equivalent area of any combination of SEWRPC Primary or Secondary Resource Corridor, or Isolated Natural Area, within the City of Franklin, so long as the total area conserved is of sufficient size to meet the required mitigation area pursuant to this Article.

5) Shoreland Wetlands.

- (a) Impacts to shoreland wetlands shall be governed by approvals issued pursuant to [new section of municipal code] and shall be contingent upon receipt by the City of permits from the Wisconsin Department of Natural Resources and United States Army Corps of Engineers, as applicable
- (b) Mitigation shall occur at the ratio for wetlands in Table 15-07.X in strict accordance with [DNR GUIDANCE]
- (c) All conserved shoreland wetlands and any associated mitigation shall be protected with a deed restriction and a conservation easement.

6) Lakes and Ponds.

- (a) Direct impacts to Lakes and Ponds may be mitigated at the ratio in Table 15-07.X only if the impact and mitigation is part of an approved stormwater management plan that meets, at a minimum, all of the following criteria:
 - (i) The time of concentration of stormwater flows remains unchanged or is lengthened.
 - (ii) Stormwater storage capacity is maintained or increased.
 - (iii) No flooding or adverse drainage conditions on adjoining properties will be created.
- (b) Approvals shall be contingent upon receipt by the City of permits from the Wisconsin Department of Natural Resources and United States Army Corps of Engineers, as applicable.



7) **Wetlands.**

- (a) Impacts to wetlands, other than degraded or artificial wetlands as defined in this Article, shall be approved for mitigation at the ratio in **Table 15-07.X**.
- (b) Permits shall be contingent upon receipt by the City of permits from the Wisconsin Department of Natural Resources and United States Army Corps of Engineers, as applicable.
- (c) Wetland restoration shall follow the principles set forth in **[DNR guidance]**.

8) **Surface Water or Wetland Buffers.**

- (a) The Plan Commission may approve construction-phase (i.e., temporary) or post-construction (i.e., permanent) impacts within an existing or proposed Surface Water or Wetland Buffer only upon finding that:
 - (i) The authorized reduction in the width or area of the buffer is the minimum necessary to allow the proposed use to function efficiently on the project site
 - (ii) The reduced buffer, and its associated planting plan, will be sufficient to protect the associated surface water or wetland so as to prevent loss of function or flooding.
 - (iii) Sufficient planting, fencing, or other demarcation will be provided during construction to protect the buffer from activities and damage such as mowing, storage, parking, or snow storage
- (b) Impacts within Surface Water or Wetland Buffers shall include without limitation the following:
 - (i) Construction-phase disturbance, including clearing, grubbing, and disturbance of the surface grade.
 - (ii) The construction of new or expanded structures or impervious surface area
 - (iii) Clearing or mowing, or the establishment of actively maintained vegetation such as turfgrass, planted islands, or landscaped strips.
 - (iv) Permanent or temporary stormwater ponds.
- (c) If a new Surface Water or Wetland Buffer is established at a width less than required in this Article, the difference in surface area between the required and proposed Wetland or Surface Water Buffer shall be mitigated at the required ratio in **Table 15-07.X**.
- (d) **Specific Standards for Surface Water and Wetland Buffer Mitigation.** Where mitigation is approved, in addition to the standards in the City of Franklin Mitigation Guidance, the following specific standards shall be met:
 - (i) The perimeter of any existing Surface Water or Wetland Buffer impacted by an approved development, and the perimeter of all new or restored buffers provided as mitigation, shall be established or re-established with plantings, fencing, or a combination thereof.



- (ii) The Plan Commission may approve the restoration or establishment of a new surface water or wetland buffer on an existing developed site within the City of Franklin as mitigation for impacts on a Natural Resource Feature under this Article. The Plan Commission may deviate from the strict numeric requirements of the mitigation ratio where the following conditions apply:
 - (1) The proposed buffer has a minimum width of five feet (5') at its narrowest point and a minimum total area of one hundred fifty square feet (150 SF).
 - (2) In the opinion of the City Engineer, the proposed buffer would provide a material benefit to water quality, flooding, and storm water management.
 - (3) The combination of impervious surface area removed (if any), the amount of impervious surface area draining to the new or restored buffer, the degree of planting provided, and the width and size of the buffer represent, in the opinion of the City Engineer, sufficient benefit to water quality, flood prevention, and stormwater management to offset the development impact.

15-07.05 ADMINISTRATION; SPECIAL EXCEPTION

A) Natural Resource Protection Plan Review Procedures

- 1) Staff shall make a recommendation to the Plan Commission as to the completeness of a Natural Resource Protection Plan and the sufficiency of proposed mitigation.
- 2) The Natural Resource Protection Plan and mitigation plan, if applicable, shall be incorporated into the findings of fact and decision for the project and shall be binding on all future approvals, subject to any amendments approved under the provisions of this Article.
- 3) Technical Review.
 - (a) Where the Plan Commission determines that there is a material dispute as to the nature, location, extent, or quality of one or more natural resources present, or on the viability or approach to mitigation proposed, the Plan Commission may contract for review of the Natural Resource Protection Plan by a qualified professional. [note: under the City's current provisions for a special exception applicants are charged for these costs; see 15-07.05(B)(2)(e)(3) below]
 - (b) The objective of any such review shall be to establish a factual basis for determining whether a Natural Resource Protection Plan and any proposed mitigation meets the objective standards and ratios in this Article and the City of Franklin Mitigation Guidance.



- (c) Where applicable the written report from any such review and the Plan Commission's findings shall be transmitted to the Common Council for use in its review.

B) Special Exception

- 1) A Special Exception to the provisions of this Article shall be required for:
 - (a) Any construction or permanent impacts to shoreland wetlands, wetlands, lakes, ponds, or streams;
 - (b) Any permanent impacts to any surface water or wetland buffers;
 - (c) Any reduction in the required mitigation ratios in Table [15-XX REF]; and
 - (d) Any modification of the financial surety requirements in Section [X-X].
- 2) Common Council Review. Upon recommendation by the Plan Commission, the Common Council may grant a Special Exception to the provisions of this Article in accordance with the procedures in this Section.
 - (a) Burden of Proof. The applicant shall have the burden of proof to present evidence sufficient to support the findings required under sub. 2 below.
 - (b) A minimum of one (1) Class II Public Hearing shall be required. The Class II Public Hearing may be conducted by the Plan Commission, with a recommendation made to the Common Council. The Common Council may, at its discretion, warn an additional Class II Public Hearing prior to its action on the Special Exception.
 - (c) Criteria for Approval. A Special Exception to the stream, shore buffer, navigable water-related, wetland, wetland buffer and wetland setback regulations of this Ordinance and for improvements or enhancements to a natural resource feature may be granted only upon a finding by the Plan Commission and concurrence by the Common Council:
 - (i) That the condition(s) giving rise to the request for a Special Exception were not self-imposed by the applicant (this subsection (i) does not apply to an application to improve or enhance a natural resource feature); and
 - (ii) Compliance with the strict provisions of this Article will:
 - (1) be unreasonably burdensome to the applicant and that there are no reasonable practicable alternatives; or,
 - (2) unreasonably and negatively impact upon the applicant's use of the property and that there are no reasonable practicable alternatives; and



- (3) the Special Exception, including any conditions imposed under this Section will:
 - a. Be consistent with the existing character of the neighborhood; and
 - b. Not effectively undermine the ability to apply or enforce the requirement with respect to other properties; and
 - c. Be in harmony with the general purpose and intent of the provisions of this Article; and
 - d. Preserve or enhance the quality of the natural resource affected.

- (d) In making its recommendation, the Plan Commission shall consider factors such as:
 - (1) The impact on physical characteristics of the property, including but not limited to, relative placement of improvements thereon with respect to property boundaries or otherwise applicable setbacks;
 - (2) Any exceptional, extraordinary, or unusual circumstance or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district;
 - (3) The proposed degree of noncompliance with the requirement of this Article to be allowed by the Special Exception;
 - (4) The project's proximity to and character of surrounding property;
 - (5) Purpose of the zoning district of the area in which property is located and neighboring area; and
 - (6) Any potential for negative effects upon adjoining property from the Special Exception if authorized.

- (e) Conditions of Special Exception. Any Special Exception granted under the authority of this Section shall be conditioned upon the applicant first obtaining all other necessary approval(s) from all other applicable governmental agencies and shall also set forth conditions that the Plan Commission deems necessary, including, but not limited to, conditions that:
 - (1) Prescribe the duration of the Special Exception (i.e., permanent, a specified length of time; or a time period during which the property is owned or occupied by a particular person);
 - (2) Require additional mitigation beyond measured proposed in the Natural Resource Protection Plan and Mitigation Plan, provided such measures are related to and roughly proportional with the degree of impact authorized;
 - (3) Require payment or reimbursement by the applicant to the City of any costs, expenses, professional fees (including the fees of a person recognized with knowledge and experience in natural systems) or legal fees reasonably incurred by the City in reviewing or processing the application for Special



Exception. The Common Council may also require the posting of a bond or letter of credit to cover the costs of such expenses and fees. An applicant may obtain the review of the amounts imposed under this Subsection pursuant to Division [WHERE IZ THIS] of this Ordinance.

draft

A. Base Site Area

The base site area shall be calculated as indicated in Table 15-3.0502 for each parcel of land to be used or built upon in the City of Franklin as referenced in § 15-3.0501 of this Ordinance.

Table 15-3.0502

Worksheet for the Calculation of Base Site Area for Both Residential and Nonresidential Development

	Number	Unit	Total
<i>STEP 1: Indicate the total gross site area (in acres) as determined by an actual on-site boundary survey of the property.</i>		Acres	
<i>STEP 2: Subtract land which constitutes any existing dedicated public street rights-of-way, land located within the ultimate road rights-of-way of existing roads, the rights-of-way of major utilities, and any dedicated public park and/or school site area.</i>		Acres	
<i>STEP 3: Subtract land which, as a part of a previously approved development or land division, was reserved for open space</i>		acres	
<i>STEP 4A: For a proposed residential use, subtract the land proposed for nonresidential uses</i>		Acres	
<i>STEP 4B: for a proposed nonresidential use, subtract the land proposed for residential uses</i>		Acres	
<i>STEP 5: Equals "Base Site Area"</i>			



Birchline Planning LLC
Great Waters + Great Communities

*City of Franklin, WI UDO Update
D R A F T Natural Resource Worksheets
Prepared June 16, 2023*

Calculation of Natural Resource Mitigation

Base Area = 100% for all resources

Mitigation ratios = variable by resource type

Areas affected during construction and mitigated = adds .5 of area to total required

Areas permanently impacted and not mitigated = multiplied by full mitigation ratio

Trees outside a woodland, corridor, or stream buffer = in-kind or fee-in-lieu



Resource Impact and Mitigation Table

	A	B	C	D	E	F = (D + (.5*E))*A
	Mitigation Factor	Total Area on Site (SF)	Proposed Area of Construction Disturbance (SF)	Permanent Impact Area (SF)	Proposed Area of Post-Construction Mitigation (SF)	Mitigation Required (SF)
SEWRPC Primary Environmental Corridor	1.0	10,000	2,000	500	1,500	[(500)+ (1,500*.5)] * 1.0 =1,250 x 1 = 1,250 SF
SEWRPC Secondary Environmental Corridor	.75	2,000	1,000	750	250	[(750) + (250 * .5)] * .75 = 875 SF
SEWRPC Isolated Natural Resource	1.0					
Steep Slopes, 10-19%	.25					
Steep Slopes, 20-30%	.75					
Steep Slopes, >30%	1.0					
*Surface Water Buffers	1.25					
Woodland	.75					
Degraded Wetland	1.5					
*Wetland	1.5					
*Lakes and Ponds	1.0					
Total Mitigation Required						

*Direct impacts to Surface Water and Wetland Buffers, Wetlands, Lakes, and Ponds allowed only with special exception

**Where the boundaries of natural resource protection areas other than delineated wetlands and surface waters overlap, use the highest mitigation factor of the resources found within the protection area. If Surface Water and Wetland Buffers are present but undisturbed, use the next highest mitigation factor. For example:

- Permanent impact to 2,000 SF of woodland within a SEWRPC Primary Natural Resource Corridor, no post-construction mitigation = 2,000 x 1.0 = 2,000 SF



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- Permanent impact to 1,000 SF of a SEWRPC Secondary Natural Resource Corridor containing a stream buffer; buffer not impacted; no post-construction mitigation = $1,000 \times .75 = 750$ SF
- Permanent impact to 1,000 SF of a SEWRPC Primary Natural Resource Corridor containing wetland and surface water and wetland buffer: $1,000 \times 1.5 = 1,500$ SF

Shoreland-Wetland Zoning Ordinance

1. Statutory Authorization, Findings of Fact, Statement of Purpose and Title.
 - a. Statutory Authorization. This ordinance is adopted pursuant to the authorization in secs. 61.35 and 61.351 for villages; or, secs. 62.23 and 62.231 for cities; and, secs. 87.30 and 144.26 of the Wisconsin Statutes.
 - b. Findings of Fact and Purpose. Uncontrolled use of the shoreland-wetlands and pollution of the navigable waters of the municipality would adversely affect the public health, safety, convenience and general welfare and impair the tax base. The Legislature of Wisconsin has delegated responsibility to all municipalities to:
 - i. Promote the public health, safety, convenience and general welfare;
 - ii. Maintain the storm and flood water storage capacity of wetlands;
 - iii. Prevent and control water pollution by preserving wetlands which filter or store sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
 - iv. Protect fish, their spawning grounds, other aquatic life and wildlife by preserving wetlands and other aquatic habitat;
 - v. Prohibit certain uses detrimental to the shoreland-wetland area; and,
 - vi. Preserve shore cover and natural beauty by restricting the removal of natural shoreland cover and controlling shoreland-wetland excavation, filling and other earth moving activities.
 - c. General Provisions and Zoning Maps.
 - i. Compliance. The use of wetlands and the alteration of wetlands within the shoreland area of the municipality shall be in full compliance with the terms of this ordinance and other applicable local, state or federal regulations. (However, see section (4) of this ordinance for the standards applicable to nonconforming uses.) All permitted development shall require the issuance of a zoning permit, unless otherwise expressly excluded by a provision of this ordinance.
 - ii. 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 if sec. 13.48(13) of the Wisconsin Statutes applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when sec. 30.12(4)(a) of the Wisconsin Statutes applies.

- d. Abrogation and Greater Restrictions.
 - i. This ordinance supersedes all the provisions of any municipal zoning ordinance enacted under secs. 61.35, 62.23 or 87.30 of the Wisconsin Statutes, which relate to floodplains and shoreland-wetlands, except that where another municipal zoning ordinance is more restrictive than this ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
 - ii. 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.
- e. Interpretation. In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the municipality and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this ordinance is required by a standard in Chapter NR 117, Wis. Adm. Code, and where the ordinance provision is unclear, the provision shall be interpreted in light of the Chapter NR 117 standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.
- f. Severability. Should any portion of this ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

2. Shoreland-Wetland Zoning District.

- a. Shoreland-Wetland Zoning Maps. The following maps are hereby adopted and made part of this ordinance and are on file in the office of the City Clerk:
 - i. Wisconsin Wetlands Inventory Maps stamped "REVISED" on March 9, 1989.
 - ii. Federal Emergency Management Agency "Flood Boundary and Floodway Map," April 15, 1981.
 - iii. Southeastern Wisconsin Regional Planning Commission "Floodplain Delineation Map," January, 1995.
 - iv. United States Geological Survey quadrangle map.
- b. District Boundaries.

- i. The shoreland-wetland zoning district includes all wetlands in the municipality which are five (5) acres or more and are shown on the final Wetland Inventory Map that has been adopted and made a part of this ordinance and which are:
 - ii. Within one thousand (1,000) feet of the ordinary high-water mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in the municipality shall be presumed to be navigable if they are shown on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this ordinance.
 - iii. Within three hundred (300) feet of the ordinary high-water mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this ordinance. Floodplain zoning maps adopted in section (3)(a)l. shall be used to determine the extent of floodplain areas.
- c. Determinations of navigability and ordinary high-water mark location shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the appropriate District office of the Department for a final determination of navigability or ordinary high-water mark.
- d. When an apparent discrepancy exists between the shoreland-wetland district boundary shown on the official zoning maps and actual field conditions at the time the maps were adopted, the Zoning Administrator shall contact the appropriate District office of the Department to determine if the shoreland-wetland district boundary, as mapped, is in error. If Department staff concur with the Zoning Administrator that a particular area was incorrectly mapped as a wetland, the Zoning Administrator shall have the authority to immediately grant or deny a zoning permit, in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors or acknowledge exempted wetlands designated in sections (3)(c) and (3)(d), the Zoning Administrator shall be responsible for initiating a map amendment within a reasonable period.
- e. Filled Wetlands. Wetlands which are filled prior to October 27, 1988, the date on which the municipality received final wetland inventory maps, in a manner which

affects their wetland characteristics to the extent that the area can no longer be defined as wetland, are not subject to this ordinance.

- f. Wetlands Landward of a Bulkhead Line. Wetlands located between the original ordinary high-water mark and a bulkhead line established prior to May 7, 1982, under sec. 30.11 of the Wisconsin Statutes, are not subject to this ordinance.
3. Permitted Uses. The following uses are permitted subject to the provisions of Chapters 30 and 31 of the Wisconsin Statutes, and the provisions of other local, state and federal law, if applicable.
 - a. Activities and uses which do not require the issuance of a zoning permit, provided that no wetland alteration occurs:
 - i. Hiking, fishing, swimming and boating;
 - ii. 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;
 - iii. The practice of silviculture, including the planting, thinning and harvesting of timber.
 - b. Uses which do not require the issuance of a zoning permit and which may involve wetland alterations only to the extent specifically provided below:
 - i. The practice of silviculture, including limited temporary water level stabilization measures which are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silvicultural activities if not corrected;
 - ii. The maintenance and repair of existing drainage systems to restore pre-existing levels of drainage, including the minimum amount of filling necessary to dispose of dredged spoil, provided that the filling is otherwise permissible and that dredged spoil is placed on existing spoil banks where possible;
 - iii. The construction and maintenance of piers, docks, walkways, observation decks and trail bridges built on pilings, including limited excavating and filling necessary for such construction or maintenance;
 - iv. The installation and maintenance of sealed tiles for the purpose of draining lands outside the shoreland-wetland zoning district, provided that such installation or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the shoreland-wetland listed in Section (6)(a)3. of this ordinance;
 - v. The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.

- c. Uses which are allowed upon the issuance of a building permit and which may include wetland alterations only to the extent specifically provided below:
 - i. The construction and maintenance of roads, which are necessary for the continuity of the municipal street system, the provision of essential utility and emergency services or to provide access to uses permitted under Section (3)(c) of this ordinance provided that:
 - 1. The road cannot, as a practical matter, be located outside the wetland;
 - 2. The road is designed and constructed to minimize adverse impacts upon the natural functions of the wetland listed in Section (6)(a)3. of this ordinance;
 - 3. The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;
 - 4. Road construction activities are carried out in the immediate area of the roadbed only; and,
 - 5. Any wetland alteration must be necessary for the construction or maintenance of the road.
 - ii. The construction and maintenance of nonresidential buildings provided that:
 - 1. The building is used solely in conjunction with a use permitted in the shoreland-wetland district or for the raising of waterfowl, minnows or other wetland or aquatic animals;
 - 2. The building cannot, as a practical matter, be located outside the wetland;
 - 3. The building does not exceed five hundred (500) square feet in floor area; and,
 - 4. Only limited filling and excavating necessary to provide structural support for the building is allowed.
 - iii. The establishment and development of public and private parks and recreation areas, outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms, wildlife preserves and public boat launching ramps, provided that:
 - 1. Any private development allowed under this paragraph shall be used exclusively for the permitted purpose;
 - 2. Only limited filling and excavating necessary for the development of public boat launching ramps, swimming beaches or the construction of park shelters or similar structures is allowed;

3. The construction and maintenance of roads necessary for the uses permitted under this paragraph are allowed only where such construction and maintenance meets the criteria in Section (3)(c)3.a. of this ordinance; and,
 4. Wetland alterations in game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms and wildlife preserves shall be for the purpose of improving wildlife habitat or to otherwise enhance wetland values.
- iv. The construction and maintenance of electric and telephone transmission lines, water and gas distribution lines and sewage collection lines and related facilities and the construction and maintenance of railroad lines provided that:
 1. The utility transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland;
 2. Only limited filling or excavating necessary for such construction or maintenance is allowed; and,
 3. Such construction or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the wetland listed in Section (6)(a)3. of this ordinance.
4. Prohibited Uses.
 - a. Any use not listed in Section (3)(c) of this ordinance is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this ordinance in accordance with Section (6) of this ordinance.
 - b. The use of a boathouse for human habitation and the construction or placement of a boathouse or fixed houseboat below the ordinary high-water mark of any navigable waters are prohibited.
5. Nonconforming Structures and Uses.
 - a. The lawful use of a building, structure or property which existed at the time this ordinance, or an applicable amendment to this ordinance, took effect and which is not in conformity with the provisions of the ordinance, including the routine maintenance of such a building or structure, may be continued, subject to the following conditions:
 - i. The shoreland-wetland provisions of this ordinance authorized by sec. 62.231 of the Wisconsin Statutes, shall not limit the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure in existence on the effective date of the shoreland-wetland provisions, or of

any environmental control facility in existence on May 7, 1982, related to such a structure. All other modifications to nonconforming structures are subject to sec. 62.23(7)(h) of the Wisconsin Statutes, which limits total lifetime structural repairs and alterations to fifty percent (50%) of current fair market value.

ii. If a nonconforming use or the use of a nonconforming structure is discontinued for twelve (12) consecutive months, any future use of the building, structure or property shall conform to this ordinance.

- b. Any legal nonconforming use of property which does not involve the use of a structure and which existed at the time of the adoption or subsequent amendment of this ordinance adopted under secs. 61.351 or 62.231 of the Wisconsin Statutes, may be continued although use does not conform with the provisions of the ordinance. However, such nonconforming use may not be extended.
- c. The maintenance and repair of nonconforming boathouses which are located below the ordinary high-water mark of any navigable waters shall comply with the requirements of sec. 30.121 of the Wisconsin Statutes.
- d. Uses which are nuisances under common law shall not be permitted to continue as nonconforming uses.

6. Administrative Provisions.

- a. Zoning Administrator. The Code Enforcement Director is appointed Administrator for the purpose of administering and enforcing this ordinance and shall have the following duties and powers:
 - i. Advise applicants as to the provisions of this ordinance and assist them in preparing permit applications and appeal forms.
 - ii. Issue permits and certificates of compliance and inspect properties for compliance with this ordinance.
 - iii. Keep records of all permits issued, inspections made, work approved and other official actions.
 - iv. Have access to any structure or premises at all reasonable hours for the purpose of performing these duties.
 - v. Submit copies of decisions on variances, conditional use permits, appeals for a map or text interpretation, and map or text amendments within ten (10) days after they are granted or denied, to the appropriate district office of the Department.

- vi. Investigate and report violations of this ordinance to the appropriate municipal planning agency and the district attorney, corporation counsel or municipal attorney.

- b. Zoning Permits. Unless another section of this ordinance specifically exempts certain types of development from this requirement, a zoning permit shall be obtained from the Zoning Administrator before any new development, as defined in Section (8)(b)6. of this ordinance, or any change in the use of an existing building or structure is initiated.

- c. Application. An application for a zoning permit shall be made to the Zoning Administrator upon forms furnished by the municipality and shall include, for the purpose of proper enforcement of these regulations, the following information:
 - i. General Information.
 - ii. Name, address and telephone number of applicant, property owner and contractor, where applicable.
 - iii. Legal description of the property and a general description of the proposed use or development.
 - iv. Whether or not a private water supply or sewage system is to be installed.
 - v. Site Development Plan. The site development plan shall be submitted as a part of the permit application and shall contain the following information drawn to scale:
 - 1. Dimensions and area of the lot;
 - 2. Location of any structures with distances measured from the lot lines and center line of all abutting streets or highways;
 - 3. Description of any existing or proposed on-site sewage systems or private water supply systems;
 - 4. Location of the ordinary high-water mark of any abutting navigable waterways;
 - 5. Boundaries of all wetland;
 - 6. Existing and proposed topographic and drainage features and vegetative cover;
 - 7. Location of floodplain and floodway limits on the property as determined from floodplain zoning maps;
 - 8. Location of existing or future access roads; and,
 - 9. Specifications and dimensions for areas of proposed wetland alteration.

- d. Expiration. All permits issued under the authority of this ordinance shall expire six (6) months from the date of issuance.

e. Certificates of Compliance.

- i. Except where no zoning permit or conditional use permit is required, no land shall be occupied or used; and, no building which is hereafter constructed, altered, added to, modified, rebuilt or replaced shall be occupied, until a certificate of compliance is issued by the Zoning Administrator subject to the following provisions:
 1. The certificate of compliance shall show that the building or premises, or part thereof, and the proposed use thereof, conform to the provisions of this ordinance.
 2. Application for such certificate shall be concurrent with the application for a zoning or conditional use permit.
 3. The certificate of compliance shall be issued within ten (10) days after notification of the completion of the work specified in the zoning or conditional use permit, providing the building or premises and proposed use thereof conform with all the provisions of this ordinance.
- ii. The Zoning Administrator may issue a temporary certificate of compliance for a building, premises or part thereof, pursuant to rules and regulations established by the municipal governing body.
- iii. Upon written request from the owner, the zoning administrator shall issue a certificate of compliance for any building or premises existing at the time of ordinance adoption, certifying, after inspection, the extent and type of use made of the building or premises and whether or not such use conforms to the provisions of this ordinance.

7. Amending Shoreland-Wetland Zoning Regulations.

- a. The Common Council of the City of Franklin may alter, supplement or change the district boundaries and the regulations contained in this ordinance, in accordance with the requirement of sec. 62.23(7)(d)2. of the Wisconsin Statutes, NR 117, Wis. Adm. Code, and the following:
 - i. A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the Department within five (5) days of the submission of the proposed amendment to the municipal planning agency;
 - ii. All proposed text and map amendments to the shoreland-wetland zoning regulations shall be referred to the municipal planning agency, and a public hearing shall be held after Class II notice, as required by sec. 62.23(7)(d)2. of the Wisconsin Statutes. The appropriate District office of the

Department shall be provided with written notice of the public hearing at least ten (10) days prior to such hearing.

- b. In order to insure that this ordinance will remain consistent with the shoreland protection objectives of sec. 144.26 of the Wisconsin Statutes, the Common Council of the City of Franklin may not rezone a wetland in a shoreland-wetland zoning district, or any portion thereof, where the proposed rezoning may result in a significant adverse impact upon any of the following wetland functions:
 - i. Storm and flood water storage capacity;
 - ii. Maintenance of dry season stream flow or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area or the flow of groundwater through a wetland;
 - iii. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
 - iv. Shoreline protection against erosion;
 - v. Fish spawning, breeding, nursery or feeding grounds;
 - vi. Wildlife habitat; or,
 - vii. Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.
- c. Where the District office of the Department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in Section (6)(a)3. of this ordinance, the Department shall so notify the City of Franklin of its determination either prior to or during the public hearing held on the proposed amendment. The appropriate District office of the Department shall be provided with:
 - i. A copy of the recommendation and report, if any, of the municipal planning agency on a proposed text or map amendment, within ten (10) days after the submission of those recommendations to the municipal governing body.
 - ii. Written notice of the action on the proposed text or map amendment within ten (10) days after the action is taken.
- d. If the Department notifies the City of Franklin planning department in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in Section (6)(a)3. of this ordinance, that proposed amendment, if approved by the municipal governing body, shall not become effective until more than thirty (30) days have elapsed since written notice of the municipal approval was mailed to the Department, as required by Section (6)(a)5.b. of this ordinance. If, within the thirty (30) day period, the Department notifies the municipality that the Department intends to adopt a superseding shoreland-wetland zoning ordinance for the municipality, as provided by secs. 62.231(6) and 61.351(6) of the Wisconsin Statutes, the proposed amendment shall not become effective until

the ordinance adoption procedure under secs. 62.231(6) or 61.351(6) of the Wisconsin Statutes, is completed or otherwise terminated.

8. Enforcement and Penalties.

- a. Any development, building or structure or accessory building or structure constructed, altered, added to, modified, rebuilt or replaced or any use or accessory use established after the effective date of this ordinance in violation of the provisions of this ordinance, by any person, firm, association, corporation (including building contractors or their agents) shall be deemed a violation. The Zoning Administrator shall refer violations to the City of Franklin City Attorney who shall prosecute such violations.
- b. 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 dollars (\$10) nor more than five hundred dollars (\$500) per offense, together with the taxable costs of such action. Each day of continued violation 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 by action at suit of the municipality, the state or any citizen thereof, pursuant to sec. 87.30(2) of the Wisconsin Statutes.

9. Definitions.

- a. 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; words in the plural number include the singular number. The word "shall" is mandatory, not permissive. All distances, unless otherwise specified, shall be measured horizontally.
- b. The following terms used in this ordinance mean:
 - i. "Accessory structure or use" means a detached subordinate structure or a use which is clearly incidental to, and customarily found in connection with, the principal structure or use to which it is related and which is located on the same lot as that of the principal structure or use.
 - ii. "Boathouse," as defined in sec. 30.121(1) of the Wisconsin Statutes, means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of structural parts.
 - iii. "Class II public notice" means publication of a public hearing notice under Chapter 985 of the Wisconsin Statutes, in a newspaper of circulation in the

affected area. Publication is required on two (2) consecutive weeks, the last at least seven (7) days prior to the hearing.

- iv. "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 Appeals or, where appropriate, the planning agency designated by the City of Franklin Common Council.
- v. "Department" means the Wisconsin Department of Natural Resources.
- vi. "Development" means any man-made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and, the deposition or extraction of earthen materials.
- vii. "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.
- viii. "Environmental control facility" means any facility, temporary or permanent, which is reasonably expected to abate, reduce or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste and thermal pollution, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplements or replaced by other pollution control facilities.
- ix. "Fixed houseboat," as defined in sec. 30.121(1) of the Wisconsin Statutes, means a structure not actually used for navigation which extends beyond the ordinary high-water mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.
- x. "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 sec. 144.26(2)(d) of the Wisconsin Statutes, notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under secs. 61.351 or 62.221 of the Wisconsin Statutes, and Chapter NY 117, Wis. Adm. Code, do not apply to lands adjacent to farm drainage ditches if;
 - 1. Such lands are not adjacent to a natural navigable stream or river;
 - 2. Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; or,

3. Such lands are maintained in nonstructural agricultural use.

"Wisconsin's Supreme Court has declared navigable bodies of water that have a bed differentiated from adjacent uplands and levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis [Muench v. Public Service Commission, 261 Wis. 492 (1952); and, DeGaynor and Co., Inc., v. Department of Natural Resources, 70 Wis. 2d 936 (1975)]. For example, a stream which is navigable by skiff or canoe during normal spring high water is navigable, in fact, under the laws of this state though it may be dry during other seasons."

- x. "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.
- xi. "Planning agency" means the municipal plan commission of the City of Franklin.
- xii. "Shorelands" means lands within the following distances from the ordinary high-water mark of navigable waters; one thousand (1,000) feet from a lake, pond or flowage; and, three hundred (300) feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.
- xiii. "Shoreland-wetland district" means the zoning district, created in this shoreland-wetland zoning ordinance, comprised of shorelands that are designated as wetlands on the wetlands inventory maps which have been adopted and made a part of this ordinance.
- xiv. "Unnecessary hardship" 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 purpose of this ordinance.
- xv. "Variance" means an authorization granted by the Board of Appeals to construct or alter a building or structure in a manner that deviates from the dimensional standards of this ordinance.
- xvi. "Wetlands" means those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.
- xvii. "Wetland alteration" means any filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.