

TOWN OF RHINE MUNICIPAL CODE

CHAPTER 4: ZONING

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4.01 INTERPRETATION AND PURPOSE

(1) **PURPOSE.** The purpose of this Ordinance is to promote the health, safety, morals and general welfare of the Town of Rhine by regulating and restricting the use and size of buildings and other structures, the size of yards, courts and other open spaces, the density of population, the location and use of buildings, structures and land for trade, industry, agriculture, recreation, conservation of natural resources, residence and other purposes, and for the said purposes dividing the Town of Rhine, Sheboygan County, Wisconsin, into districts of such number, shape, and area as are deemed best suited to carry out the said purposes; to provide a method for its administration and enforcement and to provide penalties for its violation.

(2) **INTENT.** It is the general intent of this ordinance to:

- (a) Stabilize and protect property values and the tax base.
- (b) Recognize the needs of agriculture, forestry, industry, and business in future growth.
- (c) Further the appropriate use of land and conservation of natural resources.
- (d) Encourage the wise use, conservation, development, and protection of the Town's water, soil, wetland, woodland, and wildlife resources.
- (e) Preserve natural growth and cover and promote the natural beauty of the Township.
- (f) Prevent overcrowding and avoid undue population concentration and urban sprawls.
- (g) Facilitate the adequate provision of public facilities and utilities.
- (h) Lessen congestion and promote the safety and efficiency of streets, highways, and other transportation systems.
- (i) Provide adequate light, air, sanitation, drainage, and open space.
- (j) Regulate the use of structures, lands, and waters outside of shoreland areas.
- (k) Regulate lot coverage, population density and distribution, and the location and size of structures.
- (l) Prohibit uses or structures incompatible with the natural characteristics, existing development, or intended development within or adjacent to a zoning district.
- (m) Implement those municipal, county, watershed, or regional plans or their components adopted by the Township.

Additionally, it is intended to provide for the administration and enforcement of this Ordinance and to provide penalties for its violation.

(3) **MINIMUM REQUIREMENTS ESTABLISHED.** The provisions of this Ordinance shall be held to be minimum requirements adopted to promote the health, safety, morals, comfort, prosperity, and general welfare of the Town of Rhine, Sheboygan County, Wisconsin.

(4) PRIVATE RESTRICTIONS UNIMPAIRED; MOST STRINGENT REQUIREMENT CONTROLS. It is not intended by this Ordinance to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, or agreements between parties or with any regulations, rules, or permits previously adopted or issued pursuant to laws; provided, however, that where this Ordinance imposes a greater restriction upon the use of building or premises, or upon the height of a building or requires larger open spaces than are required by other rules, regulations, or permits, or by easements, covenants, or agreements, the provisions of this Ordinance shall govern.

(5) TITLE. This Ordinance shall be referred to and cited as the "Town of Rhine Zoning Ordinance."

(6) CAPTIONS. Captions or titles of Sections, Subsections, Paragraphs, or Subparagraphs of this Ordinance are inserted for the convenience of the reader and are not to be deemed a part of the Ordinance unless essential to the interpretation of the meaning of any part hereof.

4.02 DEFINITIONS

For the purpose of this Ordinance, certain words and terms are defined as follows:

(1) TENSE. Words used in the present tense include the future; the singular includes the plural; the word "building" includes the word "structure;" the word "shall" is mandatory and not directory. Any words not herein defined shall be construed as defined in the State and Town building codes.

(2) ACCESSORY BUILDING. A building or portion of a building subordinate to the main building and used for a purpose customarily incident to the permitted use of the main building or the use of the premises.

(3) ALLEY. A street or thoroughfare less than twenty-one feet (21') wide and affording only secondary access to abutting property.

(4) BASEMENT. The lowest story of a structure wholly or partially underground used for any purpose. Basements with a portion of the floor within two (2) feet of grade shall be counted as a story for purposes of height measurement. *(Rev. 09/07/04)*

(5) BUILDING. Any structure used, designed, or intended for the protection, shelter, enclosure, or support of persons, animals, or property. When a building is divided into separate parts by unpierced walls extending from the ground up, each part shall be deemed a separate building.

(6) BUILDING HEIGHT. Vertical distance from the lowest portion of grade surrounding the structure to the highest point of the structure excluding chimneys. Height shall be measured from grade to the highest ridge, parapet, tower, dormer, penthouse, mechanical room, or other structural element attached or placed on or above a roof. *(Rev. 09/07/04)*

(6.5) BUILDING, MAIN. A non-accessory building in which is conducted a principal use of the lot on which the building is located. *(Rev. 09/05)*

(7) BUSINESS. An activity which generates pedestrian or vehicular traffic abnormal for a residential area.

(8) DWELLING, ONE FAMILY. A detached building designed for or occupied exclusively by one (1) family.

(9) DWELLING, TWO FAMILY. A detached or semidetached building designed for and occupied exclusively by two (2) families.

(10) DWELLING, MULTIPLE. A building or portion thereof designed for and occupied by more than two (2) families including tenement houses, row houses, apartment houses, and apartment hotels.

(11) FAMILY. The body of persons who live together in one dwelling unit as a single housekeeping entity.

(12) FRONTAGE. All the property abutting on one (1) side of a road or street between two (2) intersecting roads or streets or all of the property abutting on one (1) side of a road or street between an intersecting road or street and the dead end of a road or street.

(13) GARAGE, PRIVATE. An accessory building or space for the storage only of not more than three (3) motor-driven vehicles.

(14) GARAGE, PUBLIC. Any building or premises, other than a private or a storage garage, where motor-driven vehicles are equipped, repaired, serviced, hired, sold, or stored.

(15) GARAGE, STORAGE. Any building or premises used for the storage only of motor-driven vehicles, pursuant to previous arrangements and not to transients, and where no equipment, parts, fuel, grease, or oil is sold and vehicles are not equipped, serviced, repaired, hired, or sold. No commercial motor vehicle exceeding two (2) tons capacity shall be stored in any storage garage.

(16) HOME OCCUPATION. An occupation conducted by members of the family within their residence; provided that no article is bought or sold or offered for sale on the premises except such as is produced by such occupation, that no stock in trade is kept or sold, that no mechanical equipment is used other than such as is permissible for purely domestic purposes, that no sign other than one unlighted nameplate not more than ten feet (10') square is installed and that no person other than a member of the immediate family living on the premises is employed in the occupation. (Rev. 04/07)

(17) LOT. A parcel of land having a width and depth sufficient to provide the space necessary for one (1) main building and its accessory building, together with the open spaces required by this Ordinance and abutting on a public street or officially approved place.

(18) LOT, DEPTH OF. The mean horizontal distance between the front and rear lot lines.

(19) LOT LINES. The lines bounding a lot as defined herein.

(20) MOBILE HOME. A vehicle, house car, camp car, trailer, or any portable or mobile vehicle on wheels, skids or rollers, blocks, or a permanent or temporary foundation either self-propelled or propelled by any other means which is used or designed to be used, permanently or temporarily, exclusively for residential occupancy.

(21) NON-CONFORMING USE. A building or premises lawfully used or occupied at the time of the passage of this Ordinance or amendments thereto which use or occupancy does not conform to the regulations of this Ordinance or amendments thereto.

(21.5) OPEN FENCE. An open fence shall be no more than one-third (1/3) closed with a height limit of eight feet (8').

(22) PROFESSIONAL OFFICE. The office of a doctor, practitioner, dentist, minister, architect, landscape architect, professional engineer, lawyer, author, musician, or other recognized profession. When established in a residential district, a professional office shall be incidental to the residential occupation, not more than twenty-five percent (25%) of the floor area of only one (1) story of a dwelling unit shall be occupied by such office and only one (1) unlighted name plate, not exceeding one (1) square foot in area, containing the name and profession of the occupant of the premises shall be exhibited.

(23) ROADSIDE STAND. A structure not permanently fixed to the ground that is readily removable in its entirety, covered or uncovered and not wholly enclosed, and used solely for the sale of farm products produced on the premises. No such roadside stand shall be more than three hundred (300) square feet in ground area and there shall be not more than one (1) roadside stand on any one (1) premises.

(24) SETBACK. The minimum horizontal distance between the street or highway line and the nearest point of a building or any projection thereof, excluding uncovered steps.

(25) STABLE. Stable shall have the same meaning as garage, one (1) draft animal being considered the equivalent of one (1) self-propelled vehicle.

(26) STREET. All property dedicated or intended for public or private street purposes or subject to public easements therefor and twenty-one feet (21') or more in width.

(27) STORY. That portion of a building or structure located between the surface of a floor and the surface of the next floor or roof above it. A story which is more than fourteen (14) feet from floor to floor or floor to ceiling will be considered two (2) stories for the purpose of determining height.
(Rev. 09/07/04)

(28) STORY, HALF. Any roofed portion of a building above the second story of a structure. (Rev. 09/07/04)

(29) STREET LINE. A dividing line between a lot, tract, or parcel of land and a contiguous street.

(30) STRUCTURE. Anything constructed or erected, the use of which requires a permanent location on the ground or attached to something having a permanent location on the ground.

(31) STRUCTURAL ALTERATIONS. Any change in the supporting members of a building or any substantial change in the roof structure or in the exterior walls.

(32) TEMPORARY STRUCTURE. A movable structure not designed for human occupancy nor for the protection of goods or chattels and not forming an enclosure.

(33) TOURIST CAMP. A tract or parcel of land, with or without buildings or other equipment on which one or more camp cabins are located or where temporary accommodations are provided for two (2) or more automobile trailers or house cars, open to the public free or for a fee.

(34) VISION CLEARANCE. An unoccupied triangular space at the street corner or a corner lot which is bounded by the intersecting street lines and a setback line connecting points located on each street line by specified measurement from the corner.

(35) YARD. An open space on the same lot with a building, unoccupied and unobstructed from the ground upward except as otherwise provided herein.

(36) YARD, FRONT. A yard extending the full width of the lot between the front lot line and the nearest part of the main building, excluding uncovered steps.

(37) YARD, REAR. A yard extending the full width of the lot, being the minimum horizontal distance between the rear lot line and the nearest part of the building, excluding uncovered steps.

(38) YARD, SIDE. A yard extending from the front yard to the rear yard, being the minimum horizontal distance between the building and the side lot line.

(39) OFF-ROAD VEHICLES. Any motorized vehicle which travels off-road for recreational purposes. (Rev. 03/01/05)

(40) OFF-ROAD VEHICLE PARKS. Any location improved or not improved for a gathering of people and off-road vehicles. (Rev. 03/01/05)

4.03 DISTRICTS

(1) DISTRICTS ESTABLISHED. For the purposes of this Ordinance, the Town of Rhine, Sheboygan County, Wisconsin, is hereby divided into the following districts:

(a) Agricultural Land Districts.

1. A-1 Prime Agricultural Land.
2. A-2 Small Farming Operations.
3. A-3 Agricultural Transitional Area.
4. A-4 Farm Consolidation and Agricultural Living District. (Rev. 10/02/01)

(b) Residential Districts.

1. R-1 One- or Two-Family Residence District.
2. R-2 Multi-Family Residence District.

(c) Conservancy Districts.

1. C-1 Lowland Conservancy District.
2. C-2 Upland Conservancy District.

(d) Commercial Districts.

1. B-1 Neighborhood Business.
2. B-2 Commercial Manufacturing and Processing.

(2) DISTRICT ZONING MAP ADOPTED. The boundaries of the aforesaid Districts are hereby established as shown on the map entitled "Official Zoning Map Town of Rhine, Sheboygan County, Wisconsin", which map is dated October 3, 1984, and accompanies and is made a part of this Ordinance. All notations and references shown on the Zoning Map are as much a part of this Ordinance as though specifically described herein. Pending revision of the Zoning Map, all certified survey maps approved by the Town Board of the Town of Rhine since January 1, 1984, are incorporated by reference into the Zoning Map.

(3) IDENTIFICATION OF DISTRICT BOUNDARIES. The following rules shall apply to location and identification of District boundaries on the Town of Rhine Zoning Map.

(a) Road and Street Line Boundaries. The District boundaries are either roads or streets unless otherwise shown, and where the designation on the Zoning Map indicates that the various Districts are approximately bounded by a road or street line such roads or streets shall be construed to be the District boundary line.

(b) Lot Line Boundaries. Where the District boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the District boundaries shall be construed to be lot lines, and where the designations on the Zoning Map are approximately bounded by lot lines, said lot line shall be construed to be the boundary of the District.

(c) Unsubdivided Property. In unsubdivided property, the District boundary lines shown on the Zoning Map are intended to be section lines, quarter section lines and quarter quarter section lines, and where the District boundaries cross the quarter quarter sections, north-south or east-west, the District boundary line shall be the line through the center of the quarter quarter section.

(d) Unplatted Smaller Parcels. In unplatted areas less than ten (10) acres in area, the District boundaries, where not otherwise designated, shall be determined by the use of the scale shown on the Zoning Map.

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4.04 GENERAL PROVISIONS

(1) COMPLIANCE REQUIRED. Except as otherwise specifically provided in this Ordinance, no person shall hereafter use, change, erect, construct, convert, move, enlarge, or structurally alter any building or structure or use or change the use of any land within the Town of Rhine except in compliance with the regulations established herein for the District in which such building, structure, or land is located.

(2) GENERAL LOT AND AREA REQUIREMENTS. Except as otherwise specifically provided by a variance, conditional use, special exception, or stipulation granted by the Town Board or Appeals Board. (Rev. 10/02/01)

(a) Reduction in Lot Area or Increased Density Prohibited. No lot area shall be so reduced that the yards and open spaces shall be smaller than is required by this Ordinance, nor shall the density of population be increased in any manner except in conformity with the area regulations hereby established for the District in which a building or premises is located.

(b) Overlap of Yards Not Permitted. No part of a yard or other open space provided about any building for the purpose of complying with the provisions of this Ordinance shall be included as a part of a yard or other open space required for another building. If a duplex is to be constructed, the lot area per family as required by the zoning category may be reduced by no more than twenty-five percent (25%) per family unit. (Rev. 10/02/01)

(c) One Main Building Per Lot. Every building hereafter erected, converted, enlarged, or structurally altered shall be located on a lot and in no case shall there be more than one (1) main building on one (1) lot.

(d) Accessory Buildings. (Rev. 09/05)

1. Permitted. Accessory buildings shall be allowed only if a building permit has been granted for the main building or if the structure can be shown to be accessory to a permitted or conditional use conducted on the property. (Rev. 09/05)

2. Timing. A structure accessory to a main building or to any dwelling shall only be constructed concurrently with or after completion of the main building or dwelling. A structure accessory to a permitted or conditional use shall not be constructed prior to commencement of the principal use. (Rev. 09/05)

3. Size and Setbacks. Accessory buildings which are not a part of the main building shall not occupy more than twenty percent (20%) of the area of the required rear yard, shall not be more than seventeen and one-half feet (17-1/2') high and shall not be nearer than three feet (3') to any lot line. When an accessory building is a part of the main building or within ten feet (10') of the main building, the side yard and rear yard regulations applicable to the main building shall be applied to the accessory building. Accessory buildings in the A-1, A-2, and A-4 Districts are governed by Section 4.05(2)(c). (Rev. 09/05; 12/06)

(e) [reserved]

(f) Lots Abutting Certain Lakes. No lot or parcel of land having frontage on Gerber Lakes, Little Elkhart Lake, Crystal Lake, or Big Elkhart Lake of at least one hundred feet (100') at the lake front as of July 1, 1990, may be divided by certified survey map or in any other manner unless the lots or parcels of land resulting from such division each have at least one hundred feet (100') of frontage on the lake which it abuts. This Subsection does not apply to any lot or parcel of land resulting from a division which has no frontage on any lake whatsoever.

(g) Lot Line Grade Regulations. The finished grade within twelve feet (12') of neighboring properties in R-1 and R-2 zoning cannot be changed without a variance. The finished grade within twenty-five feet (25') of neighboring properties in all other zoning categories cannot be changed without a variance. In the event that a variance is granted, the slope commencing at or near a point along the boundary with a neighboring property shall in no event be greater than a 1 to 3 slope as finished grade unless authorized by express reference in an issued variance. (Rev. 07/02/02)

(3) NON-CONFORMING USES.

(a) Continuation of Existing Lawful Uses Permitted. The existing lawful use of a building or premises at the time of the enactment or amendment of this Ordinance may be continued although such use does not conform with the regulations for the District in which it is located, but such non-conforming use shall not be extended into additional non-conforming use.

(b) Substitution of More Restrictive Use. If no structural alterations are made, a non-conforming use of a building or structure may be changed to another non-conforming use of the same or a more restricted classification. Whenever a non-conforming use has been changed to a more restricted non-conforming use or a conforming use such use shall not thereafter be changed to a less restricted use.

(c) Discontinuance. If a non-conforming use of a building or premises is discontinued for a period of twelve (12) months, any future use of the building or premises shall conform to the regulations for the District in which it is located.

(d) Destruction. When a building containing a non-conforming use is damaged by fire, explosion, act of God, or the public enemy to the extent of more than fifty percent (50%) of its fair market value subject to Board of Review, it shall not be restored except in conformity with the regulations of the District in which it is located and must meet Sanitary Code requirements. The total structural repairs or alterations in any non-conforming use shall not during its life exceed fifty percent (50%) of the fair market value of the building at the time of its becoming a non-conforming use unless permanently changed to a conforming use.

(e) Permits Outstanding on Date of Ordinance. Nothing herein contained shall require any change in the plans, construction, size, or designated use of any building or part thereof commenced before the effective date of this Ordinance if a legal, building permit therefor has been issued before the effective date hereof.

(4) TRAFFIC AND PARKING REQUIREMENTS

(a) Loading Areas to be Provided. In any Commercial District wherever a lot abuts upon a public or private alley sufficient space for the loading or unloading of vehicles shall be provided on the lot in connection with any commercial or industrial use so that the alley shall at all times be free and unobstructed to the passage of traffic.

(b) Parking Required at Public Gatherings. All theaters, arenas, auditoriums, churches, clubs, or other places of public gathering hereafter erected shall provide an accessible parking space of sufficient space to accommodate at least one (1) car for every four (4) seats provided.

(5) HEIGHT, AREA, AND YARD EXCEPTIONS. The regulations contained herein relating to the height of buildings and the size of yards and other open spaces shall be subject to the following exceptions: *(Renumbered 09/07/04)*

(a) Height of Public Buildings. Churches, schools, hospitals, sanatoriums, and other public or quasi-public buildings may be erected to a height not exceeding sixty feet (60') nor five (5) stories, provided the front, side, and rear yards required in the District in which such building is to be located are each increased at least one (1) foot for each foot of additional building height above the height limit otherwise established for the District in which such building is to be located.

(b) Height Exceptions. Chimneys, silos, cooling towers, elevator bulkheads, fire towers, monuments, penthouses, stacks, scenery lofts, tanks, water towers, ornamental towers, spires, wireless, television, or broadcasting towers, masts or aerials, telephone, telegraph, and electric power poles, towers, and lines, microwave radio relay structures, and necessary mechanical appurtenances are hereby excepted from the height and area regulations of this Ordinance and may be erected in accordance with other regulations or Ordinances of the Town of Rhine. This provision is not applicable in residential or conservancy districts.

(c) Grade Exceptions. Where a lot abuts on two (2) or more streets or alleys having different average established grades, the higher of such grades shall control only for a depth of one hundred twenty feet (120') from the line of the higher average established grade.

(d) Rear Yard Exceptions. Lots abutting on the lakes in the Town of Rhine may consider their rear yards to be the area from the road to the main building and the front yard to be from the main building to the lake. A record of this selection will be maintained by the Building Inspector and the Town. *(Rev. 03/04/02; 12/2/08)*

(e) Density Exceptions. Where a lot has an area less than the minimum number of square feet per family required for the District in which it is located and was of record as such at the time of the passage of this Ordinance (August 12, 1974), such lot may be occupied by one (1) family.

(f) Fire Escapes and Fire Towers. Open or enclosed fire escapes and fire towers may project into a required yard not more than five feet (5') provided they be so located as not to obstruct light and ventilation.

(g) Lots Abutting District Boundaries. Any side yard, rear yard, or court abutting a District boundary line shall have a minimum width and depth in the less restricted District equal to the average of the required minimum widths and depths for such yards and courts in the two (2) Districts which abut the District boundary line.

(h) Accessory Structures. The requirement that accessory structures not within ten (10) feet of a main building be placed in the rear yard shall be waived if the width of the lot at its public road frontage is greater than sixty-six feet (66') and the side and rear setback distances of the accessory structure are greater than twice the minimum. This exception does not apply to the R-1 and R-2 Districts. (Rev. 03/04/02; 12/2/08)

(6) LARGE DEVELOPMENTS; CONDOMINIUMS. When a housing or development project consisting of a group of two (2) or more buildings containing a total of eight (8) or more dwelling units is to be constructed on a site not divided into customary lots with public street frontages, where a proposed development is or will be subjected to a condominium declaration under Wis. Stat. ch. 703, or where an existing lot and street layout make it impractical to apply the requirements of this Ordinance to the individual building units, the Town Plan Commission may approve a development plan, provided it complies with the regulations of this Ordinance as applied to the entire site.

(7) BUILDING PERMITS REQUIRED. No building or structure, including decks, porches, or stairways which are not enclosed or roofed shall be erected, structurally altered, or relocated until a building permit has been issued by the Building Inspector of the Town of Rhine, certifying that such building, as proposed, would be in compliance with the provisions of this Ordinance and with the Building Code of the Town of Rhine.

(8) MUNICIPAL COOPERATION. In order to facilitate roadway shoulder improvement projects in the Town of Rhine, the Town Board may allow removal of fill from private property without a rezoning or Conditional Use Permit if the following criteria are met:

(a) Written application shall be made by Sheboygan County to the Town of Rhine Town Board at least ten (10) days prior to the regular Town Board meeting. The application shall include a letter describing the scope of the project, a map of the site, and other information as required by this Section of Chapter 4.

(b) The area of removal is adjacent to the right-of-way.

(c) No crushing occurs.

(d) The neighbors will be notified, in writing by the Town Clerk, of the meeting at which the Town Board will make its decision.

(e) The area of removal will be less than one (1) acre.

(f) The area will be reclaimed to agricultural or natural cover.

(g) The material will not be moved out of the Town of Rhine.

(h) The operation will take no more than a month. Extensions can be made by the Town of Rhine Chairperson.

(9) USES NOT SPECIFIED

(a) Uses not specified in this Chapter which are found by the Town Board, upon recommendation of the Plan Commission, to be sufficiently similar to specified permitted uses for a District may be allowed by the Town Board. (Rev. 04/01/05)

(b) Uses not specified in this Chapter which are found by the Town Board, upon recommendation of the Plan Commission, to be sufficiently similar to specified conditional uses for a District may be allowed by the Town Board following a public hearing and approval in accordance with the procedures set forth in the issuance of a conditional use permit. (Rev. 04/01/05)

4.05 AGRICULTURAL LAND DISTRICTS

(1) GENERAL STANDARDS IN AGRICULTURAL DISTRICTS

(a) A-1 Prime Agricultural Land District. Lands in this District are characterized as prime agricultural lands which generally consist of, without limitation because of enumeration, soil capability Classes 1, 2, and 3 as established by the National Resources and Conservation Service, USDA. In the A-1 District, thirty-five (35) acres shall be the minimum area on which a residence will be permitted. A-1 land may be less than thirty-five (35) acres without a residence. The only residences that will be allowed as permitted or conditional uses are those that promote preserving the productive capacity of the land demonstrating compliance with the intent of this Section of the Ordinance and are occupied by any of the following.

Permitted Uses:

1. An owner of the parcel.

Conditional Uses:

2. A person or family who has at least one (1) adult member of which is principally engaged in conducting the permitted or conditional uses of the parcel.
3. An owner's parent or child who is principally engaged in conducting the permitted or conditional uses on the property.

Other principal and conditional uses in the A-1 District are listed in Subsection (2) of this Section. Refer to Section 4.06(d): R-1 Zone Specifications, or primary building requirements. (Rev. 11/07/01)

(b) A-2 Small Farming Operations #1. Lands in this District are intended to provide for small farming operations and to keep in agricultural use areas of at least five (5) acres but less than thirty-five (35) acres. Refer to Section 4.06(1)(d) [R-1 District] for primary building requirements. Principal and conditional uses in the A-2 District shall be the same as in the A-1 District. (Rev. 11/07/01; 1/20/11)

(c) A-3 Agricultural Transitional Area. Lands in the A-3 District are lands presently in agricultural use or open areas located next to municipalities or urbanized regions where conversion to non-agricultural uses can be anticipated within the foreseeable future. The Town Plan Commission shall review the Town of Rhine Zoning Map at least every five (5) years to determine the need to increase or decrease the area of lands included in the A-3 District to conform with existing circumstances. The minimum parcel size for establishing a farmstead in the A-3 District shall be thirty-five (35) acres. Principal and conditional uses in the A-3 District shall be the same as in the A-1 District. Refer to Section 4.06(d): R-1 Zone Specifications, for primary building requirements.

(d) A-4 Farm Consolidation and Agricultural Living District. For purposes of farm consolidation, farm residences or structures which existed prior to the adoption of Section 4.05 of this Ordinance may be separated from a larger farm parcel. Parcels of less than thirty-five (35) acres in area shall conform with the restrictions contained in the A-4 Farm Consolidation and Agricultural Living District.

Lands in this District are intended to provide for small farming operations and to keep in agricultural use areas of less than thirty-five (35) acres. Principal or permitted uses in the A-4 District shall be the same as in the A-2 District. Refer to Section 4.06(d): R-1 Zone Specifications, for primary building requirements. Conditional uses shall be the same as in the A-2 District but also include the following: *(Rev. 11/07/01)*

A-4 Conditional Uses: Two-family dwelling and owner's retirement home or home for hired workers with two- (2-) acre minimum.

Height: Residences hereafter erected or structurally altered shall not exceed thirty-five feet (35') from the first floor grade elevation, or in the case of an exposed lower-level basement on a parcel of at least five (5) acres, forty-two feet (42') overall from the lowest grade. There shall be no limit on the height of agricultural buildings, except their placement in relation to property lines shall in no case be less than their height. *(Rev. 9/1/09)*

Lot Area: Every lot hereafter created shall provide not less than two (2) acres in area.

(e) A-5 Small Farming Operations #2. Lands in this District are intended to provide for small farming operations and to keep in agricultural use areas of at least twelve (12) acres but less than thirty-five (35) acres. Refer to Section 4.06(1)(d) [R-1 District] for primary building requirements. Principal and conditional uses in the A-5 District shall be the same as in the A-1 District. *(Cr. 1/20/11 by Ord. 2011-1)*

(2) SPECIFIC USE STANDARDS. In Agricultural Land Districts A-1, A-2, and A-3, the following are permitted and conditional uses:

(a) Principal or Permitted Uses.

1. Agriculture.
2. Dairying.
3. Floriculture.
4. Forestry
5. General farming.
6. Grazing.
7. Greenhouses.

8. Poultry hatcheries. *(Rev. 11/07/01)*
 9. Horticulture.
 10. Livestock raising (except commercial feed lots).
 11. Nature trails and paths.
 12. Orchards.
 13. Paddocks.
 14. Pasturage.
 15. Plant nurseries.
 16. Poultry raising.
 17. Production of grain, grass, mint, herb, and seed crops.
 18. Stables.
 19. Tree crops.
 20. Truck farming.
 21. Vegetable growing.
 22. Viticulture.
 23. Home occupations not involving the conduct of business on the premises.
 24. Single-family or two-family residences.
 25. Accessory buildings. *(Rev. 10/02/01)*
- (b) Conditional Uses.

1. Beef, hog, dairy, or other animal operations in excess of five hundred (500) animal units in the A-1 District or in excess of one (1) animal unit per acre in A-2, A-3 or A-4 Districts. Animal unit equivalencies are as defined by the U. S. Department of Agriculture. All operations in excess of five hundred animal units shall meet the requirements of Wisconsin Administrative Rule ATCP 51 (Livestock Facility Siting Law). No such facility may be located in Sections 1-9 and 15-22 and 28-35. *(Rev. 11/06)*

2. Commercial stud housing and operation.
3. Commercial raising of boarding of pigs and fur-bearing animals.
4. Fish hatcheries and/or fish farms. *(Rev. 11/01)*
5. Campground and manufactured home parks. *(Rev. 11/01)*
6. Sanitary landfill sites.

7. Home occupations involving the conduct of business on the premises.

8. Public utilities such as regional gas lines, electric transmission lines, and communication towers. *(Rev. 10/01)*

9. Ponds designed for aesthetic or wildlife habitat purposes where removal of material exceeds the limits of Chapter 19.04(2) and does not qualify under Chapter 19.04(3). *(Rev. 02/07)*

10. Omission from this list is not intended to preclude Plan Commission consideration of other related uses. *(Rev. 02/07)*

11. Section 4.09 of this Ordinance shall govern all conditional uses. *(Rev. 02/07)*

(c) Height and Yard Requirements.

1. Height Restrictions. Dwelling: thirty five feet (35') from the first floor grade elevation, or in the case of an exposed lower-level basement on a parcel of at least five (5) acres, forty-two feet (42') overall from the lowest grade. Other Structures: Seventeen and one half feet (17.5') if not used primarily for a farm operation or fifty feet (50') if primarily used for a farm operation. *(Rev. 11/07; 9/1/09)*

2. Yard Requirements: Dwelling - Rear Yard - minimum: One hundred feet (100'). Side Yard - minimum: Twenty feet (20'). Front Yard - minimum: as set in Section 4.10(4). Other Structures: Rear Yard - minimum: One hundred feet (100'). Side Yard - minimum: Twenty feet (20') if not used for animals or one hundred feet (100') if used for animals. *(Rev. 02/02)*

(d) Gas and Electric Facilities. Pursuant to Wis. Stat. § 91.75(4), gas and electric facilities not regulated under Wis. Stat. § 196.491(3), shall be allowed as permitted uses, conditional uses, or special exceptions and shall not be considered to conflict with agricultural use.

4.06 RESIDENTIAL DISTRICTS

(1) R-1 ONE- OR TWO-FAMILY RESIDENCE DISTRICT

(a) Permitted Uses. The following are permitted uses in the R-1 District:

1. One- or two-family dwellings, with attached or unattached garage; except that any lot within the District on the shoreline of a Town of Rhine lake is limited to a one-family dwelling with attached or unattached garage.

2. Accessory buildings and unattached garages not requiring space in excess of twenty percent (20%) of the minimum rear yard area.

3. Public parks and playgrounds.

4. Home occupations not involving the conduct of a business on the premises.

(b) Conditional Uses. Section 4.09 of this ordinance shall govern all conditional uses. The following are conditional uses in the R-1 District:

1. Home occupations (involving the conduct of business on the premises).
2. General farming.

(c) Lot Dimensions.

1. Unsewered parcels. Area - minimum of twenty thousand (20,000) square feet (per family). Width - minimum of one hundred feet (100').
2. Sewered parcels. Area - minimum of eight thousand (8,000) square feet per family.

(d) Dwelling.

1. Area - one thousand two hundred (1,200) square feet minimum.
2. Minimum width - twenty-four feet (24'). *(Rev. 11/01)*
3. Height Restrictions - Thirty five (35) feet from the first floor grade elevation, or in the case of an exposed lower-level basement on a parcel of at least five (5) acres, forty-two feet (42') overall from the lowest grade. *(Rev. 09/04; 9/1/09)*
4. Setback - Section 4.10 of this Ordinance shall apply.
5. Built on an approved permanent foundation. *(Rev. 11/01)*

(e) Yard Depths.

1. Front - Minimum of twenty-five- (25-) foot depth.
2. Side - Sum of widths shall be thirty feet (30'); single side yard a minimum of twelve feet (12'). *(Rev. 09/04)*
3. Rear - Minimum of twenty-five- (25-) foot depth.

(f) Lots Abutting Lakeshore¹. In order to erect or structurally alter a structure on a lot with lake frontage, both of these minimum requirements apply:

1. Width: One hundred feet (100') wide at the ordinary high water mark, or fifty feet (50') if the lot existed of record before December 1, 1990.
2. Area: One hundred fifty percent (150%) of the normal area requirement for such lot.

¹ Amended by Ord. 2013-5, adopted August 13, 2013.

(g) Single Use. No lot abutting or having frontage on the shoreline of Town of Rhine lakes in this District shall by deed, covenant, easement, or other device or agreement provide for the permitted uses or for the right of access to the lake, by other than the owner or legally resident occupant of the premises and guests, except in the case of a public park or way, public utility easement, patrons of a commercial use, or of a specifically permitted organizational use.

(h) Uses Restricted. No pyramiding, as hereinafter defined, shall be permitted on any lands fronting on any lake except as may be specifically permitted accessory to a marina or resort and which may be allowed under the terms of a conditional use permit covering said lands. Pyramiding is defined as the act of obtaining or providing access to public bodies of water across private lots or lands in a manner which increases the number of families which have access to that water to a degree greater than what would occur with individual riparian owners having individual lots fronting on the water. The effect of pyramiding is to funnel back lot development from offshore lots or residences via a narrow parcel of land to provide access to the water. Publicly-owned access points shall not fall within this definition.

(2) R-2 MULTI-FAMILY RESIDENCE DISTRICT

(a) Permitted Uses. The following are permitted uses in the R-2 District:

1. One-family or two-family dwellings. Lot, yard, and dwelling specifications given under R-1 shall apply.
2. Dwelling attached or unattached garage.
3. Accessory buildings not requiring space in excess of twenty percent (20%) of the rear yard area.
4. Home occupations not involving the conduct of business on the premises.

(b) Conditional Uses. Section 4.09 of this Ordinance shall govern all conditional uses. The following is a conditional use in the R-2 District:

1. Three (3) or more family dwellings per structure only when central or public sewers are available. The minimum lot area shall be six thousand (6,000) square feet per family.
2. Home occupations involving the conduct of business on the premises.

(c) Yard Depths.

1. Front and Rear - Minimum depth of twenty-five feet (25').
2. Side - Minimum of sixteen feet (16').

(d) Dwellings Area.

1. Setback - Section 4.10 of this Ordinance shall govern.
2. Height - Thirty-five- (35-) foot maximum.

4.07 CONSERVANCY DISTRICTS

(1) C-1 LOWLAND CONSERVANCY DISTRICT

(a) Purpose. The primary purpose of the C-1 District is to preserve, protect, and improve the quality and functions of the lakes, bogs, swamps, marshes, running streams, ponds, and other wetlands in the Town of Rhine. This District recognizes that it is desirable to preserve areas for fish and wildlife habitat and natural water storage.

(b) Lands Included. Lands included in the C-1 District are areas of wetlands, swamps, bogs, marshes, shorelands, and other lowlands.

(c) Permitted Uses. The following uses are permitted in the C-1 District:

1. Forestry.
2. Fur skin production.
3. Hunting, fishing, and game management.
4. Natural crop production and harvesting.
5. Recreational areas.

(d) Conditional Uses. In the C-1 District, all buildings or structures and any use of a residence for a home occupation will be regarded as conditional uses. All conditional use applications shall follow the procedure detailed in Section 4.09 of this Ordinance.

(e) Prohibited Uses. The following uses of land or buildings are prohibited in the C-1 District:

1. Activities which would substantially disturb or alter the natural flora and fauna or topography.
2. Damming of or relocation of any watercourse.
3. Dumping, filling, or draining.
4. Removal of top soil or peat.

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(2) C-2 UPLAND CONSERVANCY DISTRICT

(a) Purpose. The purpose of the C-2 District is to preserve, protect, and improve woodlands, scenic areas, submarginal farmlands, wildlife habitat, and recreational areas.

(b) Lands Included. Lands included in the C-2 District consist of wooded and partially wooded areas, former mineral extraction areas, and other highlands, all of which generally do not fall within the Agricultural Districts.

(c) Permitted or Principal Uses. The following principal uses are permitted in the C-2 District:

1. Forestry and game management.
2. General farming when following Soil Conservation Service standards.
3. Parks and recreational areas not including those of off-road vehicles. *(Rev. 03/05)*
4. Single-family residence. Minimum lot area of twelve (12) acres. If wooded, a maximum of forty thousand (40,000) square feet may be cleared for the residence site. Refer to Section 4.06(d): R-1 Zone Specifications, for primary building requirements. *(Rev. 11/01)*. Accessory buildings are permitted. All buildings shall meet the setback distances provided in Sections 4.06(1)(d) & (e) of the Town Ordinances. *(Rev. 10/01)*
5. Home occupations not involving the conduct of business on the property.

(d) Conditional Uses. All uses not listed under permitted uses in Subsection (c) above are conditional uses in the C-2 District. This includes home occupations involving the conduct of business on the property. All conditional use applications shall follow the procedure detailed in Section 4.09 of this Ordinance.

(e) Prohibited Uses. The following uses are prohibited in the C-2 District:

1. Activities which would substantially disturb or alter the natural flora or fauna.
2. Clear-cutting of a timber stand without the approval of the District Forester and Town Board.

4.08 COMMERCIAL DISTRICTS**(1) NEIGHBORHOOD BUSINESS**

(a) Purpose. The purpose of the B-1 District is to identify currently existing areas of neighborhood commercial uses and to provide for uses which have traditionally existed in these areas and are compatible with the surrounding and overall goals of this Ordinance.

(b) Permitted Uses. The Town Board reserves the right to establish conditions for operation under this Subsection. The following are permitted uses in the B-1 District:

1. Barber and beauty shops.
2. Business offices.
3. Clinics.
4. Food stores.
5. General retail stores.
6. Greenhouse, nursery.
7. Professional offices.
8. Bed and breakfast operations. *(Rev. 9/05)*

(c) Conditional Uses. Section 4.09 of this Ordinance shall apply to all conditional uses. The following uses are conditional uses in the B-1 District:

1. Alcoholic beverages stores.
2. Automotive service. *(Rev. 9/05)*
3. Bars.
4. Cleaning establishments.
5. Clubs.
6. Dining and lunch rooms.
7. Recreational establishments.
8. Facilities for the generation or operation of public utilities. *(Rev. 10/02/01)*
9. Repair shops. *(Rev. 9/05)*
10. Retail fuel service and dispensing (including propane). *(Rev. 9/05)*
11. *[deleted 7/6/10]*

(d) A single family dwelling residence in conjunction with any enumerated permitted use and conditional use shall comply with the provisions of R-1 District Zoning. *(Rev. 7/6/10)*

(e) All buildings shall minimally meet the setback distances as specified in 4.06(1)(d) and (e) of the Town Ordinances. *(Rev. 10/01; Ren. 7/6/10)*

(2) B-2 COMMERCIAL MANUFACTURING OR PROCESSING

(a) Purpose. The purpose of the B-2 District is to identify and regulate uses which have traditionally generated noise, smoke, dust, light, odors, heavy traffic, runoff, and other secondary effects which have a high potential to produce complaints from adjoining properties or the general public. Any uses other than permitted uses or any structures require a conditional use permit pursuant to Section 4.09. *(Rev. 04/06)*

(b) Permitted Uses. The following are permitted uses in the B-2 District: *(Rev. 04/05/06)*

1. Agriculture. Those uses permitted in the Agricultural Land Districts pursuant to Section 4.05(2)(a), except that no structures may be built without first obtaining a conditional use permit pursuant to Section 4.09. *(Rev. 04/06)*

2. Passive Outdoor Recreation. Passive, outdoor, recreational land uses such as arboretums, natural areas, wildlife, areas, hiking trails, bicycle trails, cross-country ski trails, horse trails, picnic areas, gardens, fishing and hunting areas, and similar land uses. *(Rev. 04/06)*

(c) Conditional Uses. The following conditional uses may be authorized in the B-2 District pursuant to the provisions of Section 4.09 of this Ordinance: *(Renum. 04/06)*

1. Fabrication of consumer or industrial commodities.
2. [Reserved for future use.]
3. Quarrying: Gravel, sand, rock, and soil removal and processing.
4. Mining and ore processing.
5. Salvage yards for wood, metals, papers, and clothing.
6. Stockyards.
7. Off-road vehicle parks.

4.09 CONDITIONAL USES

(1) APPLICATION. Applications for conditional use permits shall be made in duplicate to the Building Inspector and shall include the following information where applicable and necessary for proper review:

(a) Names and addresses of the applicant, owner of the site, architect, professional engineer, contractor, and all opposite and abutting property owners of record.

(b) Description of the subject site by section, lot, block, and recorded subdivision or by proper measurements and address of the subject site, if any.

(c) Proposed type of structure, operation, and use of the structure or site, number of employees, and the zoning district in which the subject site lies.

(d) Plat of survey prepared by a registered land surveyor showing all of the information required for a building permit and in addition the following: location, boundaries, dimensions, elevations, uses of, size of, existing and proposed easements, highway access, existing highway access restrictions, and the current use of abutting lands and their structures within forty feet (40') of the subject site. The architectural plans of all proposed new buildings shall be attached to the plat of survey.

(e) Additional information as may be required by the Town Plan Commission.

(f) Payment to the Town Clerk/Treasurer of an application fee in the sum of Two Hundred Fifty Dollars (\$250.00). In the event, however, that for any reason it is necessary for the Town Plan Commission to hold additional meetings in regard to the application for a conditional use permit, then the applicant, shall pay to the Town Clerk/Treasurer an additional fee of Two Hundred Fifty Dollars (\$250.00) for each such public hearing or appearance. In addition, applicants are subject to the fees for development services pursuant to Section 4.18, below. *(Rev. 11/07/01; 09/05)*

(g) Any conditional use requiring a renewal of application will require the applicant be assessed application fees of Two Hundred Fifty Dollars (\$250.00). Applicant must contact the Clerk/Treasurer sixty (60) days prior to time of renewal. *(Rev. 11/01)*

(2) REVIEW AND APPROVAL. The Town Plan Commission shall review the site, existing and proposed structures, architectural designs or plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, sewerage and water systems, and the proposed operation.

(a) Conditions. Conditions such as landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, planting screens, location, size and number of signs, hours of operations, improved traffic circulation, higher performance standards, deed restrictions, highway access restrictions, street dedication, certified survey maps, or increased yards or parking areas may be required by the Town Plan Commission upon its finding that these are necessary to fulfill the purpose and intent of this Ordinance.

(b) Compliance. Compliance with all other provisions of this Ordinance, such as lot dimensions, yards, height, parking, loading, traffic, highway access, and performance standards shall be required of all conditional uses. Variances shall only be granted as provided in Section 4.11.

(c) **Public Hearings.** A public hearing shall be held by the Plan Commission on each application for a Conditional Use Permit. A Class 2 notice under Wis. Stat. ch. 985 of the public hearing shall be given in a newspaper of general circulation in the Town. The Town Clerk shall also mail copies of such notice, by first class mail, to the owners of abutting property within two hundred feet (200') of the boundaries of the site on which the proposed conditional use will be located whose names and addresses are known or can be obtained with reasonable diligence.

(d) When receiving a permit to remove and/or process gravel, sand, or rock, the Plan Commission shall consider the following:

1. The number of pits closed and not reclaimed.
2. The number of pits operating.
3. The acreage of pits operating.
4. Material available in operating pits.
5. Need for proposed operation.
6. Credibility of prospective operator.
7. Material available in proposed operation.
8. Duration of proposed operation.
9. On-site or off-site mitigation. *(Rev. 10/01)*

(3) **HEARING.** The hearing on the conditional use application shall be conducted in accordance with Wis. Stat. § 68.11(2).

(4) **DETERMINATION OF PLAN COMMISSION.** The Plan Commission shall make such written findings and determinations as it deems appropriate based upon the information submitted to it and presented at the public hearing and shall make a written recommendation to the Town Board with regard to such conditional use application. A copy of the Plan Commission's findings, determinations, and recommendations shall also be mailed to the applicant by the Town Clerk. In making its determinations and recommendations, the Commission shall be guided by the purposes, goals, and intent set forth in or necessarily implied from Section 4.01 and any other applicable Sections of this Ordinance.

(5) **TOWN BOARD REVIEW AND ACTION.** The Town Board shall review the findings and recommendations of the Plan Commission and make the ultimate determination of whether to grant the conditional use and the conditions upon which such grant is made. If the Town Board determines that all considerations have not been appropriately reviewed, it may refer the matter back to the Plan Commission or it may schedule its own additional hearing.

(6) **VIOLATION OF CONDITION.** Any permitted conditional use which does not continue in conformity with the conditions of the permit shall be considered in violation of this Ordinance.

(7) **LAPSE OF PERMIT.** Conditional use permits shall expire two (2) years from the date of issue unless use or construction authorized thereby shall be commenced with said two (2) years or if certain terms or conditions were established at the time of creation or renewal of permit. *(Rev. 11/01)*

4.10 HIGHWAY SETBACK LINES

(1) **SETBACK LINES ESTABLISHED.** In order to promote and enhance the public safety, general welfare, and convenience, it is necessary that highway setback lines be and they are hereby established in the Town of Rhine, Sheboygan County, Wisconsin, outside the limits of incorporated cities and villages; along all public highways, at the intersections of highways with highways and highways with railroads as hereafter provided. If a highway in the future is located on a City, Village, or County boundary, this Section is not intended to be effective on the side within the City or Village nor on the side within another County.

(2) **DEFINITIONS.** As used in this Section and for its purposes, the following words mean:

(a) **Centerline.** A line connecting the points on a highway from which setback lines shall be measured at any point on the highway.

(b) **Setback Lines.** Lines established along highways at specified distances from the center line, which prohibited buildings or structures shall be set back of or outside of, and within which they may not be placed except as hereinafter provided. Within the setback line means between the setback line and the highway.

(c) **To Place.** The putting of a building or structure in a particular situation, whether by original construction or erection, or by moving a building or structure to the particular site.

(d) **Traffic Lane.** A strip or portion of a roadway intended to accommodate a single line of moving vehicles.

(e) **Surveys and Plans.** Surveys and plans as referred to hereinafter shall be considered as accepted by the County or Town Board if County or Town funds have been used in the improvement carried out with such plans.

(f) **Junction.** The point upon which two (2) highway centerlines as herein established or a highway centerline and the centerline of a railway right-of-way meet.

(3) **CLASSES OF HIGHWAYS AND CENTERLINES.** Highways are classified and the position of the centerline shall be determined as follows:

(a) **Class C Highways.**

1. Town roads not otherwise classified that have not been improved in accordance with engineering surveys and plans accepted by the County or Town Board. The centerline is the midway point between fences or other markers indicating the boundaries of the highway on opposite sides thereof.

2. Town roads not otherwise classified that have been improved in accordance with engineering surveys and plans accepted by the County or Town Board. The centerline is at the center of the surfacing or pavement or, if there be none, the center of the graded roadbed.

3. Roads and streets in platted subdivisions not otherwise classified. The centerline is at the midpoint between the right-of-way lines as shown on the recorded plat.

(b) Class B Highways.

1. County trunk highways that have not been improved according to engineering surveys or plans accepted by the County Board or its agent, the County Transportation Committee. The centerline is at the midway point between fences or other markers indicating the boundary on opposite sides thereof.

2. County trunk highways that have been improved according to engineering surveys and plans accepted by the County Board, or their agent, the County Transportation Committee. The centerline is the center of the surfacing or pavement, or if there be none, the center of the graded roadbed.

(c) Class A Highways. State trunk highways that have been improved according to surveys and plans of the State Highway Commission or plans accepted by the County Board. The centerline is the center of the pavement or surfacing, or if there be none, the center of the graded roadbed or the center of the directional separator if the highway is to be paved as a double-divided road.

(4) STRUCTURES PERMITTED WITHIN SETBACK LINES

(a) Buildings and Structures to Comply. No new building or other new structure or part thereof shall be placed between the setback lines established by this Ordinance and the highway except as provided by this Ordinance, and no building, sign, or structure or part thereof existing within such setback lines on the effective date of this Ordinance shall be altered, enlarged, or added to in any way that increases or prolongs the permanency thereof or be reconstructed in its original existing location after having been destroyed by fire, storm, or other catastrophe to the extent of fifty percent (50%) or more of its last assessed value. (Rev. 12/06)

(b) Trees and Shrubbery Excepted. This Subsection shall not be interpreted so as to prohibit the planting and harvesting of field crops, shrubbery, or trees; provided, however, that no building or structure, trees, or shrubbery shall be so located, maintained, or permitted to grow so that the view across the sectors at the intersections as provided by Subsection (5), Subparagraphs (b), (c), (d), and (e) shall be obstructed.

(c) Permitted Structures. The following kinds of structures may be placed between the setback line and the highway:

1. Open fences. (Rev. 12/06)

2. Telephone, telegraph, and power transmission poles and lines and microwave radio relay structures may be constructed within the setback lines and additions to and replacements of existing structures may be made provided the owner will file with the Town of Rhine an agreement in writing to the effect that the owner will remove all new construction, additions, and replacements erected after the adoption of this Ordinance at his expense when necessary for the improvement of the highway.

3. Underground structures not capable of being used as foundations for future prohibited overground structures.

4. Access or service highways constructed according to plans as approved by the County Transportation Committee shall give due consideration to highway safety and maximum sight distances.

5. Signs are subject to the provisions of Chapter 18 of this Municipal Code. (Rev. 04/07)

(5) SETBACK DISTANCES. Except as otherwise provided, the distance from the centerline to the setback line applicable to the various classifications of highways as defined by Subsection (2) of this Section, shall be provided by the following paragraphs of this Subsection, respectively. Whenever a highway is improved to a classification requiring a greater setback distance than that required by this Ordinance prior to such improvement, the setback distance shall be that applicable to the later classification. In cases where the provisions of this Section may be interpreted to provide for different setback distances, the greater setback distance shall prevail.

(a) Along Highways Generally. The setback distances, at any point, for the respective classes of highways shall be as follows:

1. Class C Highways. Sixty feet (60') from centerline except in platted subdivisions where the setback distance shall be thirty-six feet (36') from the right-of-way lines, as shown on the recorded plat but not less than thirty-six feet (36') from outside of and nearest point on the boundary line of the highway.

2. Class B Highways. Seventy-five feet (75') from centerline but not less than forty-two feet (42') from outside of and nearest point of the boundary line of the highway.

3. Class A Highways. One hundred feet (100') from centerline but not less than sixty-seven feet (67') from outside of and nearest point of the boundary line of the highway.

(b) Variance. Where structures are to be erected between buildings existing at the time of the adoption of this Ordinance which are located not more than one hundred fifty feet (150) apart, and having setback lines less than are established by this Section, the Board of Appeals may vary this regulation, provided that the Board of Appeals shall establish such conditions as will save the Town harmless from additional improvement damages which might accrue when and if the highway is improved, and provided that no such variation will permit a setback less than the average setback of the adjacent buildings.

(c) At Ordinary Highway Intersections. At grade intersections of highways with highways, except those roads and streets in platted subdivisions which do not intersect Class B Highways or Class A Highways, there shall be setback lines which shall be straight lines across all sectors connecting points on the setback lines along the intersecting highways, which points are located fifty feet (50') from the intersections of the projections of the setback lines along the highway.

(d) At Railroad Grade Crossings. The setback lines shall be straight lines across all sectors, connecting points located on the railroad right-of-way lines and the highway setback line, respectively, each; one hundred feet (100') from the intersection of the highway setback lines and the railway right-of-way line.

4.11 BOARD OF APPEALS²

(1) **MEMBERSHIP ESTABLISHED.** The Board of Appeals shall consist of five (5) members appointed by the Town Chairperson, subject to confirmation by the Town Board, for three (3) year staggered terms. The members shall be removable by the Town Chairperson for cause upon written charges and after a public hearing. The Town Chairperson shall designate one (1) member Chairperson. The Town Chairperson shall appoint two alternates, Alternate One and Alternate Two, for terms of three (3) years, who shall act with full power only when a member of the Board of Appeals refuses to vote because of interest or is unavailable. Vacancies shall be filled for the unexpired term of the member who resigned or was removed. Not more than one (1) member of the Town Board may be a member of the Appeals Board. (Rev. 11/06)

(2) **RULES AND MEETINGS.** The Board of Appeals shall adopt rules for its government and procedure. Meetings of the Board of Appeals shall be held at the call of the Chairperson and at such other times as the Board of Appeals may determine. The Chairperson, or in the absence of the Chairperson, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

(3) **RECORD OF PROCEEDINGS.** The Board of Appeals shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact and shall keep records of its examinations and other official actions, all of which shall be timely filed in the office of the Town Clerk and shall be a public record.

(4) **PROCEDURE; APPLICATIONS.**

(a) **General.**

1. Applications must be accompanied by the applicable fee and at least one complete set of plans, drawings, attachments, photos and/or maps. An additional seven (7) complete sets of application materials must be provided seven (7) days prior to the meeting.

2. Notice shall be given by publication of a Class 2 notice under Wis. Stat. ch. 985 in a newspaper of general circulation in the Town and mailing to the Building Inspector, applicant/appellant and all parties having filed a request therefor a notice of the time, date, and place of the hearing.

3. Should it be necessary for the Board to hold additional public hearings or meetings concerning any matter, the applicant/appellant shall pay to the Town Clerk/Treasurer an additional fee for each such public hearing or appearance, as set by the Town Fee Schedule (Table 21.04).

4. Decisions of the Board shall be in writing and shall include written findings and conclusions.

(b) **Variances.** Variances may be requested by filing with the Town Clerk/Treasurer at least 21 days prior to a Board of Appeals meeting the appropriate application and paying the applicable fee set by the Town Fee Schedule (Table 21.04).

(c) **Appeals.** Appeals may be taken by filing with the Town Clerk/Treasurer a notice of appeal and paying the applicable fee set by the Town Fee Schedule (Table 21.04). Thereafter the Building Inspector shall transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken. The Board of Appeals shall decide appeals within a reasonable time after a hearing, not to exceed twenty (20) days.

² Repl. & Recr. by Ord. 2013-3, adopted August 13, 2013 [substantive changes to (4)(a) and (5)(f)].

(d) Special Exceptions/Permits. Special permits described in subparagraph 4.11(5)(e) may be requested by filing with the Town Clerk/Treasurer at least 21 days prior to a Board of Appeals meeting the appropriate application supplied by the Town, the information required for a conditional use permit under Section 4.09(1) and such other information as the Board of Appeals shall from time to time by rule require, and paying the applicable fee set by the Town Fee Schedule (Table 21.04).

(5) POWERS. The Board of Appeals shall have the following specific powers:

(a) Appeals. To hear and decide appeals by any person aggrieved or by any officer, Department or Board of the Town of Rhine affected, where it is alleged there is error in any order, requirement, decision, or determination made by the Building Inspector or other administrating official in the enforcement of this chapter. Such appeals shall be taken within sixty (60) days of the order, requirement, decision or determination.

(b) Special Exceptions. To hear and decide special exceptions to the terms of this chapter upon which the Board of Appeals is required to pass under subparagraph 4.11(5)(e) or any other provision of this chapter.

(c) Variances. To authorize, upon appeal in specific cases, such variance from the terms of this chapter, as will not be contrary to the public interest, where, owing to special conditions peculiar to a specific lot or tract of land, a literal enforcement will result in practical difficulty or unnecessary hardship so that the spirit of the chapter shall be observed, public safety and welfare secured, and substantial justice done, provided in every case where a variance from these regulations has been granted by the Board of Appeals, the minutes of the Board shall affirmatively show that a "practical difficulty" or "unnecessary hardship" exists, and the records of the Board shall clearly show in what particular and specific respects a "practical difficulty" or an "unnecessary hardship" is created.

(d) Public Utility Permits. Permit the erection and use of a building or premises in any location, subject to appropriate conditions and safeguards in harmony with the general purposes of this chapter, for such public utility purposes which are reasonably necessary for public convenience and welfare.

(e) Special Exceptions Enumerated. In addition to the foregoing, the Board of Appeals shall have the following specific powers:

1. Grant a permit for a temporary structure for commerce or industry in a Residential District which is incidental to the residential development, such permit to be issued for a period of not more than one (1) year.

2. Grant a permit for the extension of a District boundary for a distance of not more than twenty five feet (25') only where the boundary of a District divides a lot in a single ownership at the time of adoption of this chapter.

3. By special exception permit, after due notice and public hearing, authorize the location of any of the following buildings or uses in any District from which they are excluded by this chapter, provided that such buildings or use shall comply with all other regulations in the District in which it is proposed to be relocated:

a. Private clubs and lodges, except those the chief activity of which is a service customarily carried on as a business; but no such use shall be authorized or permitted in the Industrial District or in the A-1 or A-3 Districts.

b. Hospitals and clinics; but no such use shall be authorized or permitted in the Industrial District.

c. Institutions of an educational, philanthropic, or charitable nature; but no such use shall be authorized or permitted in the Industrial District.

d. Cemeteries.

e. Storage garage or parking area in connection with a residential development project; but no such use shall be authorized or permitted in the A-1 or A-3 Districts.

f. Sewage disposal plant.

g. Mobile home parks which comply with Ordinance passed April 10, 1973, but no such use shall be authorized or permitted in the A-1 and A-3 Districts.

(f) Orders; Voting Requirements. The Board of Appeals may reverse or affirm wholly or in part or may modify any order, requirement, decision, or determination appealed from and shall make such order, requirement, decision, or determination as in its opinion ought to be made and to that end shall have all the powers of the Building Inspector. The concurring vote of three (3) members of the Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination appealed from or to decide in favor of the applicant on any matter on which it is required to pass or to effect any variation in the requirements of this chapter.

(6) DUTIES AND RESPONSIBILITIES. In exercising the powers enumerated under Subsection 4.11(5), the Board of Appeals shall be subject to the following specific requirements:

(a) Intent and Purpose. The Board shall interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan as shown on the Zoning District Map accompanying and made a part of this chapter where the street layout actually of the ground varies from the street layout on the aforesaid map.

(b) Departmental Assistance. The Board shall call on any other Town Department for assistance in the performance of its duties, and it shall be the duty of such other Departments to render such assistance as may be reasonably required.

(c) No Variances. Except as specifically authorized in this chapter, the Board of Appeals shall not permit and its decisions shall not be interpreted to have the effect of permitting in any District uses prohibited in such District.

(d) Impose Conditions. In exercising its powers, the Board of Appeals shall, in appropriate cases, establish suitable conditions and safeguards in harmony with the general purpose and intent of this chapter.

4.12 TOWN ZONING MAP

The Town Zoning Map attached to this Ordinance is made a part of the same by reference and supersedes and replaces any other such map and is the official Zoning Map of the Town of Rhine, Sheboygan County, Wisconsin, until amended, revoked, or superseded.

4.13 ADMINISTRATION

(1) GENERAL PROVISIONS. The administration of this Ordinance is hereby vested in the following three (3) offices of the Town of Rhine:

- (a) Building Inspector.
- (b) Board of Appeals.
- (c) Town Plan Commission.

(2) DUTIES OF THE BUILDING INSPECTOR. The Building Inspector or his duly designated and acting deputy shall enforce the provisions of this Ordinance within the Town of Rhine and its extraterritorial jurisdictional area as defined in this Ordinance and in addition thereto and in furtherance of said authority, he shall:

(a) Permit Approval. Approve and issue all zoning and occupancy permits or certificates and make and maintain records thereof.

(b) Inspections. Conduct inspections of buildings, structures, and uses of land to determine compliance with the terms of this Zoning Ordinance.

(c) Maintain Records. Maintain permanent and current records of the Zoning Ordinance, including but not limited to all maps, amendments, special exceptions, variances, appeals, and applications therefor and records of hearings thereon.

(d) Annual Update. Have available in book, pamphlet, mimeographed, or map form, on or before July 1 of each year:

1. The compiled text of the Town of Rhine Zoning Ordinance and amendments thereto, including amendments adopted through the preceding Town Board year.

2. A current updated copy of the Town of Rhine Zoning District Map showing the zoning districts, divisions, and classifications in effect in the Town of Rhine, including any areas of the Town subject to an extraterritorial zoning ordinance of any City or Village at the close of the preceding Town Board year.

3. If no amendments to the Town Zoning Ordinance have been adopted during the preceding Town Board year, then no supplements need be printed for such year. If no changes in the zoning districts, divisions, and classifications in effect in the Town of Rhine or portions located in an extraterritorial jurisdiction area have been made during the preceding Town Board year, then no zoning map need be printed for such year.

(e) Distribute Map and Ordinance. Maintain for distribution to the public a supply of copies of the zoning map, the compiled text of the Zoning Ordinance, and the rules of the Board of Appeals and the Extraterritorial Zoning Committee, if any. A fee not to exceed Five Dollars (\$5.00) for each copy shall be charged to defray the cost of printing.

(f) File Appeal Records. Receive, file, and forward to the Board of Appeals for action all appeals for variances and the records in all appeals.

(g) Assist Other Officials and Bodies. Provide such clerical, technical, and consultative assistance as may be required by the Board of Appeals, the Plan Commission, the Extraterritorial Zoning Committee, if any, and other Town officials in the exercise of their duties relative to this Ordinance.

4.14 TOWN PLAN COMMISSION³

(1) ESTABLISHMENT. There shall be established a Plan Commission known as "The Town of Rhine Plan Commission."

(2) MEMBERSHIP

(a) The Plan Commission shall consist of five (5) members of recognized experience and qualifications appointed by the Town Board Chair and subject to confirmation by the Town Board. One alternate may also be appointed.

(b) At least 1 member shall be a Town Board supervisor. No more than 2 members may be Town officials (an elected or appointed position of the Town).

(c) Members shall be appointed in April after qualification of any new Town Supervisor, for staggered three year terms commencing May 1 and ending April 30. However, Town officials shall serve for the period of such elected or appointed term, pursuant to s. 66.0501(2), Wis. Stats.

(d) Members may be re-appointed to serve additional terms.

(e) Vacancies shall be filled in the same manner as appointments for a full term.

(f) The Town Board Chair shall designate the Commission's Chairperson.

(3) COMMISSION STAFF

(a) The Town Clerk shall act as recording secretary for the Plan Commission to: prepare its correspondence; receive and file all referrals, applications, papers, and records; prepare, publish, and mail all required notices; and prepare and keep minutes of its proceedings.

(b) The Plan Commission may request the Building Inspector, Town Attorney, or other Town staff or agents to attend meetings to provide technical assistance.

(4) MEETINGS

(a) The Plan Commission shall meet at least annually, and more often as needed.

(b) Special meetings may be called by the Commission Chair or upon the written request of three (3) members to the Town Clerk. Notice of special meetings shall be provided to all Commission members at least twenty-four (24) hours prior to the special meeting.

(c) The Town Clerk shall keep minutes of the proceedings and a record of all actions showing the vote of each member upon each question, the reasons for the Commission's determination, and its findings.

3 Repl. & Recr. by Ord. 2013-4, adopted October 1, 2013.

(5) JURISDICTION; DUTIES; POWERS. The Plan Commission shall have the following jurisdiction, duties and powers, in addition to those contained in s. 62.23 and ch. 236, Wis. Stats.:

(a) To propose or review and recommend text and map amendments to the Town Zoning Code for consideration and final action by the Town Board.

(b) To review conditional use permit applications and recommend their denial, approval, or conditional approval to the Town Board.

(c) Such others as determined from time-to-time by the Town Board.

4.15 CHANGES AND AMENDMENTS

(1) PLAN COMMISSION REVIEW. Whenever the public necessity, general welfare, or good zoning practice require, the Town Board may, by Ordinance, change the District boundaries or amend or supplement the regulations established by this Ordinance in accordance with the provisions of the Wisconsin Statutes. Such change or amendment shall require a prior review by the Town Plan Commission which shall make a recommendation in writing to the Town Board within sixty (60) days after receiving a request to review a proposed change.

(2) INITIATION. A change or amendment to the Zoning Ordinance may be initiated by petition of any property owner in the area to be affected by the change or amendment or by the Town Board or the Town Plan Commission.

(3) PETITION. Petitions for any change to the District boundaries or amendments to the regulations shall be filed with the Town Clerk, shall describe the premises to be rezoned or the regulations to be amended, list the reasons justifying the petition, specify the proposed use, and have the following materials attached;

(a) Petitioner's name, address, phone number, and interest in property, such as owner, tenant, etc.

(b) Existing and proposed Zoning District.

(c) Proposed use. A statement of the type, extent, area, etc., of any development project.

(d) Names and addresses of owners of all properties lying within two hundred feet (200') of the area proposed for rezoning.

(e) Compatibility with adjacent lands, including a statement of land uses and impact of zoning change.

(f) Legal description of property to be rezoned.

(g) A scale plot plan or survey plat of property to be rezoned showing location, dimensions, zoning of adjacent properties, existing uses, and buildings of adjacent properties.

(h) Any additional information as may from time to time be required by the Town Board or Plan Commission.

(i) Payment to the Town Clerk/Treasurer of an application fee in the sum of Two Hundred Fifty Dollars (\$250.00). In the event that it is necessary for the Town Plan Commission to hold additional public hearings in regard to the application, then the applicant shall pay an additional fee of Two Hundred Fifty Dollars (\$250.00) for each such public hearing. Additional charges may be required to defray legal or technical assistance as outlined in Section 4.18, below. *(Rev. 08/07/01; 09/06/05)*

(4) HEARING. The Town Board shall, after publishing a Class 2 notice under Wis. Stat. ch. 985, hold a public hearing upon each petition or proposed zoning change or amendment listing the time, place, and the changes or amendments proposed. The Town Board shall also give at least ten (10) days' prior written notice to the Clerk of any municipality within one thousand feet (1,000') of any land to be affected by the proposed change or amendment.

(5) BOARD ACTION. Following such hearing, and after careful consideration of the Town Plan Commission recommendations, the Town Board shall vote on the passage of the proposed changes or amendments. A negative recommendation of the Town Plan Commission shall only be overruled by majority vote of the full Town Board membership. If a rezoning is granted contingent on receiving a Certified Survey Map, that map shall be presented to the Town Board within ninety (90) days or the rezoning action of the Board shall be automatically vacated. Reasonable extensions may be requested. *(Rev. 10/02/01)*

(6) PROTEST. In the event of a protest against such change or amendment duly signed and acknowledged by the owners of twenty percent (20%) or more either of the area of the land included in such change or by the owners of twenty percent (20%) or more of the land immediately adjacent extended one hundred feet (100') therefrom or by the owners of twenty percent (20%) or more of the land directly opposite thereto extending one hundred feet (100') therefrom, or by the owners of twenty percent (20%) or more of the land directly opposite thereto extending one hundred feet (100') from the street frontage of such opposite land, such change or amendments shall not become effective except by the favorable vote of three-fourths (3/4) of the members of the Town Board voting on the proposed change.

4.16 VIOLATIONS AND PENALTIES

Any person, firm, or corporation who violates, disobeys, neglects, omits, or refuses to comply with, or who resists the enforcement of any of the provisions of this Ordinance, shall upon conviction thereof, forfeit not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) together with applicable penalty assessment under the Wisconsin Statutes and costs of prosecution and in default of payment shall be imprisoned in the County Jail of Sheboygan County for a term of not more than thirty (30) days. Each day a violation of this Ordinance occurs or continues shall constitute a separate offense. *(Rev. 08/07/01)*

4.17 VALIDITY

Should any Section, clause, or provision of this Ordinance be declared by the courts to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid and the Town Board hereby declares that it would have enacted each section, clause, and provision of this Ordinance as a separate enactment regardless of the validity or invalidity of any other section, clause, or provision thereof.

4.18 CHARGES FOR DEVELOPMENT SERVICES

(1) FEES CHARGED. All person proposing an action that requires the issuance of a building permit, conditional use permit, special land use permit, map approval, plat approval, or rezoning approval by the Town or any of its Commissions, Committees, officers, or other agents shall pay such reasonable and necessary charges for professional or technical services incurred by the Town for the review, administration, investigation, and processing of the application. 'Professional services' may include but is not limited to planning, engineering, legal, and related services. Such charges shall be in addition to any other filing, permit, publication, or meeting fees, charges, or costs otherwise owed by the applicant. A decision by the Town Board, Committee, or commission which is unfavorable to the applicant shall not excuse the applicant from the obligations under this Section.

(2) APPEAL OF FEES. The applicant has the right to challenge the amount of fees levied under this Section by an appeal to the Town Board. Based upon the relevant records and the testimony presented, the Board shall make a determination to decrease, affirm, or increase the fees concerned.

4.19 LARGE WIND ENERGY SYSTEMS⁴

(1) APPLICABILITY. This Section applies to all wind energy systems, as defined by Wis. Stat. § 66.0403(1)(m), used to convert wind energy to electrical energy, except for small wind energy systems, as defined in Wis. Admin. Code § PSC 128.01(20). This Section applies to the construction of a wind energy system or the expansion of an existing or previously approved wind energy system.

(2) DEFINITIONS. The definitions set forth in Wis. Admin. Code Chapter PSC 128 are incorporated herein.

(3) PERMITTED USES. Wind energy systems are permitted uses in all zoning districts, except in areas that are primarily designated for future residential or commercial development, as shown on the Town's comprehensive plan that was in existence as of June 2, 2009, or as shown in such maps after December 31, 2015, as part of a required update to a comprehensive plan. This paragraph shall apply only to wind energy systems having a total nameplate capacity of at least one megawatt (1000 kilowatts).

(4) OWNER REQUIREMENTS. The owner requirements specified in Wis. Admin. Code PSC 128.13-128.19 related to the following are hereby incorporated in their entirety:

- (a) siting criteria, including setback and height requirements;
- (b) noise criteria;
- (c) shadow flicker;
- (d) signal interference;
- (e) stray voltage;
- (f) construction and operation, including physical characteristics; and
- (g) decommissioning.

⁴ Re-created by Ord. 2012-____, adopted Sept. 4, 2012 (originally created by Ord. 2010-1, adopted Jan. 5, 2010)

(5) APPLICATION AND NOTICE REQUIREMENTS.

(a) At least 90 days before an owner files an application to construct a wind energy system, an owner shall provide written notice of the planned system to all of the following:

1. landowners within one (1) mile of a planned wind turbine host property;
2. the Town Clerk;
3. emergency first responders and air ambulance providers servicing the Town;
4. the Wisconsin Department of Transportation;
5. the Public Service Commission; and
6. the Wisconsin Department of Natural Resources.

(b) At least 90 days after filing the notice required under the preceding Paragraph (a), an owner shall file with the Town Clerk twelve (12) copies of an application to construct a wind energy system. Such application shall include the information specified in Wis. Admin. Code § PSC 128.30(2). The owner shall also provide documentation showing that the real property owners consent to the installation of the proposed wind energy system on their property and copies of any wind energy system easements that have been recorded in the Register of Deeds Office. The owner shall ensure that all information contained in the application is correct.

(c) On the same day an owner files an application with the Town Clerk, the owner shall provide written notice of the filing to property owners and residents located within one (1) mile of the proposed location of the wind energy system facility. Such notification shall meet the requirements of Wis. Admin. Code § PSC 128.30(5)(a).

(d) As soon as possible after receiving the application for a wind energy system, the Town Clerk shall publish a Class 1 Notice, under Wis. Stat. Chapter 985, stating that an application for a wind energy system has been filed with the Town. The Notice shall include the following:

1. brief description of the proposed wind energy system and its proposed location;
2. the locations where the application is available for public review;
3. the method and time period for public comments; and
4. the approximate schedule for reviewing the application by the Town.

(e) Within 45 days of receiving an application, the Town Board shall determine whether the application is complete and notify the applicant as to the determination. An application is complete if it meets the requirements of Paragraph (5)(b), above. If the Town Board determines that the application is incomplete, it shall provide notice to the owner stating the reason for the determination, and the owner shall provide the information necessary to complete and re-file the application. There is no limit on the number of times an applicant may supplement and refile an application. If the Town Board fails to make a determination as to the completeness within 45 days after the application is filed, it shall be deemed complete. Each time an owner supplements an incomplete application, an additional 45-day completeness review period shall begin the day after the owner re-files the application.

(f) The Town Clerk shall make an application for a wind energy system available for public review at the Town Hall and at the Elkhart Lake Public Library, 40 Pine Street, Elkhart Lake, WI 53020.

(g) The Plan Commission shall review and make a recommendation as to the approval of the application. At the Town Board's option, the public meeting may be held by the Plan Commission.

(h) The Town Board or Plan Commission may request additional information necessary to understand the wind energy system after the Town Board has determined an application is complete. An owner shall provide additional information in response to all reasonable requests in a timely, complete and accurate manner.

(i) The Town Board shall hold at least one public meeting prior to making a decision on the application to inform the public about the proposed wind energy system and to obtain public comments thereon. At least one business day prior to the public meeting, the public may submit written comments to the Town Clerk during the Clerk's regular office hours, by mail, email, or at the drop-box at the Town Hall.

(j) The Town Board shall approve or disapprove an application no later than 90 days after the day on which the Town Board notifies the applicant that the application is complete. If the Town Board fails to act within the 90 days, or within the extended review period, the application is considered approved. The review period may be extended if within the initial 90-day review period, the Town Board authorizes in writing any combination of the following extensions, except that the total amount of time for all extensions granted hereunder may not exceed 90 days:

1. up to 45 days if the Town Board needs additional information to determine whether to approve or deny the application;
2. up to 90 days if the owner makes a material change to the application for approval;
3. up to 90 days for other good cause specified in writing by the Town Board.

(k) If the wind energy system is proposed to be located in more than one political subdivision, the Town may conduct a joint application review process in accordance with Wis. Admin. Code § PSC 128.30(7).

(6) **CONDITIONS OF APPROVAL.** The Town Board may place conditions on the approval of a wind energy system application or require any of the provisions as outlined in Wis. Admin. Code § PSC 128.33.

(7) **WRITTEN DECISION.**

(a) The Town Board shall issue a written decision to grant or deny an application for a wind energy system. The decision shall include findings of fact supported by evidence in the record. Any denial shall specify the reason for denial.

(b) The Town Clerk shall provide the written decision to the owner and to the Public Service Commission. If approved, the Town shall provide the owner with a duplicate original of the decision, and the owner shall record such original with the Sheboygan County Register of Deeds Office.

(c) Change in ownership does not affect the approval of a wind energy system. The owner shall provide not less than 90 days prior written notice to the Town Clerk advising of the transfer of ownership.

(8) **COMPLIANCE MONITORING.** The Town Board, or its designee, shall act as a monitoring committee to determine compliance with any condition established as a condition of approval or to assess when wind energy system facilities are not maintained in good repair and operating condition. The monitoring committee may establish a compliance monitoring procedure including timelines, provide for payment of reasonable fees, and notice requirements, as it deems appropriate.

(9) **POST-CONSTRUCTION FILING REQUIREMENTS.** Within 90 days of the date a wind energy system commences operation, the owner shall file with the Town Clerk and the Public Service Commission an as-built description of the wind energy system, an accurate map of the wind energy system showing the location of all wind energy facilities, geographic information system showing the location of all wind energy systems and current information identifying the owner of the wind energy system. Each wind turbine location shall be labeled with a unique identifier.

(10) **MODIFICATIONS.** An owner may not make a material change in the approved design, location or construction of a wind energy system without the prior written approval of the Town. The owner shall submit an application for the material change, along with the appropriate fee, to the Town Clerk. The application and notice requirements, except the pre-application notice, the conditions of approval, and the written decision requirements of this Section shall apply to any application for a material change.

(11) **COMPLAINT PROCESS.** The complaint process and notice requirements set forth in Wis. Admin. Code § PSC 128.40 and 128.42 are incorporated herein.

(12) **FEES.**

(a) An owner shall submit a non-refundable application fee as set forth in the Town of Rhine Fee Schedule (Section 21.04).

(b) An owner shall be responsible for all reasonable fees and costs incurred by the Town for any services necessary to review an application, which may include the costs of services provided by outside engineers, attorneys, planners, environmental specialists, and other consultants or experts of the Town's choosing. The owner shall be responsible for third-party inspection fees regarding compliance with approved construction requirements.

(c) An owner shall deposit 1% of the total estimated project cost, or an amount as otherwise determined by the Town Board, with the Town Clerk, which represents 50% of the total estimated amount of reimbursement for the Town's review of the application. Such amount shall be paid before the Town issues a written decision on the application. The Town shall hold the estimated fees in a non-interest bearing account, and shall refund any overpayment of estimated fees to the owner one year after the wind energy system commences operation. The owner shall be responsible for the difference between the deposited amount and the Town's actual fees. Any fees or costs that remain unpaid for more than 30 days after written demand by the Town shall result in the application being denied. Any fees that remain unpaid after 30 days shall accrue interest at a rate of 12% per annum and may be assessed against the property as a special charge.

(13) **ADMINISTRATIVE CODE REFERENCES.** All references to the Wis. Admin. Code Chapter 128 are to the 2011 version. Any amendments to Chapter 128 shall be incorporated herein.

4.20 SMALL WIND ENERGY SYSTEMS⁵

(1) **APPLICABILITY.** This Section applies to small wind energy systems, as defined by Wis. Admin. Code 128.01(20), to be a wind energy system that has a total installed nameplate capacity of 300 kilowatts or less and that consists of individual wind turbines that have an installed nameplate capacity of not more than 100 kilowatts. This Section applies to the construction of a wind energy system or the expansion of an existing or previously approved wind energy system.

(2) **DEFINITIONS.** The definitions set forth in Wis. Admin. Code Chapter PSC 128 are incorporated herein.

(3) **PERMITTED USES.** Small Wind Energy Systems are permitted uses in all zoning districts provided all requirements of this Section are met.

(4) **OWNER REQUIREMENTS.** The owner requirements specified in Wis. Admin. Code PSC § 128.13-128.19 related to the following are hereby incorporated in their entirety:

- (a) siting criteria, including setback and height requirements;
- (b) noise criteria;
- (c) shadow flicker;
- (d) signal interference;
- (e) stray voltage;
- (f) construction and operation, including physical characteristics; and
- (g) decommissioning.

Small Wind Energy Systems shall be subject to the exemptions and modifications required by Wis. Admin. Code §§ PSC 128.60 and 128.61.

(5) **APPLICATION AND NOTICE REQUIREMENTS.**

(a) At least 60 days before an owner files an application to construct a small wind energy system, the owner shall provide a notice of the proposed construction to adjacent landowners and the Town Clerk.

(b) An owner shall file with the Town Clerk twelve (12) copies of an application to construct a small wind energy system. Such application shall include the information specified in Wis. Admin. Code § PSC 128.30(2), except the emergency plan and decommissioning and site restoration plan, and shall include all worksheets, maps, and other attachments included in the application. The owner shall ensure that all information contained in the application is correct. The owner shall also provide the following:

1. documentation showing that the real property owners consent to the installation of the proposed small wind energy system on their property;
2. copies of any wind energy system easements that have been executed and/or recorded in the Register of Deeds Office;
3. copies of all necessary state and federal permits and approvals.

⁵ Created by Ord. 2012-____, adopted Sept. 4, 2012.

(c) On the same day an owner files an application with the Town Clerk, the owner shall provide written notice of the filing to property owners and residents located within one (1) mile of the proposed location of the wind energy system facility. Such notification shall meet the requirements of Wis. Admin. Code § PSC 128.30(5)(a). An application is considered “filed” the day the owner notifies the Town in writing that all application materials have been filed.

(d) Within 45 days of the filing of an application, the Town Board shall determine whether the application is complete and notify the applicant as to the determination. An application is complete if it meets the requirements of Paragraph (5)(b), above. If the Town Board determines that the application is incomplete, it shall provide notice to the owner stating the reason for the determination, and the owner shall provide the information necessary to complete and re-file the application. There is no limit on the number of times an applicant may supplement and re-file an application. If the Town Board fails to make a determination as to the completeness within 45 days after the application is filed, it shall be deemed complete. Each time an owner supplements an incomplete application, an additional 45-day completeness review period shall begin the day after the Town receives responses to the items identified in the notice.

(e) As soon as possible after receiving the application for approval of a small wind energy system, the Town Clerk shall publish a Class 1 Notice, under Wis. Stat. Chapter 985, stating that an application for a wind energy system has been filed with the Town. The notice shall include the following:

1. brief description of the proposed wind energy system and its proposed location;
2. the locations where the application is available for public review;
3. the method and time period for public comments; and
4. the approximate schedule for review of the application by the Town.

(f) The Town Clerk shall make an application for a wind energy system available for public review at the Town Hall and at the Elkhart Lake Public Library, 40 Pine Street, Elkhart Lake, WI 53020.

(g) The Plan Commission shall review and make a recommendation as to the approval of the application. At the Town Board’s option, the public meeting may be held by the Plan Commission.

(h) The Town Board shall hold at least one public meeting prior to making a decision on the application to inform the public about the proposed small wind energy system and to obtain public comments thereon. At least one business day prior to the public meeting, the public may submit written comments to the Town Clerk during the Clerk’s regular office hours, by mail, email, or at the drop-box at the Town Hall.

(i) The Town Board or Plan Commission may request additional information necessary to understand the small wind energy system after the Town Board has determined the application is complete. An owner shall provide additional information in response to all reasonable requests in a timely, complete and accurate manner.

(j) The Town Board shall approve or disapprove an application no later than 90 days after the day on which the Town Board notifies the applicant that the application is complete. If the Town Board fails to act within the 90 days, or within the extended review period, the application is considered approved. The review period may be extended if within the initial 90-day review period, the Town Board authorizes in writing any combination of the following extensions, except that the total amount of time for all extensions granted hereunder may not exceed 90 days:

1. up to 45 days if the Town Board needs additional information to determine whether to approve or deny the application;
2. up to 90 days if the owner makes a material change to the application for approval;
3. up to 90 days for other good cause specified in writing by the Town Board.

(k) If the wind energy system is proposed to be located in more than one political subdivision, the Town may conduct a joint application review process in accordance with Wis. Admin. Code § PSC 128.30(7).

(6) WRITTEN DECISION.

(a) The Town Board shall issue a written decision to grant or deny an application for a small wind energy system. The decision shall include findings of fact supported by evidence in the record. Any denial shall specify the reason for denial.

(b) The Town Clerk shall provide a copy of the written decision to the owner and to the Public Service Commission. If approved, the Town shall provide the owner with a duplicate original of the decision, and the owner shall record such original with the Sheboygan County Register of Deeds Office.

(c) Change in ownership does not affect the approval of a small wind energy system. The owner shall provide not less than 90 days prior written notice to the Town Clerk advising of the transfer of ownership.

(7) MODIFICATIONS. An owner may not make a material change in the approved design, location or construction of a wind energy system without the prior written approval of the Town. The owner shall submit an application for the material change, along with the appropriate fee, to the Town Clerk. The application and notice requirements, except the pre-application notice, and written decision requirements of this Section shall apply to any application for a material change.

(8) COMPLAINT PROCESS. The complaint process and notice requirements set forth in Wis. Admin. Code § PSC 128.40 are incorporated herein, except as exempted under Wis. Admin. Code § PSC 128.60.

(9) FEES.

(a) An owner shall submit a non-refundable application fee as set forth in the Town of Rhine Fee Schedule (Section 21.04).

(b) An owner shall be responsible for all reasonable fees and costs incurred by the Town for any services necessary to review an application, which may include the costs of services provided by outside engineers, attorneys, planners, environmental specialists, and other consultants or experts of the Town's choosing. The owner shall be responsible for third-party inspection fees regarding compliance with approved construction requirements.

(c) An owner shall deposit 2% of the total estimated project cost, or an amount as otherwise determined by the Town Board, with the Town Clerk, which represents 50% of the total estimated amount of reimbursement for the Town's review of the application. Such amount shall be paid before the Town issues a written decision on the application. The Town shall hold the estimated fees in a non-interest bearing account, and shall refund any overpayment of estimated fees to the owner one year after the wind energy system commences operation. The owner shall be responsible for the difference between the deposited amount and the Town's actual fees. Any fees or costs that remain unpaid for more than 30 days after written demand by the Town shall result in the application being denied. Any fees that remain unpaid after 30 days shall accrue interest at a rate of 12% per annum and may be assessed against the property as a special charge.

(10) ADMINISTRATIVE CODE REFERENCES. All references to the Wis. Admin. Code Chapter 128 are to the 2011 version. Any amendments to Chapter 128 shall be incorporated herein.

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