

SHEBOYGAN COUNTY ORDINANCE NO. 08 (2017/18)

Re: Amending Sections 72.15 and 72.32(43) of the Sheboygan County Shoreland Ordinance Regarding Lake Michigan Setback

WHEREAS, in 2012, the Sheboygan County Planning and Conservation Department was notified that Sheboygan County's Shoreland Zoning Ordinance needed to be revised and updated in order to be compliant with new statutory requirements and with more modern practices, and

WHEREAS, the Planning and Conservation Department, together with the Department of Natural Resources (DNR), put together a "stakeholder" group comprised at times of as many as 20 people representing a variety of parties with competing interests and charged the group with recommending code provisions which would be in compliance with new Wisconsin statutory and administrative requirements while at the same time balancing private property rights against the public interest in controlling the use of shorelands and wetlands, and

WHEREAS, one of the things that the stakeholder group recognized early on in its line-by-line review of the existent Ordinance was that Lake Michigan, with its sand beaches, rock cliffs, earthen bluffs, waves in excess of 15 feet, tides, seiches, rip currents, and wave run-up, has vastly different characteristics from inland lakes and rivers, and

WHEREAS, in recognition of the difference between Lake Michigan and inland lakes, the stakeholder group supported a standard that had been in place since the 1990s wherein Sheboygan County would calculate setbacks for Lake Michigan property utilizing an Ordinary High Water Mark (OHWM) for Lake Michigan as the line where an elevation of 582.7 feet above sea level intersects the shoreline, and

WHEREAS, this provision addressed health, safety, and welfare concerns of the Lake Michigan shoreline properties in both the northern part of the County with its steep bluffs and in the southern part of the County with its gently sloping sand beaches with dunes, and

WHEREAS, on November 6, 2012, the County Board enacted Ordinance No. 10 (2012/13) which completely revised Chapter 72 (the Shoreland Zoning Ordinance) which provided for the unique treatment of Lake Michigan property, and

WHEREAS, on July 12, 2015, the Wisconsin legislature enacted 2015 Wisconsin Act 55, the Budget Bill, which included as one of its provisions a new Wis. Stat. § 59.692(1d) prohibiting counties from enacting shoreline regulations that are more restrictive than state shoreland zoning standards, and

WHEREAS, the County has been informed by the DNR that the unique treatment of Lake Michigan shoreland property under its Shoreland Zoning Ordinance is now non-complaint with the new requirements of Wis. Stat. § 59.692(1d) and that the County is again being required to amend its Ordinance to treat Lake Michigan shoreland property just like any inland lake shoreland property, and

WHEREAS, the County Board finds this state-mandated ordinance change is not in the best interests of the citizens of Sheboygan County but is obliged to follow the statutory provisions to amend its Ordinance to be compliant with state law;

NOW, THEREFORE, the County Board of Supervisors of the County of Sheboygan does ordain as follows:

Section 1. **Amending Sections 72.15 and 72.32(43).** Sections 72.15 and 72.32(43) of the Sheboygan County Code of Ordinances is hereby amended as follows (charges marked by redlining or strikethrough) (only those Sections or portions of Sections affected appear):

72.15(1)(a) ~~Inland~~ Navigable Waters, except if exempt or reduced as hereafter provided.

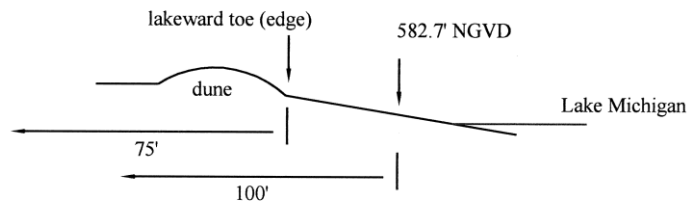
1. Required Setbacks. All structures shall require a setback of at least seventy-five feet (75') from the OHWM although a greater setback may be required where otherwise regulated by the floodplain provisions of Chapter 73 of the County Code of Ordinances or other more restrictive ordinances.

~~(b) Lake Michigan.~~

- ~~1. Findings of Fact. Lake Michigan possesses unique ecological characteristics, water level fluctuations, and erosion hazards, not found on other surface waters in Sheboygan County.~~
- ~~2. Required Setbacks. All structures shall be set back at least one hundred feet (100') from the OHWM elevation of 582.7' National Geodetic Vertical Datum (NGVD) or Mean Sea Level (MSL) or 75' from the lakeward toe of the natural primary dune, whichever is less.~~

Toe: The lowest point on the slope of a dune or bluff.

Lakeward toe: The toe or edge on the lake side of the dune.



~~(eb) Reduced Setback for New Principal Structures. A setback less than the seventy-five foot (75') required setback from the OHWM shall be permitted for a proposed principal structure and shall be determined as follows:~~

1. Where there are existing principal structures in both directions, the setback shall equal the average of the distances the two existing principal structures are set back from the OHWM provided all of the following are met:

- A. Both of the existing principal structures are located on an adjacent lot to the proposed principal structure;
- B. Both of the existing principal structures are located within two hundred fifty feet (250') of the proposed principal structure;
- C. Both of the existing principal structures are located less than seventy-five feet (75') from the OHWM; and
- D. The average setback shall not be reduced to less than thirty-five feet (35') from the OHWM of any navigable water.

Functional appurtenances such as decks or porches that are attached to the proposed principal structure must comply with the reduced principal structure setback but shall not be used in the calculation of the reduced principal structure setback.

- (43) **ORDINARY HIGH WATER MARK (OHWM).** The point on the bank or shore up to which the presence and action of water is so continuous as to leave a distinctive mark by erosion, destruction, or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristics.

Erosion scars, transitions in vegetation from aquatic to terrestrial types, cobbled beaches below the current waterline, and evidence of even-aged stands of woody vegetation paralleling contours or below the existing water line may all be indicators of current or historic OHWM. Only one (1) OHWM indicator need be present to establish an OHWM, but a number of indicators may be interpreted together to locate it at a given site. When the bank or shore is of such character that it is difficult or impossible to ascertain the point of OHWM, recourse may be had to the opposite bank of a waterway or to similar places on the shore of a lake or flowage to determine whether a given stage of water is above or below the OHWM.

~~Notwithstanding the above, and for zoning purposes only, the OHWM for the coastal reach of Lake Michigan extending from the City of Sheboygan south to the south County line may be determined by an elevation at 582.7 feet NGVD (National Geodetic Vertical Datum, also known as MSL, Mean Sea Level), an elevation equivalent to 581.4 feet IGLD (International Great Lakes Datum), as determined by the Bureau of Water Regulation & Zoning, Wisconsin Department of Natural Resources. Elevations shall be determined by a registered professional surveyor, employing not less than five (5) uniformly distributed points of elevation, tied to a fixed reference point. The OHWM shall be a line connecting these points.~~

Section 2. **Non-Code Provisions.** Because the County Board believes these requirements are not in the best interests of the citizens of Sheboygan County, the County Clerk is directed to forward copies of this Ordinance to Governor Walker, the Secretary of the

Wisconsin Department of Natural Resources, and to Sheboygan County legislative delegates in the hope that the legislature can fix Wis. Stat. § 59.692(id) to allow local deviations in shoreland zoning ordinances to address unique local conditions.

Section 3. **Effective Date.** The herein Ordinance shall take effect upon enactment.

Respectfully submitted this 7th day of November, 2017.

PLANNING, RESOURCES, AGRICULTURE, AND EXTENSION COMMITTEE*

Keith Abler, Chairperson

Steven Bauer
Steven Bauer

Fran Damp
Fran Damp, Vice-Chairperson

James Baumgart
James Baumgart

Curt Brauer
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Opposed to Introduction:

*County Board members signing only

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Enacted 12.19.2017