

## ARTICLE III. GENERAL REGULATIONS

### Sec. 94.122. Introduction.

The proper regulation of the use of certain structures, land, waters and air only through the use of the zoning districts contained within this chapter is neither feasible nor adequate. Therefore, the regulations given in this article, which shall be applied in addition to the district regulations, are necessary to accomplish the intent of this chapter.

(Ord. of 11-18-1991)

### Sec. 94.123. Use regulations.

(a) *Uses restricted.* No structure or land shall be used and no structure shall be erected, structurally altered or relocated, except for a use as permitted and in compliance with the regulations established for the district in which it is located, and the regulations of this section as applicable.

(b) *Uses classified.* For the purpose of this chapter, all uses shall be classified according to the following categories:

- (1) Permitted uses by right are principal uses the permissibility of which is a predetermined right anywhere in the district in which located, subject only to the regulations established governing such use.
- (2) Permitted accessory uses are uses incidental, customary to and commonly associated with a permitted principal use, and therefore permitted on the same basis as the principal use. Accessory uses shall not be permitted prior to principal uses.
- (3) Uses permitted by conditional grant are uses the nature, character or circumstances of which are so unique or so dependent upon the specific contemporary conditions that predetermination of permissibility by right or the detailing in this chapter of the specific standards, regulations or conditions necessary or appropriate at all possible sites to such permissibility, are not practical, but which may be permitted or denied in the districts where listed subject to arriving at mutually agreed conditions and requirements between the petitioner and the village.

(c) *Unclassified uses.* Any use not specifically listed as a permitted or conditional use shall be considered to be prohibited except as may be otherwise specifically provided in districts where uses listed are examples, not an exhaustive listing.

In case of question as to the classification of a use, the question shall be submitted to the planning commission for determination.

(d) *Temporary uses.*

(1) *Exemptions.* Temporary uses of duration of less than three days which are held on parks or other public property and sponsored by a bona fide charitable or nonprofit organization are exempt from the requirements contained herein, provided such uses have prior approval of the parks superintendent or other village department having responsibility for the village land being utilized. Garage sales, yard sales, and similar temporary sales activities in residential areas, shall be exempt from the requirements contained herein as long as such activity does not exceed five days within any thirty day period.

(2) *Permitted uses.* The following temporary uses may be permitted subject to granting of a temporary use permit and any conditions attached thereto in accordance with the provisions of this chapter.

a. *Real estate development field offices.*

1. Temporary uses such as real estate development field offices are permitted in any district for any new subdivision approved in accordance with Chapter 74 Subdivision Regulations. The office may not contain sleeping or cooking accommodations. A model home may be used as a temporary sales office for the duration of the temporary use permit.
2. May be permitted by the zoning administrator (also see section 94.116(d)2) for periods not exceeding 18 months, renewable for a second 18 months in any zoning district.
3. Office shall be removed upon completion of the development of the subdivision.

b. *Temporary construction office.*

1. A temporary structure or structures for use in connection with a construction project or land subdivision development shall be permitted on the land of the project during the construction period. Temporary buildings related to with a construction project or land subdivision development shall be removed when construction ceases for a period of six consecutive months or at the time final occupancy is issued on the project.
2. A temporary structure or shelters for construction materials and equipment, may also be permitted by the zoning administrator (also see section 94.116(d)2) for periods not exceeding 18 months, renewable for a second 18 months in any zoning district.

- c. *Seasonal sales of Christmas Trees.* Temporary uses selling seasonal Christmas trees shall be permitted subject to the following standards:
1. A temporary use permit shall be required and good for a maximum of thirty consecutive days. All unsold trees must be removed from the property by December 31 of each calendar year.
  2. The temporary use shall be located on a lot that fronts a collector or principal arterial street.
  3. The temporary use shall be located at least fifty feet from any residential district.
  4. A minimum setback of ten feet shall be established between the street right-of-way and the Christmas trees, signs or any structures.
  5. If located within an existing parking lot, reduction of available space shall not exceed the amount noted in the following table:

Number or Available Off-Street Parking Spaces	Maximum Reduction Allowed
0-25	0
26-35	2
36-49	3
50-99	4
100+	5

6. The area shall be maintained free of litter and comply with any regulations required in Chapter 34 Fire Prevention and Protection.
- d. *Farm produce.* The seasonal sale of farm produce from a roadside produce sale stand shall be allowed in AG or RR zoning districts and shall be further subject to the regulations outlined in Secs. 94.175(c)(6) and 94.176(c)(6).
- e. *Non-profit food stands in commercial districts.*
- f. *Sales and/or special events associated with a permanent retail use.* Temporary retail activity conducted on property associated with a permanent retail use shall be subject to the following standards:
1. The temporary retail activity shall be of the same nature as the permanent retail activity conducted on the property.
  2. A temporary use permit shall be required and good for a maximum of thirty consecutive days unless otherwise approved by the Plan Commission.
  3. A temporary use permit shall only be issued to the operator of the associated permanent retail use.
  4. No property shall be issued more than one such temporary use permit in a calendar year.

5. Tents or other temporary tent-like structures utilized shall comply with all applicable Municipal Code regulations specifically, Chapter 34 Fire Prevention and Protection and Chapter 94 Zoning.

g. *Other temporary uses not identified.* Those temporary uses not specified herein, and not determined by the Zoning Administrator to be similar to those other uses identified above, shall be referred to the Plan Commission for determination and time duration of permit issued..

(e) *Performance standards.* Performance standards listed in article IV of this chapter shall be complied with by all uses in all districts. Uses, even if listed as permitted, which cannot comply with a particular performance standard become individually prohibited.

(f) *Storage and discharge prohibited.* No waste material such as garbage, rubbish, gasoline, fuel oil, flammables, soils, tars, chemicals, greases, industrial or agricultural waste, or any other materials of such nature, quantity, obnoxiousness, toxicity or temperature so as to contaminate, pollute or harm the waters shall be so located, stored or discharged in a way that would be likely to run off, seep or wash into surface waters or groundwaters; nor shall any such material be allowed to accumulate on any lands of waters so as to be unsightly, dangerous or so as to constitute a nuisance. No nonagricultural gasoline storage tanks shall be permitted in a residential district, and no more than five cords of firewood may be stored on any parcel located in the R-E through R-5 districts.

(Ord. of 11-18-1991; Ord. of 9-22-2011)

#### **Sec. 94.124. Engineering regulations.**

(a) *Establishment of grades.* Every building erected, structurally altered or relocated, shall be at a grade approved by the zoning administrator or the planning commission, upon advice of the village engineer, as being in satisfactory relationship with the established street and adjacent lot grades, or with the existing street grade where none is established, with particular consideration for proper drainage and safe vehicular access. Such grade shall also comply with chapter 14. No building or structure shall be constructed in such a way so that any window is below the established grade unless a drainage plan is approved in advance by the building inspector.

(b) *Surface water drainage and erosion control.*

(1) Adequate drainage and soil erosion control plans required. No zoning permit involving building construction or site grading shall be issued unless there is first provided a plan for surface water drainage and soil erosion control, which

plan was either approved as part of the land subdivision approval process, or as part of this chapter or a previous zoning permit.

- a. Where the plan was previously approved as part of the land division process or a previous zoning permit process, the zoning permit shall not be issued until the zoning administrator is satisfied that required on-site and off-site facilities such as drainage courses, storm sewers or detention areas will be functioning by the time of occupancy permit issuance, unless needed sooner, or that the zoning permit applicant has financially provided a fair share of costs as provided for in the plan.
- b. Where a plan was not previously approved, the zoning administrator shall not issue the zoning permit until a current approved plan is provided. Where the zoning permit is subject to planning commission review, the commission, after first hearing the advice of the village engineer, shall be the approving authority. Where commission review is not required, the village engineer shall be the approving authority.

- (2) Changing of drainage prohibited. The damming, filling, relocating or otherwise interfering with the natural flow of surface or subsurface water in the natural drainage course or the intended course in an approved drainage and erosion control plan shall not be permitted without filing and gaining approval of a new plan. Approval by the village does not signify nor guarantee approval by other agencies also having jurisdiction.

(c) *Subsurface water drainage.* Where soil maps provided by the U.S. Soil Conservation Service, or experience of the village engineering or public works departments indicates that subsurface groundwater presence or movement, including seasonal-only flows, will be a hindrance to the construction or maintenance of private or public improvements, a zoning permit shall not be issued until a plan is provided by the permit applicant dealing with the expected conditions and the plan is approved as provided for in subsection (b) of this section.

(d) *Sanitation and water supply.* Zoning of land for urban development and its subdividing for human occupancy or use shall only be recommended by the planning commission and adopted by the board after each is assured that the development will be served, by the time of development, with a safe individual or common water supply, and adequate means for disposal of wastewater under terms complying with appropriate state, county and village sanitary regulations.

(e) *Preservation of topography.* In order to protect property owners from possible damage due to change in the existing grade of adjoining lands and to aid in preserving and protecting the natural beauty and character of the landscape, no change in the existing topography of any land shall be made that would result in increasing any portion of the slope to a ratio greater than two horizontal to one vertical, within a distance of 20 feet from the property line, except where retaining walls are built pursuant to article

V of this chapter or with the written consent of the abutting property owners and with the approval of the planning commission, or which would alter the existing drainage or topography in any way as to adversely affect the adjoining property. In no case, shall any slope exceed the normal angle of slippage of the material involved, and all slopes shall be protected against erosion.

(Ord. of 11-18-1991; Ord. of 8-19-2002, § 1)

### **Sec. 94.124.1. Telecommunications facilities.**

(a) *Purpose.* The purpose of this section is to provide a uniform and comprehensive set of standards for the development and installation of telecommunications towers, antennas and facilities. The regulations contained herein are designed to protect and promote public health, safety, community welfare and the aesthetic quality of the Village of Weston, while at the same time not unduly restricting the development of needed telecommunications facilities. It is intended that the Village of Weston shall apply these regulations to accomplish the following:

- (1) Facilitate the provision of non-discriminatory and competitive wireless telecommunications services to the residents and businesses of the village.
- (2) Provide a process for obtaining necessary permits for telecommunications facilities while protecting the interests of the citizens of the village.
- (3) Avoid potential damage to adjacent properties through tower failure by establishing structural standards and setback requirements.
- (4) Minimize adverse visual effects of towers, antennas and facilities through careful design and siting standards.
- (5) Minimize the total number of towers in the village through the use of alternative support structures, co-location of new antennas on existing towers and buildings, and construction of towers with the ability to locate four or more providers.
- (6) Protect environmentally sensitive areas of the village, including the protection of migratory birds, through the placement of a maximum height limitation on new towers, the effective prohibition of guyed tower structures, and the prohibition of towers in key habitat areas such as wetlands, shorelands and floodplains.

(b) *Definitions.* The following definitions shall apply to this section unless the context dictates otherwise. All definitions in section 94.113 shall apply unless specifically defined in this section.

*Alternative support structure* means structures including but not limited to clock towers, steeples, silos, light poles, water towers, free-standing chimneys, utility poles and towers, towers, buildings or similar structures that may support telecommunications facilities.

*Antenna* means any system of wires, poles, rods, reflecting discs, or similar devices used for the transmission or reception of electromagnetic waves when such system is either external to or attached to the exterior of a structure. Antennas shall include devices having active elements extending in any direction, and directional beam type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which are deemed to be a part of the antenna.

*Antenna building mounted* means any antenna, other than an antenna with its supports resting on the ground, directly attached or affixed to a building.

*Antenna ground mounted* means any antenna with its base placed directly on the ground.

*Camouflaged tower* means any telecommunications tower that due to design or appearance hides, obscures, or conceals the presence of the tower and antennas. Camouflaging may be accomplished by a suitable combination of the following examples: lack of lighting, low tower height, non-contrasting colors, screening and landscaping, and others.

*Carrier* means companies licensed by the Federal Communications Commission (FCC) to build personal wireless telecommunications facilities and operate personal wireless telecommunications services. *Also called a provider.*

*Co-location* means a telecommunications facility comprised of a single telecommunications tower or building supporting multiple antennas, dishes, or similar devices owned or used by more than one public or private entity.

*FAA* means Federal Aviation Administration.

*FCC* means Federal Communications Commission.

*Ground equipment* means telecommunications facility support equipment and buildings.

*Guyed structure* means a telecommunications tower that is supported in whole or in part by guy wires and ground anchors or other means of support besides the superstructure of the tower itself.

*Height, telecommunications tower* means the distance measured from the original grade at the base of the tower to the highest point of the tower. This measurement excludes any attached antennas, and lighting.

*Lattice structure* means a telecommunications tower that consists of vertical and horizontal supports and crossed metal braces.

*Monopole structure* means a telecommunications tower of a single pole design.

*Operation* means other than nominal use; when a facility is used regularly as an integral part of an active system of telecommunications it shall be deemed in operation.

*Provider*: see Carrier.

*Satellite dish* means a device incorporating a reflective surface that is solid, open mesh, or bar configured that is shallow dish, cone, horn, or cornucopia shaped and is used to transmit or receive electromagnetic signals. This definition is meant to include, but is not limited to, what are commonly referred to as satellite earth stations, TVRO5 and satellite microwave antennas.

*Telecommunications facility* means a facility, site, or location that contains one or more antennas, telecommunications towers, alternative support structures, satellite dish antennas, other similar communication devices, and support equipment which is used for transmitting, receiving, or relaying telecommunications signals, excluding facilities exempted under subsection (e).

*Telecommunications facility structure* means a telecommunications tower or alternative support structure on which telecommunications antenna(s) may be mounted.

*Telecommunications tower* means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including camouflaged towers, lattice towers, guy towers, or monopole towers. This includes radio and television transmission towers, microwave towers, and common-carrier towers. It shall exclude alternative support structures and those facilities exempted under subsection (c).

*Utility pole mounted antenna* means an antenna attached to or upon an existing or replacement electric transmission or distribution pole, street light, traffic signal, athletic field light, or other approved similar structure.

*Village* means Village of Weston.

(c) *Exemptions*.

(1) Any pre-existing tower or antenna for which permits have been issued prior to the effective date of this section is exempt from its provisions. Any addition or

change to a pre-existing tower shall make such tower subject to all applicable requirements of this section.

- (2) Any new antenna or ground equipment proposed for an existing tower or alternative support structure shall be exempt from the conditional use permit requirements of this section, and shall only require a land use permit from the village.
  - (3) Any tower or antenna that is used exclusively for federally licensed amateur radio is exempt from this section, unless the tower or antenna exceeds 100 feet in height.
  - (4) Receive-only television or radio antennas and receive-only satellite dishes are exempt from this section, unless the antennas or dishes exceed 100 feet in height.
  - (5) Public safety towers or antennas used for law enforcement and emergency communications are exempt from this section.
  - (6) Mobile services providing public information coverage of news of a temporary or emergency nature are exempt from this section.
  - (7) Exempt structures under this section are subject to all other applicable provisions of the municipal zoning code of the village.
- (d) *Areas where telecommunications facilities may be allowed or prohibited.*
- (1) Telecommunications facilities may be allowed as a conditional use only in the following zoning districts, subject to public hearing and review by the planning commission and approval by the board of trustees:
    - a. AG agriculture (open space), as defined by the 1992 village rezoning section.
    - b. RR rural residential, provided the parcel is 5 acres or more in size.
    - c. B-3 general commercial (business with outside storage).
    - d. LMD light manufacturing and distribution.
    - e. M-1 manufacturing and warehousing (general manufacturing).
    - f. PUL public or utility land

(2) Telecommunications facilities, except exempt facilities, shall not be allowed in the following areas due to potential harm to the environment:

- a. Wetlands
- b. Shorelands.
- c. Floodplains.

(3) Telecommunications facilities, except exempt facilities, shall not be allowed in the following areas due to potential conflict with other uses of the land:

- a. Habitat areas of threatened or endangered species.
- b. Areas designated for planned residential use by the Village of Weston.
- c. Significant historic or cultural sites or buildings.

(e) *Conditional use permit required.*

(1) A conditional use permit is required for all telecommunications facilities, except exempt facilities. A conditional use permit is also required for existing towers and alternative support structures which are substantially modified. Sections 94.140, 94.141, and 94.142 of the Village of Weston Municipal Code shall apply to all telecommunication facilities.

(2) The zoning administrator and the planning commission shall review a conditional use permit application for compliance with the provisions of this section. The administrator shall complete a communication facility decision form to record the commission's decision in writing. The conditional use permit will be issued only if approved by the village board of trustees.

(3) In addition to the information required by 94.140, 94.141, and 94.142, the application shall include the following:

- a. A legal description of the facility site.
- b. A plat of survey showing the parcel boundaries, lease boundaries, tower, accessory structures, ancillary facilities, location, access, landscaping and fencing.
- c. An original signature of the applicant, landowner, lessees and holders of easements. The identity of the carrier, service provider, applicant, landowner and their legal status. The name, address and telephone number of the officer, agent or employee responsible for the application.

- d. A description of the telecommunications services that the applicant offers or provides to persons, firms, businesses or institutions.
- e. In the case of a leased site, a lease agreement or binding lease memorandum which shows on its face that it does not preclude the facility owner from entering into leases on the tower with other provider(s) and the legal description and amount of property leased.
- f. A description of the proposed tower's height and capacity, including the potential number and type of antennas and carriers/providers that it can accommodate.
- g. Location of all sites that were considered as possible alternatives to the site being applied for, including existing structures and towers, and the reasons for recommending the current site.
- h. Photo simulations of the proposed facility from points of interest as identified by the zoning administrator. A photo simulation shall be no smaller than eight inches by ten inches.
- i. A tabular and map inventory of all the applicant's existing telecommunications facilities located within the Village of Weston and including all of the applicants' existing telecommunications facilities within three miles of the village boundary.
- j. FCC license numbers and registration numbers, if applicable.
- k. Copies of finding of no significant impacts (FONSI) statement from the FCC or environmental impact study (EIS), if applicable.
- l. Copies of the determination of no hazard from the FAA including any aeronautical study determination or other findings from the Wisconsin Department of Transportation bureau of Aeronautics if applicable.
- m. A report prepared by a structural engineer licensed by the state of Wisconsin certifying the structural design of the tower and its ability to accommodate at least three additional antennas.
- n. Proof of liability coverage. The Village of Weston shall be a certificate holder in this policy.
- o. Proof of financial security for tower removal as defined in subsection (i)(2).
- p. Such other information as the department, the planning commission or the village board of trustees may reasonable require.

q. A narrative demonstrating how the applicant has complied with the requirements for the telecommunications facility conditional use permit.

(4) The village board of trustees may employ on behalf of the village an independent technical expert to review technical materials submitted by the applicant or to prepare any technical materials required but not submitted by the applicant. The applicant shall pay the reasonable costs of such review and/or independent analysis, and shall pay the estimated cost of such services before they are rendered. All invoices, fees and charges shall be paid in full before the issuance of a conditional use permit.

(f) *Co-location.* Co-location shall be the preferred method for establishing new telecommunications facilities. Every effort shall be made to co-locate the proposed facility on existing telecommunications facilities or other similar facilities or alternative support structures.

(1) No tower or structure shall be permitted as a matter of right or shall be permissible as a conditional use in any zoning district unless the applicant proves with sufficient credible evidence to the satisfaction of the village board of trustees, after review by the planning commission, that no existing tower can accommodate the applicant's proposed antenna. Sufficient credible evidence shall consist of not less than a signed statement by a licensed professional engineer that:

- a. No existing towers or alternative support structures are located within the geographic area required to meet the applicant's engineering requirements.
- b. Existing towers or alternative support structures are not of sufficient height to meet the applicant's engineering requirements.
- c. Existing towers or alternative support structures do not have sufficient strength to support the applicant's proposed antenna and related equipment.
- d. The applicant's proposed system would cause electromagnetic interference with the system on the existing tower or alternative support structure, or the system on the existing tower or alternative support structure would cause electromagnetic interference with the applicant's proposed system.
- e. The fees, cost or contractual provisions required by the owner to share an existing tower or alternative support structure or to adapt an existing tower or alternative support structure for co-location are unreasonable. Costs are considered unreasonable if they exceed 125 percent of new tower construction and development.

- f. The applicant demonstrates that there are other limiting factors that render existing towers or alternative support structures unsuitable.
- (2) Tower owners are required to accommodate the applicant's antenna and compatible antennas for at least three additional users (a minimum of four total users) if the tower or structure exceeds 100 feet in height. Any owner authorized to construct a tower or structure who refuses to allow use by other parties by the position of contractual provisions, fees or costs that are unreasonable shall be subject to revocation of the conditional use permit.
  - (3) All co-location inquiries made to an owner shall be made in writing. An owner who is contacted for the purpose of potential co-location shall respond in writing within 30 days of receipt of a written inquiry.
  - (4) The village and local government agencies shall have the right to reserve space upon any new tower or upon any tower being substantially modified. Reservation of the accommodation upon the structure shall be acquired during the permit approval process through good faith negotiations with the applicant.
- (g) *Design requirements.*
- (1) All towers and antennas must comply with all FCC and FAA rules and regulations.
  - (2) The design and installation of all towers and antennas shall comply with the manufacturer's specifications. Plans shall be approved and certified by a registered professional engineer.
  - (3) Installation of all towers shall comply with all applicable state building and electrical codes.
  - (4) Lattice towers may be allowed if all other requirements of this section are met.
  - (5) Monopole structures may be allowed if all other requirements of this section are met.
  - (6) Guyed structures shall only be allowed if the applicant demonstrates to the satisfaction of the village board of trustees that no other type of telecommunications facility structure will provide an equivalent level of service. Economic considerations shall not be used in determining whether a guyed structure may be used.
  - (7) Height of all telecommunications towers shall be limited to no more than 199 feet above original grade, unless the applicant can demonstrate to the

satisfaction of the planning commission that a greater height is necessary to provide coverage meeting the minimum requirements of the FCC license(s) and that no feasible alternative exists to provide coverage, such as co-locating on existing telecommunications towers or alternative support structures, constructing a new tower in a different location or constructing multiple towers of a shorter height.

- (8) New towers shall be designed structurally and electrically to accommodate the applicant's antennas and comparable antennas for at least three additional users (minimum of four total users). Towers must also be designed to allow for future rearrangement of antennas on the tower and to accept antennas mounted at different heights.

(h) *Performance standards.*

- (1) Monitoring and reporting. The applicant shall monitor the telecommunications facility to ensure full compliance with FCC regulations. A report shall be submitted to the department within one month of activation of the facility. Additional reports shall be submitted as needed in conformance with subsection (k) of this section.
- (2) Insurance. All towers, antennas and telecommunications structures must be adequately insured for injury to persons and damage to property. The Village of Weston shall be listed as an additional "insured" for liability in the event of tower or facility failure.
- (3) Security for removal. The applicant or owner of the telecommunications facility shall provide a bond, irrevocable letter of credit or other suitable financial guarantee as determined by the planning commission to ensure the removal of the facility and restoration of the site to its pre-construction state when use of the facility has been discontinued as defined by subsection (i) of this section. The amount of financial guarantee shall be no less than the cost of removal. The Village of Weston shall be a certificate holder in the financial guarantee.
- (4) Security. All telecommunications facilities shall be reasonably protected against unauthorized access. The bottom of all towers from the ground level to 12 feet above ground shall be designed to preclude unauthorized climbing and shall be enclosed with a minimum of a six foot high chain link fence with a locked gate. Guy anchors of guyed towers shall be similarly protected.
- (5) Signs. Signs shall be mounted on the fenced enclosure on or adjacent to the gate prohibiting entry without authorization, warning of the danger from electrical equipment and unauthorized climbing of the tower, and identifying the owner of the tower and telephone number for contact in case of

emergency. The sign shall be no larger than six square feet. No commercial advertising signs may be located on a telecommunications facility site.

(6) Screening and landscaping. All telecommunications facilities, except exempt facilities, shall be designed to blend into the surrounding environment and to hide views of the facility from adjoining properties and public roads to the greatest extent feasible.

a. Existing mature vegetation and natural landforms shall be preserved to the greatest extent possible.

b. In locations where existing mature vegetation and landforms will not adequately screen the views of the facility, the site shall be landscaped and maintained with a buffer of plant materials.

1. The landscaped buffer shall effectively screen the view of all tower accessory structures, equipment and improvements at ground level.

2. The area shall be so designed and planted as to be 75 percent or more opaque between two and six feet above ground level within not less than 24 months of the date of planting.

3. Upon project completion the owner(s)/operator(s) of the facility shall be responsible for maintenance and replacement of all required landscaping and screening.

4. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived by the village board of trustees upon the recommendation of the planning commission.

c. A camouflaged tower may be required by the village board of trustees in order to minimize adverse visual effects.

(7) Lighting. No lighting of the principal telecommunications facility structure shall be allowed unless required by the FAA or the FCC. If required, lighting shall be installed only when no other options are available.

a. Red lights shall be preferred to white lights on the primary telecommunications facility structure or tower.

b. High visibility paint shall be preferred to daytime lighting of any kind on the primary telecommunications facility structure or tower.

c. Lighting of accessory structures and the facility site may be permitted by the village board of trustees upon the recommendation of the planning

commission if it is of low intensity, directed inward and downward and is limited to within the facility site boundary.

- (8) Access. Access shall be provided by an all-weather gravel or paved driveway.
- (9) Setbacks. The following minimum setback distances shall apply:
  - a. No tower shall be located within 600 feet of any residence other than the residence on the parcel on which the tower is to be located.
  - b. No tower shall be located within 1,200 feet of any school, or any single-family dwelling within major plats, county plats, or residential zoning districts.
  - c. Tower structures shall be set back from the nearest property line, and from the residence on the parcel on which the tower is to be located, by a distance equal to the height of the tower. This setback may be reduced to one-half height of the tower if the applicant submits a report stamped by a professional engineer registered in the State of Wisconsin that certifies that the tower is designed and engineered to collapse upon failure within the distance from the tower to the property line.
  - d. Tower structures shall be set back from the nearest road right-of-way a distance equal to the height of the tower. The setback may be reduced to one-half the height of the tower if the applicant submits a report stamped by a professional engineer registered in the State of Wisconsin that certifies that the tower is designed and engineered to collapse upon failure within the distance from the tower to the road right-of-way.
  - e. All guy wire anchors shall be set back at least 25 feet from all property lines; this does not include leased parcels with boundaries located within a larger property. Subsurface anchors or portions of anchors that are subsurface shall be located on the property in which the tower has been constructed.
  - f. Setbacks required for telecommunications towers shall be measured from the center of the tower structure.
  - e. The required separation distance between tower and dwelling and/or subdivision may be reduced by obtaining the written agreement of the adjacent property owner, with the approval of the village board of trustees.
- (10) Lot size. When a new lot is created for the purpose of locating a telecommunications facility, the minimum lot size for that zoning district shall apply.

(11) Facility construction. All telecommunications facilities approved with a conditional use permit shall be completely constructed and in operation within six months of the date of approval. An extension of time, not to exceed six months, may be granted by the village board of trustees due to inclement weather or other extenuating circumstances. There is no additional fee for an extension.

(i) *Removal of abandoned telecommunications facility.* It is the express policy of the Village of Weston that telecommunications facilities be removed and their sites restored to their pre-construction state once they are no longer in use and not a functional part of providing telecommunications service.

(1) Removal and restoration of such facilities is the responsibility of the owner of the facility.

(2) The telecommunications facility(s) shall be removed when use of the facility(s) has been discontinued or the facility not been used for its permitted purpose for 12 consecutive months. Mere intent to discontinue use of the facility(s) shall not constitute use. The applicant/owner shall demonstrate through facility(s) lease(s) or other similar instruments that the use will be continued without a lapse of more than 12 consecutive months to constitute actual use. If the applicant cannot demonstrate actual use, the facility shall be considered abandoned and shall be removed.

(3) This restoration shall include removal of any subsurface structure or foundation, including concrete, used to support the telecommunications facility.

(4) Nothing in this section prevents the removal of the facility prior to expiration of the 12 month period.

(j) *Compliance review and revocation.* Each telecommunications facility under the jurisdiction of this section will be reviewed by the village for compliance each year. To facilitate the review, each telecommunications tower owner/operator shall submit annually on or before January 31st of each year, to the zoning administrator a telecommunications facility annual information report. This annual report shall include the owner/operator names, addresses, phone numbers, contact person(s), and any other appropriate information deemed necessary by the village board of trustees. The owner/operator shall supply the number of co-location positions designated, occupied or vacant. The information shall be submitted on a Village form, designated for such use, and shall become evidence of compliance. An annual fee shall be collected from the owner/operator to fund the review of the requirements of this section. Failure to comply with the requirements of this section may result in the revocation of a conditional use permit, if such action is deemed necessary by the village board of trustees.

(k) *Fees.* Permit and review fees for the following are as provided in the Village fee schedule:

- (1) Conditional use for telecommunications facility.
- (2) Compliance review for telecommunications facility.

(Ord. of 1-20-2003, Ord. of 9-22-2011, § 1)

#### **Sec. 94.124.2. Small Wind Energy System.**

(a) *Title.* This ordinance may be referred to as the Small Wind Energy System Ordinance.

(b) *Authority.* This ordinance is adopted pursuant to authority granted by Wis. Stats. §§62.23(7) and 66.0401.

(c) *Purpose.* The purpose of this ordinance is to:

- (1) Oversee the permitting of small wind energy systems.
- (2) Preserve and protect the environment and public health and safety without significantly increasing the cost or decreasing the efficiency of a small wind energy system.
- (3) To promote the safe, effective and efficient use of small wind energy systems installed to reduce the on-site consumption of utility supplied electricity.

(d) *Findings.* The village finds that wind energy is an abundant, renewable, and nonpolluting energy resource and that its conversion to electricity will reduce our dependence on nonrenewable energy resources and decrease the air and water pollution that results from the use of conventional energy sources. Distributed small wind energy systems will also enhance the reliability and power quality of the power grid, reduce peak power demands, and help diversify the State's energy supply. Small wind systems also make the electricity supply market more competitive by promoting customer choice.

The State of Wisconsin has enacted a number of laws and programs to encourage the use of small-scale renewable energy systems. However, many existing zoning ordinances contain restrictions, which while not intended to discourage the installation of small wind turbines, that can substantially increase the time and costs required to obtain necessary construction permits.

Therefore, the village finds that it is necessary to standardize and streamline the proper issuance of building permits for small wind energy systems so that this clean, renewable energy resource may be utilized in a cost-effective and timely manner.

(e) *Definitions.* In this ordinance:

- (1) *Administrator* means the Village of Weston Zoning Administrator.
- (2) *Board* means the Village of Weston Board of Trustees.
- (3) *Building Inspector* means the Village of Weston Building Inspector.
- (4) *Meteorological tower (met tower)* is defined to include the tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.
- (5) *Owner* shall mean the individual or entity that intends to own and operate the small wind energy system in accordance with this ordinance.
- (6) *Plan Commission* means the Village of Weston Plan Commission.
- (7) *Rotator diameter* means the cross sectional dimension of the circle swept by the rotating blades.
- (8) *Small wind energy system* means a wind energy system that
  - a. Is used to generate electricity;
  - b. Has a nameplate capacity of 100 kilowatts or less; and
  - c. Has a total height of 170 feet or less.
- (9) *Total height* means the vertical distance from ground level to the tip of a wind generator blade when the tip is at its highest point.
- (10) *Tower* means the monopole, freestanding, or guyed structure that supports a wind generator.
- (11) *Wind energy system* means equipment that converts and then stores or transfers energy from the wind into usable forms of energy, as defined by Wis. Stat. §66.0403(1)(m). This equipment includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries or other component used in the system.

(12) *Wind generator* means blades and associated mechanical and electrical conversion components mounted on top of the tower.

(f) *Standards.* A small wind energy system shall be a permitted use in all zoning districts where structures of any sort are allowed, subject to the following requirements:

- (1) *Setbacks.* A wind tower for a small wind system shall be set back a distance equal to its total height from:
  - a. Any public road right of way, unless written permission is granted by the governmental entity with jurisdiction over the road;
  - b. Any overhead utility lines, unless written permission is granted from the affected utility;
  - c. All property lines, unless written permission is granted from the affected land owner or neighbor.
- (2) *Noise.* Small wind energy systems shall comply with Sec. 50.103(f) of the village noise ordinance-. The level, however, may be exceeded during short-term events such as utility outages and/or severe wind storms. Sound levels in excess of the limits established in this ordinance shall be grounds for the Administrator to order immediate shutdown of all non-compliant small wind energy systems.
- (3) *Access.*
  - a. All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
  - b. The tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground.
- (4) *Electrical wires.* All electrical wires associated with a small wind energy system, other than wires necessary to connect the wind generator to the tower wiring, the tower wiring to the disconnect junction box, and the grounding wires shall be located underground.
- (5) *Lighting.* A wind tower and generator shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA).
- (6) *Appearance, color and finish.* The wind generator and tower shall remain painted or finished the color or finish that was originally applied by the manufacturer, unless approved in the building permit.

- (7) *Signs.* All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a small wind energy system visible from any public road shall be prohibited.
  - (8) *Code compliance.* A small wind energy system including tower shall comply with all applicable state construction and electrical codes, and the National Electrical Code.
  - (9) *Compliance with FAA Regulations.* Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports or helicopter landing pads.
  - (10) *Utility notification and interconnection.* Small wind energy systems that connect to the electric utility shall comply with the Public Service Commission of Wisconsin's Rule 119, "Rules for Interconnecting Distributed Generation Facilities."
  - (11) Met towers shall be permitted under the same standards, permit requirements, restoration requirements, and permit procedures as a small wind energy system.
- (g) *Permit Requirements.*
- (1) *Building Permit.* A building permit shall be required for the installation of a small wind energy system.
  - (2) *Documents.* The building permit application shall be accompanied by a plot plan which includes the following:
    - a. Property lines and physical dimensions of the property.
    - b. Location, dimensions, and types of existing major structures on the property.
    - c. Location of the proposed wind system tower.
    - d. The right-of-way of any public road that is contiguous with the property.
    - e. Any overhead utility lines.
    - f. Wind system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed).
    - g. Tower foundation blueprints or drawings.
    - h. Tower blueprint or drawing.
    - i. An engineering analysis of the tower showing compliance with the International Building Code (IBC) and certified by

a licensed professional engineer. If the tower is building mounted, the engineering analysis must be certified by a licensed structural engineer.

- j. A line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This information is frequently supplied by the manufacturer.
  - k. Documentation that the utility company has been informed of the owner's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
  - l. A letter from the Federal Aviation Administration verifying the Wind Energy System(s) has been issued a "Determination of No Hazard to Air Navigation."
- (3) *Fees.* The application for building permit for a small wind energy system must be accompanied by the fees as set forth in the village Fee Schedule.
- (4) *Expiration.* A permit issued pursuant to this ordinance shall expire when:
- a. The small wind energy system is not installed and functioning within 24-months from the date the permit is issued; or,
  - b. The small wind energy system is out of service or otherwise unused for a continuous 12-month period.

(h) *Abandonment.*

- (1) A small wind energy system that is out-of-service for a continuous 12-month period will be deemed to have been abandoned. The Administrator may issue a Notice of Abandonment to the Owner of a small wind energy system that is deemed to have been abandoned. The Owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. The Administrator shall withdraw the Notice of Abandonment and notify the Owner that the Notice has been withdrawn if the owner provides information that demonstrates the small wind energy system has not been abandoned.
- (2) If the small wind energy system is determined to be abandoned, the owner of a small wind energy system shall remove the wind generator from the tower at the Owner's sole expense within 3 months of receipt of Notice of Abandonment. If the owner fails to remove the wind generator from the tower, the Administrator may

pursue legal action to have the wind generator removed at the Owner's sole expense.

(i) *Building Permit Procedure.*

- (1) An Owner shall submit an application to the Administrator for a building permit for a small wind energy system. The application must be on a form approved by the Administrator and accompanied by two copies of the plot plan identified in (f) (2) above.
- (2) The Administrator shall check the application for completeness and conformance to this ordinance and shall place the application for small wind energy system application on the next available meeting agenda of the Plan Commission.
- (3) Upon receipt of the application, the Plan Commission shall conduct the necessary study and investigation in order to provide, as promptly as possible, a recommendation to the Board.
- (4) The Board shall not act upon the application until it shall have received a recommendation from the Plan Commission on the proposed application.
- (5) The Building Inspector shall issue a building permit for a small wind energy system if the application materials show that the proposed small wind energy system meets the requirements of this ordinance and after approval from the Board.
- (6) If the application is approved, the Administrator will return one signed copy of the application with the permit and retain the other copy with the application.
- (7) If the application is rejected, the Administrator will notify the applicant in writing and provide a written statement of the reason why the application was rejected. The applicant may appeal the Administrator's decision pursuant to Chapter 68 Wis. Statutes. The applicant may reapply if the deficiencies specified by the Administrator are resolved.
- (8) The Owner shall conspicuously post the building permit on the premises so as to be visible to the public at all times until construction or installation of the small wind energy system is complete.

(j) *Violations.* It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance or with any condition contained in a building permit issued pursuant to this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt.

(k) *Administration and Enforcement.*

- (1) This ordinance shall be administered by the Administrator or other official as designated.
- (2) The Administrator or other official as designated may enter any property for which a building permit has been issued under this ordinance to conduct an inspection to determine whether the conditions stated in the permit have been met.
- (3) The Administrator or other official as designated may issue orders to abate any violations of this ordinance.
- (4) The Administrator or other official as designated may issue a citation for any violation of this ordinance.
- (5) The Administrator or other official as designated may refer any violation of this ordinance to legal counsel for enforcement.

(l) *Penalties.*

- (1) Any person who fails to comply with any provisions of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as stipulated in Section 94.121 of the Zoning Code.
- (2) Nothing in this section shall be construed to prevent the Board from using any other lawful means to enforce this ordinance.

(m) *Liability.* The village or its designated agent shall not be held liable for changes in the wind patterns or intensity to a small energy system caused by future development from neighboring property owners.

(n) *Severability.* The provisions of this ordinance are severable, and the invalidity of any section, subdivision, paragraph, or other part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

(Ord. of 12-19-2008)

**Sec. 94.125. Locational regulations.**

(a) *Location restricted.* No building shall be erected, structurally altered or relocated, or moved onto a lot except in conformity with the following locational regulations and for the district in which it is located:

- (1) *Building must be on a lot.* Every building erected, structurally altered or relocated shall be placed on a lot as regulated in this section.
- (2) Only one principal residence building on a lot. Except as provided in the district regulations for attached single-family dwellings, apartments, manufactured/mobile home projects or planned development projects, only one principal residence building shall be permitted on a lot.
- (3) *Accessory building location.* No accessory building shall be erected, structurally altered or relocated so that any roofed or enclosed portion of the building is closer than ten feet to the principal building on the lot unless it is attached to the building with a wall or roof. Notwithstanding the regulations of section 94.174, in residential use districts one accessory structure per lot, not to exceed 150 square feet in floor area, may be erected to within three feet of a side or rear lot line.

(b) *Setbacks.* The proximity of a building, structure or use to a public street or way is regulated by setback provisions as follows:

- (1) Base setback lines are established parallel to the centerline of all existing and proposed public streets and ways as follows:
  - a. On all public streets as designated on the highway plan or official map adopted by the village or upon a county highway width map or highway plans duly adopted by the county or the state and certified to the village as adopted, the base setback line shall be located at a distance from the centerline of the street equal to half the width of the highway as designated.
  - b. In the case of existing or proposed frontage streets along principal traffic arteries, the base setback line shall be located on the property line as will be established by the frontage street.
  - c. Where realignment of an existing street is shown on the plan or a new street is proposed, the location of the base setback line shall be established by the planning commission.
- (2) No building shall be erected, structurally altered or relocated so that it is closer to the base setback line than the setback distance specified by the regulations of the district in which it is located; except that in the case of a new residential building to be located adjacent to one or more existing residential buildings placed farther back than the required setback, the following increased setbacks shall apply:

- a. Where only one adjacent residence with an increased setback is within 250 feet or two lots, whichever is less, of the proposed residence, the average between the required setback and that of the existing residence shall be applied.
  - b. Where the nearest existing residences on both sides of a proposed residence and within 250 feet or two lots of the residence, whichever is less, have increased setbacks, the average of the adjacent increased setbacks shall apply.
- (3) The setback as required in subsection (b)(2) of this section shall be measured from the nearest enclosed or roofed portion of a building; however, the first two feet of an overhanging eave and gutter shall not be included, nor the first six feet of uncovered stairs, landings and fire escapes, provided they do not extend closer than three feet to the lot line.
- (4) The only structures permitted within the setback area shall be necessary highway and traffic signs, public utility lines and poles, telephone booths, walls and fences as regulated in this chapter, rural mailboxes, signs as permitted under the district regulations, structures other than buildings as regulated in this chapter, temporary structures, outdoor lighting installations and unenclosed canopies for lighting and rain protection in conjunction with such uses as automobile fuel sales or drive-in commercial facilities, provided that such canopy structures are approved by the planning commission.
  - a. Walks, drives, paved terraces and purely decorative garden accessories such as fountains, pools, statuary, flagpoles, etc., where subject to permanent structure classification, shall be permitted in setback and side yard areas but not closer than two feet to an abutting property line; except walks, drives and paved terraces may abut the street or alley line.
  - b. Fences, walls, hedges, clothes poles, children's play apparatus and architectural screening devices where anchored to supports imbedded in the ground shall be considered permanent structures and shall be subject to the regulations of structures other than buildings, section 94.127.
- (5) Vision setback lines at the intersections of public streets and of a street with a railroad or alley, where the grade is not separated, are established as follows:
  - a. Across each sector between the intersection of a street with a railroad, a vision setback line shall be established by a straight line connecting points on the base setback line and the railroad right-of-way line, which points are located 20 feet on a spur and 120 feet on any other railroad line from the intersection of the base setback line and the railroad right-of-way line.

- b. Across each sector between intersecting streets, one or more of which has a designated width of 100 feet or greater, a vision setback line shall be established by a straight line connecting two points on the intersecting base setback lines, which points are located 30 feet from the intersection of the base setback lines.
  - c. Across each sector between any other intersecting street, a vision setback line shall be established by a straight line connecting two points on the intersecting base setback lines, which points are located 20 feet from the intersection of the base setback lines.
  - d. Across each sector between an alley and an intersecting street, a vision setback line shall be established by a straight line connecting two points on the intersecting base setback lines, which points are located ten feet from the intersection of the base setback lines.
- (6) In the vision setback area, no structure and no landscaping of any kind shall be permitted which obscures vision between a height of 2 1/2 feet to ten feet above the elevation of the center of the intersection except for necessary highway and traffic signs, public utility lines, and open fences through which there is clear vision.
- (7) On corner lots of record, as of the date of this chapter, the effect of the setback regulations shall not reduce the buildable width of such corner lot to less than 30 feet.
- (8) The setback required for any principal structure or detached structure greater than 150 square feet, shall be ten feet, horizontally, from the nearest defined wetland boundary. The lowest entry to any principal structure or detached structure greater than on 150 square feet, must be no less than two feet, vertically, above the nearest defined wetland boundary.

(c) *Side yards and rear yards.* The proximity of any portion of a building to any other lot line other than a street line is regulated by side yard and rear yard provisions as follows:

- (1) No building shall be erected, structurally altered or relocated so that a roofed or enclosed portion of the building is closer to any lot line than the side yard or rear yard distance specified by the regulations for the district in which it is located, except as follows:
- a. Individual districts may establish differing side and rear yard requirements for accessory structures than for principal structures, and for the driveway side of a lot than for the other sides. The building inspector may require a driveway side yard where, in the inspector's judgment, a present or future

owner is likely to install a driveway; and the inspector may deny permits for driveways into side yards less than the driveway side yard requirement.

- b. In case of any lot of record which has a width less than that required by the district in which it is located, the side yard from a side lot line may be reduced proportionately to the ratio between the actual width and the required width; however, no side yard shall in any case be less than half the required side yard, except that the side and rear yards for detached garages may be reduced to five feet.
  - c. In the case of single-family attached, multiple-family, commercial or industrial use structures, two or more buildings on adjoining lots may be erected with common or directly adjoining walls provided the requirements of the Administrative Code relative to such construction are complied with and provided that at both ends of such "row" type buildings, the applicable side yard requirements shall be complied with.
- (2) The side yards and rear yards shall be measured from the roofed or enclosed portion of a building, including overhanging eaves, except that the first two feet of an overhanging eave and gutter shall not be included where the yard requirement exceeds five feet.
- (3) In all districts that allow common wall construction or do not require a side yard or rear yard, all buildings erected, structurally altered or relocated having any rooms required by the building code to have light and ventilation by windows opening directly to the outer air shall provide courts as follows:
- a. *Outer courts.* The width of any required court shall be not less than the height of any opposing wall forming the court. The depth of an outer court formed by walls on three sides shall be not greater than 1 1/2 times the width.
  - b. *Inner courts.* The least dimension of an inner court shall be not less than the full height of the walls enclosing such court.
- (d) *Height regulations.*
- (1) *Maximum height restricted.* In any district, no building or structure shall be erected or structurally altered to a height in excess of that specified by the regulations for that district.
  - (2) *Exceptions.* The following shall be excepted from the height regulations of all districts, subject to subsection (d)(4) of this section:
    - a. Chimneys, flues, electrical or telephone and telegraph transmission and distribution structures.

- b. Subject to approval of the planning commission, who shall be guided by the standards of article V of this chapter, cooling towers, elevator bulkheads, fire towers, monuments, penthouses, stacks, scenery lofts, tanks, water towers, ornamental towers, spires, wireless or broadcasting towers, masts, aerials and dish antennae and necessary mechanical appurtenances. PCS towers and similar types are not included herein.
- (3) *Increase permitted.* Subject to approval of the planning commission, who shall be guided by the standards of article V of this chapter, the maximum height in commercial, industrial and other nonresidential districts as permitted under article XI may be increased provided the required setbacks and offsets affecting the portion of the structure having increased height shall be increased by one foot for each foot in excess of the height limit in the district, but in no case more than one story.
- (4) *Airport runway clearance zone.* Heights as permitted in this chapter may be further restricted as provided for in Wis. Stats. § 66.23(6)(am) in airport affected areas where structures, including those otherwise exempt from height regulations by this chapter, may be subject to height limitations greater than those imposed in this chapter in order to provide unobstructed airspace off the ends of airport runways.

(Ord. of 11-18-1991; Ord. of 12-6-99, § 1)

**Sec. 94.126. Lot regulations.**

(a) *Street access required.* No lot shall be created nor any building placed on a lot that does not access onto a public street or approved private street or way as provided in subsection (b) of this section. Where the access street is not open to traffic at the time of zoning permit application, or is dedicated to only a portion of the minimum width required for that street, issuance of the zoning permit may be denied or delayed until the zoning administrator is satisfied that:

- (1) In the case of an unopened or partially opened street, the necessary utilities, drainage or paving will be provided in time to facilitate the development or construction authorized by the permit, as assured by execution of a developer's agreement.
- (2) In the case of a street not dedicated to its fully planned width, that the zoning permit applicant has dedicated all that is required from the applicant's ownerships, and that the resulting available width is sufficient to accommodate the necessary underground utilities and street paving adequate to assure access by public emergency vehicles.

(b) *Approved private street or way.* Subject to the approval of the planning commission, approved private streets or ways that lead to public streets may be substituted for direct public street access provided the commission finds that:

- (1) It is not in the public interest to require direct public street access at the time of zoning permit application.
- (2) The proposed development will not preclude provision of public street access in the future.
- (3) Permanent easements satisfactory to the commission are recorded to ensure continued function of the approved private street or way, which easements show no liability of the village to assume maintenance of the easement area.
- (4) Any buildings erected or other improvements made do not interfere with future provision of public streets, and are located so as to be in conformance with such future streets. The commission may require that a future street reservation be recorded to set forth the commission's intent and ensure compliance with this section.

(c) *Lot size.*

- (1) *Minimum required.* No lot shall be platted of less area or width than required by the district regulations in which the lot is placed.
- (2) *Future resubdividability required.* Whenever a lot is proposed to be platted larger than the minimum lot size required by the district regulations, or in the case of certain districts that require initial large lot areas due to the unavailability of public sanitary sewer or water at the time of platting, but which districts permit redivision of such lots when such utilities become available, the planning commission shall require that the future possible divisions be taken into account in the initial lot layout so as to facilitate such future divisions, and at the commission's discretion, or if required by the district regulations, the future lot lines be shown, or actually created, so that initial construction does not inadvertently preclude such future resubdividability.
- (3) *Lot area, how measured.* For the purposes of this chapter, the lot area shall be measured from the base setback line and shall be exclusive of the area between that line and the existing property line ultimately to be included in street right-of-way. Wetlands and floodplains may be included in minimum required lot area provided there remains sufficient area not in wetland or floodplain to accommodate the proposed building, access drive and on-site sanitary system and water well where such services are not provided via off-site public utilities.

- (4) *Lot width, how measured.* Where a minimum lot width is specified by individual district regulations, measurements shall be applied as follows:
- a. For interior, rectangle-shaped lots, the width shall be measured at the rear of the required setback area.
  - b. For corner lots, the width shall be measured at the rear of the required setback area on the narrowest street side; and the district regulations may also provide that the lot width be up to 20 percent greater than for an interior lot in the same district.
  - c. For interior irregular-shaped lots such as pie-shaped or L-shaped lots, the width specified by the district regulations for rectangular interior lot shall constitute the required minimum average width of irregular interior lots, measured at the point of average depth. Such lots shall have a minimum frontage on a street or approved way of at least 33 feet, or greater if specified in the district regulations.
- (5) *Lot area reduction.* No lot area shall be reduced by any means so as to create a lot of less than the required size or so that the existing setbacks, yards, open space or lot area would be reduced below that required by the regulations for the district in which such lot is located.
- (d) *Residential density.* Density is the relationship between land and population, expressed in this chapter as square feet of land, or acres of land, per housing unit.
- (1) *Purpose of control.* As set forth in Wis. Stats. § 62.23, the distribution of population at various locations and intensities within the community is one of the essential purposes of community planning and of zoning regulation for the health, wealth, safety and enjoyment of the community population.
  - (2) *Method of control.* The most basic form of control is division of the community into various zones in which population is permitted or prohibited from residing. Additionally, the residential zones are further divided into districts permitting various types and densities of residential use. In single-family detached development, density is established by the minimum required lot size. In attached single-family, manufactured/mobile home, and multiple-family development, density is established by a required ratio of land area per dwelling unit. These basic controls are potentially modified by the open space requirement described in subsection (e) of this section.
  - (3) *Shared land area.* The land area provided for one housing unit shall not also be counted for another unit in order to meet the density requirement of the district in which the units are located, subject to the following:
    - a. In group projects with more than one building on the lot or a series of lots, all in single ownership, or in multiple ownership but bound together by

land covenants running with the land so as to form a single project, developed and maintained in a coordinated way to share use of land area, open space and possibly also street access or parking, the density requirement of land area per individual housing unit is met so long as the division of total land area by total dwelling units is met.

b. Where it is desired to separate individual or groups of buildings from such a project relationship, any individual lots so separated and the residual lot or group of lots remaining shall comply with the land area requirement of the zoning district.

(e) *Open space.*

(1) *Minimum required.* No building intended partially or entirely for residential use shall be erected, structurally altered, moved onto, or relocated on a lot unless there is provided usable open area as specified by the regulations for that district.

(2) *How measured.* To be considered usable, such open area shall be readily accessible at or near ground level and of a size and shape that can be reasonably considered to provide for the amenities and necessities of light, air, landscaping, play space, walkways, drying yard, garden, etc., but shall not include parking areas and drives.

(3) *Shared open space.* The open space provided for one housing unit shall not also be counted for another unit in order to meet the open space requirements of the district in which the units are located, subject to the same group project modifications set forth in subsection (e)(2) for land area.

(Ord. of 11-18-1991)

**Sec. 94.127. Structure regulations.**

(a) *Structures other than buildings.*

(1) *Structures less than six inches in height.* Structures not classified as buildings and less than six inches in height from the approved surface of the ground shall not be subject to the setback, side yard or rear yard or building size or open space requirements of this chapter except as may be specifically otherwise provided, such as swimming pools.

(2) *Structures six inches or more in height.* Structures not classified as buildings and six inches or more in height from the surface of the ground shall be subject to the setback, yard, height and open space requirements of this chapter except as may be specifically otherwise provided, such as in section

94.125(b)(4). Ground- or building-mounted air conditioning condensers or satellite or other dish-shaped antennae shall not be located in required front or side yards unless specifically approved by the planning commission.

(3) *Fences.*

- a. *Permit required.* No fence, except those fences provided for in subsection (a)(3)b. of this section, shall be located, moved, reconstructed, extended, enlarged, converted or structurally altered without a zoning permit and without being in conformity with all the structural requirements of local and state building codes. All fences, whether or not requiring a permit, shall present the nonstructural face outward.
- b. *Fences permitted without a zoning permit.* The following fences are permitted as specified without a zoning permit subject to the following restrictions and providing that no fence in any way interferes with traffic visibility:
  1. A snow fence shall be permitted in all districts when comprised of wooden pickets bound together by wire and not exceeding four feet in height and removed between May 1 and November 1 of each year. No privately owned snow fence shall extend beyond the highway right-of-way line.
  2. Fences to be installed around swimming pools shall be governed by the provisions of subsection (a)(4)e. of this section.
  3. Agricultural fences in the AG, RR and S/R districts shall be permitted provided that they do not extend into the highway or road right-of-way.
  4. Decorative fences not exceeding two feet in height shall be permitted in all districts.
- c. Fences or walls for which a zoning permit is required.
  1. Residential fences or walls are permitted on the property lines in residential districts, but shall not be greater than six feet in height in the side yard and rear yard or greater than four feet in height in the street yard. Residential fences or walls may be six feet in height in the rear street yard of a double-frontage lot. Residential fences or walls shall be not closer than two feet to any public right-of-way, and no fence or wall greater than 2 1/2 feet above the street grade shall be placed within the vision triangle. (See section 94.125(b)5.) No fence or wall that incorporates barbed or similar security wire or sharpened top spikes shall be permitted in residential districts.

2. Security fences or walls are permitted in all districts other than residential districts. Security fences or walls may be placed on side and rear property lines, but shall not be located closer than two feet to a public right-of-way line. (See section 94.125(b)5.) Security fences or walls shall not exceed eight feet in height.
3. Reference to "on the property line" shall mean adjacent to but not overlapping, including not obscuring vision lines to surveying pipes marking the property line.

(4) Swimming pools.

- a. *Compliance.* A zoning permit shall first be required before any swimming pool,  $\geq 32$ " in depth, both residential and nonresidential, is installed, enlarged or altered. All pools  $\geq 24$ " must be located in the rear yard and must meet appropriate setback regulations for accessory structures for the zoning district in which the property is located.
- b. *Permit application.* All drawings and plans for the construction, installation, enlargement or alteration of any such swimming pool and its accessories shall first be presented to the zoning administrator for examination and approval as to proper location and construction. The plans shall be drawn to scale and shall indicate all distances and dimensions so as to accurately show all lot lines, and all information pertaining to the location of the pool, walk, deck, fence construction, water supply system, drainage and water disposal systems, and all accessories pertaining to the swimming pool. Such plans shall also indicate the vertical elevations of the pool.
- c. *Location.* No portion of a swimming pool outside a building, including a surrounding deck and fence, shall be located in a street setback yard nor in a required side or rear yard setback but in no case less than eight feet from any side or rear property line or building line. Such pool shall also comply with Wis. Admin. Code, ILHR 90 HFS 172 and with any local regulations with respect to the distances from an on-site sewage disposal absorption system. Pumps, filters and pool water disinfection equipment installations and all other accessories shall be located at a distance not less than eight feet from any side property line.
- d. *Maximum pool size.* No pool, together with its deck area, shall occupy more than 40 percent of the usable area of the rear yard excluding all garages or other accessory structures located in such area.
- e. *Safety features.* No swimming pool,  $\geq 32$ ", shall be installed or maintained unless:

1. There shall be erected and maintained a sound and secure fence not less than four feet in height completely surrounding the pool or surrounding the yard in which the pool is located. In lieu of a fence, the zoning administrator may, on a case-by-case basis, approve other measures, such as a lockable pool cover that can hold up to 500 lbs or more, designed to prevent unauthorized access to the pool.
  2. Every gate or other opening in the fence enclosing such pool, except an opening to the dwelling or other main building of the premises, shall be kept securely closed and locked at all times when the owner or occupant of the premises is not present at such pool. All such gates shall be equipped with self-closing and self-latching devices placed at the top of the gate.
- f. *Control of pool lighting.* No lighting may be installed in connection with the pool that shall throw any direct rays beyond the property lines.
- g. *Water drainage.* No water drained from a pool shall be discharged over or near any septic tank, septic field or well, nor into neighboring property except to the approved drainage system for the area.

(b) *Building size and floor area regulations.*

- (1) *Minimum required.* Those portions of buildings intended for residential use shall provide a minimum floor area, as specified by the district regulations in which such buildings are located, and either a minimum basement and utility area or attached \garage, or in lieu thereof increased floor area if required by the district regulations; and the minimum residential floor area shall be based upon either the number of bedrooms, or upon total rooms exclusive of bathrooms, rooms being defined by the building code.
- (2) *Maximum permitted (floor area ratio).* The maximum total floor area of the buildings on a lot shall not exceed that permitted under the floor area ratio (F.A.R.) as specified by the regulations for the district in which such building is located.
- (3) *How measured.* Floor area shall be measured at each level from outside of wall to outside of wall, but for the purpose of determining minimum required floor area shall not include any area having an average height of less than seven feet, basements, open porches, attics, public hallways or storage areas. For the purposes of minimum and maximum floor area regulations in the case of floor levels built into a hillside, the floor area subject to regulation shall be the area extending back in depth half the length of the exposed wall at grade.

(c) *Minimum standards for single-family detached dwellings and duplexes.*

(1) *Residential design.* To protect and enhance the quality of Weston's residential living environment to a minimum level of residential design comparability is hereby established. The standards set forth in this section shall apply to all single-family detached dwellings and duplexes in all residential zoning districts except AG (Agriculture) constructed after the effective date of this section of the zoning ordinance.

- a. **Roof.** All dwellings shall have a roof with a pitch of at least 3 inches in height for each foot of width and an eave which extends at least 6 inches from the wall which supports the roof. All dwellings, accessory garages and carports shall have a roof surfaced with any of the following:
  1. Wood shakes;
  2. Asphalt;
  3. Composition or wood shingles;
  4. Clay, concrete or metal tiles;
  5. Slate;
  6. Built-up gravel materials;
  7. Architectural standing seam metal roofing;
  8. Hidden fastener metal roofing.
- b. **Siding.** The exterior sides of all dwellings, and accessory garages and carports, shall be covered with siding made of wood, masonry, concrete, stucco, Masonite, vinyl or metal lap. The exterior siding shall extend to the top of the foundation. If the top of the foundation is below grade, the siding shall extend to the ground.
- c. **Foundation.** All dwellings shall be placed on an enclosed permanent foundation which does not extend more than 24 inches above the exterior finished grade of the lot. Exception: When the grade of the lot slopes, only that portion of the foundation which is on the highest point of the lot must meet the requirements of this subsection.
- d. **Minimum Width.** The side of any dwelling facing the front yard shall not be less than 24 feet in width. Attached garages, carports and open decks shall not be included in the measurement of the width of the front yard side of a dwelling.
- e. **Ratio of Length to Width.** The ratio of a dwelling's length to its width shall be no greater than 5 to 2. A 24 foot long dwelling must be at least 9 feet 7 inches wide.
- f. **Minimum Gross Floor Area.** Every dwelling shall contain a minimum gross floor area of not less than 700 square feet. (Also see Sec. 94.174)

g. **Garage Construction Required.** All single-family detached dwellings and duplexes shall have constructed on the same lot as the dwelling, a garage, as defined in Sections 94.113 and 94.154(c), of at least 400 square feet of floor area for each dwelling unit.

(2) *Waivers for New Construction and Building Additions.* One or more of the minimum design standards set forth herein may be waived through the conditional use process in Section 94.142 upon a finding that the architectural style of the proposed structure provides compensating design features and that the proposed dwelling will be compatible and harmonious with other dwellings in the vicinity.

(3) *Metal Canopy, Tarp sheds and other Tent-Like Structures.* Metal canopy, tarp sheds and other tent-like (fabric/vinyl) structures are specifically prohibited for storage or garage use, as they do not meet the design standards of this section. They may be used on a temporary basis for a maximum of five consecutive days within a 30 day period for a special event such as a garage sale or gathering occurring on the property.

(Ord. of 11-18-1991; Ord. of 11-24-2006; Ord. of 9-22-2011)

#### **Sec. 94.127.5. Prohibiting solid fuel-fired outdoor heating devices.**

(a) *Purpose.* The purpose of this section is to promote the health and well being of the residents of the Village of Weston.

(b) *Definition.* "Solid fuel-fired outdoor heating device" means an outdoor device designed or constructed for solid fuel combustion so that the usable heat derived is for the interior of buildings.

(c) The construction or use of "solid fuel-fired outdoor heating devices" within the village limits of the Village of Weston is prohibited, except in RR or AG Zoning, provided that the device is at least 50 feet from a rear or side lot line, and not located in the front yard.

(Ord. of 4-21-2003, § 1)

#### **Sec. 94.128. Farming and animal regulations.**

(a) *Statement of intent.* The village at the adoption of this section [November 18, 1991], and for at least five decades into the future according to the master plan this chapter seeks to implement, is and will continue to be a mixture of extensive urban and rural/agricultural areas. Consistent with that character, and with renewed interest in conserving undeveloped areas as long as possible before being needed for development,

it is the intent of this section to permit farming and the keeping of farm livestock as much as possible throughout large portions of the village. Promoting such farming can also serve to help sustain the connection between urban man and the productivity of the land, and to foster understanding of related elements such as soil conservation, animal husbandry, etc. In order to avoid undue offense to nearby urban development, especially residential areas, it is necessary to prohibit those intensive farm activities envisioned to occur in the county's less urban towns in the county agricultural preservation plan.

(b) *Household pets and commercial kennels separately regulated.* This section does not intend to establish regulations for household pets, to be regulated by chapter 10 separate from this chapter, nor for boarding and breeding kennels for dogs, uses which are regulated in this chapter apart from this section.

(c) *Agricultural uses prohibited.* Those agricultural operations and associated activities generally understood in the county farmland preservation plan as agribusiness rather than common farming, and intended for nonurban towns due to the heavy impact of such uses upon the land or upon potential nearby urban uses, are prohibited, including but not limited by virtue of explicit listing to such operations as:

- (1) Alcohol distillation for fuel or food.
- (2) Animal or plant fat rendering or processing.
- (3) Commercial feedlots.
- (4) Commercial egg production exceeding 1,000 laying hens.
- (5) Dairy processing plants (cheese, milk, etc.).
- (6) Drying and dehydrating fruits and vegetables.
- (7) Grain elevators and grist mill operations.
- (8) Fertilizer production or sales.
- (9) Fur farming.
- (10) Livestock sale facilities.
- (11) Meat packing, slaughterhouse or sausage plants.

These categories of excluded uses which also qualify as manufacturing may be permitted in the industrial district of this chapter if the performance standards of this chapter can be met.

(d) *Crop and tree farming permitted.* The raising of field crops, tree plantations and plant nurseries and all related activities shall be permitted in any district except as may be restricted in the WPD, OWC, OWP, OME, OFP or OCS districts, and except that a commercial greenhouse in excess of 1,000 square feet shall be permitted only in an agricultural or commercial district or on an existing operation of at least ten acres, and except that crops requiring application of inorganic chemicals or fungicides shall not be grown closer than 200 feet to a residence.

(e) *Animal husbandry permitted.* The keeping or raising of non-household pets such as horses, poultry, beef and domestic livestock, and all related activities, shall be permitted in the AG (Agriculture) or RR (Rural Residential) districts except as may be restricted in the WPD, OWC, OWP, OME, OFP and OCS districts subject to the following:

- (1) No such use shall be permitted on a lot less than five acres in area exclusive of existing rights-of-way.
- (2) Except on an existing farm operation of at least 20 acres, such use shall be limited to one animal unit of livestock per acre. An animal unit shall be defined as any one of the following: one steer of 1,000 pounds weight or less, one beef cow, one dairy cow and calf, two head of stock prior to freshening, two llamas, one swine, five sheep, two goats, ten rabbits, 20 fowl, one horse or pony.
- (3) The keeping of hogs and pigs intended for slaughter or market, goats, roosters or fur-bearing animals, other than rabbits and ferrets, shall not be permitted except on an existing farm operation of at least ten acres.
- (4) The keeping of horses for private use shall be permitted on the basis of one horse per acre. The operation of a commercial stable for boarding or training shall be permitted only as a conditional use.
- (5) Any area where poultry, domestic livestock or horses are allowed to pasture or run shall be adequately fenced to keep them confined to such area.
- (6) In the AG (Agriculture) or RR (Rural Residential) districts other than on an existing farm of at least 20 acres, no building housing domestic livestock, poultry or horses shall be permitted closer than 50 feet to an adjoining lot line of a property zoned residential.
- (7) The stocking of private ponds with fish shall be permitted in any district, except that commercial fish hatcheries or the operation of commercial fishing ponds shall be permitted only as a conditional use.
- (8) No predatory birds may be kept on any residential property (R-1, R-2, R-3, R-4, R-5, RTF, RE, and SR) under the regulations of this Section. For purposes

of this ordinance, a “predatory bird” is defined as an owl, hawk, falcon, eagle or similar bird that feeds principally by catching living prey.

- (9) No pigeons may be kept on any residential property (R-1, R-2, R-3, R-4, R-5, RTF, RE, and SR) under the regulations of this Section.
- (10) This section does not intend to establish regulations for household pets such as rabbits, ferrets, fish, song birds, potbelly pigs, cats or dogs which are kept indoors. Household pets such as dogs or cats are regulated separate from this chapter through chapter 10.
  - (f) *Bees.* The keeping of bees, and associated beehives, shall be governed by the following regulations.
    - (1) In residential districts. In residential districts the following regulations shall apply.
      - a. Permitted residential districts. No such use shall be permitted on a residential lot unless it is zoned AG (Agriculture) or RR (Rural Residential) and is greater than or equal to three acres in size.
      - b. Number. No more than one (1) beehive shall be kept for each 5000 square feet of lot area, and no beehive shall be kept on a lot less than 3 acres in size.
      - c. Location and setbacks. No beehive shall be kept closer than 15 feet ft to any lot line and ten feet to a dwelling, and no beehive shall be kept in a required front yard or corner yard. The front of any beehive shall face away from the property line of the residential property closest to the beehive.
      - d. Fences and shrubs. A solid fence or dense hedge, known as a “flyway barrier,” at least six feet in height, shall be placed along the side of the beehive that contains the entrance to the hive, and shall be located within five feet of the hive and shall extend at least two feet on either side of the hive. No such flyway barrier shall be required if all beehives are located at least 25 feet from all property lines and for beehives that are located on porches or balconies at least ten feet above grade, except if such porch or balcony is located less than 15 feet from a property line.
      - e. Water supply. A supply of fresh water shall be maintained in a location readily accessible to all colonies on the site throughout the day to prevent bees from congregating at neighboring swimming pools or other sources of water on nearby properties.

f. Prohibitions. No Africanized bees may be kept on a property under the regulations of this Section.

(2) In non-residential districts. In zoning districts other than Residential Districts, all regulations applicable in Residential Districts outlined herein shall apply except that the number of beehives shall be limited to one for each 2,500 square feet of lot area.

(Ord. of 11-18-1991, Ord. of 11-24-2006: Ord. of 9-22-2011)

**Cross References--**Animals, ch. 10.