

CHAPTER 171: LOWER ST. CROIX RIVERWAY ZONING ORDINANCE

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The Town of Troy’s Lower St. Croix Riverway Ordinance is hereby Comprehensively revised, renumbered and amended to read as follows:

171 - A. PURPOSE: This ordinance is enacted by the Town of Troy and is authorized by Wis. Stats. § 30.27 Wis. Admin. Code Chapter NR 118 and other applicable state statutes and administrative code sections, and shall become Chapter 171 in the General Code of the Town of Troy.

1. Purpose: This ordinance is enacted to create regulations to protect the continued eligibility of the Lower St. Croix River for inclusion in the National Wild and Scenic River system and to guarantee the protection of the wild scenic and recreational qualities of the river for present and future generations.

These rules are also necessary to reduce the adverse effects of overcrowding and poorly planned shoreline and bluff development, prevent pollution and contamination of surface and ground waters, prevent soil erosion, provide sufficient space for sanitary facilities, minimize flood damage, maintain property values and preserve and maintain the exceptional scenic, cultural and natural characteristics of the lower St. Croix riverway.

2. Applicability. This ordinance regulates all land located in the Town of Troy and within the boundaries of the Lower St. Croix National Riverway as set forth in the Master Plan jointly prepared by the States of Minnesota and Wisconsin and the National Park Service, pursuant to P.L. 92-560 and as

shown on the official Town of Troy Lower St. Croix Riverway District map. Additionally, this ordinance is enacted to create local regulations consistent with the intent of NR 118 and appropriate to the pre-existing patterns of development, local topography and other natural conditions that will allow reconstruction, limited expansion and new development where the visual and environmental impact is minimized.

171 - B. DEFINITIONS: For the purpose of this ordinance:

1. "Accessory structure" means a subordinate structure, the use of which is incidental to, and customarily found in connection with, the principal structure or use of the property. Accessory structures include, but are not limited to the non-habitable area of attached garages and detached garages, sheds, barns, gazebos, patio, decks, swimming pools, hot tubs, fences, retaining walls, driveways, parking lots, sidewalks, detached stairways and lifts.

2. "Accessory use" means a use subordinate to and serving the principal use of the same lot, located on the same lot and customarily incidental thereto.

3. "Agriculture" means beekeeping; livestock grazing; orchards; raising of grain, grass or seed crops; raising of fruits, nuts or berries; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; and vegetable raising.

4. "Antenna" means any device or equipment used for the transmission or reception of electromagnetic waves, which may include an omni-directional antenna (rod), a directional antenna (panel) or a parabolic antenna (disc).

5. "Bed and breakfast operation" means a place of lodging for transient guests that is the owner's personal residence, that is occupied by the owner at the time of rental, and in which the only meal served to guests is breakfast.

6. "Bluffline" means the line along the top of a slope preservation zone where the slope landward first becomes less than 12%, as measured landward from the bluffline for not more than 50 feet nor less than 25 feet.

7. "Board of Appeals" means the body created in Section 170-5 of the Town of Troy's Code of Ordinances.

8. "Building line" means a line measured across the width of a lot at that point where the principal structure is placed in accordance with setback provisions.

9. "Camouflage design" means a wireless communication service facility that is disguised, hidden or screened, but remains recognizable as a tower or antenna.

10. "Compliant building location" means an area on a lot where a building could be located in compliance with all applicable ordinance requirements.

11. "Conditionally permitted structure or activity" means a structure or activity allowed in the riverway district as specifically listed in sections F. and J. of this ordinance and permitted only after the Plan Commission and Town Board determine that all conditions specified in the ordinance for that use have been met.

12. "Conditional use" means a use specifically listed in sections G. and K. of this ordinance and permitted only after the Board of Appeals has determined that all conditions specified in the ordinance for that use have been met and has created and imposed such other site or operation - specific conditions as are necessary for public and neighborhood health, safety and welfare.

13. "Department" means the Wisconsin department of natural resources.

14. "Disabled" means having a physical or mental impairment that substantially limits one or more major life activities.

15. "Earth-tone" means colors that harmonize with the natural surroundings on the site during leaf on conditions.

16. "Expansion" means an addition to an existing structure regardless of whether the addition is vertical or horizontal or both.

17. "Filtered view of the river" means that one can see the river through the vegetation, while any structure remains visually inconspicuous.

18. "Footprint" means the area of land that is covered by a structure at ground level, measured on a horizontal plane. Cantilevered or pier supported horizontal expansions or similar expansions, that enlarge the area of the structure without using a ground level foundation, shall be included in the calculations that determine the combined structure footprint.

19. "Foundation" means the underlying base of a building or other structure, including, but not limited to pillars, footings and concrete and masonry walls.

20. "Highest visible bluffline" means the line along the top of the highest riverway facing slope preservation zone, visible in leaf on conditions, when viewed from at, or near the midline of the river.

21. "Human habitation" means the use of a building or other structure for human occupancy, including but not limited to cooking, eating, bathing and sleeping.

22. "Land division" means any division of a parcel of land by the owner or the owner's agent, for the purpose of transfer of ownership or building development, which creates one or more parcels or building sites of 35 acres or less.

23. "Landscape architect" means a person who has graduated with a major in landscape architecture from a college accredited by the American Society of Landscape Architects.

24. "Lift" means a mechanical device, either temporary or permanent, containing a mobile open top car including hand or guard rails, a track upon which the open top car moves, and a mechanical device to provide power to the open top car.

25. "Local zoning ordinance" means chapter 171 of the Code of Ordinances of the Town of Troy or amendments thereto, adopted by the Town under authority of state enabling legislation which regulates the use of land within the Lower St. Croix riverway.

26 "Lot" means a contiguous parcel of land with described boundaries.

27. "Lower St. Croix riverway" or "Lower St. Croix national scenic riverway" means the area described in NR 118.02 (1). (see Applicability section).

28. "Management zone" means the rural residential management zone as described in NR 118.04.

29. "Mitigation" means action taken to minimize the adverse impacts of development. The term "mitigation" may include, but is not limited to, the installation of vegetative buffers, the removal or relocation of nonconforming structures from the 75 foot shoreland setback area, and the implementation of best management practices for erosion control and storm water management.

30. "Net project area" means the area of a lot minus slope preservation zones, floodplains, road rights-of-way and wetlands. The net project area need not be contiguous.

31. "Nonconforming structure" means a building or other structure whose location dimensions or other physical characteristics do not conform to the standards in the current local zoning ordinance but which was legally constructed or placed in its current location prior to the adoption of the ordinance or ordinance amendment that made it nonconforming.

32. Nonconforming use" means the use of land or a structure or other premises that does not conform to the land use restrictions in the current local zoning ordinance, but which was legally

established prior to the adoption of the ordinance or ordinance amendment that made it nonconforming.

33. "Ordinary high water mark" means the fixed elevation(s) established by the Department as the ordinary high water mark on the Lower St. Croix river.

34. "Ordinary maintenance and repair" means any work done on a nonconforming structure that does not constitute expansion, structural alteration or reconstruction and does not involve the replacement, alteration or improvement of any portion of the structure's foundation.

35. "Planned cluster development" means a pattern of development that places residences into compact groupings as means of permanently preserving open space.

36. "Porch" means the area of a principal structure, with a roof over it, providing access to a building.

37. "Principal structure" means the main building or other structure on a lot that is utilized for the property's principal use. The term "principal structure" includes porches and the inhabited portion of attached and detached garages.

38. "Protrude above the bluffline" means that a structure appears silhouetted against the sky when viewed during summer months, from at or near the mid-line of the river or from 250 feet riverward from the shoreline, whichever is less.

39. "Reasonable accommodation" means allowing a disabled person to deviate from the strict requirements of this ordinance if an accommodation is necessary and reasonable, in order not to unlawfully discriminate against the disabled person and to allow them equal housing opportunity.

40. "Reconstruction" means the replacement of all or substantially all of the components of a structure other than the foundation.

41. "Selection cutting" means the removal of selected trees throughout the range of merchantable sizes at regular intervals, either singly or in small groups, leaving a uniformly distributed stocking of desirable tree and shrub size classes.

42. "Setback" means the minimum horizontal distance between the foundation of a structure and either the ordinary high water mark, the bluffline or the highest visible bluffline. Setback shall be measured to the outer edge of a roof overhang instead of the foundation when the roof overhang width extends more than three feet beyond the foundation. When the roof overhang is 3 feet or less and any part of the structure is cantilevered out beyond the foundation, the setback shall be measured to the outer cantilevered portion of the structure.

43. "Shelterwood cut" means a partial removal of mature trees leaving trees of desirable species and form to provide shade, seed source and a desirable seedbed for natural regeneration with the final removal of the over story after adequate regeneration is established.

44. "Single-family residence" means a detached structure used for human habitation for one family.

45. "Slope preservation zone" means an area where the slope facing toward the river is 12% or greater when measured horizontally for a distance of not more than 50 feet nor less than 25 feet.

46. "Small regeneration cut" means a harvest of not more than one-third of the contiguous forested ownership within a 10-year period with each opening not exceeding 6 acres in size and not closer than 75 feet at their closest points.

47. "Stealth design" means a wireless communication service facility that models or mimics in size or shape and color something in the surrounding landscape, such as silos in farm settings and trees in forested lands, and is unrecognizable year round as an antenna or antenna mount.

48. "Structural alteration" means the replacement or alteration of one or more of the structural components of any of a nonconforming structure's exterior walls.

49. "Structural component" means any part of the framework of a building or other structure. The structural components of a building's exterior walls include the vertical studs, top and bottom plates, and window and door sills and headers. A structural component may be non-load-bearing, such as the framework of a wall at the gable end of a one-story house. Wall-coverings, such as siding on the exterior and dry wall on the interior, are not included in the definition of "structural component."

50. "Structural erosion control measures" means a retaining wall or other man-made structure whose primary function is to control erosion.

51. "Structure" means any man-made object with form, shape and utility, that is constructed or otherwise erected, attached to or permanently or temporarily placed upon the ground, a riverbed, streambed or lakebed or upon another structure. The term "structure" includes swimming pools, hot tubs, patios, decks and retaining walls, but does not include landscaping or earthwork such as graded areas, filled areas, ditches, berms or earthen terraces. The term "structure" does not include small objects that are easily moved by hand, such as lawn chairs, portable grills, portable picnic tables, bird feeders, bird baths and bird houses.

52. "Subdivision Ordinance" means the Town of Troy Subdivision of Land ordinance. Note: St Croix County's Ag-Res and Exclusive-Ag zoning requirements may also apply to land in the Town's rural residential management overlay zoning district.

53. "Substandard lot" means a lot with dimensions that do not conform to all of the requirements of this ordinance, the Town's Subdivision Ordinance or applicable County ordinances.

54. "Transmission services" means electric power lines, telephone and telegraph lines, communication towers, cables, sewage lift stations, sewer and water pipes, and other pipes, conduits and accessory structures that are used to transport power, convey information or transport material between 2 points, other than wireless communication service facilities.

55. "Town" means Town of Troy, St. Croix County, Wisconsin.

56. “Visually inconspicuous” means difficult to see, or not readily noticeable, in summer months as viewed from at or near the mid-line of the Lower St. Croix River.

57. “Wetland” has the meaning found in s. 23.32 (1), Stats.

Note: Section 23.32 (1), Stats., defines “wetland” to mean “an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.”

58. “Wireless communication service facilities” means hardware that provides wireless communication services including antennas, towers, all associated equipment, and buildings and other structures.

171 - C. LOWER ST. CROIX RIVERWAY RURAL RESIDENTIAL MANAGEMENT OVERLAY DISTRICT CREATED.

The entire area to which this ordinance applies is hereby classified as a rural residential management zone as defined by Wis. Admin. Code Sec. NR 118.04(4). This is an overlay zoning district in that its regulations apply in addition to those found in the Town’s Subdivision Ordinance and in the St. Croix County Zoning Ordinances. The requirements of this ordinance apply to all areas in the rural residential management zone within the Lower St. Croix Riverway in the Town and to no area in the Town outside of the rural residential management zone. The location and boundaries of this overlay zoning district are set forth on the zoning map, and that map is made a part of this ordinance by reference. An official copy of the zoning map, together with a copy of this ordinance, shall be kept at the office of the Town Clerk/Treasurer, available for public inspection during office hours. The boundaries of the zoning district and the zoning map follow the management zone boundaries established in Wis. Admin. Code, § NR 118.04 and cannot be changed without revision of NR 118.04.

171 - D. PERMITTED USES.

The following uses are permitted in the rural residential management overlay zoning district if the standards in Section I are met:

1. Single-family residential and accessory uses.
2. Conservancy

3. Forestry

4. Agriculture

5. Public parks, natural resource management and interpretation areas, waysides, rest areas and scenic overlooks.

6. Filling and grading outside of slope preservation zones.

171- E. PERMITTED STRUCTURES.

The following structures require issuance of a Town riverway permit are allowed in the rural residential management overlay zoning district if the applicable standards in section I are met:

1. Single-family residences and accessory structures.

2. Piers or wharves that have required state and federal permits or that meet statutory criteria or administrative rule standards and do not require a state or federal permit.

3. Signs.

4. Structural erosion control measures constructed outside of slope preservation zones. Rock rip-rap may be allowed within a slope preservation zone and within the ordinary high water mark setback

area if the Town determines that rip-rap is necessary to prevent erosion in flood prone areas and either a state permit is granted for the rip-rap or statutory criteria or administrative rule standards are met so that a state permit is not required for the rip-rap.

171- F. CONDITIONALLY PERMITTED STRUCTURES AND ACTIVITIES.

The following activities and structures are conditionally permitted in the rural residential management zone district that require issuance of a Town riverway permit and that shall comply with the applicable requirements in sections I. and J.

1. Land divisions.
2. Planned cluster developments for single-family residences.
3. Transmission services.
4. Wireless communication service facilities.
5. Filling and grading within slope preservation zones.
6. Structural erosion control measures constructed in slope preservation zones.
7. Stairways.
8. Lifts.
9. Public roads and private roads serving 2 or more lots or single family residences.

171- G. CONDITIONAL USE PERMITS.

Conditional use permits for the following uses must be approved and issued by the Town Board of Appeals. All such uses shall comply with the applicable requirements of sections I and K.

1. Bed and breakfast operations.
2. Home occupations.
3. Nature-oriented educational, non-profit facilities.

171- H. PROHIBITED USES.

All uses and structures not listed herein as permitted uses, conditionally permitted structures and activities or conditional uses are prohibited in the rural residential management riverway zoning district.

171 - I. GENERAL STANDARDS.

1. Density and Minimum lot size.

The minimum lot size in the rural residential management riverway zoning district shall be one lot per one acre of net project area. The minimum lot size and subdivision density shall also conform to the requirements of the Town subdivision ordinance unless an exception or variance is granted by the Town Board of Appeals and/or the Town Board.

If the lot is not served by a public sewage system or community sewage collection and treatment services, the lot shall have adequate room for one single-family residence and 2 private on-site wastewater treatment systems.

2. Residence Standards. There may not be more than one single-family residence on each lot.

3. Minimum lot width. The minimum lot width shall apply at the building line and at the side of the lot nearest the river. The minimum lot width in that location shall be 200 feet.

4. Maximum structure height.

The maximum structure height shall be measured, between the average ground elevation and the uppermost point of the structure, excluding chimneys. The maximum structure height shall be 35 feet except for wireless communication service facilities, which shall meet the height requirement in section J.4 of this ordinance.

5. Ordinary high water mark setback.

All structures except piers, wharves, structural erosion control measures stairways and lifts shall be set back at least 200 feet from the ordinary high water mark. The setback shall be measured on a horizontal plane from the foundation of structure to the ordinary high water mark, unless otherwise required by the definition of "setback" in section B of this ordinance.

6. Bluffline and highest visible bluffline setback.

All structures, except piers, wharves, structural erosion control measures, stairways and lifts shall be set back at least 100 feet from the bluffline, or from the highest visible bluffline when measured on a horizontal plane to the foundation unless otherwise required by the definition of "setback" in section B of this ordinance. Structures may be set back less than 100 feet from the bluffline or highest visible bluffline, but not less than 40 feet from the bluffline or from the highest visible bluffline, only when all of the following conditions are met:

(a) No part of the structure, excluding chimneys, protrudes above the bluffline when viewed from, at or near the midline of the river or from 250 feet riverward from the shoreline, whatever is less.

(b) The structure is not located in a slope preservation zone.

(c) The structure utilizes earth-tone building materials that are of a non-reflective nature, except that windows may be made of ordinary window glass or non-reflective glass, but may not be made of glass designed to reflect more light than ordinary window glass.

(d) The structure is visually inconspicuous.

(e) The entire structure is located more than 200 feet from the ordinary high watermark.

7. Structure Color Standards.

All new, expanded, reconstructed or repainted structures shall be earth tone colored.

NOTE: the Town may develop a building materials color planning guide to aid in the definition and application of building material-colors that meet this standard that may be added as an appendix to this ordinance. Any such appendix shall not be considered part of this ordinance and may be revised by the Town without being treated as an amendment to this ordinance. Any riverway Planning Guide developed by the Town may not be adopted over the objection of the Department.

8. Sign Standards.

Signs are allowed if one or more of the following criteria are met:

(a) The sign is approved by state or local government and is necessary for public health or safety.

(b) The sign indicates areas that are available or not available for public use.

(c) The sign is not visible from the river and is otherwise lawful.

9. Structural Erosion Control Measures.

Except for rock rip-rap allowed in compliance with section E. 4. of this ordinance, structural erosion control measures may only be placed above the ordinary high water mark and within the ordinary high water mark setback area and bluffline setback areas if all of the following criteria are met:

(a) The structural erosion control measure is constructed outside of slope preservation zones, or a conditionally permitted structure and activity permit has been issued in compliance with the requirements of section 171-J.6 of this ordinance that allows its construction inside of slope preservation zones.

(b) The Town determines that structural erosion control measures are necessary to address significant on-going erosion that nonstructural erosion control measures cannot control.

NOTE: the Town may develop an environmental management planning guide to aid in the definition and application of erosion control measures and other water run off management mitigation applications that may be added as an appendix to this ordinance. Any such appendix shall not be considered part of this ordinance and may be revised by the Town without being treated as an amendment to this ordinance.

(c) The structural erosion control measure is constructed of natural materials and is made as visually inconspicuous as possible.

(d) The person seeking to construct the structural erosion control measure submits a detailed construction plan, an erosion control plan and a vegetative management plan, showing how the structural erosion control measure will be constructed, what land disturbing activities will take place, what, if any, vegetation will be removed, and how new, native vegetation will be re-established. Construction may not proceed until the Town has approved the plans.

10. Slope Preservation Zone Standards.

(a) No structures except piers, wharves, structural erosion control measures, stairways and lifts, may be placed in slope preservation zones.

(b) Slope preservation zones may not be altered to become less than 12% except where permitted pursuant to section J-5 of this ordinance.

11. Vegetation Management.

(a) Goals. All of the following goals apply:

(1) The primary goals of these vegetative management provisions are to screen structures to make them visually inconspicuous and to prevent erosion and minimize disturbance of environmentally sensitive areas such as steep slopes, shorelines and bluff top areas.

(2) A secondary goal is to maintain and restore historically and ecologically significant plant communities and enhance diversity.

(3) Vegetative screening of structures takes priority over restoration and maintenance of significant plant communities.

(b) Standards. The purposes of vegetative management standards are to lessen the visual impact of existing, new and expanded structures, prevent erosion, protect ground water and prevent surface water contamination. The following vegetation management standards apply in the rural residential management zone, except where different standards are authorized elsewhere in this ordinance for transmission services, wireless communication facilities or roads:

(1) Vegetation in ordinary high water mark setback areas, directly facing slope preservation zones and 40 feet landward of the bluffline and highest visible bluff shall be left undisturbed unless activity is authorized elsewhere in this subsection.

(2) Vegetation may not be disturbed or removed if it would disrupt the visually inconspicuous character of structures, reduce the quality or diversity of the plant community, or increase the potential for erosion, unless activity is authorized elsewhere in this subsection.

(3) Routine pruning of trees or shrubs to improve their health and vigor, pruning to provide a filtered view of the river, pruning to prevent property damage, and removing trees that pose an imminent safety hazard to persons or structures is allowed.

(4) Vegetative management plans, tree trimming and reforestation shall comply with the Town of Troy Riverway Vegetative Management Guidelines and the Wisconsin Forest Management Guidelines (FMG). Town of Troy Riverway Guidelines may not be adopted over the objection of the Department. Written approval by the Department shall be required before the implementation of any Town of Troy Riverway Guideline.

NOTE: the Town may develop a vegetative management planning guide to aid in the definition and application of riverway vegetative management guidelines that may be added as an appendix to this ordinance. Any such appendix shall not be considered part of this ordinance and may be revised by the Town without being treated as an amendment to this ordinance. Generally accepted forest management guidelines, which include guidelines for forest aesthetics, are described in a WDNR publication titled Wisconsin Forest Management Guidelines, PUB-FR-226 2003 available from the WDNR Forestry Division, PO Box 7921, Madison, Wisconsin 53707-7921 or on the Wisconsin DNR website at:

<http://www.dnr.state.wi.us/org/land/forestry/Publications/Guidelines/index.htm>.

(5) Lawns within ordinary high water mark setbacks areas, slope preservation zones and bluffline setback areas shall not be expanded. Maintenance of existing lawns may be continued.

(6) These standards do not prohibit the growth and harvest of non-wood-fiber crops, the removal of vegetation to allow permitted uses or structures or conditional uses, the removal of state-designated noxious weeds, and the pruning or removal of vegetation to prevent insect infestation or disease that threaten large areas of vegetative cover.

NOTE: Noxious weeds include those species designated by s. 66.96(2), Stats., which includes Canada thistle, leafy spurge, field bindweed and any other such weeds as the St. Croix County Board by ordinance or resolution declares to be noxious.

(7) Herbicide use shall be limited to direct topical application to cut stems to kill noxious weeds, exotic species, poison ivy, poison oak or poison sumac, or as a prescribed treatment within a forest stewardship plan.

(8) The practice of forestry shall be allowed on lands for which a forest stewardship plan has been developed under Wis. Stats. ch. 77, or Wis. Admin. Code ch. NR 46 or 47, and on lands managed under forest stewardship plans that employ best management practices for water quality protection, erosion control and generally accepted forest management guidelines and have been approved by a department forester. Forest stewardship plans so allowed shall be implemented to employ commonly accepted silvicultural practices approved by a department forester, to ensure that silvicultural practices are compatible with the riverway overlay district goals of protecting natural scenic values and ensuring that structures remain visually inconspicuous. Cutting, harvesting or removal of timber under this provision on land that is visible from the river during the time when the leaves are on the deciduous trees may only include the following practices: small regeneration cuts with boundaries designed to harmonize with naturally occurring shapes; shelterwood cuts not to exceed the size, shape, spacing or timing of regeneration cuts; or selection cutting leaving a residual timber stand of at least 60 square feet basal area.

(9) Noxious weeds, exotic species, poison ivy, poison oak, poison sumac or any other vegetation that is removed shall be replaced with native vegetation, which may include native non-noxious weeds.

c) Penalties. The penalty for removing vegetation in violation of this Town ordinance shall include replacement of vegetation with native vegetation at the property owner's expense in addition to other remedies available under this ordinance.

12. Private On-Site Wastewater Treatment Systems.

Private on-site wastewater treatment systems shall be constructed in accordance with the requirements of Commerce Chapter 83 or more strict requirements that may be required by the Town in its Subdivision Ordinance or by the County in its sanitation code.

13. Filling and Grading.

Filling and grading are permitted outside of slope preservation zones when all of the following requirements are met:

- (a) Filling and grading activities are set back at least 40 feet from slope preservation zones.
- (b) Filling and grading activities do not disturb more than 10,000 square feet of land.
- (c) No wetlands are filled or drained.
- (d) Any vegetation that is removed is replaced with native vegetation.
- (e) Filling and grading activities are designed and implemented in a manner to minimize erosion, sedimentation, and impairment of fish and wildlife habitat.
- (f) As part of an erosion control plan, WIDNR Storm Water Management Standards are implemented.
- (g) Filling and grading are not allowed for the purpose of adding net project area in order to create additional lots.

14. Erosion Control Standards. All permitted filling and grading on, or within 40 feet of a slope preservation zone shall, as part of an erosion control plan, comply with the Wisconsin Construction site Erosion Technical Standards and Wisconsin Post-Construction Storm Water Technical Standards included in the WIDNR Storm Water Management Standards.

171 - J. STANDARDS FOR CONDITIONALLY PERMITTED STRUCTURES AND ACTIVITIES.

The structures and activities specifically described in this section require a Town riverway permit and are permitted when the Town determines that all applicable requirements in this ordinance have been met:

1. Land Division.

Subdivision of property into lots is a permitted use when the Town determines that all of the following conditions are met.

(a) All lots on which single family residences are proposed to be built shall meet the minimum lot size and width requirement in section I.1 and 3 and shall be suitable for residential development in their existing condition, without the need for a variance.

(b) All such proposed lots shall be suitable for their proposed use and will not be subject to the potential for flooding, inadequate drainage, severe erosion, inadequate water supply or inadequate sewage disposal capabilities.

(c) The use of such proposed lots for residential purposes will not be limited by unfavorable soil and rock formations, unfavorable topography, or any other feature likely to result in harm to the health, safety or welfare of future residents of the lots or of the local community.

(d) The Town shall consult with the State Historical Society concerning potential impacts to archeological sites. If the property is found to contain an archeological site, the Town and the applicant shall develop and implement a plan to avoid or mitigate adverse impacts to the archeological site with the assistance from the State Historical Society.

2. Planned Cluster Developments.

A subdivision for a cluster development for single family residences is a permitted use when the Town determines that all of the following conditions are met:

(a) The proposed clustering provides a better means of preserving scenic views, open space and shoreline than a non-clustered single family residential subdivision.

(b) The proposed structures comply with the minimum ordinary high water mark and bluffline setbacks and height standards in section I. 4, 5 and 6 of this ordinance.

(c) The total number of single family residences in a planned cluster development shall not exceed 50% more than the total number of residences that would be allowed if the development complied with the lot size and width requirements of sections I.1.and I.3.

(d) Every lot or outlot in a planned cluster development containing riparian land shall be owned by a homeowners association with membership consisting of all lots in the planned cluster development.

(e) Notwithstanding the requirements of sections I.1. and I.3. regarding lot size and width and subsection J.2.(c) herein, the minimum lot size in a planned clustered development may be reduced to one acre of net project acre, and the lot line width to 132 feet where also consistent with the Town's Subdivision Ordinance. For every cluster lot created, at least one acre of open space containing all of the riparian land 175 feet landward from the ordinary high water mark shall be permanently preserved by a restrictive covenant or conservation easement that prevents future subdivision and development of the open space.

3. Transmission Services.

The construction, updating, maintenance or reconstruction of transmission services is permitted when the Town determines all of the following conditions have been met:

(a) All new, updated or reconstructed transmission services shall be placed underground if the Town determines that underground placement is technically feasible. An applicant who seeks to establish that underground placement is technically infeasible, shall provide supporting engineering data to explain to the Town what factors make it infeasible.

(b) When underground placement has been determined to be technically infeasible, above ground transmission services shall be designed and located to minimize adverse visual impact on the scenic character of the riverway.

(c) New, updated or reconstructed transmission services shall be constructed and maintained using minimally invasive techniques for construction and maintenance, including erosion control. Existing transmission facilities shall be maintained using minimally invasive techniques, including erosion control.

(d) Cutting or clearing of vegetation for transmission service maintenance may be conducted provided that an understory layer of vegetation shall be maintained to prevent erosion and allow succession. Vegetative management shall protect the quality and diversity of the plant community and prevent erosion. Herbicide use shall be limited to direct topical application to cut stems to prevent regrowth. The pruning of normal tree growth for safety reasons or to prevent interference with the transmission service and the removal of noxious weeds is allowed.

4. Wireless Communication Service Facilities.

The installation, reconstruction, modification and replacement of wireless communication service facilities is permitted when the Town determines that all of the following conditions have been met:

(a) Construction and maintenance shall be conducted using techniques which minimize the cutting or pruning of vegetation in order to preserve mature vegetation and provide screening of the facilities. Erosion control measures shall be employed.

(b) Wireless communication service facilities shall use building materials, colors, textures, screening and landscaping that blend the facilities into the surrounding natural features and shall be visually inconspicuous.

(c) Wireless communication service facilities shall be of camouflage or stealth design, unless placed on existing structures.

(d) Wireless communication service facilities may not exceed a height of 50 feet or no more than 20 feet above the tallest structure or tree canopy within a 300 foot radius of the proposed communication facilities as measured horizontally, whichever is higher.

(e) New or reconstructed wireless communication service facilities may not be placed in slope preservation zones of any kind, floodplains or wetlands.

5. Filling and Grading Activities.

(a) Filling and grading in any of the following areas are conditionally permitted when the Town determines that all of the conditions in par. (b) have been satisfied:

(1) In slope preservation zones that do not directly face the river and do not drain directly to the river.

(2) Outside of slope preservation zones when more than 10,000 square feet of land is proposed to be disturbed by filling or grading activity.

(3) Within 40 feet of a slope preservation zone.

(b) Filling and grading in the areas described in par. (a) are conditionally permitted when the Town determines that all of the following conditions are met:

(1) Filling and grading activities will not disturb more than 10,000 square feet of land that is located in a slope preservation zone.

(2) No wetlands are filled or graded.

(3) Any vegetation that is removed is replaced with native vegetation.

(4) Filling and grading activities are designed and implemented in a manner that minimizes erosion, sedimentation, and impairment of fish and wildlife habitat.

(5) The filling and grading is visually inconspicuous.

(6) As part of an erosion control plan, Wisconsin Construction Site Erosion Technical Standards and Wisconsin Post-Construction Storm Water Technical Standards as included in the WiDNR Storm Water Management Standards must be implemented to control erosion.

6. Structural Erosion Control Measures In Slope Preservation Zones.

The construction, updating, maintenance or reconstruction of structural erosion control measures in slope preservation zones is permitted when the Town determines that all of the following conditions have been met:

(a) The Town has determined that structural erosion control measures are necessary to address significant on-going erosion that nonstructural erosion control measures cannot control.

(b) The structural erosion control measure is constructed of natural materials and is located and constructed to be as visually inconspicuous as possible.

(c) The person seeking to construct the structural erosion control measure submits a detailed construction plan, an erosion control plan and a vegetative management plan, showing how the structural erosion control measure will be constructed, what land disturbing activities will take place, what, if any, vegetation will be removed, how new native, vegetation will be re-established, and the Town has approved all aspects of all plans.

7. Stairways.

The installation, reconstruction, modification and replacement of stairways are permitted when the Town determines that all of the following conditions have been met:

(a) The stairway is required to provide pedestrian access to the river because of steep, rocky, unstable or wet site conditions.

(b) The tread width of the stairway does not exceed 48 inches.

(c) Landings are located at vertical intervals of not less than 20 feet, and no individual landing exceeds 40 square feet in area.

(d) Hand rails may be allowed in conjunction with stairways.

(e) Canopies and roofs are not allowed on stairways.

(f) Stairways, handrails and landings shall be anchored and supported above grade with pilings or footings or by using professionally engineered designs that do not require continuous anchorage for structural integrity and which designs have been approved by the Town's Engineer.

(g) Stairways shall be constructed of unfinished wood or stone, or shall be painted or stained with earth-tone materials.

(h) Stairways shall be visually inconspicuous and shall be located in the most visually inconspicuous area of the lot.

(i) Native plantings shall be used to form a vegetative canopy to screen the stairway from the river.

(j) Existing vegetation may be removed only within one foot of either side of the stairway route and no more than 8 feet above the stairway floor.

(k) Only one stairway is permitted on a lot that abuts the Lower St. Croix River.

8. Lifts.

The installation, reconstruction, modification and replacement of lifts is permitted when the Town determines that all of the following requirements have been met:

(a) The lift is required to provide pedestrian access to the river because of steep, rocky, unstable or wet site conditions.

(b) The car floor of the lift does not exceed 4 feet by 6 feet in area.

(c) Canopies and roofs are not allowed.

(d) All visible parts of the lift shall be painted or finished in earth-tone, non-reflective materials and shall be visually inconspicuous.

(e) Lifts and their transporting device or power source shall be visually inconspicuous and shall be located in the most visually inconspicuous portion of the lot.

(f) Native plantings shall be used to form a vegetative canopy to screen the lift from the river.

(g) Existing vegetation may be removed only within one foot on either side of the lift route and no more than 8 feet above the lift floor.

(h) Only one lift is permitted on a lot that abuts the Lower St. Croix River.

(i) Contiguous landowners may be permitted to construct a shared lift serving both properties.

9. Public Roads and Private Roads Serving Two or More Lots or Single Family Residences.

The construction, reconstruction or right-of-way maintenance for public roads and private roads serving 2 or more properties or single- family residences is conditionally permitted if all of the following conditions are met:

(a) No new road, may be constructed in slope preservation zones, in an area 40 feet landward of blufflines, within 200 feet of the river, within 100 feet of tributary watercourses or in wetlands, except as minimally required to serve a permitted expansion of a nonconforming structure.

(b) Route design and construction or reconstruction shall minimize visual impacts by using terrain features to blend the road into the landscape, avoiding cuts and fills as much as feasible.

(c) New roads shall be visually inconspicuous.

(d) All new roads shall meet or exceed the applicable standards and requirements of the Town Subdivision, Road Standards and Driveway ordinances.

(e) Cutting or clearing vegetation for road right-of-way maintenance shall be conducted only in accordance with the following requirements:

(1) Vegetation shall be managed to allow an understory layer to remain in place to prevent erosion and allow succession. Vegetation shall not be disturbed in such a way that there would be reduced quality or diversity of the plant community or increased potential for erosion, except as necessary for public safety.

(2) Herbicide use shall be limited to direct topical application

(3) Mowing of a safety zone is allowed, extending from the edge of the pavement back 15 feet or to the ditch bottom, whichever is less, as is the periodic clearing of intersection vision triangles.

Other parts of the right-of-way may be mowed to control noxious weeds and undesirable brush and only after July 15 in order to avoid adverse impact on ground-nesting birds.

(4) Cutting of trees more than 4 inches in diameter at breast height is prohibited, unless determined by the Town to pose a hazard to public health or safety or as otherwise permitted in section I-11.

171 - K. CONDITIONAL USE PERMIT STANDARDS.

1. Bed and Breakfast Operations.

A conditional use permit may be issued to the owner of land in the rural residential management zone for a bed and breakfast operation if all of the following requirements are met:

(a) The bed and breakfast operation provides 4 or fewer rooms for rent to transient visitors.

(b) The bed and breakfast operation has sufficient parking spaces on its lot for the guests.

(c) Any other conditions deemed appropriate to the owner, site or proposed operation by the Town Board of Appeals.

2. Home Occupations.

A conditional use permit may be issued to the owner or tenant of land in the rural residential management zone for the use of a single-family residence for a home occupation if all of the following requirements are met:

(a) The owner or person who rents the residence on a full-time basis will conduct the home occupation.

(b) The home occupation is conducted inside of the residence and is subordinate to the use of the home as a principal residence.

(c) The home occupation will not cause environmental pollution.

(d) If the home occupation causes additional persons to visit the residence, sufficient parking is provided on the lot.

(e) Any other conditions that may be deemed appropriate to the owner, site or proposed operation by the Town Board of Appeals.

3. Nature-Oriented Educational, Non-Profit Facilities.

A conditional use permit may be issued to the owner of land in the rural residential management zone for a nature-oriented educational, non-profit facility in the overlay district if all of the following requirements are met:

(a) The facility will not cause environmental pollution or erosion.

(b) The facility has sufficient parking on its property for patrons to park.

(c) Any other conditions that may be deemed appropriate to the owner, site or proposed operation by the Town Board of Appeals.

171 - L. NONCONFORMING USES AND STRUCTURES AND SUBSTANDARD LOTS.

1. Nonconforming Uses; General Rules.

A nonconforming use in the rural residential management zone may not be expanded or enlarged. A change from one nonconforming use to another nonconforming use is not allowed. If a nonconforming use is discontinued for a period of 12 months, then any future use of building and premises shall conform to all of the requirements of this ordinance. No nonconforming use shall be approved by St. Croix County over the objection of the Town.

2. Nonconforming Principal Structures: Maintenance and Repair.

As defined by this ordinance, ordinary maintenance and repair to nonconforming principal structures in the rural residential management zone is allowed, without a riverway permit. The Town's Building Code and other applicable ordinances do apply.

3. Reconstruction of Nonconforming Principal Structures.

Nonconforming principal structures located in an ordinary high water mark setback area, bluffline setback area or slope preservation zone, may be structurally altered or reconstructed and the pre-existing foundation may be replaced, improved, repaired or structurally altered only after the Town has determined that all of the following requirements have been met and issued a riverway permit:

(a) The lot has an area of at least 7,000 square feet.

(b) The altered or reconstructed structure will be visually inconspicuous or will be rendered so within a reasonable time through mitigation as required in section L.7 of this ordinance. The mitigation requirements shall be incorporated into the riverway permit.

(c) The structure is altered or reconstructed in the same footprint as the pre-existing structure.

(d) The height of the structure following alteration or reconstruction complies with the height limitations of section I-4. The reconstructed structure may not be any taller than the pre-existing nonconforming structure, except that a pre-existing flat roof may be replaced with a pitched roof.

(e) The color of the structure complies with the building material color requirements of section I.7.

(f) The property owner submits a mitigation plan that complies with the requirements of section L.7. When the Town issues a permit for alteration or reconstruction, the mitigation plan shall be approved or modified and approved by the Town and incorporated into the permit, and the property owner shall be required to implement the mitigation plan as a permit condition.

(g) Private on-site waste water treatment systems shall be brought into compliance with the current requirements of Wis. Adm. Code Comm. 83, the St. Croix County sanitation code and the requirements of the Town's Subdivision Ordinance.

(h) The foundation of a nonconforming principal structure may only be replaced, improved or structurally altered in conjunction with the reconstruction of the structure when the entire structure is located more than 50 feet from the ordinary high water mark.

(i) A nonconforming principal structure located in a slope preservation zone and located entirely more than 50 feet from the ordinary high water mark may be structurally altered or reconstructed, and its foundation may be improved or replaced but not expanded, so long as Wisconsin Construction Site Erosion Technical Control Standards and Post-Construction Storm Water Management Technical Standards as included in WIDNR Storm Water Management Standards are implemented to control erosion pursuant to an erosion control plan reviewed for compliance by the Town Engineer.

(j) An erosion control plan and re-vegetation plan shall be submitted the Town for review, approval or modification and approval prior to the issuance of a permit for any structural alteration or reconstruction of a nonconforming principal structure.

(k) No filling and grading is allowed during the structural alteration or reconstruction project except as minimally necessary to perform permitted construction and bring the site into compliance with existing sanitary and erosion control requirements.

4. Expansion of Nonconforming Principal Structures.

Nonconforming principal structures located in an ordinary high water mark setback area or bluffline setback area may be expanded and the pre-existing foundation may be replaced, improved, repaired or structurally altered in conjunction with the expansion only after the Town has determined that all of the applicable requirements for reconstruction in sub. 3 have been met, the Town has further determined that all applicable following requirements have been met and issued a riverway permit:

(a) Structures located entirely or partially within 50 feet of the ordinary high water mark, or entirely or partially on a slope preservation zone, may not be expanded.

(b) Where footprint expansion is permitted, vertical expansion of the existing nonconforming structure is also permitted up to the height limit in section I-4.

(c) A nonconforming principal structure that is entirely located more than 50 feet from the ordinary high water mark and also located entirely or partially within 75 feet of the ordinary high water mark may be expanded only if the Town, after consulting its Engineer concludes that there is no compliant location available elsewhere on the lot.

(d) Structures entirely located more than 75 feet from the ordinary high water mark may be expanded regardless of whether a compliant location exists elsewhere on the lot.

(e) Nonconforming structures that are located entirely or partially within the 200 foot ordinary high water mark setback area and located entirely outside a slope preservation may expand to a total footprint, including the existing and expanded area, of not more than 1,500 square feet.

(f) The property owner submits a mitigation plan that complies with the requirements of section L.7. If a permit is issued for the expansion, the mitigation plan shall be approved or modified and approved by the Town and incorporated as approved into the permit. The property owner shall implement the mitigation plan as a condition of the permit.

(g) Nonconforming principal structures located entirely more than 200 feet from the ordinary high water mark and entirely outside a slope preservation zone and entirely or partially inside the bluffline setback area or highest visible bluffline setback area, may expand to a total footprint, including existing and expanded area, of not more than 2,000 square feet; provided that the expansion will not increase the area of the structure silhouetted against the sky when viewed from the midline of the river during leaf on conditions.

(h) Footprint expansion may occur only on the side of the structure farthest from the river or, if landward expansion is not possible, in a location that runs parallel to the ordinary high water mark

5. Nonconforming Accessory Structures.

Ordinary maintenance and repair of nonconforming accessory structures in the overlay district is allowed. Nonconforming accessory structures may not be structurally altered, reconstructed or

expanded, except that attached garages, detached garages and storage sheds may be structurally altered, reconstructed including the foundation or expanded and sidewalks and driveways may be minimally expanded to serve an approved expansion after the Town has determined that all of the following requirements have been met and issues a permit:

(a) The detached garage or storage shed is located entirely outside of any slope preservation zone.

(b) The entire detached garage or storage shed is set back more than 75 feet from the ordinary high water mark.

(c) A detached garage or storage shed shall not be used for human habitation. Attached garages shall not include a habitable area without complying with sub. (e)

(d) Existing garages located more than 75 feet from the ordinary high water mark may be structurally altered or reconstructed, including the foundation, provided WIDNR Storm Water Management Standards are implemented to control erosion, pursuant to an erosion control plan reviewed for compliance by the Town Engineer

(e) The combined footprints of the uninhabited portion of all nonconforming attached garages, detached garages and sheds on a lot that are located entirely more than 75 feet from the ordinary high water mark, entirely outside a slope preservation zone and entirely outside a bluffline or highest visible bluffline setback area shall not exceed 900 square feet. The combined footprints allowed for such structures that are located inside a bluffline or highest visible bluffline setback area shall not exceed 500 square feet. The combined footprints allowed for the non-habitable portion of detached garages and the non-habitable portion of attached garages and sheds is in addition to the footprint area allowed for nonconforming principal structures.

(f) A newly constructed or expanded garage may be attached to a nonconforming principal structure. When this occurs, the garage footprint area shall be included in the combined footprint of the accessory garages and sheds. Any habitable area created inside an attached garage construction or expansion shall be included in the principal structure footprint.

(g) Expansion or construction may occur only on the side of the principal structure farthest from the river or, if landward expansion is not possible, in a location that runs parallel to the ordinary high water mark or bluffline.

(h) The detached garage or storage shed is built with earth-tone building materials that are non-reflective, except that windows may be made of ordinary window glass or non-reflective glass, but may not be made of glass designed to reflect more light than ordinary window glass.

(i) Mitigation measures are implemented and maintained that comply with the requirements of section L.7 of this ordinance. If a permit is issued for expansion or construction, the mitigation plan shall be approved, or modified and approved by the Town and incorporated into the permit. The property owner shall be required to implement the mitigation plan as a condition of the permit.

(j) The structure is visually inconspicuous or will be rendered so within a reasonable time through a mitigation plan that complies with the provisions of section L.7 of this ordinance.

(k) Nonconforming principal structures that are permitted to expand may enclose an existing attached deck provided that the area of the deck, once enclosed, shall be included in the area of principal structure footprint.

(l) Boathouses constructed on or before December 16, 1979 and located entirely above the ordinary high water mark may be maintained and repaired but may not be expanded in any dimension and shall conform to the building color requirements of this ordinance. Pre-existing boathouses shall conform to the requirements of Wis. Stats. § 30.121.

(m) Existing and expanded nonconforming accessory structures shall comply with the building material color standards contained in section I.7. of this ordinance.

(n) In this section, “attached garage” means a storage structure for vehicles that shares one or more structural walls with the principal structure.

(o) The lot has an area of at least 7,000 square feet.

6. Substandard Lots.

Lots in the rural residential management zone that were of record with the St. Croix County Register of Deeds on January 1, 1976, or on the date of the adoption of an amendment to the County or Town ordinance that made the lot substandard and that do not meet the requirements of this chapter may be allowed to be used as building sites when the Town determines that all of the following criteria are met:

(a) Either the lot is held in separate ownership from abutting lands or the lot, by itself or in combination with an adjacent lot or lots under common ownership in an existing subdivision, has at least one acre of net project area. Adjacent substandard lots under the same ownership may be sold or developed as separate lots only if each such lot has at least one acre of net project area and separately complies with the Town's subdivision ordinance and other applicable Town ordinances.

(b) All structures that are proposed to be constructed or placed on a substandard lot and the proposed use of the lot shall comply with the requirements of this ordinance, and any underlying St. Croix County or Town of Troy zoning or sanitary code requirements.

7. Mitigation Requirements.

Expansion, structural alteration or reconstruction of nonconforming principal structures and nonconforming accessory structures in the rural residential management zone shall comply with these mitigation requirements. Mitigation requirements shall be roughly proportional to the magnitude of the impacts of the proposed project on scenic resources, water quality, erosion potential and the protection of the shoreland area. Mitigation measures shall include but not be limited to the following:

(a) Planting of trees capable of screening the entire riverway face of non-conforming structures from the riverway, viewed from at or near the mid-line of the river, during summer months, if existing vegetation is not sufficient to render the structures visually inconspicuous. The trees shall be native to the area, at least 2 inches in diameter and planted no more than 12 feet apart across the riverway facing frontage. The trees may be planted at staggered distances between the shoreline and the structure.

(b) Vegetation in the area within 50 feet of the ordinary high water mark shall be preserved or restored through planting of native vegetation. Vegetation shall be established or maintained at densities adequate to protect water quality, habitat and natural scenic beauty of the shoreland area. Vegetation shall provide screening between all structures and the river so as to make all non-conforming structures visually inconspicuous while providing a limited view to the river from the structures. A 15-foot wide mowed area around the structure to protect it from wildfire is permitted.

(c) Planting of trees for screening, reforestation or erosion control shall comply with the recommendations contained in the Town Riverway Vegetative Management Guidelines and the Wisconsin Forest Management Guidelines. Wisconsin Storm Water Management Standards shall be implemented to encourage storm water infiltration and erosion and runoff limit.

(d) An affidavit describing the approved mitigation plan shall be executed and recorded with the County registrar of deeds by the property owner within 14 days after approval of the mitigation plan. The affidavit shall alert subsequent purchasers of the land of the requirements of the mitigation plan.

171 - M. Administration

1. Riverway Permit

(a) A riverway permit issued by the Town is required prior to undertaking or engaging in any uses, construction or activity authorized under the conditions and for the purposes set forth in sections D.1.,3.,5. and 6., and all of sections E., F. and L. of this ordinance, except for applications to perform ordinary maintenance and repair and where otherwise exempted. Applications for ordinary maintenance and repair that require a building permit shall be received and approved by the Town Building Inspector. Riverway permit applications are subject to primarily review by the Plan Commission. The Town Board takes action on riverway permits, acting only after receiving the recommendation of the Plan Commission. Other Town ordinances, including but not limited to the building code, road, driveway, utility and subdivision ordinances also apply in the rural residential management zone, as do all applicable regulations of other governmental entities.

(b) Concept review.

(1) Purpose. Riverway permit applications are preceded by concept review by the Town Plan Commission. Prospective permit applicants shall apply for concept review prior to making application for a Town riverway permit. Concept review informs the Plan Commission concerning the applicant's proposal and allows the parties to identify the requirements of this ordinance that apply to their plans, to discuss and refine such plans where possible and to identify the information that applicants will be expected to provide to the Town as part of riverway permit application. Concept review also allows the Plan Commission to make an informed decision prior to the submission of formal application on whether it can identify and waive the submission of information otherwise required under the ordinance but irrelevant to the project for which riverway permit application is being planned.

(2) Procedure. Each request for concept review receives a public hearing before the Plan Commission. The Town Clerk must verify that the applicant has mailed written notices to all landowners and residents of land contiguous to the property affected at least 24 days before the public hearing on the concept review. The Plan Commission, Town Engineer or designee will visit the property for which application is sought to inspect the proposed project site prior to the public hearing. Following concept review, the Plan Commission shall make a record of specific portions of the ordinance applicable to the concept under review and of such otherwise required application materials for that project as the Plan Commission decides to waive.

(c) Riverway Permit Application.

(1) Purpose. Application for a riverway permit is not deemed to have been accepted by the Town until an application has been submitted following concept review that addresses all parts of the project proposed for concept review and that submits all required application materials except those specifically waived by the Plan Commission.

(2) Procedure. A public hearing is held by the Plan Commission on each riverway permit application. The Town Clerk must verify that the applicant has provided written notice to all landowners and residents of land contiguous to the property affected at least 24 days before the meeting at which the application will be heard by the Plan Commission. The applicant shall provide stamped, envelopes enclosing notices of the public hearing concerning the application plus copies of all application materials to the Town Clerk/Treasurer for submittal to the Town attorney and Town engineer at least 30 days before the public hearing on the permit application. After the public hearing before the Plan Commission has taken place, the Plan Commission shall recommend approval of the riverway permit application, approval of the application with changes, or denial. Any conditions to a recommended approval and the reasons for a recommendation of application denial shall be recorded in the minutes of the Plan Commission. Plan Commission recommendations are advisory in nature. The Town Board takes action to issue or deny the issuance of riverway permits for which application has been made. The Town Board acts on riverway permits at its next regular meeting following receipt of the Plan Commission's recommendation.

(d) Riverway Permit Application Requirements. All applications for riverway permits shall include the following information unless specific items are waived by action of the Plan Commission following concept review and with specific reference to the application under review:

(1) A scale drawing or survey showing the property location, boundaries, dimensions, elevations, blufflines, slope preservation zones, utility and roadway corridors, ordinary highwater mark, ordinary highwater mark setback, floodway and flood fringe boundaries, and adjoining land and water-oriented uses/ownership.

(2) A recent aerial photograph with property lines drawn in that shows the location of existing and proposed structures, including height, footprint and setback dimensions.

(3) Location of existing, and proposed alterations of, vegetation and topography, including any vegetation removal and replacement that is being proposed.

(4) A mitigation plan, if required, plus an affidavit in recordable form, signed by the property owner and describing the proposed mitigation plan in sufficient detail to conform to the requirements of section L.7(d).

(5) Photos of the site taken from the middle of the river, slightly upstream and downstream of the property and directly offshore.

(6) An erosion control plan.

(7) A vegetative management plan, showing where vegetation is proposed to be removed and replaced.

(8) Any other information that the Town Plan Commission, the Town Board, or the Department deems appropriate in making a decision on the Riverway Permit application. Additional information requested by the Town or the Department shall be submitted prior to the permit application public hearing.

(9) Permit application for land divisions, planned cluster developments, bed and breakfast operations, home occupations, nature oriented educational, non-profit facilities and for variances shall also include the location of any proposed on-site wastewater treatment system and private water supply information, including the location of any proposed well.

(10) Permit applications for filling and grading, structural erosion control structures and road construction shall also include a plan showing the proposed construction, reconstruction, location and design of the filling, grading, structural erosion control measure or road construction.

(11) Permit applications for transmission services and wireless communication service facilities shall also include:

(a) For transmission services, a plan showing the location of the proposed facilities and if not being placed underground, documentation of why underground placement is technically infeasible and a plan outlining design and construction methods to minimize adverse visual impact to the riverway;

(b) For wireless communication service facilities, a plan showing the location of proposed facilities and an illustration of the methods that will be used to meet design requirements for the appropriate stealth, camouflage and height requirements.

(12) Permit applications for stairways and lifts shall also include a plan showing the stairway or lift locations, design, dimensions, or, construction materials, erosion control measures and vegetative removal and replacement. The plan shall contain certification by a registered professional engineer or architect that the stairway or lift components as designed will be securely anchored to prevent them from shifting and causing erosion. This plan as approved or modified and approved by the Town shall be incorporated into the applicant's permit.

(e) Public hearing decision record. The public hearing records of the Plan Commission recommendations on riverway permits and of the Town Board decisions on riverway permits shall contain the comments of the applicant, the public, governmental agencies and members of the Plan Commission and Town Board.

(1) Required Contents. Decision records shall specifically address:

(a) the preservation of the scenic and recreational resources of the riverway, especially with regard to the view from and use of the river;

(b) the maintenance of safe and healthful conditions;

(c) the prevention and control of water pollution, including sedimentation;

(d) the location of the site with respect to floodways, floodplains, slope preservation zones and blufflines;

(e) the erosion potential of the site based on the degree and direction of slope, soil type and vegetative cover;

(f) potential impact on terrestrial and aquatic habitat, location of the site with respect to existing or future access roads;

(g) adequacy of proposed wastewater treatment; and

(h) compatibility with adjacent land uses.

(f) Town Action. All plans submitted with all such applications shall be approved, approved as modified or rejected, and included in the record as part of the riverway permit, conditional use or variance application. The Town shall send a copy of each riverway permit, conditional use and variance which shall also include a brief decision, a summary of the hearing, to the Department within five working days following the hearing at which a final Town decision is issued.

2. Variances.

(a) Standard. Variance applications require action by the Town Board of Appeals. The Board of Appeals may only grant variances where doing so is not contrary to the public interest and where,

due to special conditions, literal enforcement of the provisions of this ordinance will result in unnecessary hardship, so that the spirit of the ordinance shall be observed and substantial justice done. Economic considerations alone do not constitute a hardship, nor may the hardship be self-created. The Board of Appeals shall impose such conditions when it grants a variance as will ensure compliance and protect adjacent properties and the public interest, especially in regard to the view from the river and environmental standards. In deciding on a variance request, the Board of Appeals shall consider whether compliance with the strict letter of the ordinance concerning area, setbacks, frontage, height, bulk or density unreasonably prevents the owner from using the property for a permitted purpose, renders conformity with such restrictions unnecessarily burdensome or unduly undermines the intent of the ordinance. The Board of Appeals shall also consider the effect of the variance on the neighborhood and the larger public interest, in making its decision.

(b) Application. All applications for a variance from the requirement of this chapter shall include substantiating information consistent with the degree and nature of the variance request, all information required under subsection M 1(d) of this ordinance and other information as may be requested by the Plan Commission, the Board of Appeals or the Town Engineer. The applicant bears the burden of proof and of persuasion in a variance application. The completed application shall be delivered to the Town Clerk/Treasurer at least 45 30 days prior to the next scheduled Board of Appeals hearing.

(c) Procedure. A public hearing on the application shall be held by the Plan Commission, which shall forward its hearing record and recommendations to the Board of Appeals. A public hearing concerning the application shall then be held by the Board of Appeals. Written, stamped, addressed notices from the applicant to landowners and residents of contiguous land shall be provided to the Town Clerk/Treasurer for mailing 24 days prior to the Plan Commission hearing and 30 days prior to the Board of Appeals hearing. The notice of the Plan Commission hearing and the Town Board of Appeals hearing may be combined in one mailing. An onsite inspection by the Town Plan Commission, Town Engineer or designee shall take place prior to or during the public hearing before the Plan Commission. The Town Engineer may provide background information and recommendations to assist the Board of Appeals. The Board of Appeals may also make an onsite inspection.

(1) After reviewing all information provided by the applicant, considering all information received at the public hearings and receiving the recommendation of the Plan Commission, the Board of Appeals shall make a decision on the variance application, either on the record at its meeting or in a separate written document, to be provided to the applicant within 14 days of the final public hearing on the manner. A variance decision shall address all of the following issues:

(a) whether hardship has been demonstrated;

(b) whether and how the public interest is harmed by granting the variance;

(c) whether satisfactory evidence has been provided to ensure that the applicable core concerns of this ordinance are met if the variance is granted;

(d) that any reconstructed structure or new and expanded structure for which a variance is granted will be visually inconspicuous from the river;

(e) that best management practices regulating erosion and surface water degradation are required for any project for which a variance is granted; and

(f) that the effect on the neighborhood and property value has been considered, and that no adverse affect will occur if the variance is granted.

3. Board of Appeals.

(a) The Board of Appeals for purposes of this Ordinance (Chapter 171) shall be the same body as is authorized and constituted in Section 170-5 of the Code of Ordinances of the Town of Troy and shall operate under the rules, procedures and standards as set forth therein except that, to the extent that the rules, procedures and standards of this ordinance differ from those set forth in Chapter 170, the rules, procedures and standards set forth herein shall prevail.

(b) Powers. The Board of Appeals has the following powers:

(1) To hear and decide whether conditional use permits under section G should be issued, following receipt of the Plan Commission's recommendation.

(2) To authorize variances in specific cases from the terms of this ordinance, following receipt of the recommendation of the Plan Commission and in accordance with the standards in Section M.2. of this ordinance.

(3) To adopt rules of internal procedure by written resolution that do not conflict with the provisions of this ordinance, and which shall not be considered part of this ordinance. Meetings of the Board of Appeals shall be held at the call of the Chair. All meetings of the Board of Appeals shall be open to the public, and minutes shall be kept of its proceedings showing the vote of each member upon each question before it.

(4) In exercising its powers under this ordinance concerning conditional use permit and variance applications, the Board of Appeals may, after receiving the recommendation of the Plan Commission, approve or deny the application before it on the basis of the Plan Commission's recommendation or it may modify that recommendation, in whole or in part, and to that end the Board of Appeals shall have all powers of the Plan Commission, particularly with reference to requiring the submission of additional information, and shall have the power to adjourn and reconvene in order to consider that information prior to making a decision on a conditional use permit or variance application.

4. Department Review.

Applications for conditionally permitted structures and activities, conditional use permits, variances and zoning ordinance text or map amendments shall be submitted to the Department for review and provided to the County Planning Department. Notice of all public hearings and a copy of all applications and materials shall be submitted to the Department and county not less than 30 days before the public hearing of the Town Board or Town Board of Appeals at which the application will be heard. Comments from the Department and received by the Town shall be included in the public hearing record to which they relate. Where additional information is introduced at the hearing by the applicant or where the applicant wishes to review the Department's or the public's or the Plan Commission's opposition, the hearing record may be held open for the applicant's review of that information. If, at the end of 30 days following the date of the hearing the Town has not scheduled a second hearing on the application at the request of the applicant, the Department or the Town, the hearing record shall be closed. The Town shall notify the Department of the final disposition, approval or disapproval of all applications required under this section.

5. Reasonable Accommodations for the Disabled.

Where necessary to accommodate a disabled person entitled to reasonable accommodations under the Americans with Disabilities Act, the Federal Fair Housing Act or the Wisconsin Open Housing Law, the Town shall issue a special administrative permit to allow disabled persons a necessary and reasonable accommodation that would otherwise violate the requirements of this ordinance, provided the accommodation does not cause undue hardship or fiscal or administrative burdens on the Town and does not undermine the basic purposes of this ordinance. The process and requirements for obtaining the special administrative permit shall be identical to what would be required for a riverway permit or a variance, if that is what is requested as accommodation, including required mitigation procedures. In addition, the disabled applicant shall provide the medical verification necessary to determine and establish the eligibility of the applicant for the special administrative permit.

6. Ordinance Amendments.

Proposed ordinance amendments shall receive at least one public hearing before the Plan Commission and before the Town Board. The Town Board shall receive and consider the recommendation of the Plan Commission on all proposed ordinance amendments before taking action on them. Notice of proposed ordinance amendments and copies of the application materials shall be provided to the Department, and St. Croix County Planning and Zoning Department at least thirty days before the public hearing before the Plan Commission. The area and classification of the Town's rural residential management zone is not modifiable without the participation of the Department and modification of Wis. Admin. Code. Sec. NR 118.04(4).

7. Penalties.

(a) Violations. No building, foundation or structure shall be erected, constructed, placed, moved, structurally altered, reconstructed or expanded, nor shall any use of land, premises, building or structure be established or changed in violation of any provision of this ordinance. No person shall fail to comply with any part of this ordinance or with any condition or qualification placed upon the issuance of any permit, other Town approval or variance granted under this ordinance.

(b) Responsible parties. Owners of land, occupants of land and agents of owners or occupants of land including, without limitation because of enumeration, building contractors, surveyors, plumbers, installers, soil technicians, landscapers, road builders, grading and excavating contractors and their agents are responsible for compliance with all provisions of this ordinance bearing upon their area of competency and responsibility. Any person who violates or who aids or abets any violation of this ordinance shall be subject to prosecution for such violation and to legal action seeking remedial action.

(c) Notice. When the Town becomes aware of a condition that is or is likely to become a violation of this ordinance, it shall immediately notify the parties it deems responsible and potentially liable for said violation. The notice shall provide a brief description of the circumstances giving rise to the Town's conclusion of an existing or potential violation and the demand that any condition alleged to constitute a present or potential violation be halted, prevented from occurring or remedied. If such a demand from the Town is not complied with within 10 days of issuance of the notice, then the Town may act to prosecute the alleged violation or seek remedial action. Notice may be given orally or in written form.

(d) Violation remedies. A forfeiture in the amount established by the Town Board in its citation ordinance shall be imposed on conviction or adjudication of violation of this ordinance. Each day a violation exists or continues shall constitute a separate offense for purposes of imposing a forfeiture. The Town may also seek emergency or permanent injunctive relief seeking site restoration or prohibition of an action, practice or continuing course of action. The Town shall also be entitled to recover its actual costs of prosecution, including legal fees.

(Note: the daily forfeiture amounts in 2007 were \$2,500.00 to \$5,000.00 per violation.)

(e) Permit or variance revocation. Where a permit or variance has been approved subject to specific conditions, and where reason exists to believe that such a condition is not being complied with, the Town Board may convene a hearing, following procedure similar to those followed when considering the granting of a permit or variance, to consider whether the permit or variance holder is in noncompliance with the current conditions of the permit, variance or this ordinance. A finding by the Board of noncompliance with any condition originally imposed or any applicable portion of this ordinance shall be grounds for revocation of the permit or variance.

171 - N. SEVERABILITY.

Should any portion of this ordinance be declared by any state or federal court to be invalid for any reason, the remainder of this ordinance shall not be affected. Notes shown in the body of this ordinance are for reference only. The notes and materials to which they refer are not to be construed a part of this ordinance.

171 - O.EFFECTIVE DATE.

This ordinance shall take effect the day after the Town has both enacted an Ordinance Enacting the Partial Code of Ordinances that this comprehensive revision and amendment represents and published the Notice called for in that Ordinance.

Ordinance originally enacted the 30th day of November, 2004.

Effective on December 1, 2004.

Ordinance comprehensively revised and amended on July 19, 2007, by approval of Ordinance 2007 - 01, incorporating Amended Chapter 171 of the Town's Code of Ordinances by reference.

Ordinance comprehensively revised and amended on November 13, 2008, by approval of Ordinance 2008 - 03, incorporating Amended Chapter 171 of the Town's Code of Ordinances by reference.

Effective on November 21st, 2008.

Town of Troy:

Raymond Knapp, Town Chair

date

Attested to by:

Sharon Provos, Town Clerk/Treasurer date