

**CITY OF CEDARBURG  
PLAN COMMISSION  
February 5, 2024**

A regular meeting of the Plan Commission, City of Cedarburg, Wisconsin, will be held at 7:00 p.m. on Monday, February 5, 2024. Attendees have the option of joining the meeting in person at City Hall, W63N645 Washington Avenue, upper level, Council Chambers, or online via the following Zoom link:  
<https://us02web.zoom.us/j/86542165274>

**REVISED AGENDA - Item 6.B.**

1. CALL TO ORDER - Mayor Mike O'Keefe
2. ROLL CALL: Present - Mayor Mike O'Keefe, Council Member Patricia Thome, Jack Arnett, Adam Voltz, Kip Kinzel, Sig Strautmanis, Tom Wiza  
  
Also Present - Jon Censky, City Planner
3. STATEMENT OF PUBLIC NOTICE
4. APPROVAL OF MINUTES – January 17, 2024
5. COMMENTS AND SUGGESTIONS FROM CITIZENS
6. REGULAR BUSINESS; AND ACTION THEREON
  - \* A. Petitioner: **Mike LaRosa, Pioneer Real Estate Development, LLC.**  
Request: **Approval of a Certified Survey (CSM)**  
Briefing: **The applicant is requesting approval of his CSM to split the 2.1-acre Pioneer Road frontage from the 9.1-acre parent parcel located at N144W5800 Pioneer Road.**  
  
Current Zoning: **M-2, General Manufacturing District**  
Aldermanic District: **5**  
Tax Key No.: **130510211013**  
Previous Discussion Dates:
  - \* B. Petitioner: **Planning Commission**  
Request: **Review and possibly recommend approval of the updated and revised Zoning Code.**  
Briefing: ***Click here to view Title 13 Zoning Code draft***  
  
Current Zoning:  
Tax Key No.:  
Aldermanic District:  
Previous Discussion Dates:
7. COMMENTS AND ANNOUNCEMENTS BY PLAN COMMISSIONERS
- \*\*8. MAYOR'S ANNOUNCEMENTS
9. ADJOURNMENT

\* *Information attached for Commission Members; available through City Clerk's office.*

\*\* *This topic is to be limited to such items as establishing the next meeting date, items for the next agenda, reminders of scheduled community events, etc.*

City of Cedarburg is an affirmative action and equal opportunity employer. All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, age, sexual orientation, gender identity, national origin, veteran status, or genetic information. City of Cedarburg is committed to providing access, equal opportunity, and reasonable accommodation for individuals with disabilities in employment, its services, programs, and activities. To request reasonable accommodation, contact the Clerk's Office at (262) 375-7606 or email: [cityhall@ci.cedarburg.wi.us](mailto:cityhall@ci.cedarburg.wi.us).

MEMBERS – PLEASE NOTIFY CITY CLERK'S  
OFFICE IF UNABLE TO ATTEND MEETING

*It is possible that a quorum of members of the Common Council may attend Plan Commission meetings held the first Monday of each month at 7:00 p.m. No business will be conducted by the Common Council and no action will be taken. Attendance is for the purpose of information gathering and exchange.*

01/30/2024

**CITY OF CEDARBURG  
PLAN COMMISSION**

**January 17, 2024**

A regular meeting of the Plan Commission of the City of Cedarburg was held on Monday, December 4, 2023, at Cedarburg City Hall, W63N645 Washington Avenue, upper level, Council Chambers and online via the zoom app. The meeting was called to order at 7:01 p.m. by Mayor Michael J. O’Keefe.

Roll Call            Present -            Mayor Michael J. O’Keefe, Council Member Patricia Thome, Adam Voltz, Jack Arnett, Sig Strautmanis

Excused -            Tom Wiza, Kip Kinzel

Also Present -            City Planner Jon Censky, Administrative Secretary Theresa Hanaman, Chris Maresh, Terrance King, Kristin Burkhart

**STATEMENT OF PUBLIC NOTICE**

Administrative Secretary Hanaman confirmed that the agenda for the meeting had been posted and distributed in compliance with the Wisconsin Open Meetings Law.

**APPROVAL OF MINUTES**

A motion was made by Council Member Thome, seconded by Commissioner Voltz to approve the minutes from December 4, 2023, to include email correspondence from Michael Wirth.

Motion carried without a negative vote, with Commissioner Wiza and Commissioner Kinzel excused.

**COMMENTS AND SUGGESTIONS FROM CITIZENS**

None

**REQUESTING REMOVAL OF THE NO-LEFT TURN STIPULATION THAT WAS PLACED ON THE WASHINGTON AVENUE EGRESS FROM THE CHURCH PARKING LOT BE REMOVED**

Planner Censky explained that the St. Francis Borgia Parish is asking that the *No-Left Turn* requirement be removed from their parking lot to allow those wishing to head south into Washington Avenue traffic. Having had the experience of complying with this requirement for the past several years, St Francis Borgia feel this requirement is not necessary as their typical service hours are at times when traffic on Washington Avenue is low. Accordingly, they would like the ability to exit the church parking lot into the south bound Washington Avenue traffic. A review of our records indicates that this stipulation was put in place as part of the approval of the Arrabelle site plan back in 2017 to address concerns regarding the impact of having the parking lot traffic exiting onto Washington Avenue. Because this stipulation was placed on the use of the parking lot by action of this Planning Commission, the Planning Commission is responsible for its removal.

Council Member Thome asked if the City Engineering staff has an objection. Planner Censky confirmed there is no objection from the City Engineer.

**Action:** Council Member Patricia Thome made a motion to approve the request to remove the *No-Left Turn* requirement. Commissioner Strautmanis seconded the motion. Motion carried without a negative vote, with Commissioner Wiza and Commissioner Kinzel excused.

### **REVIEW AND POSSIBLY RECOMMEND APPROVAL OF THE UPDATED AND REVIZED ZONING CODE**

Planner Censky discussed some of the changes and updates that have been made to the Zoning Code such as the removal of zoning district codes that are not used and cleaning up verbiage. Planner Censky made adjustments to codes that will rely on staff decision as uses come forward. The Planning Commission will have to rely on staff to discuss and see if it's appropriate. Planner Censky mentioned he checked zoning codes in other municipalities as a template.

The Planning Commission discussed posting the Zoning Code for the public to review. It was discussed to make the document in PDF form and the ability to search for specific content on the City of Cedarburg's website.

**Action:** No action made

### **CONSULTATION REGARDING LOCATING A CELLULAR TOWER IN THE BUSINESS PARK**

City Administrator Hilvo discussed a wireless telecommunication firm who is seeking to locate a cell tower within or near the city's Highway 60 Business Park. The request is for

a monopole designed to support several wireless antennas. The tower measures 195 high and is proposed to be located directly northeast of the multi-tenant building approved last month for Lot number 2 of the park. City Administrator Hilvo is requesting staff to provide their thoughts and direction regarding having a cell tower in the Business Park, the height of the tower, the specific location, and any other thoughts. Tower Co. has identified the north side of Cedarburg Business Park as a spot within the City and will remain the City's ownership. The City will continue to work with Tower Co and the City Attorney on the lease agreement. The lease agreement terms include a willingness to pay some funds up front. City Administrator Hilvo included as the City moves forward, this will be presented to the Common Council that, the annual payments will help with the City's TID. The timeline for development after approvals would start in 2025. City Administrator Hilvo informed the Planning Commission there would be no upfront cost, and the service road that was already started would need to be continued at no cost to the City and be paid for by Tower Co. There is currently one tenant with an initial lease. The more tenants on the tower would allow for additional compensation for the City.

Commissioner Strautmanis questioned if certain carriers or any other tenants request another antenna. Administrator Hilvo advised that the tower will be designed to support several competing antenna installations.

Tower Co. engineers are checking to see if the triangular configuration will fit on the space available. City Administrator Hilvo believes that any future tenants at the business park will not be affected. City Administrator Hilvo stated there is no competition with the other tower on Western Avenue and the next step would be for the City Attorney and City Administrator to work on the lease agreement and take to Common Council for approval and to Planning Commission for a public hearing.

Planner Censky stated procedurally, it will have to go through a conditional use process then public hearing.

### **PUBLIC COMMENT**

Terrance King, W63N762 Sheboygan Road

Resident Terrance King asked if the tower on Western Avenue is full and when it was first designed, was it large enough. There is concern that this tower will not be designed with the capacity that the City needs, and Cedarburg will need another tower.

City Administrator Hilvo mentioned the tower on Western Avenue may have one spot available but would have to confirm.

Council Member Thome informed Resident Terrance King that the City worked with a tower consultant on the number of customers allowed on each tower.

**Action:** No action made

### **COMMENTS AND ANNOUNCEMENTS BY PLAN COMMISSIONERS**

Commissioner Strautmanis commented on how the Planning Commission concluded the discussion of the parcel on Highway 60 as part of a larger land use and discussion for all property along Highway 60. As the City updates the land use plans it's suggested the Planning Commission should have a joint meeting with Common Council.

Planner Censky is working with Administrator Hilvo to schedule sometime in February for a joint meeting with Common Council to discuss Highway 60, also the Wirth property is still up for discussion.

### **MAYOR'S ANNOUNCEMENTS**

Mayor O'Keefe thanked Council Member Thome, City Planner Censky, and Commissioner Strautmanis for helping with the zoning revisions and Commission Members for their work on Title 13 Zoning Code.

### **ADJOURNMENT**

A motion was made by Commissioner Voltz, seconded by Council Member Thome to adjourn the meeting at 7:35 p.m. The motion carried without a negative vote, with Commissioner Wiza and Commissioner Kinzel excused.

Theresa Hanaman  
Administrative Secretary

## City of Cedarburg - Planner

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**From:** Michael Wirth <Michael.Wirth@naigreywolf.com>  
**Sent:** Thursday, January 11, 2024 3:31 PM  
**To:** City of Cedarburg - Mikko Hilvo; City of Cedarburg - Planner  
**Cc:** City of Cedarburg - Mike O'Keefe; City of Cedarburg - Patricia Thome; City of Cedarburg - Jack Arnett  
**Subject:** December 4th PC Meeting Minutes Adjustment

Mikko,

Per our conversation, please see my notes from the December 4<sup>th</sup> Plan Commission Meeting below:

*My grandfather acquired this property in 1965.*

*We had limited interest in the parcel until the City installed a lift station for utilities adjacent to the Glen at Cedar Creek site in 2015. We appreciate Planner Censky bringing up the lands annexed in 2006 for the now dissolved TID 2. The purpose of TID 2 was to provide utilities to the City's business park as well as sites within the TIF District. This was all planned in the early 2000's and incorporated into the City's 2025 Land Use Plan. The site is earmarked for B-2 Commercial Business District and RM-2 Multifamily Housing.*

*All but two parcels of this original TID have been developed. The Wirth Parcel and the parcel on the NW Corner of HWY 60 & Sheboygan Road.*

*Over the past decade, the Wirth Family has engaged approximately twenty developers. Every single developer other than Kwik Trip has been focused on a multifamily land use for this parcel.*

*Some of the developers we have spoke with include: Shaffer Development, Fiduciary Real Estate Development, P2 Properties, Continental Properties, Blackcap Halcyon, Wangard Partners, Weas Development, Wingspan Development, Duquaine Development, and The Neutral Project out of Madison among others.*

*We have done our diligence as the Landowner and we believe the market has spoken.*

*Alternative uses we have explored include:*

- *Industrial – No because of the business park*
- *Retail – No per consultation with WiRED Properties and feedback from Nick Hepner at JLL – was clear there would be limited demand for Commercial at this site*
- *Office - No the market for office is limited post covid*
- *Institutional – No. The area has not grown enough yet*
- *Self Storage – No – and probably not what the City wants*
- *Single Family – No because of the Stonewall development on Keup & Highway 60 and developer feedback has been – this site is not meant to be single family housing as its located adjacent to two roads (both with heavy traffic and one is an arterial road – HWY 60)*

*That only leaves us with multifamily which is already incorporated in the 2025 Land Use Plan for the east half of this parcel. We feel the market has spoken with regards to the Site's highest and best use and that is Multifamily.*

*We ask that City provide the Wirth Family as the landowner with a path forward taking this information into consideration.*

# LA ROSA LAND DIVISION

To: Cedarburg Plan Commission

Prepared by: Jonathan Censky, Planner

**Agenda Item: 6.A.**

Date: February 5, 2024

## *General Information*

Applicant:

**Mike LaRosa**

Status of Applicant:

**Owner**

Location:

**N144W5800 Pioneer Road**

Requested Action:

**Land Division**

Existing Zoning:

**M-2 General Manufacturing District**

Lot Size:

**2.1acres**

Existing Land Use:

**Vacant**

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## **Report:**

This certified survey map (CSM) will serve to split the 2.1-acre Pioneer Road frontage portion of 9.1-acre site located at the above reference address. Since this land division does not include the dedication of right-of-way for public road purposes, Plan Commission approval is all that is necessary. Commissioners will recall that this is the site that has been targeted for a future hotel, however, since they are not ready with plans for the hotel yet, this request is simply to prepare for the sale of the site.

## **Staff Comments:**

This site is zoned M-2 General Manufacturing and staff's review of the CSM indicates full compliance with the dimensional requirements of the M-2 District. However, the monument identification sign for the Zuern business is located on this parcel and therefore, the applicant will need to relocate the sign or create an easement to address the off-site sign before the CSM is recorded.





## LAND DEVELOPMENT APPLICATION

PROPERTY LOCATION/ADDRESS: N144 W5800 Pioneer Road  
APPLICANT/BUSINESSNAME: Michael J La Rosa  
APPLICANT/BUSINESS ADDRESS: N144 W5800 Pioneer Road  
STATUS OF APPLICANT: ☒ OWNER ☐ AGENT ☐ BUYER ☐ OTHER \_\_\_\_\_  
PHONE: 262-993-0300 EMAIL: mike@larosalandscapels.com

PROPERTY OWNER (IF DIFFERENT): Pioneer Real Estate Development, LLC.  
PROPERTY OWNER MAILING ADDRESS: 4537 Columbia Road Cedarburg, WI 53012  
PROPERTY OWNER PHONE: 262-993-0300 PROPERTY OWNER EMAIL: mike@larosalandscapels.com

### REQUEST FOR (CHECK ALL THAT APPLY):

- |  |  |
|--|--|
| <input type="checkbox"/> CONCEPT REVIEW                            | <input type="checkbox"/> CONDITIONAL USE ZONING    |
| <input type="checkbox"/> SITE/ARCHITECTURAL PLAN APPROVAL          | <input type="checkbox"/> ANNEXATION REQUEST        |
| <input checked="" type="checkbox"/> SUBDIVISION PLAT OR CSM REVIEW | <input type="checkbox"/> VARIANCE/BOARD OF APPEALS |
| <input type="checkbox"/> ZONING DISTRICT CHANGE                    | <input type="checkbox"/> OTHER _____               |

DESCRIBE REQUEST: Land division of current property at N144 W5800 Pioneer Road to create a new lot for future development.

PLEASE SUBMIT: FIVE (5) COPIES OF WRITTEN DESCRIPTION OF PROPOSAL OR REQUEST FOR CITY STAFF REVIEW  
FIVE (5) FULL SETS OF SUPPORTING DRAWINGS, SKETCHES OR SURVEY MAPS FOR CITY STAFF REVIEW  
THIRTEEN (13) SETS OF PLANS (11" x 17" MAX) FOR PLAN COMMISSION REVIEW

The undersigned certifies that he/she has familiarized themselves with the State and Local codes and procedures pertaining to this application. The undersigned further hereby certifies that the information contained in this application is true and correct. This application shall be signed by the property owner(s).

PROPERTY OWNER(S) SIGNATURE:  DATE: 01/25/2024

### FOR CITY STAFF USE ONLY

TOTAL FEE: \$ \_\_\_\_\_ (SEE FEE SCHEDULE ON REVERSE PAGE) DATE FEE PAID: \_\_\_\_\_  
APPLICATION AND FEE RECEIVED BY: \_\_\_\_\_ PLAN COMMISSION MEETING DATE: \_\_\_\_\_  
ATTACHMENTS (CHECK IF RECEIVED):  
☐ FIVE DESCRIPTIONS ☐ FIVE FULL-SIZE SETS ☐ THIRTEEN PLAN SETS  
PROPERTY TAX KEY NO/PLAN COMMISSION FILE NO: \_\_\_\_\_

# Certified Survey Map

Part of Parcel 2 of Certified Survey Map No. 739 as recorded in the Ozaukee County Register of Deeds Office in Volume 3 of Certified Survey Maps on pages 142-144, as Document No. 273852, being a redivision of part of Lot 31 of Assessor's Plat of the Town of Cedarburg, being located in the SW 1/4 and NW 1/4 of Section 35, Township 10 North, Range 21 East, City of Cedarburg, Ozaukee County, Wisconsin.

Owner/Subdivider

Pioneer Real Estates Development LLC  
N144W5800 Pioneer Road  
Cedarburg, WI 53012

Surveyor

David J. Leininger  
Homeland Surveying, LLC  
2079 Cold Springs Rd.  
Saukville, WI 53080



*David J. Leininger*  
David J. Leininger, S-2285

Dated this 22nd day of November, 2023

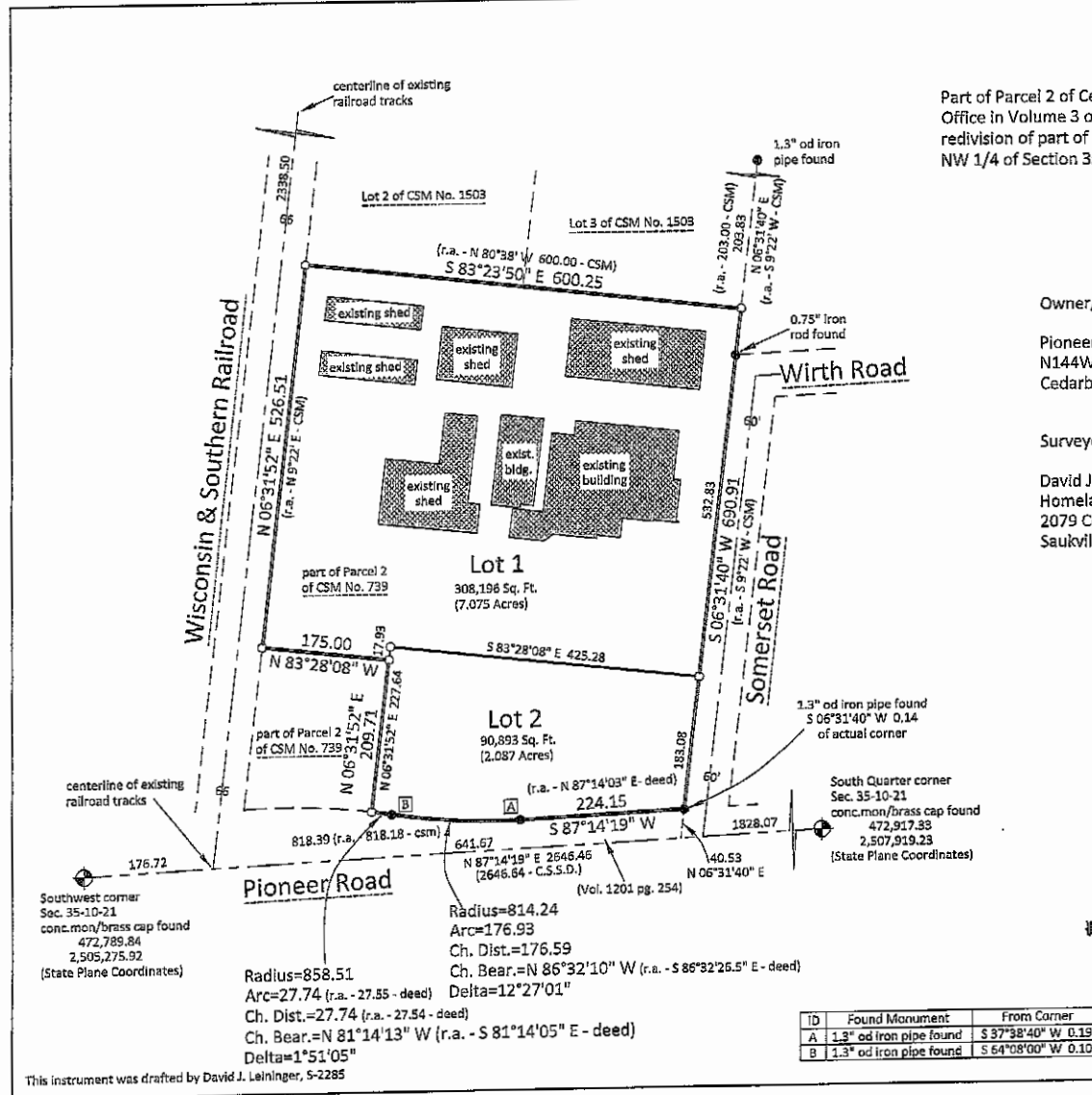
● - Indicates a found monument as indicated.

○ - indicates a 0.75" x 18" rebar weighing 1.50 lbs./ft. set

Horizontal datum is based on the Wisconsin State Plane Coordinate System Grid, South Zone (NAD83/2011), and all bearings are referenced to Grid North. The south line of the SW 1/4 of Sec. 35-10-21 has a grid bearing of N 87°14'19" E.



Scale in feet  
1" = 200'



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## Surveyor's Certificate:


I, David J. Leininger, professional land surveyor, hereby certify that by the direction of Mike LaRosa, that I have surveyed, divided, and mapped the land shown and described hereon, being part of Parcel 2 of Certified Survey Map No. 739 as recorded in the Ozaukee County Register of Deeds Office in Volume 3 of Certified Survey Maps on pages 142-144, as Document No. 273852, being a redivision of part of Lot 31 of Assessor's Plat of the Town of Cedarburg, being located in the SW 1/4 and NW 1/4 of Section 35, Township 10 North, Range 21 East, City of Cedarburg, Ozaukee County, Wisconsin, which is bounded and described as follows:

Commencing at the southwest corner of said Section 35; thence N 87°14'19" E, along the south line of said SW 1/4, 818.39 feet to a point in the southerly extension of the monumented westerly right of way line of Somerset Road; thence N 06°31'40" E, along said southerly extension, 40.53 feet to the intersection with the north right of way line of Pioneer Road, being the point of beginning of lands herein described; thence S 87°14'19" W, along said north right of way line, 224.15 feet; thence northwesterly, continuing along said north right of way line, along the arc of a curve to the right 176.93 feet, chord N 86°32'10" W 176.59 feet, curve radius 814.24 feet, delta 12°27'01"; thence continuing northwesterly along said north right of way line, along the arc of a curve to the left 27.74 feet, chord N 81°14'13" W 27.74 feet, curve radius 858.51 feet, delta 01°51'05"; thence N 06°31'52" E, parallel with the east right of way line of Wisconsin & Southern Railroad, 209.71 feet; thence N 83°28'08" W, at right angles, 175.00 feet to a point in the east right of way line of said Wisconsin & Southern Railroad; thence N 06°31'52" E, along said east right of way line of Wisconsin & Southern Railroad, 526.51 feet to the northwest corner of said Parcel 2 of Certified Survey Map No. 739; thence S 83°23'50" E, along the north line of said Parcel 2, 600.25 feet to a point in said monumented west right of way line of Somerset Road; thence S 06°31'40" W, along said monumented west right of way line, 690.91 feet to the point of beginning.

Containing 399,089 square feet (9.162 acres) more or less.

I further certify that I have fully complied with the provisions of sec. 236.34 of Wisconsin Statutes and the City of Cedarburg Land Division Ordinance in surveying, dividing, and mapping said land, and that this map is a correct representation of the exterior boundaries of the land surveyed and the division of said lands.

Dated this 22nd day of November, 2023.

  
David J. Leininger, S-2285

This instrument was drafted by David J. Leininger, S-2285

## Owner's Certificate:

As a member of Pioneer Real Estate Development, LLC, I hereby certify that I caused the land shown and described herein to be surveyed, divided, and mapped as represented on this Certified Survey Map. I also certify that this Certified Survey Map is required to be submitted to the following for approval:

City of Cedarburg Plan Commission

\_\_\_\_\_  
Michael LaRosa - Member

STATE OF WISCONSIN)  
OZAUKEE COUNTY)s.s.

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, the above named member is to me known to be the same person who executed the foregoing instrument and acknowledge the same.

(Notary Seal) \_\_\_\_\_, Notary Public,

\_\_\_\_\_, Wisconsin.

My commission expires \_\_\_\_\_



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## City of Cedarburg Plan Commission Approval:

This land division, CSM file No. \_\_\_\_\_, is hereby approved by the Cedarburg City Plan Commission as being in conformance with the City's Subdivision Ordinance this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Michael O'Keefe, Mayor

\_\_\_\_\_  
Tracie Sette, City Clerk



*David J. Leininger*  
\_\_\_\_\_  
David J. Leininger, S-2285  
Dated this 22nd day of November, 2023

## Certified Survey Map

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### Consent of Corporate Mortgagee

\_\_\_\_\_, a corporation duly organized and existing under and by virtue of the laws of the State of \_\_\_\_\_, mortgagee of the above described land, does hereby consent to the surveying, dividing, mapping, and dedication of the land described on this plat, and does hereby consent to the above certificate of Anthony and Tammy Kaiser, owners.

IN WITNESS WHEREOF, the said \_\_\_\_\_

has caused these presents to be signed by \_\_\_\_\_, its President, and countersigned by \_\_\_\_\_, its Secretary (cashier), at \_\_\_\_\_, and its corporate seal to be hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

In the presence of:

\_\_\_\_\_  
(Corporate Seal)  
Corporate Name

\_\_\_\_\_  
President Date

\_\_\_\_\_  
Secretary or Cashier Date

(Corporate Mortgagee Notary Certificate)

STATE OF \_\_\_\_\_

\_\_\_\_\_  
COUNTY) SS

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023,

\_\_\_\_\_, President, and \_\_\_\_\_, Secretary (cashier) of the above named corporation, to me known to be the persons who executed the foregoing instrument, and to me known to be such President and Secretary (cashier) of said corporation, and acknowledged that they executed the foregoing instrument as such officers as the deed of said corporation, by its authority.

(Notary Seal) \_\_\_\_\_ Notary Public, \_\_\_\_\_ City \_\_\_\_\_ State

My commission expires \_\_\_\_\_



*David J. Leininger*  
David J. Leininger, S-2285

Dated this 22nd day of November, 2023

This instrument was drafted by David J. Leininger, S-2285

# ZONING TEXT RECODIFICATION

**To:** City of Cedarburg Plan Commission

**Prepared by:** Jonathan Censky, City Planner

**Agenda Item:** **6.B.**

**Date:** February 5, 2024

## ***General Information***

**Applicant:**

Cedarburg Plan Commission

**Requested Action:**

Zoning Code Recodification

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## **Report:**

At last month's meeting, Commissioners were provided with the revised Code, and you were asked to review it to make sure it reflected all the changes we discussed. In reviewing the code that was handed out last month, it was discovered that the Introduction and General Provisions of the code were not included in the copy you received. Those sections will be handed out at Monday's meeting. With those additions, if Commissioners are now prepared to recommend approval, we will then send it to the Common Council for their review and ultimate adoption.



**TITLE 13**

Zoning Code

Chapter 1      Zoning Code

**CHAPTER 1**

Zoning Code

Article A      Introduction

- 13-1-1      Authority
- 13-1-2      Title
- 13-1-3      Purpose and Intent
- 13-1-5      Interpretation and Application
- 13-1-6      Repeal of Conflicting Ordinances
- 13-1-7      Warning and Disclaimer of Liability
- 13-1-8      Severability
- 13-1-9      Municipalities and State Agencies Regulated
- 13-1-10      through
- 13-1-19      Reserved for Future Use

Article B      General Provisions

- 13-1-20      Jurisdiction
- 13-1-21      Compliance
- 13-1-21a      Other Laws and Regulations
- 13-1-21b      Scope of Regulations
- 13-1-22      Use Restrictions
- 13-1-23      Swimming Pools
- 13-1-24      Home Occupations
- 13-1-25      Antennas
- 13-1-26      Display of Vehicles for Sale
- 13-1-27      Site Restrictions
- 13-1-27a      Site Maintenance
- 13-1-27b      Building and Structure Location
- 13-1-27c      Density Lot Coverage and Floor Area Recommendations
- 13-1-28      Reduction or Joint Use
- 13-1-29      Berm Regulations
- 13-1-30      Nonmetallic Mining Reclamation Ordinance
- 13-1-31      Standards
- 13-1-32      Permitting
- 13-1-33      Administration
- 13-1-34      Enforcement
- 13-1-35      through
- 13-1-39      Reserved for Future Use

Article C      Zoning Districts

|                    |   |
|--------------------|---|
| 13-1-40            | Establishment of Districts  |
| 13-1-40(f)         | Annexations   |
| 13-1-41            | Zoning Map  |
| 13-1-42            | Rs-1 Single-Family Residential District   |
| 13-1-43            | Rs-2 Single-Family Residential District (Ord. 99-03)                            |
| 13-1-44            | Rs-3 Single-Family Residential District   |
| 13-1-45            | Rs-4 Single-Family Residential District   |
| 13-1-46            | Rs-5 Single-Family Residential District   |
| 13-1-47            | Rs-6 Single-Family/Two-Family Residential District                              |
| 13-1-48            | Rs-7 Low-Density Single-Family Residential District                             |
| 13-1-49            | Rs-8 Low-Density Single-Family Residential District                             |
| 13-1-50            | Rd-1 Two-Family Residential District  |
| 13-1-51            | Rm-1 Multiple-Family Residential District                                       |
| 13-1-52            | Rm-2 Multiple-Family Residential District                                       |
| 13-1-53            | B-1 Neighborhood Business District  |
| 13-1-54            | B-2 Community Business District   |
| 13-1-55            | B-3 Central Business District   |
| 13-1-56            | B-4 Office and Service District   |
| <del>13-1-57</del> | <del>B-5 Business Park District</del>   |
| <del>13-1-58</del> | <del>B-6 General Business and Warehousing District</del>                        |
| 13-1-59            | M-1 Limited Manufacturing District  |
| 13-1-60            | M-2 General Manufacturing District  |
| 13-1-61            | M-3 Business Park District (Ord. 96-05)   |
| 13-1-62            | P-1 Park and Recreation District  |
| 13-1-63            | <del>I-1</del> IPS Institutional and Public Service District                    |
| 13-1-64            | C-1 Shoreland Wetland/Conservancy District                                      |
| 13-1-65            | C-2 Non-Shoreland Conservancy District  |
| <del>13-1-66</del> | <del>GFP General Floodplain District (Ord. 2007-02)(moved to 13-1-78)</del>     |
| <del>13-1-67</del> | <del>FW Floodway District (Ord. 2007-02) (moved to 13-1-78(c))</del>            |
| <del>13-1-68</del> | <del>FFO Floodfringe Overlay District (Ord. 2007-02)(moved to 13-1-78(d))</del> |
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## ARTICLE A

### Introduction

#### SEC. 13-1-1 AUTHORITY.

This Chapter is adopted under the authority granted by Sections 62.23(7), 62.231, 62.234(5), 87.30, 281.31, Chapter 236 and 444.26 703 of the Wisconsin Statutes and amendments thereto.

#### SEC. 13-1-2 TITLE.

This Chapter shall hereafter be known, cited and may be cited referred to as the "Zoning Ordinance of the City of Cedarburg, Wisconsin". and is hereinafter referred to as the "Ordinance" or "Chapter." The Chapter consists of zoning regulations, site development regulations, architectural controls, erosion and stormwater runoff control regulations, and an official zoning map which designates land use districts.

#### SEC. 13-1-3 — PURPOSE.

~~The purpose of this Zoning Ordinance is to promote the comfort, health, safety, morals, prosperity, aesthetics, and general welfare of the City of Cedarburg, Wisconsin, and its residents.~~

#### SEC. 13-1-4 — INTENT.

~~It is the general intent of this Zoning Ordinance to regulate and restrict the use of all structures, lands, and waters with a view to conserving the value of buildings and encouraging the most appropriate use of land. Such regulations shall be made in accordance with a comprehensive plan and shall be designed to regulate lot coverage, size, and location; population density and distribution; parking, loading, and access and uses of land, structures, and water in order to:~~

- ~~(a) — Prevent and eliminate overcrowding of land and undue concentration of population.~~
- ~~(b) — Provide adequate sunlight and air.~~
- ~~(c) — Facilitate the adequate provision of transportation, water, sewerage, drainage, schools, parks, and other public services.~~
- ~~(d) — Lessen congestion in the streets and promote safe and efficient use of streets and highways.~~
- ~~(e) — Secure safety from fire, panic, flooding, pollution, contamination, and other hazards.~~
- ~~(f) — Stabilize and protect property values.~~
- ~~(g) — Preserve the beauty of the City of Cedarburg.~~
- ~~(h) — Provide for a variety of suitable commercial and industrial sites.~~
- ~~(i) — Prevent and control erosion, sedimentation, and pollution of the surface and subsurface waters.~~
- ~~(j) — Prevent flood damage to persons and property and minimize the costs of flood relief and flood control projects.~~
- ~~(k) — Aid in the implementation of municipal, county, watershed, and regional comprehensive plans, or components of such plans, adopted by the City of Cedarburg.~~
- ~~(l) — Maintain safe and healthful water conditions.~~
- ~~(m) — Provide for the administration and enforcement of this Chapter and provide penalties for the violation of this Chapter.~~

**SEC. 13-1-3      PURPOSE AND INTENT.**

This Chapter is intended to protect and promote the health, safety, morals, prosperity, aesthetics, and general welfare of the City of Cedarburg, Wisconsin through the regulation of land, water, and other natural resources; the review of construction and development within the City so as to promote the wise use of limited resources; protect property values; preserve the historic heritage and aesthetic character of the City; and balance public needs and concerns with the interests of private property owners in order to:

- (a) Implement the policies and proposals of the City of Cedarburg Smart Growth Comprehensive Plan – 2025 prepared by the Cedarburg Plan Commission and adopted by the Common Council in accordance with Section 62.23 of the Wisconsin State Statutes.
- (b) Divide the City of Cedarburg into districts regulating the location, construction, reconstruction, alteration and use of buildings, structures and land for various uses; thereby providing a framework within which the community can develop in an orderly manner.
- (c) Facilitate the continued growth of a convenient, attractive and harmonious community.
- (d) Preserve and protect the natural environment and open space.
- (e) Provide for adequate light, air, access, and safety from fire, flood and other dangers.
- (f) Reduce or prevent congestion on the streets and promote safe and efficient use of the streets and highways.
- (g) Ensure the provision of adequate and efficient police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, recreational facilities, and other public facilities and services.
- (h) Preserve the City of Cedarburg's beauty, history, heritage and "small town" atmosphere.
- (i) Ensure that development occurs at a pace consistent with the City's financial capability to provide municipal services.
- (j) Encourage balanced economic development and stabilize and/or protect property values.
- (k) Establish administrative procedures whereby the City may objectively and equitably phase development based upon its fiscal and environmental impacts upon the surrounding area and the City as a whole.
- (l) Prevent and control erosion, sedimentation and pollution of the surface and subsurface waters.
- (m) Provide for the administration and enforcement of this Chapter and provide penalties for violations of the Chapter.

**SEC. 13-1-5      INTERPRETATION AND APPLICATION.**

The interpretation and application of this Chapter shall be as follows:

- (a) ~~**Construction.** This Chapter shall be liberally construed in favor of the City of Cedarburg and shall not be deemed a limitation on any power possessed by the City of Cedarburg.~~
- (b) ~~**Administrative Standards.** This Chapter shall be considered minimum requirements adopted for the purposes set forth above. Whenever in the course of administration and enforcement of this Chapter it is necessary or desirable to make any administrative decision, the decision shall be made so that the result will not be contrary to the spirit and purpose of this Chapter or injurious to the surrounding neighborhood, unless other standards are expressly provided in this Ordinance.~~
- (c) ~~**Conflict with Other Laws.** Whenever the regulations in this Chapter are either more or less restrictive than regulations or restrictions imposed by statute, other ordinances of the City of Cedarburg or other regulations, the regulations which are more restrictive, or which impose~~



~~higher standards or requirements shall govern.~~

- (d) ~~**Application.** No structure shall be constructed, erected, placed, or maintained and no land or water use commenced or continued within the City of Cedarburg, except as specifically or by necessary implication, authorized by this Chapter.~~

In their interpretation and application, the provisions of this Chapter shall be held to the minimum requirements and shall be liberally construed in favor of the City of Cedarburg and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin State Statutes. This Chapter shall be considered the minimum requirements adopted for the purposes set forth above. Whenever in the course of administration and enforcement of this Chapter it is necessary or desirable to make any administrative decisions, the decision shall be made so that the result will not be contrary to the spirit and purpose of this Chapter or injurious to the surrounding neighborhood, unless other standards are expressly provided. Whenever the regulations in this Chapter are either more or less restrictive than the regulations or restrictions imposed by statute, other ordinances of the City of Cedarburg or other regulations, the regulations which are more restrictive, or which impose higher standards or requirements shall govern. No structure shall be constructed, erected, placed or maintained and no land or water use commenced or continued within the City of Cedarburg, except as specifically or by necessary implication, authorized by this Chapter.

#### **SEC. 13-1-6 REPEAL OF CONFLICTING ORDINANCES.**

All other ordinances or parts of ordinances of the City inconsistent or conflicting with this Chapter, to the extent of the inconsistency only, are hereby repealed. in conflict with this Chapter, or inconsistent with the provisions of this Chapter, are hereby repealed to the extent necessary to give this Chapter full force and effect.

#### **SEC. 13-1-7 WARNING AND DISCLAIMER OF LIABILITY.**

~~The degree of flood protection provided by the Chapter is considered reasonable for regulatory purposes and is based on engineering experience and scientific methods of study. On rare occasions, larger floods may occur, or the flood height may be increased by manmade or natural causes such as ice jams or bridge openings restricted by debris. Therefore, this Chapter does not imply that areas outside of the delineated floodplain or land uses permitted within the floodplain will be totally free from flood and associated flood damages. Nor shall this Chapter create a liability on the part of or a cause of action against the City of Cedarburg or any office or employee thereof for any flood damages that may result from reliance on this Chapter.~~

The City does not guarantee, warrant, or represent that only those areas delineated as floodplain, floodway, floodland, wetland, or drainageways on the zoning district map will be subject to periodic inundation and hereby asserts that there is no liability on the part of the City of Cedarburg Common Council, or any of its officers, officials, and employees for any flood damages that may occur as a result of reliance upon and conformance with this Chapter.

#### **SEC. 13-1-8 SEVERABILITY.**

If any Section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter shall not be affected thereby. If any application of this Chapter to a particular structure, land, or water is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not be applicable to any other

structure, land, or water not specifically included in said judgment.

**SEC. 13-1-9      MUNICIPALITIES AND STATE AGENCIES REGULATED.**

Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this Chapter and obtain all required permits. State agencies are required to comply if Sec. 13.48(13) of the Wisconsin Statutes applies. The construction, reconstruction, maintenance, and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt from compliance when Sec. 30.12(4)(a) of the Wisconsin Statutes applies.

**SEC. 13-1-10 THROUGH SEC. 13-1-19 RESERVED FOR FUTURE USE.**



## ARTICLE B

### General Provisions

#### SEC. 13-1-20 JURISDICTION.

The jurisdiction of this Chapter shall include all lands, water, and air within the corporate limits of the City of Cedarburg, Wisconsin. The regulations contained in this Zoning Code shall apply to all property situated either wholly or partly within the boundaries of the City of Cedarburg, Wisconsin, and its extraterritorial limits in accordance with Section 62.23(7), ~~and Chapter 236~~ and Chapter 703 of the Wisconsin State Statutes. (Ord. 2005-18)

#### SEC. 13-1-21 COMPLIANCE.

No structure, land, water, or air shall hereafter be used, and no structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered without a zoning permit, unless otherwise specifically exempted by Article K and without full compliance with the provisions of this Chapter and all other applicable local, county, and state regulations.

#### SEC. 13-1-21a OTHER LAWS AND REGULATIONS.

Where appropriate, this Chapter is intended to supplement, not supplant, all federal and state agency laws, regulations, rules, and orders relating to or regulating the subject hereof. All uses, projects, developments, structures and buildings subject to this Chapter shall also comply with all applicable federal and state agency laws, regulations, rules and orders. Where the provisions of this Chapter are more restrictive than other applicable rules or regulations, the provisions of this Chapter shall control.

#### SEC. 13-1-21b SCOPE OF REGULATIONS.

- (a) No provision of this Chapter is intended to repeal, abrogate, annul, impair or interfere with any existing ordinance of the City except as is specifically repealed. Where this Chapter imposes a greater restriction on the use of land or structures or the height or bulk of structures, or requires greater open space about structures, or greater areas or dimensions of sites than is imposed or required by an existing ordinance, this Chapter shall govern.
- (b) This Chapter is not intended to abrogate any easement, covenant, or any other private agreement. Where the regulations of this Chapter are more restrictive or impose more restrictive standards or regulations than such easements, covenant, or other private agreement, the requirements of this Chapter shall govern.
- (c) All work, structures, and uses authorized by permits issued before the effective date of this Chapter or any amendment thereto shall not be affected by this Chapter. No zoning permit or conditional use permit shall be issued following the effective date of this Chapter or any amendment thereto unless the work, structure, or use for which the zoning permit or conditional use permit is sought is made to fully comply with applicable provisions of this Chapter or any such amendment thereto. Nothing herein contained shall require any change in the plans, construction, size or designed use of any structure or part thereof for which a building permit

- has been issued before the effective date of this Chapter and the construction of which shall have been substantially started with six (6) months from the date of such permit.
- (d) Uses which are legally existing prior to enactment of this Chapter but do not conform to the regulations of the district in which they are located shall be considered legal nonconforming.
  - (e) No lot, land use, or structure which was not lawfully existing at the time of adoption of this Chapter shall be made lawful solely by reason of the adoption of this Chapter, and to the extent that said lot or land use is in conflict in any manner with the requirements of this Chapter, said lot or use remains unlawful hereunder.
  - (f) No structure, development, land, water, or air shall hereafter be used, and no structure or part thereof shall hereafter be located, erected, moved, reconstructed, substantially improved, extended, enlarged, converted, or structurally altered without a building permit or land use permit and without full compliance with the provisions of this Chapter and all other local, county, and state regulations.
  - (g) No land shall be used or structure erected where the use or structure will result in a significant and unduly burdensome traffic impact, groundwater impact, capital facility impact, and/or where the land is unsuitable for such use or structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, unfavorable topography or low bearing strength, erosion susceptibility or any other feature likely to be harmful to the health, safety, prosperity, aesthetics, and general welfare of this community.

#### **SEC. 13-1-22 USE RESTRICTIONS.**

Only the following uses shall be permitted in any district:

- (a) **Principal permitted uses.** These uses represent the main or primary use of property or structures as by the regulations of the zoning district in which such use is located. ~~specified for a district and its essential services.~~
- (b) **Accessory uses and structures.** These subordinate uses and structures are customarily incidental to and located upon the same lot occupied by the principal use or structure and are not allowed until their principal use or structure is present or under construction. Any accessory use or structure shall conform to the established regulations of the district in which it is located except as specified below. No accessory use or structure shall be permitted that by reason of noise, dust, odor appearance, lighting, traffic generation or other objectional factors that could create a nuisance or a substantial adverse effect upon the property value or reasonable enjoyment of the surrounding property. ~~which are permitted in any district as follows, but not until their principal structure is present or under construction:~~
  - (1) Residential accessory uses shall not involve the conduct of any business, trade, or industry, except for permitted home occupations as defined and regulated in this Chapter. Residential accessory uses include incidental repairs, storage, parking facilities, gardening, private swimming pools, private emergency shelters, and servant's, owner's and caretaker's quarters not for rent.
  - (2) Gasoline service station accessory uses are limited to lubrication; changing oil and filters; changing and repair of tires and tubes; engine tune-up; hand washing and polishing without automatic equipment; transmission, chassis or engine repairs; and replacement of light bulbs, windshield wiper blades and other small parts, and do not include body repairs and painting.
- (c) **Conditional uses.** Along with their accessory uses are considered as special uses requiring review, public hearing, and approval in accordance with Article K. When a use is classified as a

conditional use at the date of adoption of this Chapter, it shall be considered a legal conditional use without further action. Confirmation of a pre-existing conditional use may be approved by the Plan Commission at the request of a property owner. In such cases, the Plan Commission may confirm such preexisting conditional uses without implementing the conditional use application and approval procedures as defined in Section 13-1-226. The Plan Commission may allow the preparation of the necessary conditional use documents and permits, and recordation of such documentation by the City Clerk. Changes to or substitution of conditional uses shall be subject to review and approval in accordance with Section 13-1-226. Conditional uses are granted for the real property. (Ord. 91-31)

- (d) **Unclassified Permitted Uses.** The uses not specified in this Chapter and which are found to be similar in character to principal uses permitted in the district may be permitted by the City Plan Commission.
- (e) **Unclassified Conditional Uses.** The uses not specified in this Chapter and which are found by the Plan Commission to be similar in character to conditional uses permitted in the district may be permitted by the Common Council after review, public hearing, and approval in accordance with Section 13-1-226.
- (f) **Temporary uses.** ~~such as food sales, nursery stock sales, fireworks sales, and real estate sales, and field offices or shelters for materials and equipment being used in the construction of a permanent structure may be permitted with conditions and/or restrictions established by the City Plan Commission after review and approval.~~ Structures or uses that are in place for a one-time two (2) week period or fourteen (14) cumulative days. Any such use or structure may be permitted subject to the approval of the City Planner and Building Inspector, and upon their review of potential impacts of the use and/or structure, except for the following uses:
  - (1) Plant material and nursery stock sales may be allowed according to the seasonal duration of the plant materials being sold.
  - (2) Christmas tree sales may be allowed according to the seasonal nature of the product being sold.
  - (3) Temporary uses associated with a community festival may be allowed for the period concurrent with the festival.
  - (4) Temporary uses associated with Maxwell Street Days may be allowed for a period concurrent with Maxwell Street Days.
  - (5) Temporary use permits shall state that no unattended merchandise stands or unattended displays or material shall be allowed.
- (g) **Tents and temporary structures.**
  - (1) Definitions:
    - a. Tents: Any collapsible shelter with side walls, of which the roof and/or one-half or more of the walls, are constructed of silk, cotton, canvas, fabric, or other material attached to or draped over a frame of poles.
    - b. Temporary Structure: Any constructed or erected structure, including a tent other enclosure used for commercial or business purposes and which any person or business intends to place on the same lot with or on any lot adjacent to, any permanent structure used for business or commercial purposes.
  - (2) Conformance. Tents and other temporary structures and their uses shall conform to the structural strength, fire safety, means of egress, accessibility, light, ventilation, and sanitary requirements of the Code, or County, State or Federal codes and regulations, as necessary to ensure the public health, safety, and welfare. These categories of the Code must be complied with, despite the fact that the structure will be removed, or the use

discontinued at some time in the future. These criteria are essential for measuring the safety of any structure or use, temporary or permanent. Therefore, the application of these criteria to tents and other temporary structures cannot be waived.

- (3) Conflict with Other Laws. Whenever the regulations in this Chapter are either more or less restrictive than regulations or restrictions imposed by statute, codes, other ordinances of the City of Cedarburg or other regulations, the regulations which are more restrictive, or which impose higher standards or requirements shall govern.
- (4) The City Planner, City Building Inspector, or the Fire Department, in its sole discretion, is authorized to terminate such permit for a tent or other temporary structure or use and order the tent or other temporary structure or use to be discontinued.
- (5) Requests, other than those described in Section 13-1-22(f), for a tent or other temporary structure that is in place for a period exceeding fourteen (14) days are permitted annually only from October 1 through April 30, and only after the request is reviewed and approved by the Plan Commission and, if the property is located in the Historic Preservation District, the Landmarks Commission.
- (6) Information and conditions required by the City of Cedarburg or as otherwise required under applicable regulations, ordinances, or statutes, shall be submitted for review by the City Planner, City Building Inspector and the Fire Department, including, without limitation, the following:
  - a. The applicant shall submit a scaled site plan showing the location of existing structures, property lines, dedicated rights-of-way, public easements, the proposed tent or other temporary structure, parking areas, and driveway.
  - b. Tents and other temporary structures shall be located in the rear or side yard as defined in the Zoning Code and shall be completely on private property and shall be at least ten (10) feet setback from the plane of the principal structure that faces the front yard and otherwise in compliance with all applicable setbacks.
  - c. Ingress and egress to the tent or other temporary structure shall be only through the principal structure and otherwise in accordance with the Americans with Disabilities Act of 1990, any comparable state or local law, and all regulations issued pursuant thereto.
  - d. Exits shall be clearly marked and in such quantity and in such locations as directed by the Fire Department.
  - e. All tent or other temporary structure fabric shall be flame resistant and located in accordance with the adopted International Building Code Table 602 based on the fire-resistance rating of exterior walls for the proposed type of construction. Markings or certificates of flame resistance shall be provided upon request by the Building Inspector and/or Fire Inspector.
  - f. The use of fuel-fired equipment for the purpose of heating shall be reviewed and approved by the City Building Inspector and Fire Inspector.
  - g. Smoking shall not be permitted in tents or other temporary structures. Approved "No Smoking" signs shall be conspicuously posted.
  - h. Portable fire extinguishers shall be furnished and maintained in tents and other temporary structures in such quantity and in such locations as directed by the Fire Department.
  - i. Electrical installations in all tents and other temporary structures shall be installed and maintained in accordance with the requirements of the Wisconsin



Administrative Code SPS 316 Electrical. Without limiting the foregoing, all electrical installations shall be installed and maintained in a workmanlike manner, shall be properly grounded, with GFCI protection to all outlets with UL approved enclosures, and cables on the ground in areas traversed by the public shall be protected by approved covers.

- j. Tents and other temporary structures shall not be located on or restrict access to dedicated right-of-way, public easements of any kind, fire lanes, fire department connections, or any other life safety elements that are required to be accessible.
- (h) Performance standards listed in Article H shall be complied with by all uses in all districts.
- (i) Stormwater control detention/retention related uses shall be permitted in all zoning districts except in the C-1 Shoreland Wetland/Conservancy District and floodplain districts subject to the review and approval of the City Plan Commission with recommendation from the Director of Engineering and Public Works.

### SEC. 13-1-23 SWIMMING POOLS.

Private residential swimming pools are permitted as accessory uses in any residential district provided that all applicable requirements of this Chapter are met and that a permit be obtained pursuant to Section 13-1-227. The Building Inspector shall not issue a permit for the construction of any private residential swimming pool or for any alterations, additions, remodeling, or other improvements (not including repairs) to an existing private residential swimming pool unless the following construction requirements are observed in such construction, alteration, addition, remodeling, or other improvements.

- (a) **Construction Approval.** All materials and methods of construction in the construction, alteration, addition, remodeling, or other improvements of private residential swimming pools shall be approved by the Building Inspector.
- (b) **Plumbing Code Compliance.** All plumbing as defined in Sections DILHR 80 to 84 of the Wisconsin State Plumbing Code in relation to swimming pool installation shall be in accord with the City of Cedarburg Plumbing Code.
- (c) **Drainage System.** Every private residential swimming pool shall be provided with a suitable draining method, and in no case shall waters from any pool be drained into the sanitary sewer system or with detriment onto lands of other property owners.
- (d) **Fencing; Security; Screening.**
  - (1) Every private residential swimming pool in the ground or with sides less than four (4) feet high shall be completely enclosed by a fence or wall not less than four (4) feet in height, but not to exceed six (6) feet in height, which shall be so constructed as not to have openings, holes, or gaps larger than four (4) inches in any dimension, except for doors and gates. A residence or accessory buildings may be used as part of such enclosure. All gates or doors opening through such enclosure shall be equipped with self-closing and self-locking devices for keeping the gate or door securely locked at all times when not in actual use, except that the door of any dwelling which forms a part of the enclosure need not be so equipped.
  - (2) Above-ground pools with sides greater than four (4) feet high which are not enclosed by a suitable fence, herein described, and using a ladder for ingress or egress shall have this ladder removed or flipped up when the pool is not in use.
  - (3) The requirements of this Section shall be applicable to all private swimming pools, whether constructed before or after the effective date of this Chapter, except in the case

of any pool where the Building Inspector finds that there are special circumstances existing that prevent such pool from being a safety hazard. Pools erected on top of the surface of the ground shall have the pool construction completely screened from the view of the abutting property by means of combined fence and landscape screen approved by the Plan Commission.

- (e) **Recirculation and Purification System.** All private residential swimming pools having a capacity in excess of one hundred fifty (150) cubic feet shall be equipped with a satisfactory recirculation and purification system that is in good operating condition and which shall be used when the swimming pool is in use. The owner of the parcel shall secure adequate instruction from the installing contractor or other qualified source with respect to the system's proper maintenance. Such instruction shall include the use of high-test calcium hypochlorite (dry chlorine carrier) or sodium hypochlorite (liquid chlorine), or an equally effective germicide and algicide, and the importance and procedure for maintaining proper pH (alkalinity and acidity) control.
- (f) **Electrical Service Standards.** Service from electrical service systems must comply with all applicable local, state and national electric codes and:
  - (1) No attachment from plug receptacles shall be installed within ten (10) feet horizontally from the inside walls of a portable or permanent swimming pool.
  - (2) Clearance of electric service drops to residences or any other overhead electrical wires shall be a minimum of ten (10) feet horizontally from any portion of portable or permanent pools and their pertinent equipment, such as diving boards, ladders, ramps, platforms, etc., which may be part of the pool.
  - (3) The requirements of this Subsection shall be applicable to all private swimming pools whether constructed before or after the effective date of this Chapter, except in the case of an existing pool where the Electrical Inspector finds that there are special circumstances existing that prevent such pool from being a safety hazard.
  - (4) All horizontal measurements mentioned in the above shall be measured at right angles from the nearest outside pool wall and away from the main body of water.
- (g) **Location.** Swimming pools shall be erected and constructed only in the rear yard of a lot, unless a variance is granted from the Zoning Board of Appeals. No swimming pool shall be erected or constructed on an otherwise vacant lot.
- (h) **Side Yard and Rear Yard Requirements.** No swimming pool shall be located, constructed, or maintained closer to any side or rear lot line than ten (10) feet from a lot line unless a variance is granted from the Zoning Board of Appeals.
- (i) **Area.** The area occupied by an outdoor pool shall not exceed thirty percent (30%) of the available rear yard in which it is located.

#### SEC. 13-1-24 HOME OCCUPATIONS. (Ord. 97-10)

- (a) **Standards.** ~~In addition to all of the standards applicable to the district in which it is located, home occupations shall comply with the following standards:~~ These are uses clearly incidental to the principal residential use subject to the following:
  - (1) Persons operating a home occupation shall employ no more than one (1) nonresident employee.
  - (2) ~~There shall not be conducted on the premises, the direct sales of merchandise, supplies or products from display shelves, except that orders previously made by telephone or at a sales party may be picked up on the premises. No article or service shall be sold or~~

offered for sale on the premises unless otherwise permitted below except that orders previously made via the phone, email, sales parties, etc. may be picked up at the premises.

- (3) No alteration of the principal building shall be made which changes the character thereof as a dwelling and plumbing, electrical or structural changes must be dictated by the primary residential use.
- (4) No more than a combined total of twenty percent (20%) of the area of any dwelling unit as defined in Section 13-1-240(b), inclusive of the garage area or the area in one (1) accessory building, shall be devoted to the home occupation.
- (5) There shall be no outdoor operations, no outdoor storage of equipment or materials used in the home occupation, and no outdoor display of merchandise.
- (6) The volume of vehicular or pedestrian traffic or parking shall not result in congestion or be in excess of what is compatible with the residential neighborhood.
- (7) All authorized home occupations shall meet fire and building safety requirements.
- (8) Persons conducting home occupations must furnish such information as required by municipal officials with respect to procedures and processes, equipment, materials, chemicals, and any other items utilized in the home occupation.
- (9) Any authorized home occupations which require plumbing, electrical or structural changes, when such changes are not dictated by the primary residential use, shall be prohibited.
- (10) No signs shall be permitted in conjunction with any home occupation.
- (11) Not more than two (2) home occupations may be operated from any one-dwelling unit.
- (12) No vehicle larger than a one (1) ton capacity truck or van that is used in conjunction with a home occupation shall be stored on the premises or parked on adjacent residential streets. This prohibition shall also include trailers or other specialized mobile equipment.
- (13) No home occupation shall create a public nuisance. No home occupation or its related equipment shall create any offensive noise, vibration, smoke, dust, electronic interference, odors, heat or glare, or electrical interference. Such impacts shall not emanate from the dwelling or from the garage accessory thereto.

(b) **Permitted Home Occupations.** Customary home occupations include the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Subsection (a) above as well as to any limitations specifically imposed on such occupation by this section. Home occupations proposed in a rental dwelling unit shall require written consent by the owner of the property, or his agent, prior to commencing operations.

- (1) Dressmaking, tailoring, and sewing.
- (2) Music and dance instruction, provided that the instruction shall be limited to 2 pupils at a time, except for occasional groups.
- (3) Artwork, such as painting, sculpturing, weaving, printmaking, lapidary work, ceramics, writing and similar artistic endeavors and home crafts.
- (4) Typing, transcribing, word processing, telephone answering, preparing mailing and similar business services, including computer programming and similar computer-based services.
- (5) Service providers such as lawyers, architects, engineers, accountants, realtors, insurance agents, brokers and members of similar professions.
- (6) Building tradespeople such as carpenters, painters, electricians, plumbers, masons and wallpapering.

- (7) Constructing models, yard novelties and similar woodworking projects.
  - (8) Manufacturers representatives and sales representatives.
  - (9) Drafting and graphic services.
  - (10) Tutoring, provided that the instruction shall be limited to 2 pupils at a time, except for occasional groups.
  - (11) Repairing small home appliances, watches and clocks.
  - (12) Personal Training
- (c) **Prohibited Home Occupations.** The following are prohibited as home occupations, even if the conditions of Subsection (a) are met:
- (1) Medical or dental services, chiropractic services, therapeutic massage.
  - (2) Personal services such as barbershops, beauty parlors, tanning parlors, tattooing and similar personal services.
  - (3) Photographic studios.
  - (4) Pet boarding.
  - (5) Motor vehicle repair service or storage.
  - (6) Repair services, except as allowed in Subsection (b)(11) above.
  - (7) Welding.
  - (8) Furniture stripping and/or refinishing.
  - (9) Manufacturing items for sale from components not made on the premises.
  - (10) Pet grooming.
  - (11) Fitness assessment centers/personal training.
- (d) **Unspecified Home Occupations.** Any proposed home occupation that is neither permitted nor specifically prohibited by this Section shall be considered a conditional use and be granted or denied at the discretion of the City Plan Commission and upon consideration of those standards contained in Subsection (a) above and as outlined in Section 13-1-226.
- (e) **Deed Restrictions.** Any home occupation may be subject to deed restrictions or covenants which may be applicable to the subject premises.

#### SEC. 13-1-25 ANTENNAS.

The City of Cedarburg recognizes that the development of various antennas, including earth station dish antennas, and their increasing uses by members of the public pose's questions of regulation not previously contemplated by the municipal zoning code. In implementing appropriate regulation, the interest of the antenna owner in the use of the device must be balanced with the interest of adjoining landowners and the general public so as to protect the health and safety of all citizens, as well as the aesthetic values embodied in this Zoning Code. To this end, the following regulations are adopted. Antennas are permitted as accessory uses subject to the following regulations:

- (a) **Installation.** All antennas, and the construction and installation thereof, shall conform to applicable City Building Code and Electrical Code regulations and requirements or U.L. code, as may be applicable.
- (b) **Size.** Earth station dish antennas shall not exceed ten (10) feet in diameter.
- (c) **Construction and Location Standards.**
  - (1) All freestanding antennas shall be located in rear yards in any residential district and in the side and rear yards in any business, industrial, and institutional or park district, but not until their principal structure is present or under construction and provided that all applicable requirements of this Chapter are met. In the event the property owner of a parcel located in a residential district believes that the placement of an antenna in a rear



yard would prevent its use for its intended purpose, the property owner may apply to the Zoning Board of Appeals for a variance to allow the installation of the antenna in a side yard or roof location. Owners of parcels of land within three hundred (300) feet of the site of any such freestanding antenna for which a variance is requested shall be notified of the date and time of the Zoning Board of Appeals meeting at which the application for a variance will be considered.

- (2) Freestanding and roof-mounted terrestrial antennas used for residential purposes shall meet the height requirements for the district in which they are located. Earth station dish antennas shall not exceed ten (10) feet in height. Commercial, industrial, or institutional antennas shall comply with the height requirements of Section 13-1-100(d) of this Chapter. (See Section 13-1-241, Illustration No. 1.)
- (3) Freestanding and roof-mounted terrestrial antennas shall be set back from any lot line one (1) foot for each one (1) foot of antenna height above surrounding grade. Earth station dish antennas shall be set back a minimum of ten (10) feet from any lot line. (See Section 13-1-241, Illustration No. 1.)
- (4) Not more than one (1) terrestrial antenna structure and one (1) earth station dish per dwelling unit shall be permitted on a lot or parcel of land in a residential zoning district.
- (5) Antennas shall be located and designed to minimize their visual impact on the surrounding properties. No form of advertising or identification may be displayed on the dish or framework other than the customary manufacturer's identification plates.
- (6) Antennas shall be constructed and mounted in accordance with the manufacturer's specifications. All such installations shall be constructed of noncombustible and corrosive-resistant materials.
- (7) Antennas that cause any interference with radio and/or television broadcasting or reception on adjacent properties shall be governed in accordance with the Federal Communication Commission's rules and regulations.
- (8) The storage of antennas shall not be permitted on public property, public street rights-of-way, or in the street yard of any business district. Display for sale of antennas shall be permitted in the street yard of any business district only upon the granting of a conditional use permit for such use. Such permit shall not be unreasonably withheld.
- (9) Portable or trailer-mounted antennas are not allowed, with the exception of temporary installation for on-site testing and demonstration purposes for a period not to exceed seven (7) days at any one (1) location.

#### **SEC. 13-1-26      DISPLAY OF VEHICLES FOR SALE.**

Except as otherwise provided in this Chapter, it shall be unlawful for any person or entity to display for sale purposes any motor vehicle, recreational vehicle, or item of recreational equipment on property located within the City of Cedarburg. The provisions of this Section shall not apply to the display of no more than one (1) motor vehicle, recreational vehicle, or item of recreational equipment at any one (1) time, provided such vehicle or equipment is owned by the owner or occupant of the real property on which it is displayed or by an immediate family member of the owner of the real property who shall reside on the premises on which the vehicle is displayed for sale.

#### **SEC. 13-1-27      SITE RESTRICTIONS.**

- (a) **Determining Lot Area.** For the purpose of this Chapter, the lot area shall be measured from the base setback line (i.e. front property line) and shall be exclusive of the area to be included in the ultimate street right-of-way between the base setback line and the existing property line.
- (b) **Determining Minimum Lot Width.** The width of a parcel measured at the setback line.
- (c) **No Reduction Less Than Required.** No lot area shall be reduced by any means so as to create a lot of less than the required size or where the offsets, setbacks, open space or lot area would be reduced below that required by the regulations for the district in which such lot is located.
- (d) **Existing Substandard Lots.** (See Section 13-1-107.)
- (e) **Site Suitability.** No land shall be used or structure erected where the land is unsuitable for such use or structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, unfavorable topography or low bearing strength, erosion susceptibility or any other feature likely to be harmful to the health, safety, prosperity, aesthetics, and general welfare of this community. The City Plan Commission, in applying the provisions of this Section, shall, in writing, recite the particular facts upon which it bases its conclusion that the land is not suitable for certain uses. The applicant shall have an opportunity to present evidence contesting such unsuitability if he so desires. Thereafter, the City Plan Commission may affirm, modify, or withdraw its determination of unsuitability.
- (f) **Public Street Frontage.** All lots shall abut upon a public street, and each lot shall have a minimum frontage of thirty (30) feet. This requirement does not apply to City of Cedarburg public utilities. (Ord. 2004-20)
- (g) **One (1) Principal Structure Per Lot.** All principal structures shall be located on a lot; and only one (1) principal structure shall be located, erected, or moved onto a lot in single-family residence districts. The City Plan Commission may permit more than one (1) principal structure per lot in other districts where more than one (1) principal structure is needed for the orderly development of the parcel or where Plan Commission and Common Council approval is granted through the use of PUD zoning. When additional structures are permitted, the City Plan Commission may impose additional site requirements, including, but not limited to, yard requirements, landscaping requirements, open space, or parking requirements, and may require minimum separation distance between structures, or setback requirements. All principal structures shall be provided with access driveways per Section 13-1-84 of the Cedarburg Zoning Code requirements for driveways requirements.
- (h) **Full Street Width Dedication.** No zoning permit shall be issued for a lot which abuts a public street dedicated to only a portion of its proposed width and located on that side thereof from which the required dedication has not been secured.
- (i) **Nonresidential Lots Abutting More Restrictive District.** Nonresidential lots abutting more restrictive boundaries shall provide side and rear yards not less than those required in the more restrictive abutting district. The setbacks on the less restrictive district shall be modified for a distance of not more than sixty (60) feet from the district boundary line so as to equal the average of the street yards required in both districts.

#### **SEC. 13-1-27a SITE MAINTENANCE.**

In order to protect the health, safety, and welfare of the residents of the City of Cedarburg and to maintain the desirability, amenities, esthetics, and property values of the residential, commercial, and industrial neighborhoods of the City, it shall be the responsibility of the owner of any premises to maintain their property in accordance with the following standards:

- (a) **General Maintenance.** The exterior of every principal or accessory structure shall be maintained free of broken glass, loose shingles, excessive paint peeling, crumbling stone or brick, loose boards, or other conditions reflective of deterioration and inadequate or deferred maintenance.
- (b) **Litter Control.**
  - (1) Every owner, occupant, or lessee of a building used for residential, commercial, institutional or industrial purposes shall maintain all areas of the premise in a clean well-maintained condition and shall ensure that all litter on the premises is properly containerized. Garbage containers shall be stored in the side or rear of the property generally out of view from adjacent neighbors and in an area closer to the principal structure than an adjacent property line.
  - (2) The property owners and the prime contractors in charge of any construction site in the City shall maintain the construction site in such a manner to prevent litter from being blown off the site. All litter from construction activities shall be picked up at the end of each workday and placed in appropriate containers.
- (c) **Outside Storage.** See Chapter 11, Section 11-3-5 of the City of Cedarburg Code of Ordinances.

**SEC. 13-1-27b BUILDING AND STRUCTURE LOCATION.**

- (a) **Base Setback Line.** For all streets and highways, the base setback line shall be located at a distance from the center line of such street or highway equal to one-half (1/2) the width of its ultimate right-of-way as established by the Common Council.
- (b) **Setbacks.** Unless otherwise specified within an individual zoning district, no building or structure shall be erected, constructed, structurally altered, or relocated on a lot closer to the base setback line than the minimum setback distance specified in the established zoning district.
- (c) **Frontage Roads, Service Drives, and Parking Areas Setback.** Unless otherwise specified in an individual zoning district, commercial service drives, alley ways, parking areas, etc., shall be set back a minimum of five (5) feet from the adjacent base setback line. Frontage roads shall be setback at least twenty-five (25) feet from the adjacent base setback line.
- (d) **Setback Exceptions.**
  - (1) Additions to existing structures which lack the required setback may be allowed if the addition is set back at a distance greater than or equal to the average of the existing building setback and required setback.
  - (2) On corner lots, on record as of the effective date of this Chapter, the effect of the setback regulations shall not reduce the buildable width of such corner lot to less than thirty (30) feet. Structures shall provide a street yard as required by this Chapter on the street that the structure faces. A second street yard shall be provided on the side the structure abutting a second public or private street. The remaining yards shall be a side yard and a rear yard. The permit applicant may select which yard is the side yard and which is the rear yard.
  - (3) The following exceptions shall apply:
    - a. Where the nearest existing building on one (1) side of said building has less than the required setback, the average between such existing setback and the required setback shall apply but in no case be less than fifteen (15) feet in a residential district and five (5) feet in a business district.
    - b. Where the nearest buildings on both sides of said building have less than the required setback, the average of such existing setbacks and the required setback



shall apply but in no case be less than fifteen (15) feet in a residential district and five (5) feet in a business district.

- (e) **Offsets.** The proximity of any portion of a building to the side or rear lot lines shall be regulated by offset provisions as follows:
- (1) No building shall hereinafter be erected, structurally altered, or relocated so that any enclosed portion thereof is closer to any lot line than the offset distance specified by the regulations for the district in which it is located except as follows:
- a. In the case of any lot of record which has a minimum width less than that required by the district in which it is located, the offset from a side lot line may be reduced proportionally to the ratio of the actual minimum width and the required minimum average width (i.e. actual width/required width) provided, however, that no offset shall in any case be less than fifty percent (50%) of the required offset and a building separation of less than ten (10) feet.
- b. Where a lot abuts a district boundary line, the offset from such line in the district of less restrictive use shall not be less than that required for the district of more restrictive use.
- c. In the case of attached single-family, multiple-family, commercial, or industrial use structures, two (2) or more buildings on adjoining lots may be erected with common or directly adjoining walls provided the requirements of the Wisconsin Commercial Building Code relative to such construction are complied with and provided that at both ends of such row type buildings the applicable offset requirements shall be complied with.
- (2) Any required offset area shall be landscaped and kept clean and free from the accumulation of debris or refuse and shall not be used for the storage or display of equipment, products, vehicles, or any other material.
- (f) **Driveway Offsets.** Residential driveways shall be located no closer than three (3) feet from lot lines. Existing driveways in the Rs-5 and Rs-6 Districts, which are closer than three (3) feet from the side lot line, may be replaced at the same location.

#### **SEC. 13-1-27c DENSITY LOT COVERAGE AND FLOOR AREA REGULATIONS.**

- (a) **Residential Floor Area Regulations.** Any building intended in whole or part for residential purposes shall provide a minimum floor area as hereinafter specified by the regulations for the district in which such building is located. Floor area shall be measured at each level from the exterior face of exterior walls or from the centerline of walls separating two (2) buildings. For the purpose of determining minimum required floor area, the calculation shall include attached garages, enclosed porches, penthouses, interior balconies, mezzanines, attics having an average height of seven (7) feet ten (10) inches or more and floor area devoted to accessory buildings. It shall not include basements.
- (b) **Floor Area Ratio Regulations.** The maximum total floor area of a building shall not exceed the floor area ratio specified by the regulations of the zoning district in which the building is located.
- (c) **Open Space Regulations.** The total amount of open space for a development (excluding parking area, drives and structural improvements) shall not be less than the open space ratio specified by the regulations of the zoning district in which the development is located.
- (d) **Residential Density.** Residential density (either referred to as units per acre or minimum lot size) shall not exceed the density hereinafter specified by the regulations for the zoning district

in which the development/building is located except as otherwise regulated in accordance with Section 13-1- Planned Unit Development Overlay District of this Chapter.

- (e) **Lot Coverage.** The area of a lot occupied by the principal building or buildings and all accessory buildings but excluding other impervious improvements such as sidewalks, driveways, patios, decks, recreational courts, child play structures, swimming pools, and gazebos.

#### SEC. 13-1-28 REDUCTION OR JOINT USE.

No lot, yard, parking area, driveway, building area, or other space shall be reduced in area or dimension so as not to meet the provisions of this Chapter. No part of any lot, yard, parking area, driveway, or other space required for a structure or use shall be used for any other structure or use not otherwise authorized by this Chapter.

#### SEC. 13-1-29 BERM REGULATIONS. (Ord. No. 2001-13)

- (a) **Purpose.** This Ordinance regulates the location, design and visual appearance of new berms to discourage excessive length and height, provide for ease of maintenance, assure proper stormwater drainage, avoid interfering with safe visual sight distance for motorists, and promote the attractive aesthetic appearance of areas where berms are located.
- (b) **Berm Defined.** A berm is a man-made landscape feature consisting of mounded soil. Rock or concrete rubble may be included in a berm if completely covered with topsoil.
- (c) **Applicability.** These requirements shall not apply to the following:
- (1) Minor berms not vertically higher than three (3) feet above the average ground grade along both sides of the berm.
  - (2) Landscape areas lower than three (3) feet in height.
  - (3) Landscape areas not meeting the berm definition in Subsection (b) above.
  - (4) Temporary topsoil or fill piles on active construction sites.
- (d) **Plan Commission Approval Required for Berms Exceeding Three (3) Feet in Height.**
- (1) Plan Commission Approval Required. Berms exceeding three (3) feet in vertical height above the average grade of the ground along both sides of the berm shall require review and approval by the Plan Commission prior to any construction or alteration thereof.
- (e) **Application.** Applications to construct or alter a berm shall be made on forms provided by the City and shall include the following information:
- (1) Name, address and telephone number of the applicant, and location of building, structure, or lot where the berm is to be constructed.
  - (2) Name of person, firm, corporation, or business that is constructing or altering the berm.
  - (3) Written consent of the owner or lessee of the land upon which the berm is proposed to be located.
  - (4) Plans and Attachments.
    - a. Berm plan depicting its location, setbacks, property lines, proposed and existing grade contours, any related drainage facilities, and any existing easements on the subject property.
    - b. Proposed type of fill material and cover material.
    - c. Landscaping plan including grasses or groundcover, shrubbery, and tree types specifying the spacing and size of all plantings.
    - d. Proposed schedule for all phases of work.

(5) Additional information as may be required.

The application and fee shall be submitted to the Engineering Department.

(f) **Design Requirements.**

(1) Location.

- a. Berms shall not be located within any existing or future public road right-of-way. Berms shall be located at least five (5) feet from a road right-of-way line, and at least six (6) feet from a side or rear lot line. The offset requirements from a side or rear lot line may be waived where a berm is being constructed jointly by adjacent property owners.
- b. Minor berms less than three (3) feet high may be located within five (5) feet of a road right-of-way line if integral with peripheral edge landscape screening.
- c. Berms shall not be constructed to obstruct the view of vehicular traffic for ingress and egress to any public or private road, private driveway, walkway or bike trail.
- d. Berms shall not be placed in drainageways, floodplains, wetlands, or conservancy-zoned areas.
- e. Berms shall not be located within any drainage or utility easement.

(2) Slope, Shape, Measurement, and Maximum Height. All berms shall be constructed such that their side slopes shall not exceed a slope of one (1) foot vertical to three (3) feet horizontal. The vertical height shall be measured from an average of the existing ground grade along both sides of the berm. Berms must be mowable with a riding lawn mower. Berms shall be designed and graded to have an undulating and serpentine shape, and long continuous straight berms may not be acceptable. The width and length of berms shall be measured along their base line or toe of slope. The maximum height of berms shall be determined by the Plan Commission on a case-by-case basis.

(3) Landscaping. Berms shall be covered with at least six (6) inches of topsoil and shall be landscaped with turf or groundcover. In addition, it is recommended that landscape plantings be spaced randomly on the berm to enhance its appearance.

(4) Drainage. All berm construction shall not impede surface water drainage or disturb existing drain tile systems. The provisions of Section 6-1-5 shall apply to prevent berms from interfering with surface drainage and public utility easements.

(5) Fencing. Fencing shall not be placed on a berm unless approved by the Plan Commission.

(6) Erosion Control. All berm construction shall adhere to the City's construction and erosion control ordinance where applicable.

(7) Completion. All berms shall be completed, including all landscaping, in accordance with the schedule approved by the Plan Commission.

(8) Approval Conditions. Approval conditions shall require the applicant to:

- a. Notify the City when the berm is final graded, but prior to installing any landscaping to provide for a pre-final inspection of the berm.
- b. Obtain approval from the Plan Commission to modify the berm after completion.
- c. Maintain all road drainage systems, stormwater drainage systems, best management practices and other facilities identified in the berm plan.

(g) **Inspection.** Berms shall be inspected by the City Engineer and City Forester. If berm development or berm activities are being carried out without a permit, City personnel shall enter the land pursuant to the provision of Wis. Stats. Sections 66.122 and 66.123.

- (h) **Fees.** Fees referred to in this Ordinance shall be the fee for an "Accessory or Minor Structure Review" [see Section 13-1-230(15)].
- (i) **Grandfather Clause.** Berms existing prior to the adoption of this Amendment that do not comply with the requirements in this Amendment shall be considered a non-conforming berm. Such non-conforming berms may be maintained and continued, but any changes or substitutions thereto shall comply with the provisions in this Amendment. The provisions in Article G apply to non-conforming berms.

**SEC. 13-1-30 NONMETALLIC MINING RECLAMATION ORDINANCE.** (Ord. 2006-13)

- (a) **Purpose.** The purpose of this Nonmetallic Mining Reclamation Ordinance (Ordinance) is to establish a local program to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place in the City of Cedarburg after the effective date of this Ordinance, in compliance with Chapter NR 135, Wisconsin Administrative Code and Subchapter I of Chapter 295, Wisconsin Statutes.
- (b) **Statutory Authority.** This Ordinance is adopted under authority of Section 62.11(3) and 295.14(1), Wisconsin Statutes, and Section NR 135.32, Wisconsin Administrative Code.
- (c) **Restrictions Adopted Under Other Authority.** The purpose of this Ordinance is to adopt and implement the uniform statewide standards for nonmetallic mining required by Section 295.12(1)(a), Stats. and contained in Chapter NR 135, Wisconsin Administrative Code. It is not intended that this Ordinance repeal, abrogate, annul, impair or interfere with any existing rules, regulations, ordinances or permits not concerning nonmetallic mining reclamation previously adopted pursuant to other Wisconsin law.
- (d) **Interpretation.** In their interpretation and application, the provisions of this Ordinance shall be held to be the applicable requirements for nonmetallic mining reclamation and shall not be deemed a limitation or repeal of any other power granted by Wisconsin Statutes outside the reclamation requirements for nonmetallic mining sites required by Subchapter I of Chapter 295, Wisconsin Statutes and Chapter NR 135, Wisconsin Administrative Code. Where any terms or requirements of this Ordinance may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply. Where a provision of this Ordinance is required by Wisconsin Statutes, or by a standard in Chapter NR 135, Wisconsin Administrative Code, and where the provision is unclear, the provision shall be interpreted to be consistent with Wisconsin Statutes and the provisions of Chapter NR 135, Wisconsin Administrative Code.
- (e) **Severability.** Should any portion of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected.
- (f) **Applicability.**
  - (1) **Overall Applicability.** The requirements of this Ordinance apply to all operators of nonmetallic mining sites within the City of Cedarburg operating on or commencing to operate after August 1, 2001 and as provided in Section NR 135.02(1) and (2), Wisconsin Administrative Code except where exempted in Sec. 13-1-30(f)(2).
  - (2) **Exemptions.** This Ordinance does not apply to the exempt activities listed in Section NR 135.02(3), Wisconsin Administrative Code.
- (g) **Administration.** The provisions of this Ordinance shall be administered by the City of Cedarburg.
- (h) **Effective Date.** The provisions of this Ordinance shall take effect on April 14, 2006.
- (i) **Definitions.** All definitions for the purpose of this Ordinance are those contained in Section NR 135.03, Wisconsin Administrative Code.

**SEC. 13-1-31 STANDARDS.** (Ord. 2006-13)

- (a) **Standards.** All nonmetallic mining sites subject to this Ordinance shall be reclaimed in conformance with the standards contained in Sub Ordinance II of Chapter NR 135, Wisconsin Administrative Code.

**SEC. 13-1-32 PERMITTING.** (Ord. 2006-13)

- (a) **Nonmetallic Mining Reclamation Permit Application.**
- (1) **Required Submittal.** The operator of all nonmetallic mining sites that operate on or after April 14, 2006 shall apply for a reclamation permit from the City of Cedarburg. All reclamation permit applications under this section shall be accompanied by the information required by Section NR 135.18(3), Wisconsin Administrative Code.
  - (2) **New Mines.** The operator of any nonmetallic mine site that engages in or plans to engage in nonmetallic mining shall submit an application that meets the requirements of Section NR 135.18(2), Wisconsin Administrative Code and the submittals required under Sec. 13-1-32(a)(1) to the City of Cedarburg prior to beginning operations.
- (b) **Reclamation Plan.**
- (1) **Reclamation Plan Requirements.** All operators of nonmetallic mining sites subject to this Ordinance shall prepare and submit a reclamation plan that meets the requirements of Section NR 135.19, Wisconsin Administrative Code.
  - (2) **Existing Plans and Approvals.** To avoid duplication of effort, the reclamation plan required by Sec. 13-1-32(b)(1) may, by reference, incorporate existing plans or materials that meet the requirements of this Ordinance.
  - (3) **Approval of Reclamation Plan.** The City of Cedarburg Common Council, following referral to and recommendation from the Plan Commission, shall approve, conditionally approve or deny the reclamation plan submitted under this section in writing as part of permit issuance pursuant to Sec. 13-1-32(e)(3). Conditional approvals of reclamation plans shall be made according to Sec. 13-1-32(e)(3), and denials of reclamation plans made according to Sec. 13-1-32(f). The operator shall keep a copy of the reclamation plan required by this section, once approved by the City of Cedarburg under this Ordinance, at the mine site or, if not practicable, at the operator's nearest office or place of business.
- (c) **Financial Assurance.**
- (1) **Financial Assurance Requirements.** All operators of nonmetallic mining sites in the City of Cedarburg shall prepare and submit a proof of financial assurance of successful reclamation that meets the requirements of Section NR 135.40, Wisconsin Administrative Code.
  - (2) **Existing Mines.** The operator of any nonmetallic mining site that received a permit from the Town of Cedarburg or Ozaukee County shall submit or transfer the financial assurance required by Sec. 13-1-32(c)(1) to the City of Cedarburg.
  - (3) **Public Nonmetallic Mining.** The financial assurance requirements of this section do not apply to nonmetallic mining conducted by the State of Wisconsin, a state agency, board, commission or department, or a municipality.
- (d) **Public Notice and Right of Hearing.**



- (1) **New Mines or Existing Mines that have been newly annexed into the City.** The City of Cedarburg shall provide public notice and the opportunity for a public informational hearing as set forth in Section NR 135.20(1) and (2), Wisconsin Administrative Code for any nonmetallic mining site for which a complete reclamation permit application that satisfies Sec. 13-1-32(a)(1) is received.
- (2) **Local transportation-Related Mines.** No public notice or informational hearing is required for a nonmetallic mining reclamation permit issued to a local transportation-related mine pursuant to Sec. 13-1-32(e)(4).
- (e) **Issuance of a Nonmetallic Mining Reclamation Permit.**
  - (1) **Permit Required.** Every operator of a nonmetallic mining site in the City of Cedarburg who engages in or plans to engage in nonmetallic mining on or after April 14, 2006 shall obtain a reclamation permit issued under this section, except nonmetallic mining sites exempt from this Ordinance as provided in Sec. 13-1-30(f)(2). No person may engage in nonmetallic mining or nonmetallic mining reclamation after April 14, 2006 without a reclamation permit issued pursuant to this Ordinance.
  - (2) **Permit Issuance.** Applicants for reclamation permits for nonmetallic mining sites that satisfy Sec. 13-1-32(a)(1) shall be issued a reclamation permit or otherwise acted on as provided in Section NR 135.21(2), Wisconsin Administrative Code. The permit shall require compliance with a reclamation plan submitted by the applicant that conforms to Sec. 13-1-32(b)(1), and provisions by the applicant of financial assurance that conforms to Sec. 13-1-32(c)(2) payable to the City of Cedarburg prior to beginning mining.
  - (3) **Permit Conditions.** Permits issued under this section may include conditions as provided in Section NR 135.21(3), Wisconsin Administrative Code.
  - (4) **Automatic Permit for Local Transportation-Related Mines.** The City of Cedarburg shall issue an automatic permit under this subsection for any borrow site operated to provide material for a locally administrated transportation project that meets the criteria in Section NR 135.21(1)(a), Wisconsin Administrative Code. This automatic permit shall be issued according to the provisions of Section 135.23(1)(b) through (j), Wisconsin Administrative Code.
- (f) **Permit Denial.** An application for a nonmetallic mining reclamation permit shall be denied if any of the factors specified in Section NR 135.22, Wisconsin Administrative Code exists.
- (g) **Alternate Requirements.**
  - (1) **Scope of Alternative Requirements Approvable.** An operator of a nonmetallic site may request an alternative requirement to any reclamation standard established in Sec. 13-1-31. Such a request may be made only on the basis of the criteria set forth in Section NR 135.26(1), Wisconsin Administrative Code.
  - (2) **Procedures.** The operator of a nonmetallic mining site requests an alternate requirement in Sec. 13-1-32(g)(1) shall demonstrate all the criteria in Section NR 135.26(1), Wisconsin Administrative Code. This shall be submitted in writing to the City of Cedarburg Board of Appeals appointed pursuant to Section 62.23, Wisconsin Statutes.
  - (3) **Transmittal of Decision on Request for Alternate Requirements.** The decision on a request for alternative reclamation requirements shall be in writing to the applicant and shall include documentation of why the alternative requirement was or was not approved.

- (4) **Notice to Wisconsin Department of Natural Resources.** The City of Cedarburg shall provide notice to the Wisconsin Department of Natural Resources as provided in Section NR 135.26(3)(a), Wisconsin Administrative Code.
- (h) **Permit Duration.** A nonmetallic mining reclamation permit issued under this Ordinance shall last through operation and reclamation of the nonmetallic mining site, unless suspended or revoked pursuant to Sec. 13-1-34(b)(2), or as limited under Section NR 135.27, Wisconsin Administrative Code where the mine operator is not the landowner.
- (i) **Permit Transfer.** A nonmetallic mining reclamation permit issued under this Ordinance shall be transferred to a new owner or operator upon satisfaction of the conditions in Section NR 135.28, Wisconsin Administrative Code.
- (j) **Permit Transfer Notice.** When a nonmetallic mining permit is proposed to be transferred to a new owner or operator, the permit holder shall notify the City of Cedarburg of such a transfer at least 30 days prior to the transfer to the new owner. Such notice shall be by certified mail.
- (k) **Review.** Any permitting decision or action made by the City of Cedarburg under this Ordinance may be reviewed as set forth in Section NR 135.30, Wisconsin Administration Code.

**SEC. 13-1-33 ADMINISTRATION.** (Ord. 2006-13)

- (a) **Permit Modification.**
  - (1) **By the City of Cedarburg.** A nonmetallic mining reclamation permit issued under this Ordinance may be modified by the City of Cedarburg if it finds that, due to changing conditions, the nonmetallic mining site is no longer in compliance with this Ordinance. Such modification shall be by an order conforming with the procedures in Sec. 13-1-34(b) and as provided in Section NR 135.24(1), Wisconsin Administrative Code.
  - (2) **At the Operators Option.** If the operator of any nonmetallic mine that holds a valid reclamation permit issued under this Ordinance desires to modify such permit or reclamation plan approved under this Ordinance, it may request such modification by submitting a written application for such modification to the City of Cedarburg. The application for permit of plan modification shall be acted on using the standards and procedures of this Ordinance.
  - (3) **Required by the Operator.** The operator of any nonmetallic mine that holds a reclamation permit issued under this Ordinance shall request a modification of such permit if required under the circumstances set out in Section NR 135.27, Wisconsin Administrative Code. Such application for permit modification shall be acted on using the standards and procedures of this Ordinance.
  - (4) **Review.** All actions on permit modifications requested or initiated under this section are subject to review under Sec. 13-1-32(k).
- (b) **Permit Suspension or Revocation**
  - (1) **Grounds.** The City of Cedarburg may suspend or revoke a nonmetallic mining reclamation permit issued pursuant to this Ordinance if it finds any of the grounds listed in Section NR 135.25(1), Wisconsin Administrative Code.
  - (2) **Procedures.** If the City of Cedarburg finds grounds for suspending or revoking a nonmetallic mining reclamation permit set forth in Sec. 13-1-33(c)(1), it may issue a special order suspending or revoking such permit as set forth in Sec. 13-1-34(b)(2).

- (3) **Consequences.** The consequences of a reclamation permit suspension or revocation order under Sec. 13-1-33(b)(2) shall be as set forth in Section NR 135.25(2) and (3), Wisconsin Administrative Code.
- (c) **Annual Operator Reporting.**
  - (1) **Contents and Deadline.** Annual reports shall be submitted by the operators of nonmetallic mining sites that satisfy the requirements of Section 135.36, Wisconsin Administrative Code. These reports shall be for reclamation during a calendar year and submitted in writing within 60 days of the end of each calendar year to the City of Cedarburg. Annual reports shall be submitted until reclamation at each nonmetallic mining site is certified as complete under Sec. 13-1-33(g)(3).
  - (2) **Inspection in Lieu of Report.** The City of Cedarburg may, at its discretion, obtain the information required in Sec. 13-1-33(c)(1) by written documentation of an inspection it completes during a calendar year, as set forth in Section NR 135.36(4), Wisconsin Administrative Code.
  - (3) **Retention of Annual Reports.** Annual reports submitted under this section or inspection records that replace them shall be retained by the City of Cedarburg for at least 10 years after the calendar year to which they apply at the office of the City Clerk. These records, or accurate copies of them, shall be made available to the Wisconsin Department of Natural Resources upon written request or during its inspection or audit activities carried out pursuant to Section NR 135, Wisconsin Administrative Code.
- (d) **Plan Review Fees.**
  - (1) **Amount and Applicability.** A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under Sec. 13-1-32(a)(1) shall submit a nonrefundable plan review fee of \$1,000.00. A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to Sec. 13-1-33(a). No plan review fee may be assessed under this section for any nonmetallic mine site for any local transportation-related mine issued an automatic permit under Sec. 13-1-32(e)(4).
  - (2) **Relation to Annual Fee.** Any reclamation plan review fee collected under this section shall be added to and collected as part of the first annual fee collected under Sec. 13-1-33(e).
- (e) **Annual Fees.**
  - (1) **Areas Subject to Fees, Procedures and Deadlines.** Operators of all nonmetallic mining sites subject to reclamation permits issued under this Ordinance shall pay fees to the City of Cedarburg. Fees paid under this section shall include both a share for the Wisconsin Department of Natural Resources under Sec. 13-1-33(e)(2) and a share for the City of Cedarburg under Sec. 13-1-33(e)(3) that equals as closely as possible the costs of examination and approval of nonmetallic mining reclamation plans and the inspection of nonmetallic mining reclamation sites. These fees shall be calculated based on amount of un-reclaimed acres of each site, as defined in Section NR 135.39(1), Wisconsin Administrative Code and according to its provisions. Such fees apply to a calendar year or any part of a year in which nonmetallic mining takes place, until final reclamation is certified as complete under Sec. 13-1-33(g). Fees shall be paid no later than December 31 before the year for which they apply.
  - (2) **Wisconsin Department of Natural Resources Share of Fee.** Fees paid under this section shall include a share for the Wisconsin Department of Natural Resources equal to the amount specified in Section NR 135.39(3), Wisconsin Administrative Code. For

sites on which no nonmetallic mining has taken place during a calendar year, fees to be paid under this section for the following year shall be \$15.00.

- (3) **The City of Cedarburg's Share of Fee.** Fees paid under this section shall also include an annual fee due to the City of Cedarburg. Such annual fees due to the City of Cedarburg shall be in the amounts stated in Table 3 in Section 135.39(4), Wisconsin Administrative Code.
- (4) **Reduced fee for Inactive Mines.** Any site on which no nonmetallic mining activities has taken place in a calendar year shall be assessed a fee for the following calendar year of \$50.00 per acre of un-reclaimed area.
- (5) **Documentation of the City of Cedarburg's Share of Fee.** If the annual fee in Sec. 13-1-33(e)(3) is greater than that established in Section NR 135.39(4)(c), Wisconsin Administrative Code, the City of Cedarburg shall document in writing its estimated program costs and the need for its annual fees established in Sec. 13-1-33(e)(3) on or before April 14, 2006. This documentation shall be available for public inspection.

(f) **Regulatory Reporting and Documentation**

- (1) **Reporting.** The City of Cedarburg shall send an annual report to the Wisconsin Department of Natural Resources including the information required by Section NR 135.37, Wisconsin Administrative Code.
- (2) **Documentation.** The City of Cedarburg shall, to the best of its ability, maintain the information set forth in Section NR 135.47(3), Wisconsin Administrative Code, and make it available to the Wisconsin Department of Natural Resources for that agency's audit of the City of Cedarburg's reclamation program pursuant to Section NR 135.47, Wisconsin Administrative Code.

(g) **Completed Reclamation – Reporting, Certification and Effect**

- (1) **Reporting.** The operator of a nonmetallic mining site may certify completion of reclamation for a portion or all of the nonmetallic site pursuant to a reclamation plan prepared and approved pursuant to this Ordinance and Chapter NR 135, Wisconsin Administrative Code. Such certification documents shall be file with the City Clerk.
- (2) **Reporting of Interim Reclamation.** The operator of a nonmetallic mining site may report completion of interim reclamation as specified in the reclamation plan for the site prepared and approved pursuant to this Ordinance and Chapter NR 135, Wisconsin Administrative Code. Reporting of interim reclamation shall be done according to the procedures in Sec. 13-1-33(g)(1).
- (3) **Certification of Completed Reclamation.** City of Cedarburg shall inspect a nonmetallic mining site for which reporting of reclamation or interim reclamation has been submitted pursuant to this subsection within 60 days of receipt, and make a determination in writing in accordance with Section NR 135.40(7)(c), Wisconsin Administrative Code. If it is determined that interim or final reclamation is complete, including re-vegetation as specified in a plan that conforms to Sec. 13-1-32(b), the City of Cedarburg shall issue the mine operator a written certificate of completion.
- (4) **Effects of Completed Reclamation.** If reclamation is certified by the City of Cedarburg as complete under Sec. 13-1-33(g)(3) for part or all of a nonmetallic mining site, then:
  - a. No fee shall be assessed under Sec. 13-1-33(e) for the area so certified.
  - b. The financial assurance required by Sec. 13-1-32(c) shall be released.
  - c. For sites which are reported as interim reclaimed under Sec. 13-1-33(g)(2), and so certified under Sec. 13-1-33(g)(3), financial assurance for reclaiming the



certified area shall be reduced in proportion to the total area proposed for reclamation.

- (5) **Effect of Inaction Following Report of Completed Reclamation.** If no written response as required by Sec. 13-1-33(g)(3) for an area of the mine site reported as reclaimed or interim reclaimed is given within 60 days of receiving such request, any annual fee paid to the City of Cedarburg for it under Sec. 13-1-33(e) shall be refunded.
- (6) **Permit Terminated.** When all final reclamation required by a reclamation plan conforming to Sec. 13-1-32(b) and required by this Ordinance is certified as complete pursuant to Sec. 13-1-33(f), the City of Cedarburg shall issue a written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

**SEC. 13-1-34 ENFORCEMENT.** (Ord. 2006-13)

- (a) **Right of Entry and Inspection.** For the purpose of ascertaining compliance with the provisions of Subchapter I of Chapter 295, Wisconsin State Statutes, Chapter NR 135, Wisconsin Administrative Code, or this Ordinance, any authorized officer, agent, employee or representative of the City of Cedarburg may inspect any nonmetallic mining site subject to this Ordinance as provided in Section 295.17(1), Wisconsin Statutes and Section NR 135.42, Wisconsin Administrative Code.
- (b) **Orders and Citations**
  - (1) **Enforcement Orders.** The City of Cedarburg may issue orders as set forth in Section 295.19(1)(a), Wisconsin Statutes to enforce Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this Ordinance, a permit issued pursuant to this Ordinance or a reclamation plan required by Sec. 13-1-32(b) and a permit issued under this Ordinance. A violation of this Ordinance, an order or permit issued pursuant to this Ordinance or a reclamation plan required by Sec. 13-1-32(b) and a permit issued under this Ordinance shall be considered a violation of Subchapter I of Chapter 295, Wisconsin Statutes and Chapter NR 135, Wisconsin Administrative Code.
  - (2) **Special Orders.** The City of Cedarburg may issue a special order as set forth in Section 295.19(1)(b) and (c), Wisconsin Statutes, suspending or revoking a nonmetallic mining reclamation permit pursuant to Sec. 13-1-33(b), of directing an operator to immediately cease an activity regulated under Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code or this Ordinance until the necessary plan approval is obtained.
  - (3) **Review of Orders.** An order issued under Sec. 13-1-34(b)(1) or (b)(2) may be reviewed as provided in Section NR 135.43(2), Wisconsin Administrative Code.
  - (4) **Citations.** The City of Cedarburg may issue a citation under s.66.119, Stats. and Sec. 13-1-34(c) under this Ordinance to collect forfeitures or require any action needed to enforce Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this Ordinance, a permit issued pursuant to this Ordinance or a reclamation plan required by Sec. 13-1-32(b) and a permit issued under this Ordinance. The issuance of a citation under this subsection shall not preclude proceedings under any other ordinance or law relating to the same or any other matter. Proceeding under ordinance or law relating to the same or any other matter shall not preclude the issuance of a citation under this subsection.

- (5) **Enforcement.** The City of Cedarburg may submit any order issued under Sec. 13-1-34(b) to the district attorney, the corporation counsel, municipal attorney or the attorney general for enforcement as provided in Section 295.19(1)(d), Wisconsin Statutes.
- (c) **Penalties.** Any violation of Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this Ordinance, a permit issued pursuant to this Ordinance or a reclamation plan required by Sec. 13-1-32(b) and a permit issued under this Ordinance may result in forfeiture as provided in Section 295.29(3), Wisconsin Statutes, as follows:
- (1) Any person who violates Ordinance NR 135, Wisconsin Administrative Code or an order issued under Sec. 13-1-34(b) may be required to forfeit not less than \$25 nor more than \$1,000 for each violation. Each day of continued violation is a separate offence. While an order issued under Sec. 13-1-34(b) is suspended, stayed or enjoined, this penalty does not accrue.
  - (2) Except for the violations referred to in Sec. 13-1-30, any person who violates Subchapter I of Chapter 295, State Statutes, Chapter NR 135, Wisconsin Administrative Code, any reclamation plan approved pursuant to this Ordinance or an order issued pursuant to Sec. 13-1-34(b) shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of violation is a separate offence. While an order issued under Sec. 13-1-34(b) is suspended, stayed or enjoined, this penalty does not accrue.

**SEC. 13-1-35      THROUGH SEC. 13-1-39   RESERVED FOR FUTURE USE.**