RESOLUTION 13-07

POLK COUNTY BOARD OF ADJUSTMENT PROCEDURES ORDINANCE

FOR THE POLK COUNTY COMPREHENSIVE LAND USE ORDINANCE, THE POLK COUNTY SHORELAND PROTECTION ORDINANCE, THE FLOODPLAIN ORDINANCE, AND THE LOWER ST. CROIX RIVERWAY ORDINANCE.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF POLK DO ORDAIN AS FOLLOWS:

SECTION 1.0 GENERAL PROVISIONS

1.1 Authority

This Board has been established pursuant to the Wisconsin Statutes, as amended, and assumes thereby, all responsibilities, duties and powers as provided therein and by related statutes. A copy of these rules shall be filed with the County Clerk to be kept as a permanent public record. Copies of the rules shall also be available to the public. These rules are supplementary to the provisions of the zoning ordinances of the County as they relate to the procedures of the Board of Adjustment.

1.2 Title

The official title of the Board is: The Polk County Board of Adjustment.

1.3 Membership

The Board shall consist of five members with two alternate members. Membership requirements shall be consistent with Wis. Sta. sec. 59.694.

1.4 Conflicts of Interest

Any member of the Board, who has any direct or indirect interest, personal or financial, in a matter before the Board shall not vote thereon or participate in the deliberation of such matter at any meeting or hearing at which said matter is under consideration. A disqualifying conflict of interest shall be deemed to exist when: (1) the Board member is the applicant or spouse of the applicant, or is related to the applicant within the third degree of consanguinity, or is the husband or wife of someone so related; or (2) the applicant is the employer, employee or partner of the member or is a corporation in which the member is a major shareholder or has a financial interest; or (3) the member owns property within 300 feet of the property which is the subject of the application.

1.5 Limitations

Nothing herein shall be construed to give or grant to the Board the power or authority to alter or change the zoning ordinances or zones of other official maps of the County, which authority is reserved to the Zoning Committee and County Board of Supervisors.

1.6 Board's Office

The office of the Board shall be located at the Office of the Zoning Administrator. All records of the Board shall be available for public inspection during normal office hours.

SECTION 2.0 OFFICERS AND DUTIES

2.1 Officers

The Board shall elect a Chairperson, Vice-chairperson, and Secretary from among its members. These officers shall hold office until their successors are elected. The Board may, at any meeting or hearing, elect from among the membership the replacement for an officer, who for whatever reason is unable to perform the duties of his office.

2.2 Duties of Officers

2.21 The Chairperson, if present, otherwise the Vice-chairperson, shall preside over and direct the conduct of all meetings and hearings of the Board and may administer oaths and compel the attendance of witnesses. The Chairperson shall report on all official transactions that have not otherwise come to the attention of the Board. The Chairperson shall, subject to these rules and further instructions from the Board, direct the official business of the Board, supervise the work of the Board, and request necessary help when required. The Chairperson or the presiding officer, subject to these rules, shall decide all points of procedure or order, unless otherwise directed by a majority of the members in attendance on motion duly made and approved.

2.22 The Secretary shall record and maintain permanent minutes of the Board's proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact; shall keep records of its official actions; shall summarize accurately the testimony of those appearing before the Board and keep a record of all hearings; shall record the names and addresses of all persons appearing before the Board in person, or by attorney; and shall, subject to the Board and Chairperson conduct the correspondence of the Board and have published in an official newspaper, public notices of meetings or hearings as required by law; shall file said minutes and records in the office of the Board which minutes and records shall be a public record; and shall be the custodian of the files of the Board and keep all records. County staff shall assist the Secretary of the Board in performing these clerical duties.

2.23 The County Corporation Counsel, or his/her designated representative, shall be the legal counsel for the Board. Advise of counsel shall be received and entered in the minutes before disposition of any question of law or matter requiring legal interpretation or advice.

SECTION 3.0 MEETINGS

3.1 Time: How Called

Meeting and hearings of the Board shall be held or may be cancelled at the call of the Chair and at such other time as the Board may determine, provided that the Secretary notifies all Board members at least 48 hours prior to such meeting. All meetings shall be open to the public and in accordance with the Open Meeting Law, except the Board may call a closed session at the conclusion of any public hearing for the purpose of reaching a decision on the evidence placed before it in the open session portion of such hearing. Hearings shall be advertised as required by law and these rules.

3.2 Quorum

A quorum shall consist of a majority of all members of the Board and no action may be taken except by a majority vote of such quorum except a lesser number may meet and adjourn any meeting duly called and noticed to a time certain. When determining if a quorum is present, the total number of Board members does not include alternates. For example, if the Board were comprised of five members and two alternates, it would take a total of three members to comprise a quorum.

3.3 Order of Business

The Board Chair shall prepare an agenda for each Board meeting, listing the matters of business at all meetings that do not have public hearings in the following order:

1. Call to order and roll call.
2. Statement by the presiding officer concerning notice in accordance with the Wisconsin Open Meeting Law.
3. Unfinished business.
4. New business.
5. Communications and miscellaneous.
6. Other business that may come before the Board as permitted by law.
7. Adjournment.

The Board Chair shall prepare an agenda for each Board meeting that has a public hearing, listing the matters of business in the following order:

1. Call to order and roll call.
2. Statement by the presiding officer concerning notice in accordance with the Open Meeting Law.
3. Hearings.
4. Deliberations and decisions on applications and appeals to the Board.
5. Unfinished business.
6. New Business.
7. Communications and miscellaneous.
8. Other business that may come before the Board as permitted by law.
9. Adjournment.

The order of business at any meeting or hearing may be varied from the proceedings by consent of the members present.

3.4 Robert's Rules of Order

The most current edition of Robert's Rule of Order shall govern actions of the Board and conduct of the meeting if not otherwise stated in this ordinance.

SECTION 4.0 POWERS AND DUTIES OF THE BOARD

4.1 General Powers

The powers and duties of the Board of Adjustment are identified in the Wisconsin Statutes and in the various zoning ordinances that have been adopted by the County. The Board shall have the following general powers:

4.11 To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of the Wisconsin Statutes, or of any county zoning ordinance(s) adopted pursuant thereto.

4.12 To authorize, upon appeal in specific cases, such variance of the zoning ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the ordinances will result in unnecessary hardship and so that the spirit of the ordinance shall be observed, public welfare and safety secured, and substantial justice done. A variance:

(a) Shall be consistent with the spirit and intent of the zoning ordinances.
(b) Shall not permit any change in the uses in the established zone districts.
(c) Shall not be granted unless it is shown that the variance will not be contrary to the public interest or damaging to the rights of other persons' property values in the area.
(d) Shall not be granted for actions which require an amendment to the ordinance.
(e) Shall not have the effect of allowing a use or structure which is prohibited in that zone district by the ordinance unless it determines that no feasible, legal use can be made of the property without such variance, provided no use variance may be granted in a flood-plain or wetland/shoreland district.
(f) Shall not be granted on the basis of economic gain or loss.
(g) Shall not be granted for a self-imposed hardship.

4.13 Hear and decide appeals on the extensions of structures, buildings or premises devoted to nonconforming uses.

4.2 Scope or Orders

In exercising the powers under Section 4.1, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issuance of a permit.

SECTION 5.0 APPLICATION AND APPEAL PROCEDURES

5.1 Who May File

The applicant or appellant, his/her agent or attorney shall file applications to the Board and appeals from the Zoning Administrator's decisions with the Zoning Administrator. Appeals may be filed by any person aggrieved or by any officer, department, board, or bureau of the County or Town affected by the Zoning Administrator's decision.

5.2 Copies to be Sent

The Zoning Administrator shall transmit copies of the application or appeal as follows: Original to the Board of Adjustment; a copy to the applicant; a copy to the Zoning Administrator's files; a copy to the Clerk of the Town Board or Village Council, where applicable as to variances. In the case of applications or appeals affecting property within the wetland/shorelands, one copy shall also be sent to the Department of Natural Resources.

5.3 **Time to Appeal**

Appeals from the Zoning Administrator's decision must be filed within thirty (30) days after the decision in writing is made and filed.

5.4 **Required Information**

Failure of the applicant to supply the required information within sixty (60) days of filing an application or appeal may be considered by the Board as a failure to comply with the application and appeal procedure and the case may be dismissed for failure of timely filing. Applications or appeals shall be made on forms provided by the Zoning Administrator. Any communication except on prescribed forms, purporting to be an appeal shall be deemed a mere notice of intention to file and shall not be deemed a filing to comply with requirements of timely filing.

5.5 **Reasons to Be Stated**

The reason for the application or appeal must be stated and the reasons why the request should be granted must also be stated by the applicant: (a) If a variance is requested, facts should be stated for the need of a variance and the request must meet the three (3) criteria to justify the Board of granting the variance. (b) If an appeal is based upon an alleged error or abuse of discretion of the Zoning Administrator, facts should be stated as to the nature thereof.

5.6 **Dismissal of Case**

The Board may refuse to hear a case upon the failure of the applicant to supply the required information called for on the forms and as further reasonably required by the Zoning Administrator.

5.7 **Owner's Consent**

The forms shall bear the signature of the owner of the property affected or shall be accompanied by a letter from the owner acknowledging the filing of the form.

5.8 **Notice of Hearing**

5.81 The Secretary of the Board shall give, or cause to be given, notice of each hearing as required by law and these rules. This shall include at least the following: (1) publication of a Class 2 hearing notice in the official County newspaper; (2) mailing a notice of the hearing to the applicant, and where required to the area office of the Department of Natural Resources at least ten (10) days before the hearing; (3) mailing a notice of the hearing to the Town Clerk of the Town in which the property is located, no less than ten (10) calendar days before the date of the hearing; (4) mailing a notice of the hearing to the Village Clerk and Village President when the property affected lies within 1 1/2 air miles of the closest city or village limits, no less than ten (10) calendar days before the date of the hearing.

5.82 A copy of the application for a variance shall be sent to the Town Clerk, and when applicable to the Village Clerk, of the municipality in which the property is located. The Board of Adjustment may consider the decision of the municipality in granting or denying the variance requested.

5.83 When a hearing involves an application or petition for a variance, a notice shall be sent to the adjoining property owners within 300' of the affected property. Such notice shall include the information required for a hearing notice and shall provide the recipient the opportunity to indicate whether they are in favor or opposed to the application. Comments from surrounding property owners may be considered by the Board in granting or denying the variance requested. A signature(s) is required in order that the comments receive consideration by the Board. The failure of such notice to reach any property owner shall not invalidate any decision made on a variance. Such notice shall be mailed at least ten (10) days before the hearing.

5.9 Effect of Appeal

An appeal shall stay all proceedings and furtherance of the action appealed from, unless the officer from whom the appeal is taken, shall certify to the Board of Adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed, otherwise than by a restraining order, which may be granted by the Board of Adjustment, or by a court of record on application and notice to the officer from whom the appeal is taken and on due cause shown.

5.10 Representative Filing

An applicant may file an application or appeal personally or by an agent or attorney.

5.11 Fee

The applicant shall pay such fees as may be from time to time established by the Zoning Committee, which amount shall be deposited with the Zoning Office for each application filed before a public hearing will be scheduled.

SECTION 6.0 PROCEEDINGS OF HEARINGS

6.1 Appearances, Adjournments

At the time of the hearing, the applicant may appear in his own behalf or be represented by his counsel or agent. A motion passed to table a request or a recess or adjournment of a hearing, made at a noticed hearing date, to a time and place certain is adequate notice to the members and the public of a new hearing date.

6.2 Witnesses

The Chairperson, or Vice-chairperson, may compel the attendance of witnesses and may require those wishing to testify to state their names and interests in the matter before the Board. Testimony shall be taken under oath administered by the Chairperson or Vice-chairperson.

6.3 Order of Hearings

Hearings on cases shall normally follow this order:

1. Reading of the application. Reading of the reason for denial by the secretary or administrative official.
2. Determination of Jurisdiction, if requested.
3. Submission of the file, which may include: The Town Board decision or Village Council decision; maps or surveys; inspection reports; opinion letters; letters of correspondence; soil tests results; plot plans or sketches; and photographs. Reading of the appeal.
4. Applicant's statements and presentation of evidence.
5. Others in support of applicant make statements and present evidence.
6. Objector's statements and presentation of evidence.
7. Staff recommendations.
8. Questions by Board members.
9. Rebuttals as permitted by the Board.
10. Deliberations and decision by the Board.

6.4 Preliminary Matters

Following the reading of the application or appeal, the Board may hear arguments on the question of jurisdiction and request that briefs be filed on the point. The Board may proceed with the hearing and the taking of testimony in any event and reserve its determination on a jurisdictional question until after hearing all testimony and render a decision on the merits as if it had jurisdiction. The Board may make an immediate determination and close the hearing finding that it lacks jurisdiction. If the Board determines by motion that it lacks jurisdiction, the secretary shall record the decision as a vote to deny the request.

6.5 Parties Not to Interrupt

Orderly procedure requires that each side shall proceed without interruption by the other, and that all arguments and pleadings shall be addressed to the Board. There shall be no questioning or arguments between individuals.

6.6 Questions and Debate

During the hearing, the Chairperson, Board members, and members of the staff may ask questions and make appropriate comments pertinent to the case; however, no member should debate or argue an issue with the applicant. The Chairperson and Board members may direct any question to the applicant or to any person speaking in order to bring out all relevant facts, circumstances, and conditions affecting the case and may call for questions from members of the staff.

6.7 Presentation of Evidence

All supporting evidence for and against each case shall be presented to the assembled Board. The applicant shall be responsible for the presentation of all information supporting his/her case. The Board may take administrative notice of the ordinances of the County and laws of the State of Wisconsin and other relevant facts not reasonably subject to dispute on its own motion or motion of a party.

6.8 Additional Evidence

The Board may take a case under advisement for later consideration and determination, or may table or defer action whenever it concludes that additional evidence is needed or further study is required.

6.9 **Rules of Evidence**

The Board shall not be bound by court rules of evidence, but it may exclude irrelevant, immaterial, incompetent, unduly argumentative, or repetitious testimony or evidence.

6.10 **Chairperson to Rule on Admissibility**

The Chairperson shall rule on all questions relating to the admissibility of evidence, which may be overruled by a majority of the Board members.

6.11 **Interested Persons May Testify**

Persons having an interest in the case may attend the hearing and may request an opportunity to testify provided they identify themselves.

6.12 **Record of Hearing**

All proceedings at a hearing shall be audio recorded. The Secretary shall prepare a summary of motions, witnesses, appearances, roll call, votes, and all other matters constituting the substance of the proceedings. The proceedings shall become part of the written record filed in the office of the Board and open to the public. Verbatim transcripts of recorded proceedings shall not be prepared unless ordered by the circuit court by a writ of certiorari.

6.13 **Adjournments**

When all applications or appeals cannot be disposed of on day set, the Board may adjourn from day to day or to a day certain, as it may order, and such adjourned day shall be construed as a continuance of the hearing. Notice of such adjournment shall be given to the absent members of the Board.

6.14 **Withdrawal of Application**

An applicant or appellant may withdraw an application or appeal at any time prior to the decision, but a pending motion to grant or deny the application shall have precedence over withdrawal. Withdrawal of the application or appeal shall not entitle the applicant to remission of the filing fee.

SECTION 7.0 DECISIONS OF THE BOARD

7.1 **Majority Vote Required**

The concurring vote of a majority of the members present, when such is sufficient to constitute a quorum of the Board as defined in this Ordinance shall be necessary to approve, deny, or table any matter upon which it is required under any ordinance in which the Board has jurisdiction, unless otherwise required by law.

7.2 **Decisions to be Written**

All decisions shall be in writing and contain the facts upon which the decision is based.

7.3 **Decisions to be Mailed**

Within ten (10) days of the close of the hearing to which the decision relates, written copies of such decision

shall be mailed to the applicant, the local municipality, Zoning Committee, those sworn in, and if applicable to the following: adjoining local municipality, Department of Natural Resources and State or Federal Highway Department. The approval or granting by the Board is deemed to constitute an order to the zoning official to issue a permit. A denial of the application or appeal by the Board is deemed to be an order to deny the permit.

7.4 **Findings of Fact**

In acting on any matters before it, the Board shall make findings supporting its actions. In every case where a variance from the zoning regulations is granted by the Board, the minutes of the Board shall affirmatively show that an unnecessary hardship or practical difficulty exists and the records of the Board shall clearly show in what particular and specific respects an unnecessary hardship or practical difficulty is created.

7.5 **Disqualification: Motions**

A member may disqualify himself from voting whenever the member has a personal or monetary interest in the property concerning the case, will be directly affected by the decision of the Board, has or believes he has any conflict of interest under state statutes. A member may also disqualify himself whenever the applicant or the applicant's agent has sought to influence the vote of the member on his case outside the public hearing. All decisions of the Board shall be made at a public hearing by the motion made, seconded, and passed. A motion, which decides the issue, shall be in the form of findings of fact and shall state the reasons for the findings by the Board. If conditions are imposed in the granting of a variance, such conditions shall be included in the motion.

7.6 **Decision to Relate to Specific Property**

The decision of the Board shall be deemed as applying to the property rather than to the individual and is valid only for the specific premises in the case and is not transferable to other properties.

7.7 **Informal Advice Not Binding**

The Board need give no informal request for advice or on moot questions. Any advice, opinion, or information given by any Board member, or any other official or employee of the County shall not be binding on the Board.

7.8 **Cases to be Determined Individually**

No action of the Board shall set a binding precedent. Each case shall be decided upon its merits and upon the attendant circumstances, provided the Board shall not act arbitrarily or capriciously.

7.9 **Decisions to be filed with State**

Copies of decisions on variances and appeals within the shorelands or affecting the Wetland/Shoreland One District shall be sent to the appropriate district office of the Department of Natural Resources.

7.10 Action in Circuit Court

Any person or persons jointly or severely aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board, or bureau of the County may commence an action in the circuit court for writ of certiorari to review the legality of such decision in whole or in part, within thirty (30) days after the filing of the decision in the office of the Board.

SECTION 8.0 REFILING AND REHEARINGS

8.1 One Year Refiling Rule

No matter which has been acted upon by the Board concerning the same or part of the same property shall be considered again with one (1) year from the date of the action, except as hereinafter provided.

8.2 Reopenings and Rehearings Limited

The Board may not reopen any case upon which a previous hearing has been held, except to correct a manifest error.

8.3 Closure of Case

A case will be considered as heard and closed at such time as the Board approves or rejects an application or appeal by motion or when it is considered closed by operation of these rules.

8.4 Reconsideration on Board Motion

A decision of the Board may be reconsidered by motion to reconsider made at the same meeting which may be immediately disposed of without further notice.

8.5 Reconsideration Tolls Appeal Period

The filing of a motion for reconsideration shall stop the running of the thirty (30) day period in which a petition to the Circuit Court must be made. The thirty (30) day period will run in such event from the date of a decision not to reconsider is made by the Board, or if the matter is reconsidered, from the date the decision on the reconsidered matter is filed in the Board's office.

8.6 Procedures for Reconsideration

A simple majority vote shall be sufficient to reconsider a previous decision. If reconsideration is refused to an interested party who has requested reconsideration, the Board shall enter on the minutes the basis of the request, the reason why it was refused, and the vote of the Board members thereon.

SECTION 9.0 AMENDMENTS OF RULES

These rules may be changed or amended from time to time by the Polk County Board of Supervisors.

SECTION 10.0 ANNUAL REPORT

Annually on a date specified by the County Board, the Board of Adjustment shall submit a report of its activities during the preceding year, to the Zoning Committee for transmittal to the County Board.

SECTION 11.0 STAFF

The Board of Adjustment may utilize the advice and assistance of the County employees and may delegate administrative tasks to such employees as authorized by the County Board of Supervisors.

SECTION 12.0 REIMBURSEMENT

Board members shall receive per diem as established by County Board Resolution plus travel mileage, meals, and lodging expenses as established by policy. Members shall receive per diem only for official dates of meetings if attended. One additional per diem will be paid if the meeting is over 400 miles round trip. Travel shall be held to a minimum by car-pooling. A Board Chairperson, with the approval of the County Board Chairman, may approve a ~~$40.00~~ per diem and mileage Per County Policy for a meeting that both agree needs to be attended.

Only meals, travel, lodging and registration fees will be paid consistent with policy established by the board.

SECTION 13.0 DEFINITIONS

Certain terms or words used herein are defined as follows:

1) *Aggrieved person*: Any person whose substantial interests are adversely affected by a determination. Aggrieved person may file appeals or appear in opposition to an application.

2) *Appeal*: A complaint of an injustice done or error committed in which both the facts and the law are reviewed. Board of Adjustment hear and decide appeals regarding interpretations of county zoning ordinances.

3) *Appellate body*: A body authorized to review the judgments made by other people or bodies. The Board of Adjustment hears appeals of the decisions of the zoning administrator. The Circuit Court hears appeals of the Board's decisions.

4) *Briefs*: A concise and brief statement expounding on the legal issues and the authorities.

5) *Certiorari*: A written order from a higher court to a lower court demanding a transcript of the proceedings of a case for review. Review of the Board's decision is by the Circuit Court in an action of certiorari. The records will be judged on the evidence presented and the procedures followed by the Board in hearing the case and reaching a decision.

6) *Executive (closed) session*: A session closed to the public based on a majority vote of the members for the purpose of deliberating quasi-judicial matters or conferring with legal counsel.

7) *Findings of fact*: A statement of the Board's rationale behind the decision and facts that support the decision.

8) *Hearing de novo*: To hear anew. The court may grant a hearing de novo if the decision was based on insufficient evidence or the findings of fact are insufficiently recorded.

9) *Moot question*: A hypothetical question. A question which does not rest upon existing facts or rights; a question as to which in reality there is no actual controversy existing.

10) *Unnecessary hardship*: A unique and extreme inability to conform to the provisions of a zoning ordinance due to physical factors, which are not solely related to economic loss or gain. An applicant must prove unnecessary hardship.

a. *Self-imposed hardship:* A hardship created by oneself. Examples include excavating a pond on vacant lot and then arguing that there is no suitable location for a home; claiming hardship for a substandard lot after selling off portions that would have allowed building in compliance; and claiming hardship after starting construction without required permits or during a pending appeal.

11) *Variance*: An action, which authorizes the construction or maintenance of a building in a manner inconsistent with the dimensional requirements of a zoning ordinance. A variance may only be granted in cases of unnecessary hardship and when the spirit of the ordinance is not violated.

BE IT FURTHER ORDAINED THAT THE BOARD OF ADJUSTMENT PROCEDURES ORDINANCE AS ADOPTED ON JUNE 17, 2003 (RESOLUTION #74-03) IS REPEALED.

Funding amount: N/A
Funding source: N/A
Date Finance Committee Advised: N/A
Effective data: Upon Publication.
Approved as to form:
Date Submitted to County Board: March 20, 2007
County Board action: Adopted as amended (pg 11).
Submitted by: