CHAPTER 13

BOARD OF ADJUSTMENT

13.01 GENERAL PROVISIONS
(1) Authority
(2) Conflict and Severability
(3) Title
(4) Definitions
(5) Membership
(6) Participation
(7) Conflict of Interest
(8) Ex Parte Disqualification
(9) Limitations
(10) Office of Record

13.02 OFFICERS, DUTIES AND STAFF ASSISTANCE
(1) Officers
(2) Duties of Officers
(3) Other Duties

13.03 MEETINGS
(1) Open to Public
(2) Date, Time, and Location of Meetings and Hearings
(3) Quorum
(4) General Order of Business
(5) Rules of Order
(6) Voting
(7) Compensation, Travel, and Other Personal Expenses

13.04 POWERS AND DUTIES OF THE BOARD
(1) General Powers
(2) Scope of Orders

13.05 APPEAL PROCEDURES
(1) Who May File
(2) Form of Appeal
(3) Copies to be Sent
(4) Time to File
(5) Reasons to be Stated
(6) Refusal to Hear Appeal
(7) Owner's Consent
(8) Filing Procedure
(9) Filing Fee
(10) Time for Hearing
(11) Notice of Hearing
(12) Effect of Appeal
(13) Representative Filing
(14) Contested Case Appeal Request

13.06 ON-SITE INSPECTIONS AND HEARINGS
(1) On-Site Inspections
(2) Appearance
(3) Oath
(4) Compelling Attendance of Witnesses
(5) Order of Appeals Heard
(6) Hearing Order of Business
(7) Determination of Jurisdiction
(8) Continuances
(9) Withdrawal
(10) Conduct, Recording, and Filing
(11) Parties Not to Interrupt
(12) Questions and Debate
(13) Presentation of Evidence
(14) Additional Evidence
(15) Rules of Evidence
(16) Chairperson to Rule on Admissibility
(17) Interested Persons May Testify

13.07 DECISIONS OF THE BOARD
(1) Majority Vote Required
(2) Time of Decision
(3) Form of Decision
(4) Variances
(5) Conditions
(6) Filing and Notice of Decision
(7) Closure of Appeal
(8) Deadline for Action on Granted Appeal
(9) Decision to Relate to Specific Property
(10) Informal Advice Not Binding
(11) Appeals to be Determined Individually
(12) Decisions to be Filed with the State
(13) Action in Circuit Court

13.08 REFILINGS, REOPENINGS AND REHEARINGS
(1) Refiling, Reopening, Reconsidering or Rehearing of a Matter
(2) Contents of Petition to Reopen, Reconsider or Rehear a Matter
(3) Board Action on Petition to Reopen, Reconsider or Rehear a Matter
(4) Effect of Petition to Reopen, Reconsider or Rehear a Matter
(5) Refusal to Accept Further Requests to Reopening, Reconsidering or Rehearing a Matter

13.09 SUPPLEMENTS TO AND SUSPENSION OF RULES
(1) Supplements
(2) Suspension of Rules

13.01 GENERAL PROVISIONS

(1) Authority. The County Board of Adjustment is established under the provisions of Chapter §59 Wis. Stats. Its organization and procedures shall be governed by Wisconsin law, these rules, and other applicable County ordinances. The Board assumes the responsibilities, duties, and powers as provided therein, and by related statutes or laws. These rules are supplementary to the provisions of the County Shoreland/Wetland, Floodplain and General Zoning Codes as they relate to the procedures of the Board of Adjustment.

(2) Conflict and Severability. In case of conflict between these rules and other County ordinances, Wis. Admin. Code or Wis. Stats., the more restrictive provisions shall prevail unless precluded by superior authority. In such case, all portions of these rules not in such conflict shall continue in full force and effect.

(3) Title. The official title of the board is the Marinette County Board of Adjustment.

(4) Definitions. Unless otherwise indicated by the context in these rules:

(a) ACTING MEMBER means a person who has been duly appointed to serve regularly in all proceedings of the Board of Adjustment.

(b) ADMINISTRATOR means the County Land Information Director or legal representative or agent thereof.

(c) ALTERNATE MEMBER is a member duly appointed to take the place of an acting member when an inability to serve arises.

(d) APPELLANT means the person entering the appeal or that person's attorney, agent, or other authorized representative.

(e) BOARD means the County Board of Adjustment, and each and every member thereof.

(f) CHAIRPERSON means the member actually presiding regardless of whether having been elected or temporarily filling the position.

(g) EXERCISE OF A PERMIT OR OTHER PRIVILEGE GRANTED BY THE BOARD ACTION means to obtain all required permits and to substantially commence work, including beginning excavation if that is part of the grant.

(h) MEETING means "hearing" where appropriate and shall include on-site inspections when applicable.

(i) MEMBER means all acting and alternate members.

(j) ORDINANCE means the County Shoreland/Wetland Zoning Code, Floodplain Zoning Code, Zoning Code and any other applicable ordinance.

(5) Membership. The Board shall consist of three (3) acting members and two (2) alternate members for a total of five (5) members, each acting member shall be appointed for staggered terms of three (3) years and each alternate member shall be appointed for staggered terms that will coincide with two (2) of the acting members terms. Appointments shall be by the County Administrator subject to approval by the County Board pursuant to Wis. Stats. Members must reside within the County but outside the city limits of any

incorporated city or village at the time of appointment. No two (2) members may reside in the same town. County Board members may serve as a member of the Board if residing in an unincorporated municipality but should be discouraged from serving unless no other appointees are available.

(6) Participation. A member shall participate in all proceedings of the Board except in the case of a conflict of interest, disqualification, excused absence, or other manifest inability to serve. However, no member serving as an alternate shall vote on whether or not to grant a variance or determine whether there was an error in an administrative officials decision.

(7) Conflict of Interest.

(a) Any member who has any direct or significant indirect interest in a matter before the Board shall not vote thereon nor participate in the deliberation of such matter at any meeting or hearing at which the matter is under consideration. However, a member may choose to temporarily step down from the Board and testify as a witness in that matter. In such case, that member shall not participate in subsequent Board proceedings on that matter.

(b) A conflict of interest shall be deemed to exist if:

(1) The member is the appellant or spouse of the appellant, or is related to the appellant within the third degree of consanguinity, or is the spouse or in loco parentis of someone so related; or

(2) The appellant is the employer, employee or partner of the member, or a corporation in which the member is a major shareholder or has major financial interest; or

(3) The member owns property within three hundred (300) feet of the property which is the subject of the appeal.

(8) Ex Parte Disqualification. A member may disqualify his/her self from participating in any proceeding whenever the appellant has sought to influence the vote of the member on that matter outside of the public hearing.

(9) Limitations. Nothing herein shall be construed to give or grant to the Board the authority to alter or change the Zoning Ordinance or zoning or other official maps of the county, which authority is reserved to the County Board of Supervisors.

(10) Office of Record. The office of record of the Board shall be at the same location as that of the County Land Information Director, which, at the time of adoption of these rules is the Marinette County Courthouse, Marinette, Wisconsin. The mailing address shall be the same as that of the Marinette County Land Information Department, which, at the time of adoption of these rules, is 1926 Hall Avenue, Marinette, WI 54143-1717. All records of the Board shall be available for public inspection at the office of record during legal working hours as designated by the County Board of Supervisors.

13.02 OFFICERS, DUTIES, AND STAFF ASSISTANCE

(1) Officers. The Board shall elect a chairperson, a vice chairperson, and a secretary from among its acting members at the annual organizational meeting in July or the first meeting scheduled after July 1st. No acting member shall

hold more than one (1) office. These officers shall hold office for one (1) year, or until their successors are elected. The Board may, at any meeting or hearing, elect from among its members the replacement for an officer who is unable to continue to perform the duties of that office. The officer, so elected as a replacement, shall serve until the next organizational meeting of the Board.

(2) Duties of Officers.

(a) CHAIRPERSON. The Chairperson shall preside over and direct the conduct of all meetings and hearings of the Board, may administer oaths, and may compel the attendance of witnesses through the issuance of subpoenas. The Chairperson shall, subject to these rules and further instructions from the Board, determine the dates, times, and locations of meetings; direct the official business of the Board; supervise the work of the Secretary; and decide all points of procedure or order. The Chairperson may be overruled by a majority vote of the members present and voting.

(b) VICE CHAIRPERSON. The Vice Chairperson shall assume the duties and authority of the Chairperson or the Secretary in the absence or inability of either to serve.

(c) SECRETARY. 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 accurately reduce to writing the testimony of those appearing before the Board and keep a verbatim recording of all hearings; shall record the names and addresses of all persons appearing before the Board in person, or by attorney, agent, or representative; and shall, subject to direction of the Board and Chairperson, conduct the correspondence of the Board; have published in the official County newspaper, public notices of meetings and hearings as required by law and these rules of procedure; file minutes and records in the office of record 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 in performing these duties.

(3) Other Duties.

(a) Clerical assistance, including a person to act as recording secretary for all Board proceedings, shall be provided by the Administrator. The Administrator or a staff member designated by the Administrator may attend and advise the Board at meetings, on-site inspections, and hearings, except closed executive sessions and unless determined otherwise by the Chairperson.

(b) The County Corporation Counsel, or designated representative, shall be the legal counsel for the Board, except in those cases where independent legal counsel is necessary. In case of conflict, the Board shall request approval for independent legal counsel from the Finance Committee.

Advice of counsel shall be received before disposition of any question of law or matter requiring legal advice, as determined by the Board.

13.03 MEETINGS

(1) Open to Public. In accordance with the state Open Meeting Law, all proceedings of the Board shall be open to the public, except that, with prior public notice, the Board may go into closed executive session to deliberate or consider, or to consult with legal counsel, on litigation to which the Board may be, or is, a party. Formal decisions on all matters shall be rendered in open session.

(2) Date, Time, and Location of Meetings and Hearings. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. Public notice shall be made in accordance with law and as prescribed herein. Notice to each member and the Administrator shall be hand delivered or sent by mail not less than five (5) business days prior to the meeting date. Should a member or the Administrator not receive written notice but nevertheless be present at the meeting, the requirement for written notice is waived.

(3) Quorum. A quorum sufficient for the conduct of business at any meeting shall be a majority of acting members, but not less than two (2).

(4) General Order of Business. The general order of business shall be:

(a) Call to order.
(b) Roll Call.
(c) Approval of minutes of previous meeting.
(d) Unfinished business.
(e) New business.
(f) Closed executive session to discuss litigation.
(g) Next meeting.
(h) Adjourn.

(5) Rules of Order. Robert's Rules of Order in the most recent published version shall govern during meetings and hearings except where otherwise prescribed by law, ordinance, or these rules.

(6) Voting.

(a) WHO SHALL VOTE. Unless absent or abstaining for good cause which shall be disclosed, each acting member, including the Chairperson, shall vote on each motion or other decision to be taken by the Board.

(b) ABSTENTION. Any member having a conflict of interest as defined in these rules of any matter before the Board shall not participate in the discussion of, or decision on, that matter. A member may choose to temporarily step down from the Board and testify as a witness in that matter. A member shall announce an intent to abstain from an appeal, and the reason(s) therefore, at the beginning of each consideration of that appeal and prior to each vote thereon. Such announcement and abstention shall be recorded in the minutes of the proceedings. If an acting member announces abstention an alternate member, if present, shall take the acting member's place for the proceedings and vote.

(c) DECISION. Each action of the Board shall be taken by majority affirmative vote of at least two (2) of the acting members. A tie vote resulting from the absence of an acting member and both alternates shall cause a proposed action to be delayed until such time as three (3) acting members are present and voting and a majority vote can be obtained. The action of the majority shall be the action of the entire Board, which speaks as a single entity.

(d) RECORD OF VOTE. The Secretary shall record the vote of each member on every question. If an acting member is absent, or is present but abstains and is replaced by an alternate member the fact shall be entered in the record of proceedings.

(7) Compensation, Travel, and Other Personal Expenses. Members shall be compensated for time, travel, and other expenses as allowed by the County Code of Ordinances. Assisting administrative staff, when required to travel as part of the official duties in conjunction with proceedings of the Board, shall be entitled to reimbursement of travel and other personal expenses as allowed by the County Policies and Procedures Manual.

13.04 POWERS AND DUTIES OF THE BOARD

(1) General Powers. The powers and duties of the Board are identified in applicable sections of the state statutes and in the applicable Zoning Ordinances. The Board shall have the following general powers:

(a) 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 Wis. Stats., or of any part of the County Zoning Ordinances.

(b) To authorize, upon appeal, such variance from the terms of the Zoning Ordinances as meet the requirements for hardship, unique property limitation, and public interest.

(2) Scope of Orders. In exercising the foregoing powers, and consistent with statutes and case law, 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 or committee from whom the appeal is taken, and may issue or direct the issuance of a permit, or authorize a privilege, subject to conditions and limitations where deemed appropriate by the Board.

13.05 APPEAL PROCEDURES

(1) Who May File. Appeals to the Board shall be filed with the Administrator. Appeals shall be accepted from any person aggrieved, or agent thereof, or from any officer, department, board, or bureau of the municipality affected, or agent thereof. An aggrieved person may be any person or legal entity, including a corporation or partnership, holding an interest in the property involved in the action, including a potential purchaser who has made an offer to purchase, or a purchaser under a land contract or a tenant for one (1) year or more. Neighbors and residents or other property owners near the property

involved may also appeal on a showing of injury to themselves or to the use and enjoyment of property they own or occupy. The Board may dismiss appeals which do not have standing for an appeal as described herein.

(2) Form of Appeal. Appeals shall be submitted on the form prescribed by the Board of Adjustment. The appellant shall provide all applicable information requested on the form. A scale drawing shall accompany each form showing the location and size of the property; existing structures, wells, and sanitary systems; all abutting properties and structures thereon; and change or addition requested. The appellant shall state all plans for future development or construction which may affect the property or the action on this appeal. The appellant shall also provide any additional information requested in writing by the Chairperson, Secretary, or their authorized representative. Failure to submit the appeal on the proper form or to supply the requested additional information at or before the hearing without good cause shall be sufficient grounds for dismissal, or denial of the appeal, or continuance of the hearing until such information is received by the Board.

(3) Copies to be Sent. The Administrator shall promptly transmit copies of the original appeal and associated documents to the Board. In the case of appeals affecting property in the shoreland or floodplain districts, one (1) copy of the appeal shall also be sent to the state DNR. Each member shall receive one (1) copy of the appeal with the Notice of Public Hearing and meeting agenda. Said copies shall be transmitted not less than five (5) business days before the public hearing.

(4) Time to File.

(a) CONSIDERATION. To be considered by the Board, an appeal must be received at the Board office of record within thirty (30) calendar days of written notification of the action to be appealed. Notification of the action to be appealed shall be deemed effected on the date of hand delivery to the affected individual or agent thereof, or upon deposit in the U.S. mails showing the last known address of the applicant or agent thereof and with sufficient first class postage affixed.

(b) PROPER FORM. If a written communication appearing, or purporting, to be an appeal is received within the period allowed for appeal but is not in the proper form, one (1) extension of ten (10) calendar days shall be automatically allowed beyond the original thirty (30) day deadline. In that case, the Administrator shall, within three (3) business days of receipt of such a communication, cause to be delivered or mailed to the appellant the proper appeal form.

(c) APPEAL DEADLINE. The appeal deadline shall be determined by counting the day after the effective date of notification by the Administrator and all ensuing calendar days, including intervening Saturdays, Sundays, and federal legal holidays. Should the final day of the appeal period fall on a day the Board office is not open for business, the filing deadline date shall be extended to the next day it is open for business. Appeals must be received at the Board office by close of business on the final day allowed for appeals.

(5) Reasons to be Stated. The reason for the appeal must be stated and the reasons why the appeal should be granted must also be stated by the appellant:

(a) If a variance is requested, the variance requested must be specifically stated and facts should be stated upon which findings may be made by the Board to address statutory criteria and justify the granting of the variance.

(b) If an appeal is based upon a disputed interpretation of the ordinance, the specific section of the ordinance in question must be identified, along with the appellant's interpretation and supporting rationale.

(c) If an appeal alleges an error or abuse of discretion of the Administrator, the specific error or abuse must be clearly and fully identified and facts stated as to why it is in error or abusive.

(6) Refusal to Hear Appeal. The Board may refuse to hear an appeal upon the failure of the appellant to supply the required and any additional information reasonably required by the Administrator, and/or Board Secretary.

(7) Owner's Consent. The appeal form shall bear the signature of the owner of the property affected, or legal agent thereof, or shall be accompanied by a letter from that owner or agent acknowledging the filing of the appeal. As an exception, the signature or consent of the owner or legal agent shall not be required where the appellant is in an adversary position to the owner. In that case, the appellant shall attach to the appeal form a signed statement explaining why the signature or consent of the owner or legal agent thereof cannot reasonably be obtained.

(8) Filing Procedure. The appellant shall submit the required appeal form with accompanying information and evidence of payment of the filing fee to the Administrator. Upon receipt, the Administrator shall make available to the Board all papers and other evidence constituting the complete record of the action on which the appeal purports to be based, along with any other files or copies of documents which may relate to the appeal.

(9) Filing Fee. All appeals submitted to the Board must be accompanied by evidence of payment of the fee prescribed by the County Board. No appeal will be acted upon without payment of that fee. Such fee is not refundable regardless of final disposition of the appeal.

(10) Time for Hearing. Each appeal shall be considered by the Board as soon as is reasonably possible, normally within forty-five (45) calendar days of date of receipt of the appeal, provided there is sufficient time between the date of the appeal and the date of the meeting for the required hearing notices to be published.

(11) Notice of Hearing. Notice of the time, date, and place of the hearings and related on-site inspections shall be given as follows:

(a) Notice shall be hand delivered or sent by certified U.S. Mail, not less than five (5) business days prior to the hearing, to the following.

(1) Appellant.

(2) The owners of record of all lands immediately adjacent to the land involved in the appeal.

(3) All other known parties believed to have an interest, including municipalities, community organizations, and affected state agencies.

(b) A combined Class 2 notice and Open Meeting Law notice, in accordance with Wis. Stats., shall be published in the official County newspaper. The notice shall be published on two (2) consecutive weeks with the last publication occurring at least seven (7) days prior to the hearing. The notice shall include the appellant's name; the nature of the appeal; the location and description of the property involved; the fact that an on-site inspection shall be conducted when applicable and the approximate time; the date, time, and place of the hearing; the time and purpose of any closed executive sessions; and a listing of persons who should attend.

(12) Effect of Appeal. A timely 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, after the notice of appeal shall have been filed with said officer, 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, other than by a restraining order, which may be granted by the Board, or by a Court of Record, on application and notice to the officer from whom the appeal is taken and on due cause shown.

(13) Representative Filing. An appellant may file an appeal personally or by an attorney, agent, or other representative.

(14) Contested Case Appeal Request. An appellant or other interested party may request that the appeal be handled as a contested case appeal.

(a) A request to have the matter treated as a contested appeal must be made in writing and provide with the application for appeal. A final determination on whether to handle the appeal as a contested case appeal shall be at the discretion of the Chairperson.

(b) If the appellant requests the contested case appeal method and the Chairperson approves the request, the filing fee shall include an additional amount determined by the County Board to cover the additional administrative costs involved.

13.06 ON-SITE INSPECTIONS AND HEARINGS

(1) On-Site Inspections.

(a) Unless determined to be unnecessary by the Chairperson, an on-site inspection shall be conducted prior to the first public hearing on each appeal. The inspection shall be conducted on the same day, and prior to, the hearing. The Board, accompanied by the Administrator or a member of the Administrator's staff who acted on the matter under appeal when possible, shall visit the site on the date and at the approximate time announced in the public notice.

(b) Should an acting member be absent for good reason during the on-site inspection, and a decision not be reached on the appeal that same day, the absent member may make an independent site inspection. That inspection shall be made only with prior approval of the Chairperson and the appellant or agent thereof, and under arrangements agreeable to the latter. The conduct of such an independent on-site inspection shall be announced and recorded in the proceedings when next the appeal is heard by the Board.

(c) The appellant shall give directions to the site and cause the property lines to be clearly marked, proposed structure outlines, location of sanitary facilities, wells, and other pertinent physical features prior to the arrival of the Board. The appellant, or a representative thereof, shall be present to guide the Board. Other interested persons and members of the general public shall be allowed to enter on the property with the Board and to hear and observe the proceedings. Should the appellant or representative agent be absent without good cause, or entrance on the property be denied to the Board or the public, the Board may dismiss, deny, or continue the appeal.

(d) Measurements and photographs may be taken as deemed appropriate by the Board and/or the Administrator. Questions, comments, and discussion during the inspection shall be limited insofar as possible to the dimensions, location, and appearance of the property, structures, and other physical features, and shall not constitute testimony in the appeal.

(e) The Secretary, or in the Secretary's absence a member or staff person designated by the Chairperson, shall record who was present at the inspection along with a summary of the observations made and general substance of discussion held, and any other pertinent matters, all of which shall become a part of the record of the appeal and made known during the hearing for the record.

(2) Appearance. The appellant may appear in person, or be represented by an attorney, agent, or other representative. If the appellant does not appear and is not represented at the hearing and on-site inspection, the Board may dismiss, deny, or continue the appeal, or may dispose of the matter entirely on the basis of testimony and evidence from others.

(3) Oath. No oath shall be given at an on-site inspection as no testimony shall be taken or recorded there. All persons testifying or presenting evidence at a hearing shall first present themselves before the Board, shall identify themselves by name, address, and interest in the appeal, and shall be placed under oath. The oath may be administered by the Chairperson or other member under the Chairperson's direction. The oath shall be substantially as follows: "Do you solemnly declare and affirm that the testimony and other evidence you shall give in this matter shall be the truth, the whole truth, and nothing but the truth, to the best of your knowledge, under penalty of perjury?"

(4) Compelling Attendance of Witnesses. The Chairperson may compel the attendance of witnesses by subpoena.

(5) Order of Appeals Heard. Appeals shall be numbered and heard in the order the appeal fee was paid except by order of the Chairperson or the Board for good cause.

(6) Hearing Order of Business. The order of business at a hearing shall be:

(a) Call to order by Chairperson.
(b) Roll call by Chairperson.
(c) Introduction of members and staff by Chairperson.
(d) Reading of public notice of meeting by Chairperson.
(e) Hearing on each appeal:

(1) Reading of public notice by the Administrative staff or Chairperson.
(2) Consider question of jurisdiction, if applicable.
(3) Reading of correspondence by Administrative staff or Chairperson as appropriate.
(4) Appellant's case.
(5) Administrator's case.
(6) Testimony of other interested persons.
(7) Appellant's rebuttal.
(8) Opposition's rebuttal.
(9) Appellant closing statement
(10) Administrative closing statement
(11) Closing of hearing on appeal by Chairperson.

(f) Consideration of Appeal. Closed executive session when applicable and legally noticed.
(g) Motions and votes for disposition of appeals.
(h) Adjournment.

(7) Determination of Jurisdiction. Following the reading of the public notice, the Board may hear arguments on the question of jurisdiction and request that briefs be filed on the issue. 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 the hearing is closed and render a decision on the merits as if it had jurisdiction. At any point, the Board may make an immediate determination and close the hearing upon a 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 dismiss the request.

(8) Continuances. When all appeals cannot be disposed of on the day set, the Board may adjourn, from day to day or to a certain future day as it may order, to complete consideration of undecided appeals. Such adjourned day shall be construed as a continuance of the hearing. The Board may also continue consideration of an appeal on the request of the appellant or Administrator for good cause. The date, time, and place of the continuance shall be announced prior to adjournment. Notice of such adjournment shall be given to absent members. Notice shall also be given to the Administrator and appellants of continued appeals if not represented at the hearing when the continued hearing date, time, and place is announced. Such notice may be by telephone if the next adjourned day is less than four (4) working days hence. If four (4) or more working days hence, such notice shall be given in writing by hand delivery or via the U.S. Mails.

(9) Withdrawal. An appellant may withdraw an appeal at any time prior to the decision thereon, but if a motion is pending to act on the appeal, that motion shall have precedence. Withdrawal of the appeal shall not entitle the appellant to remission of the filing fee.

(10) Conduct, Recording, and Filing.

(a) Hearings shall be conducted as quasi-judicial proceedings.
(b) The entire hearing shall be tape recorded or video recorded and reduced to writing in a form determined by the Board, which shall be retained in the

official record of the appeal. Documents and other evidence presented shall be noted in the hearing record and incorporated into the official file on the appeal. Recordings of the hearing shall be retained for a minimum of one hundred twenty (120) days after the hearing unless an appeal is received in which the recording shall be retained until the matter has been heard by the Court.

(c) Any party or member of the public may make a record of the proceedings by any means which does not disturb the hearing or others present.

(11) Parties Not to Interrupt. Orderly procedure requires that each side shall proceed without interruption by the other. All arguments and pleadings shall be addressed to the Chairperson. Questioning or arguments between individuals shall not be permitted.

(12) Questions and Debate. During the hearing, the Chairperson and members may ask questions and make appropriate comments pertinent to the appeal. However, no debate or argument with the appellant or any witness shall be allowed. The Chairperson and members may direct any question to the appellant or to any person speaking in order to bring out all relevant facts, circumstances, and conditions affecting the appeal and may call for questions from members of the staff, the appellant or representative thereof, or any other interested person present.

(13) Presentation of Evidence. All supporting evidence for and against each appeal shall be presented to the assembled Board. The appellant shall be responsible for the presentation of all information supporting the appeal. The Board may take administrative notice of the ordinances of the County and laws of the state and of other relevant facts not reasonably subject to dispute on its own motion or motion of a party.

(14) Additional Evidence. The Board may take an appeal under advisement for later consideration and determination, or may defer action whenever it concludes that additional evidence is needed or further study is required.

(15) Rules of Evidence. The Board shall not be bound by judicial rules of evidence, but it may exclude irrelevant, immaterial, incompetent, unduly argumentative, or repetitious testimony or evidence. In contested case appeal hearings, §227.44 Wis. Stats., shall apply.

(16) Chairperson to Rule on Admissibility. The Chairperson shall rule on all questions relating to the admissibility of evidence, which ruling may be overruled by a majority of the Board.

(17) Interested Persons May Testify. Any person having an interest in the appeal may request an opportunity to testify by signing the list of persons attending the hearing and noting a desire to testify. All testimony shall be under oath.

13.07 DECISIONS OF THE BOARD

(1) Majority Vote Required. The affirmative vote of a majority of all acting members, but not less than two (2) affirmative votes, shall be necessary for final action by the Board on any matter in question before it. A tie vote resulting from the absence or abstention of a member and the absence of both alternate members shall cause the decision or action to be delayed until such

time as additional members are present and voting and a majority vote is obtained. The action of the majority shall be the action of the entire Board, which speaks as a single entity.

(2) Time of Decision. Unless continued at the request of the appellant or Administrator, or for other good cause such as a tie vote, the Board shall render a decision on each appeal within thirty (30) days thereafter.

(3) Form of Decision. The decision on an appeal shall be in a form prescribed by the Board. The decision shall be in writing and shall be signed by the Chairperson. The decision shall indicate the findings of fact in the appeal and the rationale for the Board's decision. The decision shall clearly indicate the reason the appeal is dismissed, granted in whole or in part or subject to specific conditions, or denied. When applicable, the decision shall specify the subsequent action to be taken by the Administrator.

(4) Variances. Section 21.11(5) & (6) of the Marinette County Shoreland/Wetland Zoning Code, Section 19.10(2) of the Marinette County Floodplain Zoning Code and Section 17.13 of the Marinette County Zoning Code are incorporated herein by reference and made a part hereof as though fully set forth.

(5) Conditions. Conditions imposed by the Board in the granting of any appeal shall be specifically stated in the decision and shall be fully set forth in any subsequent order or permit issued by the Administrator. Permits issued or variances approved under a conditional approval by the Board shall be valid only so long as the conditions are observed. Any violation of conditions specified may result in revocation of a permit or other privilege granted by the Board after notice and an opportunity to be heard. The appellant shall report in writing to the Administrator within thirty (30) days after the terms or special conditions specified in the decision that such terms or conditions are met.

(6) Filing and Notice of Decision. Every Board decision on an appeal shall be officially filed in the office of record of the Board not later than by five (5) business days after the rendering of the decision. Each decision shall be a public record. A copy of the findings and decision shall be sent to the appellant by certified mail within two (2) business days after the filing of the decision.

(7) Closure of Appeal. An appeal will be considered as heard and closed at such time as the Board grants, denies, rejects, or dismisses an appeal by motion or if considered closed by operation of these rules.

(8) Deadline for Action on Granted Appeal. Unless otherwise specified by the Board, any permit and/or other privilege granted as part of a decision must be exercised by the appellant within two (2) years of official filing of the decision. If not exercised within the time allowed, the permit and/or other privilege shall be automatically null and void. An extension for exercise of the permit or privilege may be granted by the Board upon written application by the appellant without additional fee and for good cause as determined by the Board.

(9) **Decision to Relate to Specific Property.** The decision of the Board shall apply to the property rather than to any individual, is valid only for the specific premises in the appeal, and is not transferable to other properties.

(10) **Informal Advice Not Binding.** No informal request for advice or action on moot questions shall be accepted or considered by the Board. Any advice, opinion or information given by any individual member or any other official or employee of the County on a matter before the Board shall not be binding on the Board.

(11) **Appeals to be Determined Individually.** No decision of the Board shall set a binding precedent. Each appeal shall be decided upon its merits and upon the attendant circumstances, provided the Board shall not act arbitrarily or capriciously.

(12) **Decisions to be Filed With the State.** Decisions on floodplain and shoreland-wetland zoning appeals, and variances shall be sent to the district office of the WDNR. Said decisions shall be furnished to the WDNR within ten (10) days of the official filing date.

(13) **Action in Circuit Court.** Any person or persons jointly or severally aggrieved by any decision of the Board; any taxpayer; or any governmental officer, department, board or bureau; may petition the Circuit Court for a 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 of the Board. The expiration of the thirty (30) day period in which petition may be filed with the Court shall be determined in the same manner as specified in §13.05(4)(c) of these rules, unless otherwise determined by the Court.

13.08 REFILINGS, REOPENINGS, RECONSIDERATION AND REHEARINGS.

(1) **Refiling, Reopening, Reconsidering or Rehearing of a Matter.** No appeal or application, which has been dismissed, shall be reconsidered unless the applicant or Party in Interest can show a material change in circumstances. The Board shall not reopen, reconsider or rehear any issue already decided by the Board except upon an affirmative vote of a majority of the acting members upon finding that substantial material new evidence has been submitted which could not have been reasonably presented at the previous hearing. The Board shall not reopen, reconsider or rehear an application or appeal that was dismissed because the appellant or Person in Interest or his/her agent failed to appear at a scheduled hearing and was unable to show good cause for such nonappearance. A change of ownership or the passage of time shall not constitute a basis for another hearing before the Board.

(2) **Contents of Petition to Reopen, Reconsider or Rehear a Matter.** A petition to reopen, reconsider or rehear that pertains to a property or portion of a property that has been the subject of a previous appeal, must be in writing and address in detail all of the following:

(a) Identify all previous appeals pertaining to the property.

(b) Identify the reason for the request.

(c) Identify the substantial new evidence, which could not have been presented at the original hearing.

(3) **Board Action on Petition to Reopen, Reconsider or Rehear a Matter.** A simple majority vote shall be sufficient to reopen, reconsider or rehear a matter. The decision to grant or deny a petition to reopen, reconsider or rehear shall restate the basis for the petition, the reason why the Board granted or denied the petition and the vote of the Board members. If a petition to reopen, reconsider or rehear an appeal is granted, the scope of the hearing shall be limited to the matters that constitute the basis of the petition to reopen, reconsider or rehear the appeal and the matter shall be subject to all of the Board's applicable rules of procedure. The Secretary shall reject requests by a Party in Interest to reopen, reconsider or rehear a matter filed more than thirty (30) calendar days after the official filing of the decision. This petition or rejection will have no effect on the running of the original thirty (30) day period specified in sub. (5) below. If reconsideration is approved, the petition will be placed on the agenda for the earliest possible scheduled meeting of the Board, normally within forty-five (45) calendar days of the Board's decision to reconsider, provided there is sufficient time between the date of decision to reconsider and the date of the meeting for the required hearing notices to be published. Notice of reopening, reconsidering or rehearing a matter will be provided as was required for the original hearing.

(4) **Effect of Petition to Reopen, Reconsider or Rehear a Matter.** The filing of a petition to reopen, reconsider or rehear shall stay the running of the thirty (30) day period during which an action must be commenced seeking the remedy available by certiorari. If the Board decides to not reopen, reconsider or rehear the appeal, the balance of the said thirty (30) day period will begin to run from the date the written decision to not reopen, reconsider or rehear is filed in the office of record of the Board. If the Board decides to reopen, reconsider or rehear the appeal, a hearing shall be scheduled and any decision filed by the Board shall be subject to a new thirty (30) day period during which such certiorari action must be commenced.

(5) **Refusal to Accept Further Requests to Reopening, Reconsidering or Rehearing a Matter.** Should a request for reopening, reconsidering or rehearing a matter be determined by the Board to be capricious or manifestly or totally without merit, or for the purpose of delaying the effect of the Board's decision on the appeal, or for extending the period in which a petition to Circuit Court may be filed, the Board may by motion refuse to accept further filings for reopening, reconsidering or rehearing a matter. In that case, the Board may further order an end by a specified date for any further consideration of the appeal or extension of deadline for further action.

13.09 SUPPLEMENTS TO AND SUSPENSION OF RULES

(1) **Supplements.** These rules of procedure may be supplemented by unanimous vote of all members at any meeting, provided written notice of the proposed action, including the complete wording proposed, has been given to each member at least ten (10) calendar days before such meeting, and provided public notice shall have been given of a proposed action to supplement these rules, and further provided that no supplement shall be contrary to law or County ordinances. Upon adoption of such supplements, the Board may

submit the same to the County Board through the Land Information Committee for consideration as an amendment to this chapter of the County code.

(2) Suspension of Rules. This section and provisions of these rules prescribed by law or other ordinance, including public notice requirements, may not be suspended by action of the Board. Robert's Rules of Order may be temporarily suspended for an explicitly stated good cause at any meeting by unanimous vote of all acting members present. Such temporary suspension shall not extend beyond adjournment of that meeting or hearing at which the suspension was approved.
(Ord #301 4/18/06)