

CHAPTER 1222
Wetlands

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CROSS REFERENCES

Uses of land or structures not conforming to ordinances; powers of legislative bodies; acquisition of property - see M.C.L.A. 125.583a

Goemaere-Anderson Wetland Protection Act - see M.C.L.A. 281.708

Malicious destruction of trees - see M.C.L.A. 750.382; GEN. OFF. 666.01(17)

Waterfront lots - see P. & Z. 1286.11

1222.01 SHORT TITLE.

This chapter shall be known and may be cited as the "Village of Caseville's Wetlands Ordinance."

(Ord. 90-4. Passed 9-10-90.)

1222.02 PURPOSE.

The wetlands of the Village are indispensable but sensitive natural resources subject to flooding, erosion, soil bearing capacity limitations, and other hazards. In their natural state, wetlands serve multiple functions for flood control, storm water storage and release, pollution control, erosion control, wildlife habitat, aesthetics, open space, and recreation. The continued destruction and loss of wetlands constitutes a distinct and immediate danger to the public health, safety, and general welfare.

Throughout the State, considerable acreage of these important natural resources has been lost or impaired by draining, dredging, filling, excavating, building, polluting, and other acts inconsistent with the natural uses of such areas. Remaining wetlands are in jeopardy of being despoiled or impaired.

Pursuant to the Michigan Constitution of 1963, Article IV, Section 52, the conservation and development of natural resources of the State is a matter of paramount public concern in the interest of the health, safety, and general welfare of the people. It is, therefore, the policy of the Village of Caseville, to:

- (a) Protect wetlands while taking into account varying economic, ecological, hydrologic, recreational, and aesthetic values;
- (b) Provide for the protection, preservation, replacement, proper maintenance, and use of wetlands located in the Village of Caseville in order to minimize disturbance to them and to prevent damage from erosion, siltation, and flooding;
- (c) Provide for the issuance of use permits and approved activities;
- (d) Establish standards and procedures for the review of proposed activities in wetlands;
- (e) Establish penalties for the violation of this chapter.
(Ord. 90-4. Passed 9-10-90.)

1222.03 DEFINITIONS.

The following terms, phrases, words and their derivatives shall have the meaning, given herein, unless the context otherwise requires:

- (a) "Activity" means any use, operation, or action, including, but not limited to, filling, dredging, constructing, or excavating material and/or structures.
- (b) "Aquatic vegetation" means plants and plant life forms which naturally occur in, at, near, or predominantly near water.
- (c) "Bottomland" means all land areas of a lake, stream, or watercourse which lie below the ordinary high water mark and which may or may not be covered by water.
- (d) "Channel" means the geographical area within the natural or artificial banks of a watercourse required to convey continuously or intermittently flowing water under normal or average flow conditions.

- (e) "Drainageway" means any drain, pipe, stream, creek, or swale which serves to transport water runoff to the primary watercourse system.
- (f) "Fill material" means any soil, sand, gravel, clay, peat, debris, refuse, waste of any kind, or any other material which displaces soil or water or reduces water retention potential.
- (g) "Floodplain" means any area with a waterway, drainageway, drain, river, stream, lake, pond, or retention basin, or any body of surface water having well-defined banks, whether continually or intermittently flowing with an elevation below the determined 100-year floodplain.
- (h) "Official Map" means the official Wetlands Map of the Village of Caseville, as amended or updated from time to time, a copy of which shall be on file with the Village Clerk.
- (i) "Ordinary high water" means the line between upland and bottomland which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is markedly distinct from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation. On an inland lake which has a level established by law, the ordinary high water mark means the high establishing level. When water returns to its natural level as a result of the permanent removal or abandonment of a dam, it means the natural ordinary high water mark.
- (j) "Owner" means any person who has dominion over, control of, title to and/or any other proprietary interest in wetland areas, or title to an obstruction, natural or otherwise, to wetland properties.
- (k) "Person" means any individual, firm, partnership, association, corporation, company, organization, or legal entity of any kind, including governmental agencies, conducting operations within the Village of Caseville.
- (l) "Runoff" means surface discharge of precipitation to a watercourse or low area.
- (m) "Seasonal" means any intermittent or temporary activity which occurs annually and is subject to interruption from changes in weather, water level, or time of year, and may involve annual removal and replacement of a device or structure.
- (n) "Structure" means any assembly of materials above or below the surface of the land or water, including, but not limited to, houses, buildings, bulkheads, piers, docks, landings, dams, waterway obstructions, towers, and utility transmission devices.
- (o) "Temporary" means a time period as specified in the use permit, or if unspecified, means an uninterrupted time period less than one year in duration.

- (p) "Upland" means the land area adjoining a lake, stream, watercourse, or wetland above the ordinary high water mark, and the uses of which are essentially nonaquatic.
- (q) "Wetlands" means lands characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances do support, wetland vegetation or aquatic life and are commonly referred to as bogs, swamps, marshes and wet meadows.
(Ord. 90-4. Passed 9-10-90.)

1222.04 APPLICATION OF CHAPTER.

Those wetlands subject to the regulatory terms of this chapter include:

- (a) All wetlands contiguous to designated watercourses, including, but not limited to, a twenty-five foot buffer zone on each side of the Pigeon River and a ten-foot buffer zone on each side of other streams and drains illustrated on the official Wetlands Map.
- (b) All other wetlands determined by the Village of Caseville to be essential for preventing pollution, impairment or destruction of natural resource systems and the environment, and which are so designated on the official Wetlands Map.
- (c) All retention and detention facilities constructed for the purpose of collecting and/or directing runoff water onto any wetland identified on the official Wetlands Map.
(Ord. 90-4. Passed 9-10-90.)

1222.05 OFFICIAL WETLANDS MAP.

(a) The designated wetlands are hereby established as shown on the official Wetlands Map, as provided in Appendix I following this chapter, which, with all notations, references, and the information shown thereon, is as much a part of this chapter as if fully described herein. If, because of problems with scale or detail, there is any ambiguity as to whether a particular area is a part of a wetland, that determination shall be made by the body or official reviewing the use or activity for that area. The map shall include the location of designated lakes, streams, drains, and vegetative wetlands. The map is based on the most accurate information available from State and County agencies.

(b) The Village Council may revise the official Wetlands Map at any time that new and substantial data for wetlands are available. If the official Wetlands Map is amended, and an individual property or several properties are affected, notice of the proposed amendment and the hearing thereon shall be given to all owners of such property or properties at least fifteen days before the hearing.
(Ord. 90-4. Passed 9-10-90.)

1222.06 NOTICE TO DEPARTMENT OF NATURAL RESOURCES.

The Village of Caseville shall notify the Department of Natural Resources of the State of Michigan of the adoption of this chapter. The Village shall enter into an agreement with the Department of Natural Resources providing for the exchange of information and for the coordination of the granting of permits, as required by Section 8 of the Goemaere-Anderson Wetland Protection Act, Act 203 of the Public Acts of Michigan of 1979 (M.C.L.A. 281.708; M.S.A. 18.595(58), as amended).

(Ord. 90-4. Passed 9-10-90.)

1222.07 INSPECTIONS.

The Village of Caseville, its officials, agents, and employees may make reasonable entry upon any lands or water within the Village for the purpose of enforcing this chapter or conducting any investigation, survey, or study contemplated by this chapter.

(Ord. 90-4. Passed 9-10-90.)

1222.08 USE PERMITS REQUIRED.

Except for those activities expressly permitted by Section 1222.09, it shall be unlawful for any person to conduct any activity within a wetlands area without first having obtained a use permit upon proper application, including, but not limited to, the following:

- (a) Depositing or permitting the depositing of any material, including, but not limited to, hazardous chemicals, non-biodegradable aquatic pesticides and herbicides, and harmful fertilizers into, within, or upon any watercourse or wetland area.
- (b) Dredging, removing, or permitting the dredging or removal of material or minerals from a watercourse or wetland area.
- (c) Erecting or building any structure, including, but not limited to, buildings, roadways, bridges of any type, tennis courts, paving, utility or private poles, or towers within or upon any wetland area.
- (d) Constructing, operating or maintaining any land use or development in a wetland area.
- (e) Enlarging, diminishing, or altering any lake, stream, or other naturally occurring watercourse.
- (f) Creating, enlarging or diminishing any natural or artificially constructed canal, channel, ditch, lagoon, pond, lake, or other waterway for navigation or any other purpose, whether or not connected to an existing lake, stream or watercourse.

- (g) Constructing, placing, enlarging, extending, or removing any temporary, seasonal, or permanent operation or structure upon bottomland or wetlands, except seasonal docks, rafts, diving platforms, and other water recreational devices customarily owned and used by individual households.
- (h) Constructing, extending, enlarging, or connecting any conduit, pipe, culvert or open or closed drainage facility carrying storm water runoff from any site, or any other land use permitting discharge of silt, sediment, organic or inorganic material, chemicals, fertilizers, flammable liquids, or other polluting substances, except in accordance with requirements of County, State, and Federal agencies, and the Village of Caseville.
- (i) Constructing, enlarging, extending, or connecting any private or public sewage or waste treatment plant discharge to any lake, pond, stream, watercourse, or wetland, except in accordance with requirements of County, State, and Federal agencies, and the Village of Caseville.
(Ord. 90-4. Passed 9-10-90.)

1222.09 PERMITTED ACTIVITIES.

Notwithstanding the prohibitions of Section 1222.08, the following activities are permitted within wetland areas without a use permit, unless otherwise prohibited by statute or ordinance:

- (a) Fishing, trapping, and hunting.
- (b) Conservation of soil, vegetation, water, fish, wildlife, and other natural resources.
- (c) Swimming and boating.
- (d) The operation and maintenance of existing dams and other water control devices, if in compliance with all applicable statutes and ordinances.
- (e) Actions taken in terms of emergency, including the repair or restoration of public roads, electrical lines, natural gas lines, or storm drainage systems, when immediate action is necessary to protect public health or safety or to prevent damage to property. A person taking such emergency action shall, within fourteen days thereof, provide a report to the Village of Caseville Planning Commission describing the action taken and the nature of the emergency necessitating the action. The matter shall be reviewed by the Planning Commission, which shall make a determination as to whether the resulting activity was reasonably necessitated by the emergency situation. To the extent the resulting damage exceeds that reasonably necessitated by the emergency situation, the person shall be subject to penalty.

- (f) Gardening and harvesting of crops and forestry and nursery practices where otherwise legally permitted.
- (g) Installation on lakes, for noncommercial use, of any type of dock, boat hoist, ramp, raft, or other recreational structure which is placed in a lake and removed at the end of the boating season.
- (h) Activities by a governmental entity relating to the construction, maintenance or repair of a public highway, street, roadway, sewer system, drainage system, or watermain facility.
(Ord. 90-4. Passed 9-10-90.)

1222.10 SITE PLAN AND PLAT APPROVAL.

Where a final subdivision plat or a final site development plan containing work, as defined in this chapter, has been reviewed and approved by the Council in conformance with the requirements of this chapter, such approval, together with any additional terms and conditions attached hereto, shall be considered to have completed the requirements for a permit under this chapter, which shall then be issued by the Village of Caseville.
(Ord. 90-4. Passed 9-10-90.)

1222.11 NONCONFORMING ACTIVITIES.

An activity that was lawful before May 1, 1990, but which is not in conformity with the provisions of this chapter, may be continued subject to the following:

- (a) No such activity shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity with this chapter.
- (b) On a building or structure devoted in whole or in part to a nonconforming use or activity, work may be done in any period of twelve consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing to an extent not exceeding fifty percent of the assessed value of the building or structure.
- (c) If a nonconforming activity is discontinued for twelve consecutive months, any resumption of the activity shall conform to this chapter.
- (d) If any nonconforming use or activity is destroyed, it shall not be resumed except in conformity with the provisions of this chapter.
- (e) Activities that are or become nuisances shall not be entitled to continue as nonconforming activities.
(Ord. 90-4. Passed 9-10-90.)

1222.12 USE PERMIT APPLICATION.

A use permit application shall be submitted to the Village Clerk and shall be accompanied by the following materials:

- (a) A letter of application which includes the following information:
 - (1) The name, address and telephone number of the applicant and of the applicant's agent;
 - (2) The name, address and telephone number of the owner of the property;
 - (3) The project location, including, as applicable, the street, road, or highway, section number, name of subdivision, and name of any wetlands or watercourses which will or may be impacted;
 - (4) A detailed description and statement of the purpose of the proposed activity;
 - (5) The location and number of trees to be removed of three-inch caliper or greater (the caliper of a tree is its diameter at four and one-half feet above the ground);
 - (6) Whenever the removal of material, placement of fill material or grading is proposed; and
 - (7) The amount and type of material to be removed or deposited.
- (b) An application fee in an amount as set by resolution of the Village Council.
- (c) Where the applicant is not the owner of the property, a written authorization from the owner permitting the proposed activity.
- (d) A site plan, including topographical survey, sealed by a registered engineer or registered surveyor, which includes the following information:
 - (1) The shape and dimensions of the lot or parcel, together with the existing and proposed locations of structures and improvements, if any;
 - (2) Specification of the extent of all areas to be disturbed, the depths at which removal or deposition activities are proposed, and the angle of repose of all slopes of deposition material, and/or the sides of channels or excavations resulting from removal operations;
 - (3) Existing general soil conditions throughout the parcel;
 - (4) The location and dimensions of all set-backs, easements, and existing and proposed public and private utilities; and
 - (5) Statements as to grade changes proposed and proposed drainage pattern changes for the lot or parcel and how such changes will affect these regulations. Existing contour data for the entire property with a vertical contour interval of no more than two feet, and vertical contour data at an interval of no more than one foot

for all areas to be disturbed by proposed operations, extending for a distance of at least twenty-five feet beyond the limits of such areas, shall also be included. Indicated elevations shall be based on United States Geological Survey datum.

(Ord. 90-4. Passed 9-10-90.)

1222.13 REVIEW OF USE PERMIT APPLICATION; APPEALS.

(a) The Village Clerk shall review the submitted application to insure that all required information has been provided. At the request of the applicant or the Village, an administrative review meeting may be held to review the proposed activity in light of the purpose and review standards of this chapter. The Village or its consulting engineers shall, after review of the proposed activity, submit a report and recommendations as to the propriety of the proposed use, under the review standards of Section 1222.14, to the Village Building Inspector/Zoning Administrator.

(b) Upon receipt of the consulting engineer's report and recommendations, the Building Inspector/Zoning Administrator shall review the proposed use for compliance with this chapter and with other local codes and ordinances and make a recommendation to the Village Council to approve or deny the application and state reasons why. If the Building Inspector/Zoning Administrator cannot determine if the applicant's property is, in fact, wetland, he or she shall make formal application to MDNR for a wetlands determination prior to making recommendation to the Village Council.

(c) Prior to determination by the Village Council on a use permit application, notice of the application and the date, time, and location of a Council meeting at which the application will be considered shall be published in a paper of general circulation within the Village. A copy of the notice shall be mailed to those persons to whom real property adjacent to the proposed activity is assessed. The notice shall include a date prior to which written comments regarding the application may be submitted to the Village for consideration.

(d) After receipt and consideration of public comments, the Village Council shall approve or deny the use permit application.

(e) Whenever a use permit application is denied, the reasons for denial shall be transmitted, in writing to the applicant.

(f) Whenever a use permit application is granted, the Department of Building and Safety or the Planning Commission shall:

- (1) Impose such conditions on the manner and extent of the proposed activity or use as are necessary to ensure that the intent of this chapter is carried out and that the activity or use will be conducted in such a manner as will cause the least possible damage, encroachment, or interference with natural resources and natural processes within the wetland area;
- (2) Fix a reasonable time within which any wetland operation must be completed;
- (3) Require the filing with the Village Clerk of a cash bond or irrevocable letter of credit, in such form and amount as determined necessary by the Village to ensure compliance with the approved use permit; and
- (4) When the use permit is granted by the Village, send written notice of the granting of the permit to all persons who have submitted written comments on the application to the Village.

(g) A permit approved by the Village shall not be issued until ten calendar days following the date of the approval. Any interested person who is aggrieved by the granting or denying of a use permit may request an appeal of the decision to the Village Council. A request for appeal must be filed within ten calendar days following the grant or denial. If an appeal is requested during such ten-day period, the issuance of any permit shall be suspended pending the outcome of the appeal. The Village Council, upon review, may reverse, affirm or modify the determination and/or permit issued.

(Ord. 90-4. Passed 9-10-90.)

1222.14 REVIEW STANDARDS.

The following standards shall govern the grant or denial of use permit applications:

- (a) The proposed activity shall not threaten public health or safety by increasing flooding, erosion, siltation, pollution, or storm-water runoff volumes.
- (b) The proposed activity shall not interfere with the natural functions of wetlands and watercourses, including the flow of waters and nutrients between wetlands and adjacent watercourses.
- (c) The proposed activity shall not unnecessarily alter the natural grade or soils of any wetland or watercourse, or alter the flow of surface or subsurface water to or from the wetland at any season of the year.

- (d) The proposed activity shall not result in the destruction of critical wildlife and waterfowl habitat, including habitat important for migratory waterfowl.
- (e) The proposed activity shall not interfere with public rights to the enjoyment and use of public waters.
- (f) The proposed activity shall not interfere with the scenic, aesthetic, recreational, and educational benefits of wetlands and watercourses.
- (g) There shall be no less harmful, feasible, and prudent alternatives to the proposed activities.
- (h) The proposed activity must be consistent with the promotion of the public health, safety, and welfare in light of the paramount concern for the protection of its natural resources from pollution, impairment, or destruction.
- (i) The proposed activity shall be in compliance with all other applicable statutes and ordinances.
- (j) Proposed recreational activities shall not increase user density beyond the ability of the resource to provide for a safe and healthy environment.
(Ord. 90-4. Passed 9-10-90.)

1222.15 DISPLAY OF PERMITS.

The permit grantee shall prominently display on the site the permit issued. Such display shall be continuous while work authorized under the permit is being done and for at least ten days after the completion thereof. Failure to allow entry for inspection by Village representatives pursuant to the conditions attached to the permit shall constitute a violation of this chapter.
(Ord. 90-4. Passed 9-10-90.)

1222.16 ACQUISITION OF PROPERTY WITHOUT COMPENSATION.

(a) This chapter shall not be construed to abrogate rights or authority otherwise protected by law.

(b) For the purposes of determining if there has been a taking of property without just compensation under Michigan law, an owner of property who has sought and has been denied a permit or has been made subject to modifications or conditions in the permit under this chapter, may file an action in a court of competent jurisdiction.

(c) If the court determines that an action of the Village pursuant to this chapter differs from MDNR Rules and Regulations and constitutes a taking of the property of a person, then the court shall order the Village, at the Village's option, to do one or more of the following:

- (1) Compensate the property owner for the full amount of the lost value;
- (2) Purchase the property in the public interest as determined before its value was affected by this chapter;
- (3) Modify its action with respect to the property so as to minimize the detrimental effect to the property's value; and
- (4) Modify its action with respect to the property so that the action will not constitute a taking of the property.

(Ord. 90-4. Passed 9-10-90.)

1222.17 INTERPRETATION AND APPLICATION.

In the interpretation and application of this chapter, the provisions of this chapter shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety, comfort, convenience, or general welfare. It is not intended by this chapter to repeal, abrogate, annul, or in any way impair or interfere with any existing provisions of law or ordinance, or with any rules, regulations, or permits previously adopted or issued or which shall be adopted or issued pursuant to the law relating to activities within wetland areas, provided, however, that where this chapter imposes a greater restriction than is required by existing ordinances or by rules, regulations, or permits, the provisions of this chapter shall control.

(Ord. 90-4. Passed 9-10-90.)

1222.18 VIOLATIONS AS NUISANCES; EQUITABLE REMEDIES.

Any use or activity in violation of the terms of this chapter is hereby declared to be a nuisance per se, and may be abated by order of any court of competent jurisdiction. The Village Council, in addition to other remedies, including those provided in Section 1222.19, may institute any appropriate action or proceeding to prevent, abate, or restrain the violation. All costs, fees, and expenses in connection with such action shall be assessed as damages against the violation.

(Ord. 90-4. Passed 9-10-90.)

1222.19 RESTORATION OF PROPERTY; LIABILITY TO VILLAGE.

(a) In the event of a violation, the Village of Caseville shall have the power to order complete restoration of the wetland area involved by the person or agent responsible for the violation. If such responsible person or agent does not complete such restoration within the time specified in the order (not to exceed eighteen months), the Village shall have the authority to restore the affected wetlands to the prior condition wherever possible and the person or agent responsible for the original violation shall be held liable to the Village for the cost of restoration.

(b) Any person violating the provisions of this chapter shall become liable to the Village for any expense or damage incurred by the Village by reason of such violation.

(Ord. 90-4. Passed 9-10-90.)

1222.99 PENALTY.

Whoever violates any of the provisions of this chapter shall be guilty of a misdemeanor and shall be fined a maximum of one thousand dollars (1,000), or imprisoned for a period not to exceed ninety days, or both, in the discretion of the court, together with the costs of such prosecution, for each offense. Each day upon which such violation occurs or continues shall constitute a separate offense.

(Ord. 90-4. Passed 9-10-90.)