

ORDINANCE NO.

07-15

**AN ORDINANCE OF THE MADISON COUNTY FISCAL COURT, KENTUCKY
UPDATING A SECTION OF THE LAND USE REGULATIONS, ORDINANCE
NO. 00-02 OF THE MADISON COUNTY OFFICE OF PLANNING AND
DEVELOPMENT.**

WHEREAS, the Madison County Planning Commission met in a Public Hearing on May 14, 2007 for the purpose of discussing and making unanimous recommendation to change and/or update the Land Use Regulations, re-writing the entire relating to Landscape Buffers, Section 405;

WHEREAS, the Madison County Fiscal Court authorizes the Madison County Office of Planning and Development to change and/or update the Land Use Regulations, changing the entire Section 405 Landscape Buffers;

NOW, THEREFORE, be it ordained by the Fiscal Court of the County of Madison, Commonwealth of Kentucky, as follows:

Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

SEE THE ATTACHED AS IT WILL READ IN THE REGULATIONS...

Section 8. Effective Date.

This Ordinance shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

Section 9. Authority.

This Local Ordinance is enacted pursuant to applicable authority granted by the Commonwealth and federal government.

That the County Clerk cause this ordinance to be published in accordance with the appropriate Kentucky Revised Statues.

This Ordinance No. 07-15 shall become effective on the date of the second reading and adoption.

DATE OF FIRST READING: July 10, 2007

MOTION BY: William H. Tudor

SECONDED BY: Harold K. Botner

VOTE: YES NO

JUDGE, KENT CLARK ✓
MAGISTRATE LARRY COMBS absent
MAGISTRATE ROGER BARGER ✓
MAGISTRATE WILLIAM TUDOR ✓
MAGISTRATE HAROLD K. BOTNER ✓

DATE OF SECOND READING: 7-24-2007

MOTION BY: Harold K. Botner Jr.

SECONDED BY: William H. Tudor

VOTE: YES NO

JUDGE, KENT CLARK ✓
MAGISTRATE LARRY COMBS ✓
MAGISTRATE ROGER BARGER ✓
MAGISTRATE WILLIAM TUDOR ✓
MAGISTRATE HAROLD K. BOTNER ✓
[Signature]

MADISON COUNTY JUDGE EXECUTIVE

Attest:

[Signature]
MADISON COUNTY CLERK

405 LANDSCAPING REQUIREMENTS

405.1 Purpose

The intent of this Article is to improve the appearance of vehicular use areas (VUAs) and property abutting public rights-of-way; to require buffering between differing land uses; and to protect, preserve and promote the aesthetic appeal, character and value of the surrounding neighborhoods; to promote public health and safety through the reduction of noise pollution, air pollution, visual pollution, air temperature, and artificial light glare.

405.2 Procedures

The landscape provisions of this section of the ordinance shall be the responsibility of the developer of the property. Where the proposed development is creating a land use situation that is more intensive than the surrounding uses, it is the responsibility of the developer involved to provide a landscape buffer that will mitigate the differences between land uses.

The landscape plan shall be reviewed by the Development Review Team and the Planning Commission Work and Business Sessions prior to approval of a development plan or preliminary plat. The Administrative Official shall be responsible for enforcement of this requirement, and shall not issue a building permit until the landscape plan has been approved. No certificate of occupancy shall be issued until the landscaping work is completed and approved by the Administrative Official.

All plants shall be living plants and suitable for the conditions of the site and shall not include any of the plants listed in "Appendix I" of the "Madison County Land Use Regulations".

The property owner is responsible for the continued maintenance and replacement of all landscaping materials.

Landscape Buffers and easements shall be designed in accordance with Table 405.9.

405.3 Landscaping Placement

Landscaping in Easements

The required landscape buffer area shall be provided in addition to, and separate from, any easement. Written permission from the applicable utility companies shall be provided to the Planning Commission before any trees can be planted in utility easements containing overhead lines. Cars or other objects shall not

overhang or otherwise intrude upon the required landscape buffer area more than two and one-half (2½) feet, and wheel stops or curbs are required.

Street Trees in the Rights of Way

Street trees are not permitted in the right of way of a public thoroughfare except where incorporated with the landscape design of the main entrance to the development.

Existing Landscape Material

Existing landscape material which is proposed to be used to fulfill landscape requirements shall be shown on the required plan, and any material in satisfactory condition may be used to satisfy these requirements in whole or in part when, in the opinion of the Planning Administrator such material meets the requirements and achieves the objectives of this Article. Non-native, invasive and undesirable vegetation, as well as any existing plant material that is listed on the "Unacceptable Plant Material List" located in "Appendix I" of the Landuse Regulations must be eradicated from required buffer areas prior to planting acceptable buffer plants.

Landscaping at Driveway and Intersections

All landscaping at driveway and street intersections shall be made up of plantings that, upon full maturity, do not constitute a driving hazard or impeded visibility or site distance.

Landscaping for Service Structures

All service structures shall be fully screened except when located more than thirty-five (35) feet above the established grade. For the purpose of this Article, service structures shall include propane tanks, air conditioning units and condensers, electrical transformers and other equipment or elements providing service to a building or a site.

Location of Screening - A continuous planting, hedge, fence, wall, or earth mound shall enclose any service structure on all sides unless such structure must be frequently moved, in which case screening on all but one (1) side is required. The average height of the screening material shall be one (1) foot more than the height of the enclosed structure, but shall not be required to exceed eight (8) feet in height. Whenever a service structure is located next to a building wall, perimeter landscaping material, or vehicular use area landscaping material, such walls or screening material may fulfill the screening requirement for that side of the service structure if that wall or screening material is of an average height sufficient to meet the height requirement set out in this section.

Protection of Screening Material - Whenever screening material is placed around any trash disposal unit or waste collection unit which is emptied or removed mechanically on a regularly occurring basis, a fixed barrier to contain the placement of the container shall be provided within the screening material on those sides where there is such material. The barrier shall be at least eighteen (18) inches from the material and shall be of sufficient strength to prevent possible damage to the screening when the container is moved or emptied. The minimum front opening of the screening material shall be twelve (12) feet to allow service vehicles access to the container.

Screening of Outdoor Storage Areas

All outdoor storage areas in all commercial and industrial zones shall be screened by a solid wall or fence not less than six (6) feet in height.

405.4 Landscape Materials

The landscaping materials shall consist of the following:

Walls and Fences - Walls shall be constructed of natural stone, brick or other weatherproof materials arranged in a linear, serpentine, or other alignment; while fences shall be constructed of wood or other weatherproof, durable materials generally used in the exterior construction of buildings. Fence posts shall be structurally stable based on the material used, and shall have a maximum spacing of 8' on center (o.c.). If wood is used, the posts shall be 4" x 4" minimum. Posts shall be set in or anchored to crowned concrete footers at least six (6) inches larger in each direction than the post it supports. The base of the footer shall be at least twenty-four (24) inches below finished grade. Chain link fencing may not be used to meet the requirements of this Article. Chain link fencing may be installed in the required landscape area only if it is in addition to the required continuous planting, hedge, fence, wall or earth mound. All walls or fences shall have a minimum opacity of eighty (80) percent. Walls and fences allowed to meet the requirements of this Article shall not be used for the erection or display of any sign or other advertising device.

Earth Mounds - Earth mounds shall be physical barriers, which block or screen the view similar to a hedge, fence, or wall. Mounds shall be constructed with proper and adequate plant material to prevent erosion. A difference in elevation between areas requiring screening does not constitute an earth mound.

Plants - All plant materials shall be living plants (artificial plants are prohibited) and shall meet the following requirements:

Evergreen Trees - Evergreen trees shall be a minimum of five (5) feet high with a minimum caliper of one and one-half (1½) inches in diameter 4 feet above the base of the tree immediately after planting.

All Trees – All trees shall have a minimum of one and one-half (1½) inches in diameter 4 feet above the base of the tree immediately after planting.

Vines / Shrubs - Shall be at least twelve (12) or fifteen (15) inches high at planting, and are generally used in conjunction with walls or fences.

Unacceptable Plant Materials – See “Appendix I” of the “Madison County Land Use Regulations” for a listing of invasive or otherwise unacceptable plant materials.

405.5 Maintenance and Installation

All landscaping materials shall be installed in a sound, workmanship like manner, and according to accepted, good construction and planting procedures. Any landscape material, which fails to meet the minimum requirements of this Article at the time of installation, shall be removed and replaced with acceptable materials. The person in charge of or in control of the property whether as owner, lessee, tenant, occupant, or otherwise shall be responsible for the continued proper maintenance of all landscaping materials, and shall keep them in a proper, neat, and orderly appearance, free from refuse and debris, at all times. All unhealthy or dead plant materials shall be replaced within one year, or by the next planting period, whichever comes first; while other defective landscape material shall be replaced or repaired within three (3) months. Topping trees or the severe cutting of limbs to stubs larger than three (3) inches in diameter within the tree crown to such a degree as to remove the normal canopy shall not be considered proper or permitted for the maintenance of trees as required by this Article. Violation of these installation and maintenance provisions shall be grounds for the Planning and Building Codes Administrator to refuse a building occupancy permit, require replacement of landscape material or institute legal proceedings to enforce the provisions of this Article.

Building Permit and Certificate of Occupancy

Where landscaping is required, no building permit shall be issued until the required landscaping plan has been submitted and approved, and no Certificate of Occupancy shall be issued until the landscaping is completed as certified by an on-site inspection by the Planning Office. If the required landscaping has not been completed and a Temporary Certificate of Occupancy is issued, a full cash bond

or irrevocable letter of credit from a banking institution with offices in Madison County shall be posted at that time. The amount of the bond or letter of credit shall be based upon the cost of the proper installation of the uninstalled landscape material shown in the submitted plan with the cost certified by a landscape contractor. The amount of the bond or letter of credit shall also include an inflation factor and/or administrative contingency cost of no more than twenty-five percent (25%) of the base cost as determined by the Planning Office to complete the work in the event of the foreclosure of the bond or letter of credit.

Posting of Full Cash Bond or Irrevocable Letter of Credit

After a full cash bond or irrevocable letter of credit has been posted, the landscaping material required in the approved landscaping plan shall be installed within three (3) months after the date of posting the full cash bond or irrevocable letter of credit. A one-month extension of the planting period may be granted by the Planning Office upon a demonstration by the property owner or developer that such an extension is warranted because of adverse weather conditions or unavailability of required plant materials. No more than three (3) such one-month extensions may be granted. The full cash performance bond or irrevocable letter of credit shall be called if the required landscaping has not been installed by the end of the approved planting period and the Planning Office shall apply the proceeds of the bond or letter of credit to have the work completed.

405.6 Applicability of Standards

The standards in this Article shall be applied to all major subdivision and development plans. All developments shall be required to demonstrate compliance with these standards through either preservation of healthy trees present on the site or, if sufficient existing trees to be preserved do not meet these standards, through planting of new trees in accordance with this Article. No development plan or subdivision plan shall be approved unless it is in compliance with the standards herein. Any areas that qualify as Environmentally Sensitive Areas will be subject to the more restrictive regulations.

Procedures

The following procedures are required as an adjunct to review of proposals for development.

Preliminary Development Plan Procedures

Where a landscape buffer is required, the Preliminary Plat must provide sufficient details that include a tree inventory map (TIM). This map shall be provided at the same scale as the preliminary or development plan and shall contain the following information at a minimum:

1. The locations of any tree clusters or stands, including perimeter fence line trees, fences, and any significant trees (showing the full canopy{s} on both sides of a property line in accordance with this article).
2. The species of trees noted above. This information can be generalized as a single note calling out any significant trees (4" diameter base + measured 4 feet above grade, etc.).
3. Existing canopy coverage (location and extent expressed as a percentage of the property) to be included in the site statistics on the subdivision or development plan.
4. Location of blue-line or first-order streams and other water bodies.
5. Existing topographic contours in at least 5-foot intervals.
6. Location of Environmentally Sensitive Areas and features, such as sinkholes; slopes greater than 15%; floodplains; springs; wetlands; or other Environmentally Sensitive Areas.
7. Existing easements for utilities and other purposes.

Final Development Plan and Final Subdivision Plan

1. The information contained in the Final Development Plan or Final Plat, in a final form based upon field review information obtained since the preliminary development plan.
2. Proposed tree protection areas, including required buffers.
3. Proposed tree removal areas, including justification for removal and any mitigation measures to be taken.
4. Generalized planting plan and location for new trees as required in this Article.
5. Existing and preliminary easement locations for utilities and other purposes including type, i.e., above or underground.
6. Post-development canopy coverage and the methodology used.

RIPARIAN BUFFERS

Section I. Background

Whereas, buffers adjacent to stream systems, wetlands, sinkholes, reservoirs and other significant water resources within Madison County provide numerous environmental protections and resource management benefits which include:

- a) restoring and maintaining the chemical, physical and biological integrity of the water resources
- b) removing pollutants delivered in storm water
- c) reducing erosion and controlling sedimentation (the loss of 1 millimeter of soil over 1 acre of land is approximately 5 tons of soil)

- d) stabilizing stream banks
- e) providing filtration of stormwater runoff
- f) slowing the velocity of stormwater runoff
- g) maintaining base flow of streams
- h) contributing cleaner organic matter that is a source of food and energy for the aquatic ecosystem
- i) providing a tree canopy to shade streams, wetlands and lake banks; promoting desirable aquatic organisms
- j) providing riparian wildlife habitat
- k) furnishing scenic value, recreational opportunity and economic value
- l) aiding in compliance with the Clean Water Act

It is the intent of Madison County to protect, maintain and increase the acceptable vegetation in riparian and wetland areas by implementing specifications for the establishment, protection and maintenance of lands along streams, wetlands, sinkholes and reservoirs within our County.

Section II Purpose

The purpose of this regulation is to establish the minimal acceptable requirements for the design of buffers to protect streams, wetlands, sinkholes and reservoirs; protect the water quality of watercourses, reservoirs, and other significant water resources; to protect riparian and aquatic ecosystems; protect the health and welfare of persons utilizing our water resources; assist the County in compliance with the U.S. Clean Water Act; and to provide for the environmentally sound use of the Madison County land resources.

Section III. Definitions

Active Channel: The area of the stream channel that is subject to frequent flows (approximately once per one and a half years), and that includes the portion of the channel below where the floodplain flattens.

Best Management Practices (BMPs): Conservation practices or management measures which control soil loss and reduce water quality degradation caused by nutrients, animal wastes, toxins, sediment, and runoff.

Buffer: A vegetated area, including trees, shrubs and herbaceous vegetation, which exists or is established to protect a stream system, wetland, sink hole, reservoir or other significant water resources. Alteration of this natural area is strictly limited.

Dam any impounding structure that is either 25 feet in height, measured from the downstream toe to the crest, or has an impounding capacity of 50 acre-feet of water. Structures that fail to meet these criteria but have the potential to cause significant property damage or pose a threat to loss of life in the downstream area are regulated (by DOW) in the same manner as dams.

Development: 1) The improvement of property for any purpose involving building; 2) Subdivision, or the division of a tract or parcel of land in to 2 or more parcels; 3) the combination of any two or more lots, tracts, or parcels of property for any purpose; 4) the preparation of land for any of the above purposes.

Non-point Source Pollution: Pollution which is generated by various land use activities rather than from an identifiable or discrete source, and is conveyed to waterways through natural processes, such as rainfall, storm runoff, or ground water seepage rather than direct discharge.

One Hundred Year Floodplain: The area of land adjacent to a stream that is subject to inundation during a storm event that has a recurrence interval of one hundred (100) years.

Pollution: Any contamination or alteration of the physical, chemical, or biological properties of any waters that will render the waters harmful or detrimental to: public health, safety or welfare; domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; livestock, wild animals, or birds; fish or other aquatic life.

Reservoir any basin, which contains or will contain the water impounded by a dam, for example Lake Wilgreen.

Stream Channel: Part of a watercourse either naturally or artificially created, which contains an intermittent or perennial base flow of groundwater origin. Base flows of groundwater origin can be distinguished by any of the following physical indicators:

- 1) Hydrophytic vegetation, hydric soil or other hydrologic indicators in the area(s) where groundwater enters the stream channel, in the vicinity of the stream headwaters, channel bed or channel banks
- 2) Flowing water not directly related to a storm event
- 3) Historical records of a local high groundwater table, such as well and stream gauge records.

Stream Order: A classification system for streams based on stream hierarchy. The smaller the stream, the lower its numerical classification. For example, a first order stream does not have tributaries and normally originates from springs and/or seeps. At the confluence of two first order streams, a second order stream begins, and so on.

Stream System: A stream channel together with one or both of the following:

- 1) 100-year floodplain and/or
- 2) Hydrologically-related non-tidal wetlands

Streams: Perennial and intermittent watercourses identified through site inspection and USGS maps. Perennial streams are those which are depicted on a USGS map with a solid blue line. Intermittent streams are those which are depicted on a USGS map with a dotted blue line.

Water Pollution Hazard: A land use or activity that causes a relatively high risk of potential water pollution.

Section IV. Applications

A) This ordinance shall apply to all proposed development except for that development which meets waiver or variance criteria as outlined in Section IX of this regulation.

B) This ordinance shall apply to all timber harvesting activities, except those timber harvesting operations which are implementing a forest management plan which has been deemed to be in compliance with the regulations of the buffer ordinance and has received approval from the Kentucky Division of Forestry.

C) This ordinance shall apply to all surface or quarry mining operations except that the design standards shall not apply to active mining operations, which are operating in compliance with an approved Kentucky Division of Mine Reclamation and Enforcement mining permit.

D) The ordinance shall not apply to agricultural operations that are covered by an approved NRCS conservation plan that includes the application of best management practices.

E) Except as provided in Section IX, this ordinance shall apply to all parcels of land, structures and activities, which are causing or contributing to:

- 1) Pollution, including non-point pollution, of the waters of the County.
- 2) Erosion or sedimentation of stream channels
- 3) Degradation of aquatic or riparian habitat

Section V. Plan Requirements

A) In accordance with section IV of this ordinance, a plan approved by the Madison County Planning and Development (henceforth P&D) is required for all development, forest harvesting operations and surface or quarry mining operations.

B) The plan shall set forth an informative, conceptual and schematic representation of the proposed activity by means of maps, graphs, charts, or other written or drawn documents so as to enable the P&D an opportunity to make a reasonably informed decision regarding the proposed activity. All maps/plats shall indicate contour elevations in 10 foot intervals.

C) The plan shall contain the following information:

- 1) a location or vicinity map on a scale of no less than 1 inch = 100 feet.
- 2) field delineated and surveyed streams, springs, seeps, sinkholes, bodies of water, and

wetlands (include a minimum of two hundred (200) feet into adjacent properties).

3) Field delineated and surveyed forest buffers

4) Limits of the ultimate one hundred year floodplain

5) hydric soils mapped in accordance with the NRCS soil survey of the site area

6) steep slopes equal to or greater than fifteen (15) percent for areas adjacent to and within two hundred (200) feet of streams, wetlands, sinkholes or other waterbodies.

7) a narrative of the species and distribution of existing vegetation within the buffer

D) The buffer plan shall be submitted in conjunction with the required grading plan for any development, and the forest buffer should be clearly delineated on the final grading plan.

E) Permanent boundary markers, in the form of signage approved by P&D shall be installed prior to final approval of the required clearing and grading plan. Signs shall be placed at the edge of the top edge of the highest zone of the buffer forest.

Section VI Design Standards for Forest Buffers

A) A forest buffer for a stream system shall consist of a forested strip of land extending along both sides of a stream and its adjacent wetlands, floodplains or slopes. The forest buffer width shall be adjusted to include contiguous sensitive areas, such as sinkholes, steep slopes or erodible soils, where development or disturbance may adversely affect water quality, streams, wetlands, or other waterbodies.

B) The forest buffer shall begin at the edge of the stream bank of the active channel.

C) The required width for all forest buffers (i.e., the base width) shall be a minimum of 25 feet, with the requirement to expand the buffer depending on: 1) stream order; 2) percent slope; 3) 100-year floodplain; 4) wetlands or critical areas; 5) lands adjacent to reservoirs shall have a minimum buffer width of 100 feet, with the requirement to expand the buffer depending on percent of slope, wetlands or critical areas in the locale of the reservoir.

1) Sinkholes shall have a minimum buffer width of 15 feet completely encircling the sinkhole. Additional buffer width shall be added in accord

with the percent of surrounding slope as delineated in the chart below for Water Contact Recreational Use.

2) Forest Buffer width shall be modified if there are steep slopes that are within a close proximity to the stream and drain into the stream system. In those cases, the forest buffer width can be adjusted.

Percent Slope	Type of Stream Use	
	Water Contact Recreational Use	Sensitive Stream Habitat
0 to 14%	no change	add 25 feet
15 to 25%	add 25 feet	add 50 feet
Greater than 25%	add 50 feet	add 100 feet

3) Forest buffers shall be extended to encompass the entire 100 year floodplain and a zone with minimum width of 25 feet beyond the edge of the floodplain.

4) When wetland or critical areas extend beyond the edge of the required buffer width, the buffer shall be adjusted so that the buffer consists of the extent of the wetland plus a 25 foot zone extending beyond the wetland edge.

D) Water Pollution Hazards

The following land uses and/or activities are designated as potential water pollution hazards, and must be set back from any stream or waterbody by the distance indicated below:

- 1) storage of hazardous substances (300 feet)
- 2) above or below ground petroleum storage facilities (300 feet)
- 3) drainfields from on-site sewage disposal and treatment system (i.e., septic systems--50 feet)
- 4) raised septic systems (100 feet)
- 5) solid waste landfills or junkyards (300 feet)

6) confined animal feedlot operations (300 feet)

7) subsurface discharges from a wastewater treatment plant (100 feet)

8) land application of biosolids (300 feet)

9) wastewater pump stations (100 feet)

E. The forest buffer shall be composed of three distinct zones, with each zone having its own set of allowable uses and vegetative targets as specified in this ordinance.

Zone (1)

- a) The function of this stream, reservoir, wetland, and sinkhole zone is to protect the physical and ecological integrity of the water.
- b) This zone begins at the edge of the bank of the active channel or reservoir bank and extends a minimum of 25 feet from the top of the bank.
- c) Allowable uses are highly restricted to: flood control structures; utility right of way; footpaths; road crossing, where permitted.
- d) The vegetative covering for this zone is undisturbed vegetation (which shall consist of trees, shrubs and grasses) or acceptable grasses, shrubs and trees as outlined in the Landscape Regulations. The height and planting distance for planting materials shall be in accord with the Landscape Regulations.

Zone (2)

- a) The function of the middle zone, if it is required, is to protect key components of the water and to provide distance between upland development and Zone (1).
- b) The middle zone will begin at the outer edge of Zone (1) and extend a minimum of 50 plus any additional buffer width as specified in Section VI C.
- c) Allowable uses in this zone are restricted to biking and hiking paths; limited stormwater management techniques and facilities with approval of P&D; recreational uses as approved by P&D.
- d) The vegetative target for this zone is the planting of trees such as willow, maple, sycamore, poplar, dogwood, oak and other hardwood trees. The trees should be no more than 30 feet apart. Other acceptable trees are listed in the Landscape Regulations. The size of planting materials shall be in accordance with the Landscape Regulations.

Zone (3)

Zone (3) would begin at the outward edge of zone (2) and provide a minimum width of 25 feet between zone (2) and the nearest permanent structure.

- (a) There shall be no septic systems, permanent structures or impervious surface cover, with the exception of footpaths, within in the outer zone.
- (b) The vegetative cover target for the outer zone shall be a mixture of grasses, shrubs and trees selected from the Landscape Regulations. Shrubs and trees shall be planted no more than 30 feet apart. The size of planting material shall be in accordance with the Landscape Regulations.

Section VII. Buffer Management and Maintenance

A) The forest buffer, including wetlands and floodplains, shall be managed to enhance and maximize the unique value of these resources. Management includes specific limitations on alteration of the natural conditions of these resources. The following practices and activities are restricted within Zones 1 and 2 of the forest buffer, except with approval by P&D:

- 1) Clearing of existing vegetation, unless it is listed in the Landscape Regulations as noxious, highly invasive.
- 2) Soil disturbance by grading, stripping, or other practices.
- 3) Filling or dumping.
- 4) Drainage by ditching, underdrains, or other systems
- 5) Use, storage, or application of pesticides, except for the spot spraying of noxious weeds or non-native species. The application of fertilizers, except a controlled amount that may be needed for the initial establishment of plantings.
- 6) Housing, grazing, or other maintenance of livestock.
- 7) Storage or operation of motorized vehicles, except for maintenance and emergency use approved by P&D.

B) The following structures, practices, and activities are permitted in the forest buffer, with specific design or maintenance features, subject to the review of P&D.

- 1) Roads, bridges, paths, and utilities:
 - a) An analysis needs to be conducted to ensure that no economically feasible alternative is available.
 - b) The right of way should be the minimum width needed to allow for maintenance access and installation.
 - c) The angle of the crossing shall be perpendicular to the stream or buffer in order to minimize clearing requirements

d) The minimum number of road crossings should be used within each subdivision, and no more than one fairway crossing is allowed for every 1,000 feet of buffer.

2) Stormwater management:

e) An analysis needs to be conducted to ensure that no economically feasible alternative is available, and that the project is either necessary for flood control, or significantly improves the water quality or habitat in the stream.

f) In new developments, on-site and non-structural alternatives will be preferred over larger facilities within the stream buffer.

g) When constructing stormwater management facilities (i.e., BMPs), the area cleared will be limited to the area required for construction, and adequate maintenance access, as outlined in the most recent edition of Madison County Stormwater and Sediment Control Plan.

h) Material dredged or otherwise removed from a BMP shall be stored outside the buffer.

3) Stream restoration projects, facilities and activities approved by P&D are permitted within the forest buffer.

4) Water quality monitoring and stream gauging are permitted within the forest buffer, as approved by P&D

5) Individual trees within the forest buffer may be removed which are in danger of falling, causing damage to dwellings or other structures, or causing blockage of the stream.

6) Other timber cutting techniques approved by the agency may be undertaken within the forest buffer under the advice and guidance of Natural Resources and Soil Conservation, if necessary to preserve the forest from extensive pest infestation, disease infestation, or threat from fire.

C) All plats prepared for recording and all right-of-way plats shall clearly:

1) Show the extent of any forest buffer on the subject property by metes and bounds

2) Label the forest buffer

3) Provide a note to reference any forest buffer stating: "There shall be no clearing, grading, construction or disturbance of vegetation except as permitted by the Madison County Planning and Development."

4) Provide a note to reference any protective covenants governing all forest buffers areas stating: "Any forest buffer shown hereon is subject to protective covenants which may be found in the land records and which restrict disturbance and use of these areas."

D) All forest buffer areas shall be maintained through a declaration of protective covenant, which is required to be submitted for approval by Madison County Planning and Development. The covenant shall be recorded in the land records and shall run with the land and continue in perpetuity.

E) All lease agreements must contain a notation regarding the presence and location of protective covenants for forest buffer areas, and which shall contain information on the management and maintenance requirements for the forest buffer for the new property owner.

F) An offer of dedication of a forest buffer area to the County shall not be interpreted to mean that this automatically conveys to the general public the right of access to this area. The County has the sole discretion to accept or reject the offer of dedication.

G) Persons or a group in control of the property on which a buffer exists shall inspect the buffer annually and immediately following severe storms for evidence of sediment deposition, erosion, or concentrated flow channels and take corrective actions taken to ensure the integrity and functions of the forest buffer.

Section VIII Enforcement Procedures

A) P&D is authorized and empowered to enforce the requirements of this ordinance in accordance with the procedures of this section. No preliminary or final plat will be presented to the Planning Commission for approval unless P&D has determined that the plat and supporting documents comply with this regulation. No entrance permit will be granted for any development, municipal or county developments, fronting on a County road that is not in compliance with this regulation.

B) If, upon inspection or investigation, the director of P&D or his/her designee is of the opinion that any person has violated any provision of this ordinance, he/she shall with reasonable promptness will issue a correction notice to the person. Each such notice shall be in writing and shall describe the nature of the violation, including a reference to the provision within this ordinance, which has been violated. In addition, the notice shall set a reasonable time for the abatement and correction of the violation.

C) If it is determined that the violation or violations continue after the time fixed for abatement and correction has expired, the director shall notify the person who is in violation of legal actions

that will be taken by the County. Each such notice shall be in writing and shall describe the nature of the violation, including a reference to the provision within this ordinance, which has been violated. Failure to execute the buffer plans agreed upon during plat approval or approval of an entrance permit shall, at a minimum, result in the rescission of the entrance permit and work stoppage order at the development site. No certificates of occupancy shall be issued to county developments until the buffer is in place.

D) Any person who violates any provision of this ordinance may be liable for any cost or expenses incurred as a result thereof by the County.

E) In addition to any other sanctions listed in this ordinance, a person who fails to comply with the provisions of this buffer ordinance shall be liable to the County in a civil action for damages in an amount equal to twice the cost of restoring the buffer. Damages that are recovered in accordance with this action shall be used for the restoration of buffer systems or for the administration of programs for the protection and restoration of water quality, streams, wetlands, and floodplains.

Section IX Waivers/Variances

A) This ordinance shall apply to all proposed development except for that development which, prior to the effective date of this ordinance:

- 1) Is covered by a valid, unexpired plat in accordance with County development regulations
- 2) Is covered by a current, executed public works agreement approved by the County
- 3) Is covered by a valid, unexpired building permit
- 4) Has been granted a waiver in accordance with current development regulations.

B) The Planning Commission may grant a waiver for the following:

- 1) Those projects or activities where it can be demonstrated that strict compliance with the ordinance would result in very serious practical difficulty or severe financial hardship
- 2) Those projects or activities serving a public need where no feasible alternative is available.
- 3) The repair and maintenance of public improvements where avoidance and minimization of adverse impacts to nontidal wetlands and associated aquatic ecosystems have been addressed
- 4) For those developments which have had buffers applied in conformance with previously issued requirements.

C) Waivers for development may also be granted in an additional form, if deemed appropriate by the Planning Commission:

1) The buffer width made be relaxed and the buffer permitted to become narrower at some limited points as long as the average width of the buffer meets the minimum requirement. This averaging of the buffer may be used to allow for the presence of an existing structure, as long as the streamside zone (Zone 1) is not disturbed by the narrowing, and no new structures are built within the one hundred (100) year floodplain.

D) The applicant shall submit a written request for a waiver to the director of the P&D. The application shall include specific reasons justifying the waiver and any other information necessary to evaluate the proposed request. The Planning Commission may require an alternatives analysis, at the developer's expense, that clearly demonstrates that no other feasible alternatives exist and that minimal impact will occur as a result of the project or development.

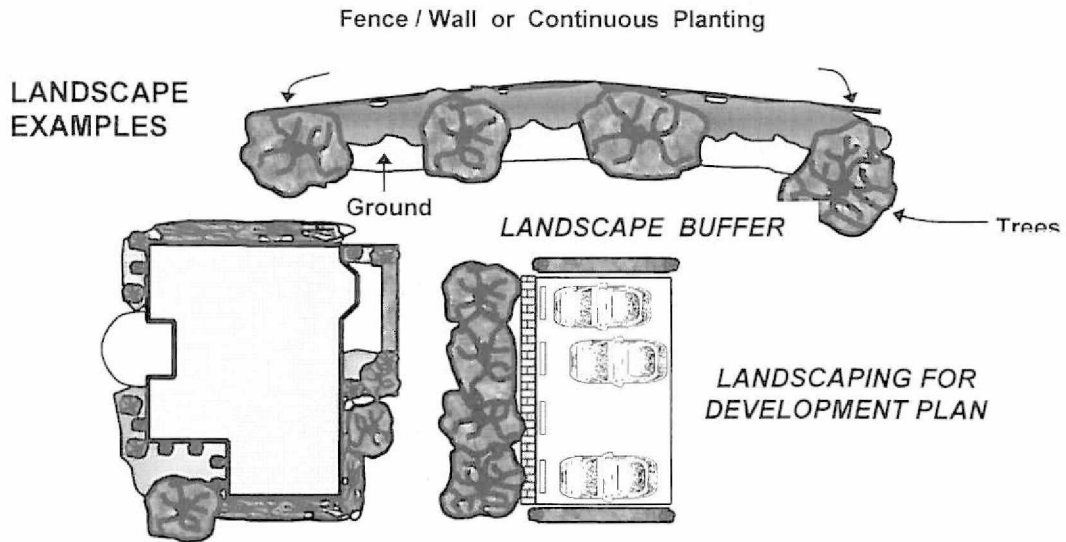
Section X. Conflict With Other Regulations

Where the standards and management requirements of this buffer ordinance are in conflict with other laws, regulations, and policies regarding streams, steep slopes, erodible soils, wetlands, sinkholes, reservoirs, floodplains, timber harvesting, land disturbance activities or other environmental protective measures, the more restrictive shall apply.

405.7 Landscape Buffers / Fences

The landscape buffer shall be located within a designated easement as prescribed in the "Table 405.9 " ~~with a minimum width of fifteen (15) feet,~~ and shall provide for a continuous landscape buffer of shrubs, or combination of shrubs and trees that will effectively shield the proposed use from surrounding property with a different land use. Groundcover should be provided as part of the landscaped area. The Planning Commission may accept a wall or fence barrier that will effectively serve this purpose as an alternative to landscaping.

When a subdivision or other development is being established in an area that is contiguous to a farm, the developer of the subdivision shall be responsible for providing a fence to separate the new development. The fence shall be constructed of woven wire, nine (9) gauge with twelve (12) inch stays, six (6) inch line posts, and a single strand of barbed wire on top. The centers of line posts will be twenty (20) feet with two (2) six and one-half (6 ½) feet steel "T" posts spaced between each line post. Corner posts shall be either (8) feet to ten (10) feet in length set in concrete or double braced.



405.8 Parking Lots

In all multi-family residential, commercial, and industrial development (with 50 or more parking spaces), a minimum of five (5) percent of the parking area shall be landscaped, in addition to landscaping around the perimeter of the building, and any outer perimeter buffer requirements.

Table 405.9
Landscape Buffer Requirements

Determine the Type of Buffers Required on Your Site

1. Look for your site's zoning or use in the first column of the **Zoning Identification Table** and make note of the number assigned to that use
2. Look for the number assigned to the use on the property adjacent to yours and make a note of it.
3. Go to the **Buffer Requirement Table** and find the number that was assigned to your property zoning/use and follow it across the table until it lines up with the column representing the number assigned to the use of the property adjacent to yours. The box at the intersection will contain a letter representing the type of Buffer required on your property when adjacent to that particular land use.
4. **Description of each buffer type.**

Zoning Identification Table	
Property Zoning / Use	Number
Single Family Residential	1 / 1A / 1B
Multi-Family Residential	2 / 2A
Neighborhood Commercial Business	3
General Commercial Business	4
Planned Commercial Center	4.1
Light Industrial	5
Public and Semi-Public	6
Agriculture	7
Resource Extraction	8
Mobile/Manufactured Home Parks	9
Hazardous Industrial	10

Buffer Requirement Table										
Property Zoning / Use	Adjacent Property Zoning Use									
	1/1A 1B	2 2A	3	4 / 4.1	5	6	7	8	9	10
1/1A/1B	--	B	B	C	C	A	--	C	B	C
2/2A	B	--	B	C	C	A	--	C	B	C
3	B	B	--	--	B	A	A	B	A	C
4 / 4.1	C	C	--	--	A	A	B	A	A	B
5	C	B	B	A	A ¹	B	C	--	B	A ¹
6	A	A	--	--	B	--	A	B	A	C
7	--	--	A	A	B	--	--	--	A	C
8	C	C	B	A	--	A	--	--	A	A
9	B	B	A	A	A	A	A	A	--	C
10	C	C	B	B	A ¹	C	C	A	C	A ¹

¹ Industrial Zoned property, where abutting industrial zoned property, shall be required to install a minimum five-foot-wide type A landscape buffer adjacent to the side and rear property lines. This area shall not be used for water management. In addition, trees may be reduced to 50 feet on center along rear and side perimeter buffers only. This reduction in buffer width shall not apply to buffers adjacent to vehicular rights-of-way or non-industrial zoned property.

2. Buffer areas between commercial out-parcels located within a shopping center may be a shared 10 feet wide buffer.
3. Buffer areas between interior lot lines of commercial parcels may be displaced to other location with approval from the Planning Commission subject to the following conditions:
 - a. The project is part of a Master Site Development Plan which includes all of the individual building parcels; and
 - b. An agreement between all owners of the separate parcels is recorded to the effect that there is a system of cross access easements and that the entire parking lot functions as a common parking lot; and
 - c. All of the buildings share a common architectural and landscape theme; and
 - d. The land area normally associated with landscaping that will be displaced as a result of the elimination of some interior lot line landscaping will be proportionally added to other required interior parking lot landscaping, building perimeter landscaping or perimeter buffering.
4. Type D buffers apply on all commercial, industrial and multi-family developments.

Buffer Type Descriptions

Buffer Types: Within a required buffer strip, the following buffer types shall be used based on the **Buffer Requirement Table**.

Type A Buffer: Ten-foot-wide landscape buffer with trees spaced no more than 25 feet on center.

Type B Buffer: Fifteen-foot-wide, 80% opaque within one year landscape buffer six feet in height, which may include a wall, fence, hedge, berm or combination thereof, including trees spaced no more than 25 feet on center. When planting a hedge, it shall be a minimum of ten gallon plants five feet in height, three feet in spread and spaced a maximum three feet on center at planting.

Type C Buffer: 20-foot-wide, opaque within one year, landscape buffer with a six-foot wall, fence, hedge, or berm, or combination thereof and two staggered rows of trees spaced no more than 25 feet on center. These projects shall provide a meandering Type D landscape buffer hedge.

Type D Buffer: A landscape buffer shall be required adjacent to any road right-of-way external to the development project and adjacent to any primary access roads internal to a commercial development. The minimum width of the perimeter landscape buffer shall vary according to the ultimate width of the abutting right-of-way. Where the ultimate width of the right-of-way is zero to 99 feet, the corresponding landscape buffer shall measure at least twenty (20) feet in width. Where the ultimate width of the right-of-way is 100 or more feet, the corresponding landscape buffer shall measure at least 15 feet in width.

Trees shall be spaced no more than 25 feet on center in the landscape buffer abutting a right-of-way or primary access road internal to a commercial development.

A hedge of at least 24 inches in height at the time of planting and attaining a minimum of three feet height within one year shall be required in the landscape buffer where vehicular areas are adjacent to the road right-of-way.

Where a fence or wall fronts an arterial or collector road, a continuous single row hedge a minimum of 24 inches in height spaced three feet on center, shall be planted along the right-of-way side of the fence. The required trees shall be located on the side of the fence facing the right-of-way. Every effort shall be made to undulate the wall and landscaping design incorporating trees, shrubs, and ground cover into the design. It is not the intent of this requirement to obscure from view decorative elements such as emblems, tile, molding and wrought iron.

The remaining area of the required landscape buffer must contain only existing native vegetation, grass, ground cover, or other landscape treatment. Every effort shall be made to preserve, retain and incorporate the existing native vegetation in these areas.