

## **WAGANAKISING ODAWAK STATUTE 2009-007**

### **LAND USE, BUILDING REGULATION, AND ZONING STATUTE**

#### **SECTION I SHORT TITLE**

This Statute may be cited as the “Land Use Statute.”

#### **SECTION II PURPOSE**

The purpose of this Statute is to provide for the regulation of land use; set standards for the construction of buildings, structures, appurtenances, additions and decorations which may accompany them; and other developmental characteristics which may have an effect upon the public health, safety, and general welfare and have such regulated through the creation of the “Planning, Zoning and Building Department”

#### **SECTION III REPEAL OF PREVIOUS LEGISLATION**

This Statute repeals and replaces the Zoning Statute, WOS 2001-13; Building Code, WOS 2002-02; Site Plan Review, WOS 2005-05, as may have been amended, subject to the following:

- A.** Non-Conforming Uses. The use of any dwelling, building, structure, land or premises which was in existence and permitted under Tribal law at the time of enactment of this Statute may be continued at the discretion of the owner thereof, even though such use does not conform to the provisions of this Statute.
- B.** Building Code, WOS 2002-02, is only repealed upon Tribal Council approval of replacement Building Code Regulations, pursuant to this Statute.

#### **SECTION IV. DEFINITIONS**

The following definitions apply in this Statute:

- A.** “Area Variance” means a departure from yard, height or other numerical requirement as stipulated in a zoning statute or regulation.
- B.** “Conceptual Programming” means the process whereby initial concepts for land uses, development or infrastructure are pursued, formalized, and investigated for fundability.

- C. “Department” means the Planning, Zoning and Building Department created under this Statute.
- D. “LTBB” or “Tribe” means the Waganakising Odawak Nation, also known as the Little Traverse Bay Bands of Odawa Indians
- E. “Master Land Use Plan” means a policy guide for land development, acquisition and use. This document is derived from the “Strategic Plan for Land Acquisition” as developed by the Legislature, research, and public input.
- F. “Trust Land” or “land in trust status” means land for which the United States holds fee title in trust for the benefit of LTBB.
- G. “Use Variance” means authorization of uses not permitted by a zoning statute or regulation.

**SECTION V                    CREATION OF THE PLANNING, ZONING AND BUILDING DEPARTMENT**

The Planning, Zoning and Building Department is hereby created within the Executive Branch to carry out the purposes stated in Section II, and each annual budget submitted by the Executive shall include funding for the Department’s operation subject to funding availability.

**SECTION VI                    HANDICAP ACCESSIBLE NEW CONSTRUCTION**

All new buildings, structures, appurtenances, and additions built by the Tribe shall be designed and constructed in a manner that is handicap accessible.

**SECTION VII                    AUTHORIZATION OF TRADITIONAL ACTIVITIES ON TRIBALLY OWNED PROPERTIES**

Article I, § B (1) of the Constitution “directs the Legislative, Executive and Judicial branches of government to . . .promote the preservation and revitalization of Anishinaabemowin and Anishinaabe culture.” The ability of the Citizens of the Waganakising Odawak Nation to utilize Tribally owned lands for ceremonies and other cultural or traditional activities is essential for the survival and revitalization of Anishinaabe culture. Citizens of the Waganakising Odawak Nation have a right to conduct ceremonies and other cultural or traditional activities on Tribally owned lands subject to health, safety and other reasonable restrictions outlined in regulations pursuant to this statute.

## **SECTION VIII DUTIES AND AUTHORITY OF EXECUTIVE BRANCH**

- A.** When Tribal Council requests lands be placed in Trust under Article VII.D.10 of the Constitution and designates the intended purpose of the individual parcel, the Executive Branch shall prepare the application and take all necessary steps to complete the Trust acquisition.
- B.** The Executive Branch develops Conceptual Programming of land uses, structures, and road systems for Tribal Council approval prior to their development or implementation.
- C.** Plans and Regulations.
  - 1. **Creation and Implementation of Master Land Use Plan:** The Master Land Use Plan is a policy document that depicts the demographic and development conditions in the area encompassed by the LTBB Reservation, as well as the potential for or limitations on development for various areas within the Reservation. From this, a set of policies are synthesized which indicate how LTBB intends to reflect this information and the overall mission and vision of the Tribe in development activities. The Executive Branch shall develop regulations, subject to Tribal Council approval, creating and implementing a Master Land Use Plan.
  - 2. **Land Base Restoration Plan:** The Land Base Restoration Plan is a document that depicts the originally intended uses of Trust land in accordance with the content of Trust applications to the Secretary of the Interior. It is a document that describes the purpose for an individual parcel of land at the time of the Trust application, and any subsequent use modifications by Tribal Council. It implies, but does not specify, the zoning category for a particular parcel of land. The Executive Branch shall develop regulations, subject to Tribal Council approval, creating and implementing a Land Base Restoration Plan.
  - 3. **Zoning:** Zoning is implemented by LTBB through a series of regulations developed pursuant to this Statute, and becomes the primary regulatory instrument for implementing the Master Land Use Plan and Land Base Restoration Plan. Zoning divides a community into districts or "zones" which specify the permitted and prohibited uses. Further, it is the classification of land in any governmental jurisdiction into areas or districts in order to regulate building dimension, density, design, arrangement and use. The Executive Branch shall develop zoning regulations, subject to Tribal Council approval.
  - 4. **Site Plan:** The Site Plan is a detailed plan, to scale, depicting how a site will be developed. It shows existing and proposed conditions, including lot

lines, streets, building sites, buildings, other impervious surfaces, other areas of human disturbance, and major landscape features. The Executive Branch shall develop regulations, subject to Tribal Council approval, establishing a method for the review and approval, as well as final submission to Tribal Council of Site Plans for developments. Upon Tribal Council approval, a Site Plan is a legally binding document that is specific to that site and can only be modified by subsequent Tribal Council action.

5. **Building Codes and Construction Plans:** Building codes are a set of regulations that govern the content and execution of construction plans and projects. Construction plans are detailed drawings and diagrams, usually drawn and plotted to scale, showing the structure or arrangement to accomplish the construction of a building or buildings, pursuant to an approved site plan. The Executive Branch shall develop regulations adopting building codes, subject to Tribal Council approval.
6. **Utilization of Tribally Owned Lands by Tribal Citizens:** The Executive Branch shall develop regulations, subject to Tribal Council approval, enabling Tribal Citizens to utilize designated Trust and other Tribally owned lands for cultural and/or traditional activities that would otherwise require a permit under approved regulations.

**D. Citations.** The Department is authorized to issue civil citations for violations of zoning regulations, building codes, or site plans subject to regulations developed by the Executive and approved by Tribal Council.

## **SECTION IX            ZONING BOARD OF APPEALS**

- A. Zoning Board of Appeals Established.** A Zoning Board of Appeals (“Board”) is hereby created. The Board shall adopt policies to carry out its duties under this Statute, subject to Tribal Council approval. The Board shall meet twice a year in regular meetings and additionally if necessary within 15 days of receiving any request for action by the Board.
- B. Appointments, Term, Nepotism and Conflict**
  1. The Board shall consist of three (3) members nominated by the Executive and confirmed by the Tribal Council. To be eligible for appointment a person must be a Tribal Citizen who is at least eighteen (18) years of age and has read all Tribal zoning laws, regulations, policies and procedures. The Board members shall serve three year terms with initial appointments being one member for one year, a second member for two years, and a third for three years to provide for staggered terms.
  2. Staff members may serve on the Board and may be compensated by stipend if the Board is not directly related to their employment, does not

interfere with their work, and does not meet during scheduled work hours. If a Board meets during scheduled working hours and the staff member wishes to attend, the staff member must utilize PTO (personal time off), or flextime upon prior approval of the individual's supervisor.

3. Two or more members of the same immediate family as defined in the Constitution shall not serve on the Board at the same time.
4. No Board member may participate in making any decision that involves a personal or financial interest of the Board member or a member of his or her immediate family unless such interest is held in common with the Tribe and its Citizens.

### **C. OPEN MEETINGS, RECORDS**

1. Board meetings shall be open to LTBB Citizens.
2. Board records shall be open to LTBB Citizens.
3. The Board must provide notice of meetings at least five days in advance of the meeting.

### **D. Compensation, Stipends**

Any Board member who attends a properly noticed meeting shall be eligible for a stipend, mileage, and expenses, even if no official action can be taken due to lack of a quorum, subject to the availability of funds.

- E. Zoning Board of Appeals Mandates. The Board shall hear and decide appeals on the grant or denial of permits, or the issuance of citations, under zoning regulations, building codes, or site plans. Only a property owner may appeal a building code violation or permit denial. The Zoning Board is prohibited from granting Use Variances.

## **SECTION X. APPEALS TO ZONING BOARD**

- A. A party who claims to be aggrieved by a decision of the Department relating to a grant or denial of a permit(s), or the issuance of citations, under zoning regulations, building codes, or site plans may appeal such decision to the Board, except as per Section IX.E only a property owner may appeal a building code violation or permit denial, and the Board cannot grant Use Variances.

1. An appeal of a decision of the Planning Department must be filed within fourteen (14) days of the challenged decision. The person or entity must file a written appeal to the Board including at a minimum:
  - a. A clear and concise statement of the reason(s) the appellant believes the decision should be overturned by the Board; and
  - b. The relief requested from the Board.
- B. The Board shall hear the appeal within 15 calendar days of filing, either during a regular meeting or special meeting called for that purpose, and issue its written ruling within ten (10) days of such hearing. The person appealing cannot proceed with any non-permitted construction while the appeal is pending.

## **XI. JUDICIAL REVIEW**

- A. Decisions of the Board may be appealed to the Tribal Court by filing a written appeal with the Court within ten (10) days of the Board's ruling. The Court shall uphold the decision of the Board unless the Court determines that the Board's decision is clearly arbitrary, capricious, or otherwise not in accordance with applicable law or regulations.
- B. The Tribal Council expressly waives the sovereign immunity of the Tribe and its agents for the limited purpose of reviewing the decisions of the Board under the standards set forth in Section XI.A and allowing for the remedies set forth in Section XI.C.
- C. In the event the Court finds the Board's decision to be clearly arbitrary, capricious, or otherwise not in accordance with applicable law or regulations, it shall enter an equitable order overturning the Board's action, but shall not award monetary damages.

## **SECTION XII SAVINGS CLAUSE**

In the event that any section, subsection or phrase of this Statute is found by a court of competent jurisdiction to violate the Constitution or laws of the Little Traverse Bay Bands of Odawa Indians, such part shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect so long as the overall intent of the Statute remains intact.

## **SECTION XIII EFFECTIVE DATE**

Effective upon the signature of the Executive, or 30 days from submission to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on March 8, 2009 at which a quorum was present, by a vote of 6 in favor, 1 opposed, 0 abstentions, and 1 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Fred Harrington, Jr.		X		
Melvin L. Kiogima	X			
Dexter McNamara	X			
Marvin Mulholland				X
Vacancy				
Alice Yellowbank	X			
Gerald V. Chingwa	X			
Regina Gasco Bentley	X			
Beatrice A. Law	X			

Date: 3/8/09

Beatrice A. Law  
Beatrice Law, Legislative Leader

Date: 3-8-09

Regina Gasco Bentley  
Regina Gasco Bentley, Secretary

Received by the Executive Office on 3-10-09 by [Signature]

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: 3-20-2009

Frank Ettawageshik  
Frank Ettawageshik, Tribal Chairperson

