



# LAND INFORMATION DEPARTMENT

John Lefebvre  
*Director*

Greg Cleereman  
*Conservationist*

Linda Christensen  
*Property Lister*

## AGENDA LAND INFORMATION COMMITTEE

DATE: Monday, July 6<sup>th</sup> 2009

TIME: 9:00 a.m.

PLACE: Marinette County Courthouse – Land Information Committee Room C129

1. Call meeting to order
2. Approve agenda
3. Approve minutes of the June 8<sup>th</sup>, 2009 meeting.
4. Reports by cooperating agencies. Action, if any.
  - UWEX – Breakfast on the Farm attendance and activities and crop status
  - FSA – FSA program update
5. Discuss/Consider how WDNR dam inspections and subsequent dam failure analyses will affect properties identified within the shadow of the dams. Action, if any.
6. Discuss/Consider June 2009 draft of NR115 Wisconsin Shoreland Management Program. Action, if any.
7. Discuss/Consider authorization for the Land Conservationist and Land Information Committee members with mileage and per diem to attend the Lake Michigan Land and Water Conservation Association Meeting in Sheboygan on July 17<sup>th</sup> 2009. Action if any.
8. Report(s) by Land Information Staff on Departmental programs and activities. Action, if any.
  - Harry Sokel/Robert Cass Issue
  - County GIS Website Usage Figures
  - AIS Coordinator Activities, especially Phragmites.
  - Conservation Camp
9. Correspondence. Action, if any. (Correspondence if not specifically listed below will be for information only)
  - WDNR Letter Shoreland and Floodplain Zoning Assistance
  - E-mail from Greg Schwalbach concerning \$5.00 Change of Address Fee
10. Review and approval of invoices and/or transfers. Action, if any.
11. Schedule next meeting – Monday, August 10, 2009
12. Adjourn

Alice Baumgarten  
Jerry Pillath

Ted Sauve  
John Guarisco

Larry Nichols  
Karl Stibbe

Joe Policello  
County Clerk (9)

NOTE: Agenda items may not be considered and acted upon in the order listed

If you are an individual with a disability and need a special accommodation while attending this meeting, as required by the Americans with Disabilities Act, please notify the County Clerk, Marinette County Courthouse (715-732-7406) at least 24 hours prior to the meeting in order to make suitable arrangements. Thank you. (TDD# 715-732-7760)





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**MEETING OF THE LAND INFORMATION COMMITTEE**  
MONDAY, JUNE 8, 2009  
LAND INFORMATION CONFERENCE ROOM

**Members Present:** Ted Sauve, Karl Stibbe, Jerry Pillath, Alice Baumgarten, Larry Nichols, John Guarisco, and Joe Policello.

**Others Present:** John Lefebvre, LID; Aleta DiRienzo, LID-LWC; Steve Kaufman, WI-DNR; Jodi Reisner, USDA-NRCS and the Peshtigo Times. Scott Reuss, UWEX was present for a portion of the meeting.

1. Chairperson Sauve called the meeting to order at 8:00 a.m.
2. APPROVAL OF AGENDA  
**MOTION** (Baumgarten/Stibbe) to approve the agenda as presented. Motion carried, no negative vote.
3. APPROVAL OF MINUTES  
**MOTION** (Guarisco/Policello) to approve the minutes of May 11, 2009. Motion carried, no negative vote.
4. REPORTS FROM AGENCIES  
Steve Kaufman, WI-DNR stated in his report that Marinette County has purchased 140,000 Jack Pine seedlings from the DNR to plant. Private landowners have purchased 125,000 seedlings of assorted trees from the DNR.
5. SOIL & WATER RESOURCE BUDGET  
**MOTION** (Guarisco/Pillath) to recommend to Finance to transfer \$3,214.00 from the 2008 Soil & Water Resource Budget as carryover funds to the 2009 budget. Motion carried, no negative vote.
6. VOUCHERS  
**MOTION** (Nichols/Policello) to approve payment of the vouchers (\$9,272.47) as presented. Motion carried, no negative vote.  
  
**MOTION** (Baumgarten/Nichols) to recommend to the County Board approval of the vouchers over \$5,000.00 (\$9,288.54). Motion carried, no negative vote.
7. SCHEDULE NEXT MEETING  
Next meeting is scheduled for Monday, July 6, 2009 at 9:00 a.m.
8. ADJOURNMENT  
**MOTION** (Stibbe/Pillath) to adjourn at 9:15 a.m. Motion carried, no negative vote.

Respectfully Submitted

Aleta DiRienzo  
Database Specialist/Program Assistant



# FACT SHEET

## ***DAM HAZARD RATING & DOWNSTREAM FLOODPLAIN ZONING***

Dams that meet the definition of a "Large Dam" as defined under s. NR 333.03(3), Wisconsin Administrative Code are required to secure a hazard rating. The requirements for a dam's hazard rating are outlined in NR 333.06 and in NR 116.08. A dam's hazard rating identifies the degree of flooding that could occur downstream from the dam in the event of a dam failure. The degrees of flooding and resulting hazard ratings are summarized below:

*Low Hazard* – A low hazard rating shall be assigned to those dams that have no development unrelated to open space use in the hydraulic shadow where the failure or mis-operation of the dam would result in no probable loss of human life, low economic losses, low environmental damage, no significant disruption of lifeline activities, and have land use controls in place to restrict future development in the hydraulic shadow.

*Significant Hazard* - A significant hazard rating shall be assigned to those dams that have no existing development in the hydraulic shadow that would be inundated to a depth greater than 2 feet and have land use controls in place to restrict future development in the hydraulic shadow. Potential for loss of human life during failure must be unlikely. Failure or mis-operation of the dam would result in no probable loss of human life, but can cause economic losses, environmental damage, or disruption of lifeline activities.

*High Hazard* - - A high hazard rating shall be assigned to those dams that have existing development in the hydraulic shadow that will be inundated to a depth greater than 2 feet or do not have land use controls in place to restrict future development in the hydraulic shadow. This rating must be assigned if loss of human life during failure or mis-operation of the dam is probable.

As can be concluded from the above definitions land use controls must be in place below a dam to avoid a high hazard rating. Land use controls can be met in several ways including restrictive covenants, deed restrictions, and large tracts of publicly owned lands (for example National, State, or County Forests), but the most commonly applicable control would be through zoning of the hydraulic shadow. The guidelines for zoning of the hydraulic shadow are given in NR 116.08 and are summarized below:

### Compliant Dams

1. Low and Significant Hazard Dams – The hydraulic shadow resulting from a dam failure during the 100-year flood should be zoned to restrict development.
2. High Hazard Dams
  - a. Developed areas: The 100-year flood as it would occur without the presence of the dam should be zoned to restrict development.
  - b. Undeveloped areas: The hydraulic shadow resulting from a dam failure during the 100-year flood should be zoned to restrict development.

Noncompliant Dams - The hydraulic shadow resulting from a dam failure during the 100-year flood should be zoned to restrict development.

Once land use controls are in place, a final hazard rating can be assigned. The dam's minimum spillway capacity requirements for its final hazard rating are listed in NR 333.07(1) and are summarized below:

<u>Dam Hazard Rating</u>	<u>Principal Spillway</u>	<u>Total Combined Spillways</u>
Low	Q <sub>10</sub>	Q <sub>100</sub>
Significant	Q <sub>50</sub>	Q <sub>500</sub>
High	Q <sub>100</sub>	Q <sub>1000</sub>

To determine the hydraulic shadow for a dam, an engineering estimate of the area that would be flooded during a dam failure during the 100-year flood must be performed. The estimate must be prepared by a professional engineer registered in Wisconsin. The most common engineering estimate is determined through a model. Contact the Department's Dam Safety Staff to obtain a list of acceptable models and engineering methods.

When the hydraulic shadow has been identified the applicable zoning agency must adopt the new floodplain map as directed in NR 116.08(1). The hydraulic shadow is information that falls under the ordinance adoption requirements of NR 116.05. In addition, failure to adopt the hydraulic shadow within one year of its availability would result in legislative action to adopt the information as described in Sections 87.30 and 227, State Statutes.

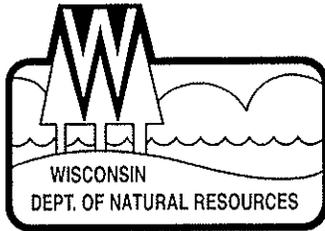
#### Definitions

Hydraulic Shadow -- means that area of land downstream from a dam that would be inundated by water upon failure of the dam during the regional flood.

Developed Area -- means an area within a floodplain designated by a municipality and approved by the Department which contains a minimum of 20 potential residential lots or a minimum of 5 acres zoned commercial, industrial or institutional wherein a minimum of 50% of the structures that could be accommodated by the respective zoning density. The limits of the developed area are defined by a line connecting the existing structures on the outer perimeter of the majority of the structures. Vacant lots within that boundary are treated the same as lots with existing structures.

Compliant Dams -- See s. NR 116.08(3), Wis. Adm. Code.

$Q_{10}$  through  $Q_{1000}$  -- Floods with a recurrence interval of 10% through 0.1% in any particular year.



## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Matthew J. Frank, Secretary  
Ronald W. Kazmierczak, Regional Director

Northeast Region Headquarters  
2984 Shawano Ave.  
Green Bay, Wisconsin 54313-6727  
Telephone 920-662-5100  
FAX 920-662-5413  
TTY Access via relay - 711

June 19, 2009

John Lefebvre  
Marinette County Courthouse  
1926 Hall Avenue  
Marinette, WI 54143-1717

Subject: Shoreland and Floodplain Zoning Assistance

As many of you already know, Water Management Specialist Mike Russo will be retiring at the end of June. Mike has served as your primary Department contact offering support and assistance as you implement your Shoreland and Wetland Zoning ordinances.

Regretfully the purpose of this letter is to notify you that the Department anticipates being unable to fill this vacancy along with many other vacancies in the Waterway Protection program for at least the next two years. We are currently working on a statewide level to find ways to fill the services provided by our vacant positions especially within this program. Until those decisions are made, the Northeast Region provides the following direction to help you implement your program.

1. **Field assistance with navigability determinations and ordinary high water marks.** The local Water Management Specialist (WMS) will be your contact for assistance with difficult determinations only. Routine determinations will be your responsibility. Most of you have been conducting these on your own for a number of years so this is not a change. If you need refresher training, your local WMS will provide that when they help you with your next difficult determination.

Please keep in mind that documentation is critical when you make ordinary high water mark and navigability determinations. Your file should contain photographs and notes on the facts that led you to your decision. Please make sure to copy the local WMS when you complete a determination.

Navigability determinations completed by Department staff in the Northeast Region are slowly being added to the Surface Water Data Viewer <http://dnrm.wisconsin.gov/imf/imf.jsp?site=SurfaceWaterViewer>. To access this information go to Layers and open the folder "Permits & Related Data". You will find the layer "Navigability Determinations" in this folder.

A map and contact information for the WMS is included with this letter.

2. **Department review and comments on Shoreland/Wetland variance requests, administrative appeals, ordinance amendments, re-zoning, and conditional use/special exceptions.** Please send notices of hearings on proposed variances, special exceptions (conditional uses), appeals and map or text amendments to the WMS for your area at least 10 days in advance. Copies of decisions of the same should also be sent directly to the WMS within 10 days of the decision.

Department staff will no longer be providing comments for hearings on variance requests, special exceptions, and administrative appeals. Staff will be focusing their limited time on the review of re-zoning requests and ordinance amendments and also the review of Board of Adjustment/Appeal decisions.

3. **Technical questions concerning NR 115.** Some of these questions may be answered by the local WMS for your area or contact Shoreland Team Leader Gregg Breese at (608) 261-6430. I apologize in advance for the delays that you will likely experience in getting answers to your questions. Everyone in the program has been assigned additional workload to cover for the vacancies and will be able to handle requests at a slower pace.
  
4. **Floodplain zoning.** For technical questions concerning NR 116 and interpreting your ordinance, please review the publication Floodplain and Shoreland Zoning: A Guidebook for Local Officials. If you need a copy of this publication, it is available for download as a "pdf" on our website at - <http://dnr.wi.gov/org/water/wm/dsfm/flood/communities.htm>. For map interpretation questions please contact the Water Management Engineer for your county. Dave Stertz, at our Wautoma office, covers Waupaca, Waushara, Marquette, Green Lake, Fond du Lac, Winnebago, Calumet, and Manitowoc and can be reached at (920) 787-4686 ext. 3035. Miles Winkler, at our Green Bay regional office, covers Marinette, Oconto, Menominee, Shawano, Outagamie, Brown, Kewaunee, and Door and can be reached at (920) 662-5195. Please send notices of hearings on proposed floodplain variances, special exceptions (conditional uses), appeals and map or text amendments to the engineer for your area at least 10 days in advance. Copies of decisions of the same should also be sent directly to the engineer within 10 days of the decision.

The following are additional resources that may help you with your day to day work.

- DNR Shoreland Management Program Website - <http://dnr.wi.gov/org/water/wm/dsfm/shore/>
- DNR Floodplain Management Program Website - <http://dnr.wi.gov/org/water/wm/dsfm/flood/>
- UW-Extension Center for Land Use Education - <http://www.uwsp.edu/cnr/landcenter/>
- Wisconsin County Code Administrators Association - <http://www.wccadm.com/>

I am interested in finding out your highest priority needs from Department Staff as it relates to implementing your Shoreland/Wetland and Floodplain Zoning Ordinance. Please email [Kristy.Rogers@wisconsin.gov](mailto:Kristy.Rogers@wisconsin.gov) your top three priorities. We will do our best to try to accommodate these priorities as we finalize longer term vacancy management plans.

In closing, I want to personally thank you for all of the hard work you do everyday to protect Wisconsin Waterways. Please know that this reduction in service is not a choice we wanted to make but is required due to the Department's budget over the next few years.

If you have any questions on this process please call me at (920) 662-5131, Linda Hyatt at (920) 787-4686 ext. 3010 or Kristy Rogers at (920) 662-5117.

Sincerely,

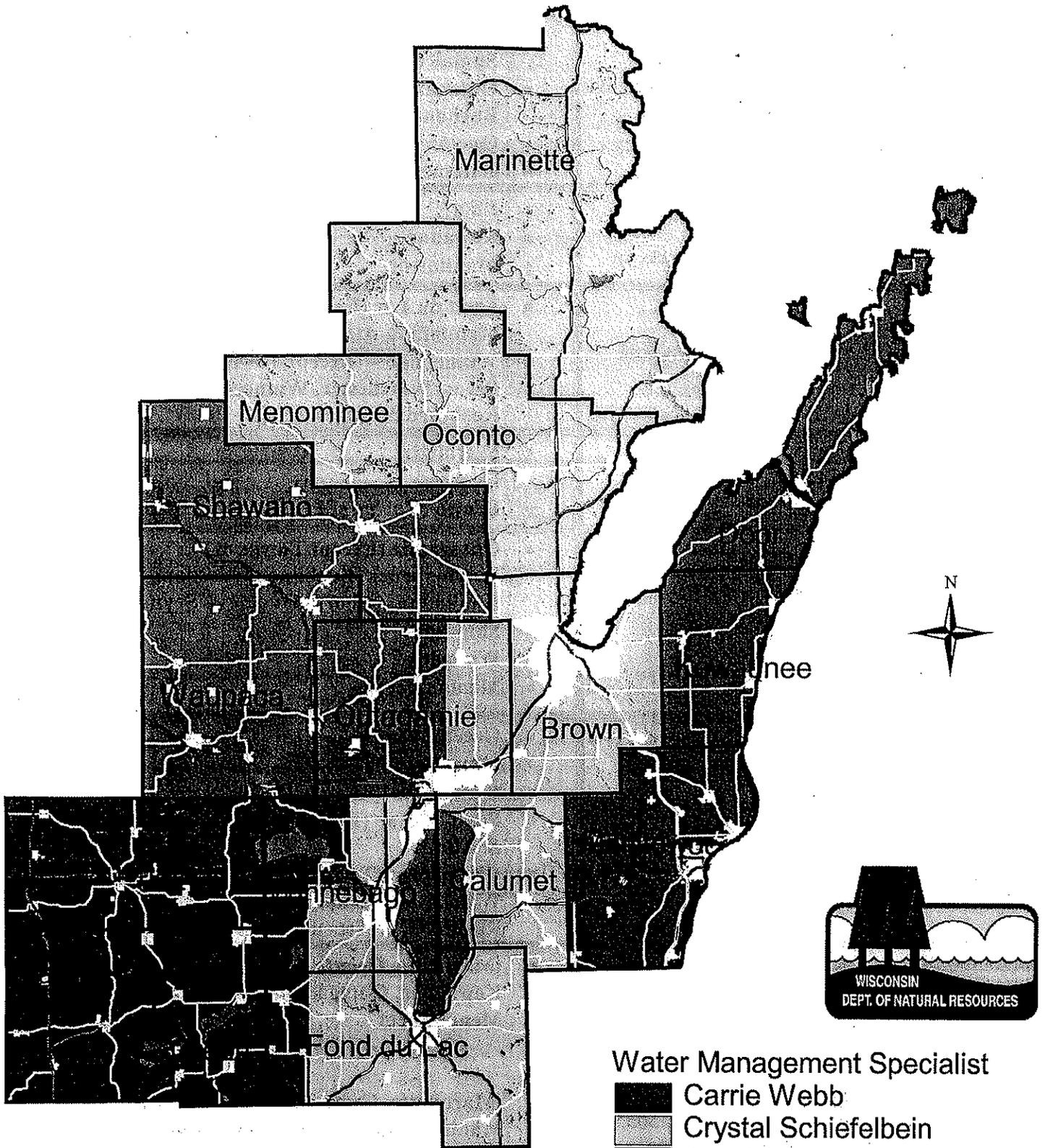


Charles Verhoeven  
Regional Water Leader

Cc: (via email)  
NER WMSs  
NER WMEs  
Gregg Breese, DNR-Madison  
Liesa Lehman, DNR-Madison

Gary Heinrichs, DNR – Madison  
Meg Galloway, DNR – Madison  
Kristy Rogers – Green Bay  
Linda Hyatt – Wautoma

# Northeast Region Water Management Specialists



Map Creator:  
Kristy Rogers

May 2008

## Water Management Specialist

- Carrie Webb
- Crystal Schiefelbein
- Jon Brand
- Robert Rosenberger
- Scott Koehnke
- Shawn Eisch

<b>WATER</b>	<b>MANAGEMENT</b>	<b>SPECIALISTS/ENGINEERS</b>
Green Bay DNR 2984 Shawano Ave. Green Bay, WI 54313-6727	Jon Brand (920)662-5466 Jon.Brand@wisconsin.gov	<ul style="list-style-type: none"> <li>• Brown (Except Towns of Pittsfield and Suamico)</li> <li>• Outagamie (Towns of Vandebroek, Buchanan, Freedom, Kaukauna, Osborn, Oneida &amp; Seymour)</li> <li>• Calumet</li> </ul>
Green Bay DNR 2984 Shawano Ave. Green Bay, WI 54313-6727	Carrie Webb (920)662-5453 Carriea.Webb@wisconsin.gov	<ul style="list-style-type: none"> <li>• Door</li> <li>• Kewaunee</li> <li>• Manitowoc</li> </ul>
Oshkosh DNR 625 E. Cty. Rd. Y, Suite 700 Oshkosh, WI 54901- 9731	Crystal Schiefelbein (920)424-7885 Crystal.Schiefelbein@wisconsin.gov	<ul style="list-style-type: none"> <li>• Fond du Lac (Except Towns of Ripon, Metomin &amp; Alto)</li> <li>• Winnebago – (Except Towns of Wolf River, Winchester, Winneconne, Poygan, Rushford &amp; Nepeuskun)</li> </ul>
Peshigo DNR 101 N. Ogden Rd., P.O. Box 208, Peshigo, WI 54157	Robert Rosenberger (715)582-5041 Robert.Rosenberger@wisconsin.gov	<ul style="list-style-type: none"> <li>• Marinette</li> <li>• Oconto</li> <li>• Brown (Towns of Pittsfield and Suamico)</li> </ul>
Shawano DNR 647 Lakeland Rd. Shawano, WI 54166	Scott Koehnke (715)526-4232 Scott.Koehnke@wisconsin.gov	<ul style="list-style-type: none"> <li>• Outagamie (Except Towns of Vandebroek, Buchanan, Freedom, Kaukauna, Osborn, Oneida &amp; Seymour)</li> <li>• Shawano</li> <li>• Waupaca</li> <li>• Menominee</li> </ul>
Wautoma DNR 427 E. Tower Dr., Suite 100 Wautoma, WI 54982	Shawn Eisch (920)787-4686 (Ext. 3016) Shawn.Eisch@wisconsin.gov	<ul style="list-style-type: none"> <li>• Green Lake</li> <li>• Marquette</li> <li>• Waushara</li> <li>• Fond du Lac (Towns of Ripon, Metomin &amp; Alto)</li> <li>• Winnebago (Towns of Wolf River, Winchester, Winneconne, Poygan, Rushford, &amp; Nepeuskun)</li> </ul>
Green Bay DNR 2984 Shawano Ave. Green Bay, WI 54313-6727	Miles Winkler, PE (920)662-5195 Miles.Winkler@wisconsin.gov	<ul style="list-style-type: none"> <li>• (Marinette, Oconto, Brown, Door, Kewaunee, Outagamie, Shawano, Menominee)</li> </ul>
Wautoma DNR 427 E. Tower Dr., Suite 100 Wautoma, WI 54982	David Stertz, PE (920)787-4686(Ext. 3035) DavidL.Stertz@wisconsin.gov	<ul style="list-style-type: none"> <li>• (Marquette, Green Lake, Fond du Lac, Manitowoc, Calumet, Winnebago, Waushara &amp; Waupaca)</li> </ul>

**John Lefebvre**

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**From:** Pat Virtues [pat.virtues@co.oconto.wi.us]  
**Sent:** Tuesday, June 16, 2009 11:51 AM  
**To:** Becky Frisch; Dawn Schmidt; Greenman, Mary; Haakenson, Duane; Jeremy Johnson; John Lefebvre; Karl Jennrich; Kelly, Trish; LaBine, Pam; Pat Virtues; Rich Wolosyn  
**Subject:** FW: DNR releases revised shoreland zoning rule (NR 115). Natural Resources Board to consider propo

**From:** Michelle Staff [mailto:MichelleS@co.jefferson.wi.us]  
**Sent:** Tuesday, June 16, 2009 11:35 AM  
**To:** Mary Greenman; Amy Barrows ; Dusty Grant; Everson, Daniel; Karl Jennrich; Mark Steward; Pat Virtues; Paul Van Eiji; Scott Godfrey; Steve Rannenberg; Sue VandenLangenberg  
**Subject:** DNR releases revised shoreland zoning rule (NR 115). Natural Resources Board to consider propo

DISTRICT REPS Please forward to your district members ASAP. The WCCA subcommittee will be meeting tomorrow to discuss the new draft. Then they will be sending all members a draft letter to the membership for comments. The time frame is very short, so be ready for quick responses. Below is a link to the rule and info. Michelle

FYI

<http://dnr.wi.gov/org/water/wm/dsfm/shore/news.htm> is the DNR link. There is a lot of new info..



Dear Dan,

Wisconsin's shoreland zoning rule (NR 115) contains statewide **minimum** standards for

6/26/2009

shoreland development in unincorporated areas. The proposed rule set to go before the Natural Resources Board June 24th includes the first changes to shoreland standards since 1968.

This revised rule includes important new provisions to prevent over-development of shorelines in order to minimize impacts on water quality, habitat, and natural scenic beauty, while protecting the legitimate interests of people who own cottages and other structures built before Wisconsin first undertook to regulate shorelands 40 years ago.

## Minimum standards

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NR 115 sets a baseline of **MINIMUM** standards applicable across the state. Nothing in the proposed rule changes the core authority of counties and other local governments to establish more restrictive shoreland regulations for the lakes and streams within their boundaries. Many counties have developed innovative approaches to manage unique local resources within their shoreland ordinances in the past 40 years, and they can continue to do so.

A one-size-fits all approach cannot possibly do justice to Wisconsin's marvelous and globally significant collection of lakes that range from the largest in the world—Lake Superior—to more than 15,000 smaller ones. Some of our lakes are remote and little used. Others are busy with boaters and anglers and have densely developed shores. Pristine North Woods lakes certainly warrant different development standards than those for highly developed shores in more populous areas.

As a new rule is implemented, we encourage citizens to become actively involved in the process and make sure their elected officials set standards the best suit the lakes in their communities. WAL is committed to the successful implementation of the new shoreland standards and engaging in further efforts to more fully protect and restore shoreland habitat for future generations.

## Key features of proposed rule

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Important provisions within the proposal include:

- The rule would require counties to set a 15 percent cap on impervious surfaces, but permits counties to allow up to 30 percent where "mitigation" is done to offset the impacts.
- The new rule would require counties to strengthen regulation of trees and vegetation within 35 feet of the water.
- The rule limits development of substandard lots in many situations.
- The rule would allow counties to permit owners of cottages and other buildings that were legally built but don't meet current setback or other standards to expand existing structures away from the water.

[Download proposed NR 115](#)

## Next steps in the process

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NR 115 will be presented to the DNR Natural Resources Board (NRB) at its June 24<sup>th</sup> meeting

If the NRB votes to move the rule forward, NR 115 will go to the legislature for consideration.

## Why should you be concerned about shoreland zoning standards?

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In the four decades since Wisconsin first established shoreland protection standards, we have learned many lessons, the most important of which is that we need to maintain some nature on the shores of our lakes and streams. Retaining areas of native plants and capping the footprints of near shore buildings are essential to protecting lake water quality. But beyond water quality, leaving nature on the shore is critical to maintaining populations of familiar creatures—from herons to turtles—that share the waterfront. Maintaining habitat helps preserve the natural scenic beauty of public lakes to the benefit of shore owner, boaters, and the whole public.

Water quality, habitat, and natural scenic beauty protect the quality of the environment, the value of waterfront property, and support the water based recreation and tourism so critical to Wisconsin's economy.

## How has the Wisconsin Association of Lakes represented member interests on NR 115?

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WAL has been closely involved with this evolving rule package since revisions were first proposed. The content of the shoreland rule (NR 115) has been markedly advanced by the Wisconsin Association of Lakes' work over the last eight years, and most especially over the last ten days. Since the winter of 2007, WAL has been in continuing meetings and negotiations with key stakeholders to resolve difference over the proposed drafts of the rule. There are many aspects of the proposed rule—for example, the standard for mitigation was markedly strengthened—that have been strengthened as a result of WAL's work.

WAL's position has always been to seek standards for local shoreland regulations that respect both the property rights of lakefront owners and the natural habitat, scenic beauty, and water quality that drew us to lakes in the first place.

## Beyond NR 115

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Adopting this proposed rule is an important step. But we have more to do. In addition to the local implementation of the new shoreland standards, we feel legislation may also be needed. Since the legislative session began in January, WAL has been working closely with legislators to pursue shoreland habitat

protection legislation.

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*Policy updates and other special messages are sent to Wisconsin Association of Lakes individual members and individuals associated with member lake groups.*

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DEPARTMENT OF NATURAL RESOURCES

**Chapter NR 115  
WISCONSIN'S SHORELAND PROTECTION PROGRAM**

NR 115.01 Purpose.  
NR 115.02 Applicability.  
NR 115.03 Definitions.

NR 115.04 Shoreland-wetlands  
NR 115.05 Minimum zoning standards for shorelands.  
NR 115.06 Department duties.

**NR 115.01 Purpose.** Section 281.31, Stats., provides that shoreland subdivision and zoning regulations shall: “further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.” Section 59.692, Stats., requires counties to effect the purposes of s. 281.31, Stats., and to promote the public health, safety and general welfare by adopting zoning regulations for the protection of all shorelands in unincorporated areas that meet shoreland zoning standards promulgated by the department. The purpose of this chapter is to establish minimum shoreland zoning standards for ordinances enacted under s. 59.692, Stats. for the purposes specified in s. 281.31(1), Stats., and to limit the direct and cumulative impacts of shoreland development on water quality; near-shore aquatic, wetland and upland wildlife habitat; and natural scenic beauty.

**History:** Cr. Register, July, 1980, No. 295, eff. 8-1-80; reprinted to correct error, Register, December, 1980; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**NR 115.02 Applicability.** The provisions of this chapter apply to county regulation of the use and development of unincorporated shoreland areas and to county, city or village regulation of previously unincorporated areas that were annexed by a city or village after May 7, 1982, or incorporated as a city or village after April 30, 1994. Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48 (13), Stats., applies, state agencies are required to comply with, and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance or repair of state highways and bridges carried out under the direction and supervision of the Wisconsin department of transportation is not subject to local shoreland zoning ordinances if s. 30.2022 (1), Stats., applies.

**History:** Cr. Register, July, 1980, No. 295, eff. 8-1-80; am. Register, October, 1980, No. 298, eff. 11-1-80; correction made under s. 13.93 (2m) (b) 7., Stats.

**NR 115.03 Definitions.** For the purpose of this chapter:

**(1d)** “Access and viewing corridor” means a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.

**(1h)** “Boathouse” means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of these structural parts.

**(1p)** “Building envelope” means the three dimensional space within which a structure is built.

**(2)** “County zoning agency” means that committee or commission created or designated by the county board under s. 59.69 (2) (a), Stats., to act in all matters pertaining to county planning and zoning.

**(3)** “Department” means the department of natural resources.

**(3m)** “Existing development pattern” means that principal structures exist within 250 feet of a proposed principal structure in both directions along the shoreline.

**(4)** “Flood plain” means the land which has been or may be hereafter covered by flood water during the regional flood. The flood plain includes the floodway and the flood fringe as those terms are defined in ch. NR 116.

**(4g)** “Impervious surface” means an area that releases as runoff all or a majority of the precipitation that falls on it. “Impervious surface” excludes frozen soil but includes rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed, constructed, and maintained to be pervious.

**(4r)** “Mitigation” means balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.

**(5)** “Navigable waters” means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under s. 281.31 (2) (d), Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Stats., and this chapter do not apply to lands adjacent to farm drainage ditches if:

(a) Such lands are not adjacent to a natural navigable stream or river;

(b) Those parts of such drainage ditches adjacent to such lands were nonnavigable streams before ditching or had no previous stream history; and

(c) Such lands are maintained in nonstructural agricultural use.

**Note:** In *Afaench v. Public Service Commission*, 261 Wis. 492 (1952), the Wisconsin Supreme Court held that a stream is navigable in fact if it is capable of floating any boat, skiff, or canoe, of the shallowest draft used for recreational purposes. In *DeGayner and Co., v. Department of Natural Resources*, 70 Wis. 2d 936 (1975), the court also held that a stream need not be navigable in its normal or natural condition to be navigable in fact. The DeGayner opinion indicates that it is proper to consider artificial conditions, such as beaver dams, where such conditions have existed long enough to make a stream useful as a highway for recreation or commerce, and to consider

**REVISIONS TO NR 115, WIS. ADMIN. CODE – as Proposed to the Natural Resources Board June 2009**

ordinarily recurring seasonal fluctuations, such as spring floods, in determining the navigability of a stream.

(6) “Ordinary high-water mark” means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.

(7) “Regional flood” means a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics once in every 100 years.

Note: The regional flood is based upon a statistical analysis of streamflow records available for watershed and/or an analysis of rainfall and runoff characteristics in the general watershed region. The flood frequency of the regional flood is once in every 100 years. In any given year, there is a 1% chance that the regional flood may occur. During a typical 30-year mortgage period, the regional flood has a 26% chance of occurring.

(7m) “Routine maintenance of vegetation” means normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.

(8) “Shorelands” means lands within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the flood plain, whichever distance is greater.

(9) “Shoreland-wetland zoning district” means a zoning district, created as a part of a county shoreland zoning ordinance, comprised of shorelands that are designated as wetlands on the Wisconsin wetland inventory maps prepared by the department.

(10) “Special exception (conditional use)” means a use which is permitted by a shoreland zoning ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the board of adjustment or, where appropriate, the planning and zoning committee or county board.

(11) “Unnecessary hardship” means that circumstance where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the zoning ordinance.

(13) “Wetlands” means those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation, and which have soils indicative of wet conditions.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; renum. (2) to (12) to be (3) to (13), cr. (2), r. and recr. (7), am. (11) and (13),

Register, October, 1980, No. 298, eff. 11-1-80; corrections in (2) (a) 1. and (b) 2. made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**NR 115.04 Shoreland-wetlands. (1)**

ESTABLISHMENT OF SHORELAND-WETLAND ZONING DISTRICTS. Counties shall adopt shoreland ordinances that include zoning regulations for shoreland-wetland zoning districts.

(2) AMENDMENT OF SHORELAND-WETLAND MAPS AND ZONING DISTRICTS. (a) *County review of wetland inventory map amendments.* After the department amends final Wisconsin wetland inventory maps:

1. The department shall transmit to the county zoning agency designated under s. 59.69 (2) (a), Stats., digital files or paper copies of amended wetland inventory maps for that county.

2. If the county believes that the amended maps are inaccurate, within 30 days of receiving the amended maps the county shall note discrepancies on the maps with an accompanying narrative explaining the amended problem areas and return a copy of the notated map and narrative to the department.

3. The department shall, at department expense, consult available soil survey maps and conduct on-site inspections, if appropriate, in order to evaluate the county recommendations, and shall then prepare final amended Wisconsin wetland inventory maps for that county.

Note: As of 1985 all counties adopted official wetland zoning maps and amendments occur as accuracy increases.

(b) *County amendment of shoreland-wetland maps and zoning districts.* 1. Within 6 months after receipt of final amended Wisconsin wetland inventory maps for that county from the department, a county shall zone all shorelands designated as wetlands on the amended Wisconsin wetland inventory maps in a shoreland-wetland zoning district. If a county fails to zone all shoreland-wetlands within this 6 month period, s. NR 115.06 (3) (b) shall apply.

2. Ordinance text and map amendments creating or amending shoreland-wetland zoning districts shall be referred to the county zoning agency for public hearing as required by s. 59.69 (5) (e) 2., Stats.

Note: Where an apparent discrepancy exists between a shoreland-wetland district shown on an amended map and actual field conditions, the county shall contact the department to determine if the amended map is in error. If the department determines that a particular area was incorrectly mapped as wetland or meets the wetland definition but was not shown as wetland on the map, the county shall have the authority to immediately grant or deny a shoreland zoning permit in accordance with the applicable regulations based on the department determination as to whether the area is wetland. In order to correct wetland mapping errors on the official zoning map, an official map amendment must be initiated within a reasonable period of time, not to exceed one year following the determination.

3. At least 10 days prior to the public hearing, the county shall provide the appropriate regional office of the department with a copy of the proposed text and map amendments and with written notice of the public hearing.

(c) *Amendment of shoreland-wetland zoning districts.*

1. Official ordinance amendments are required for any proposed change in shoreland-wetland zoning. Such amendments shall be made in accordance with provisions of s. 59.69 (5) (e), Stats. Official

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amendments to the ordinance text shall be made promptly. Provided the ordinance text is promptly amended, a county may amend its official map within a reasonable period of time not to exceed one year following the change in shoreland-wetland zoning.

2. The county clerk shall submit a copy of every proposed amendment to a shoreland-wetland zoning district to the appropriate regional office of the department within 5 days of the filing of such proposed amendment with the clerk.

3. All proposed text and map amendments to shoreland-wetland zoning districts shall be referred to the county zoning agency for a public notice and hearing as required by s. 59.69 (5) (e) 2., Stats. The appropriate regional office of the department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.

4. In order to ensure that the shoreland protection objectives found in s. 281.31, Stats., will be accomplished by the county shoreland ordinance, a county shall not rezone a shoreland-wetland zoning district, or portion thereof, if the proposed rezoning may result in a significant adverse impact upon any of the following:

- a. Storm and flood water storage capacity;
- b. Maintenance of dry season stream flow, or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
- c. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
- d. Shoreline protection against soil erosion;
- e. Fish spawning, breeding, nursery or feeding grounds;
- f. Wildlife habitat; or
- g. Areas of special recreational, scenic or scientific interest, including scarce wetland types.

5. If the department determines that the proposed rezoning may have a significant adverse impact upon any of the criteria listed in subd. 4., the department shall notify the county zoning agency of its determination either prior to or during the public hearing held on the proposed amendment.

6. As soon as possible after holding a public hearing, the county zoning agency shall submit its written findings and recommendations to the county board. Said findings shall outline the reason for the agency's recommendations. After receipt of the county zoning agency's findings and recommendations, the board may approve or disapprove of the proposed amendment.

7. The appropriate regional office of the department shall be provided with all of the following:

- a. A copy of the county zoning agency's findings and recommendations on the proposed amendment within 10 days after the submission of those findings and recommendations to the county board;
  - b. Written notice of the board's decision on the proposed amendment within 10 days after it is issued.
8. If the county board approves of the proposed amendment and the department determines, after

review as required by s. NR 115.06 (2) (c), that the county shoreland zoning ordinance if so amended would no longer comply with the requirements of s. 59.692, Stats., and this chapter, the department shall, after notice and hearing, adopt a complying ordinance for the county, under s. 59.692 (6), Stats.

9. If the department has notified the county zoning agency that a proposed amendment may have a significant adverse impact upon any of the criteria listed in subd. 4., that proposed amendment, if approved by the county board, shall not become effective until more than 30 days have elapsed since written notice of the county board's approval was mailed to the department, as required by subd. 7. If within the 30-day period the department notifies the county board that the department intends to adopt a superseding shoreland zoning ordinance for the county under s. 59.692 (6), Stats., the proposed amendment shall not become effective while the ordinance adoption procedure is proceeding, but shall have its effect stayed until the s. 59.692 (6), Stats., procedure is completed or otherwise terminated.

**(3) PERMITTED USES IN SHORELAND-WETLAND ZONING DISTRICTS.** Within shoreland-wetland zoning districts, counties shall permit the following uses subject to the general requirements of s. NR 115.05, the provisions of chs. 30 and 31, Stats., and other state and federal laws, if applicable:

(a) Hiking, fishing, trapping, hunting, swimming and boating.

(b) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops and that does not involve filling, flooding, draining, dredging, ditching, tiling or excavating.

(c) The practice of silviculture, including the planting, thinning and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done except as required to construct and maintain roads which are necessary to conduct silviculture activities, which cannot as a practical matter be located outside the wetland, and which are designed and constructed to minimize the adverse impact upon the natural functions of the wetland, or except as required for temporary water level stabilization measures to alleviate abnormally wet or dry conditions which would have an adverse impact on the conduct of silvicultural activities if not corrected.

**Note:** Local units of government, in the development and application of ordinances which apply to shoreland areas, must consider other programs of statewide interest and other state regulations affecting the lands to be regulated, i.e. regulations and management practices applicable to state and county forests and lands entered under the forest cropland and managed forest land programs.

(d) The pasturing of livestock and the construction and maintenance of fences, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(e) The cultivation of agricultural crops if cultivation can be accomplished without filling, flooding or artificial drainage of the wetland through ditching,

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tiling, dredging or excavating except that flooding, dike and dam construction, and ditching shall be allowed for the purpose of growing and harvesting cranberries. The maintenance and repair of existing drainage systems (such as ditching and tiling) shall be permitted. The construction and maintenance of roads shall be permitted if the roads are necessary for agricultural cultivation, cannot as a practical matter be located outside the wetland, and are designed and constructed to minimize the adverse impact upon the natural functions of the wetland.

(f) The construction and maintenance of duck blinds provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(g) The construction and maintenance of nonresidential structures, not to exceed 500 square feet, used solely in conjunction with the raising of waterfowl, minnows, or other wetland or aquatic animals, or used solely for some other purpose which is compatible with wetland preservation if the structure cannot as a practical matter be located outside the wetland, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(h) The construction and maintenance of piers, docks and walkways, including those built on pilings, provided that no filling, flooding, dredging, draining, ditching, tiling or excavating is done.

(i) The establishment and development of public and private parks and recreation areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves and private wildlife habitat areas, provided that no filling is done and that any private wildlife habitat area is used exclusively for that purpose. The owner or operator of a new private recreation or wildlife area to be located in a shoreland-wetland zoning district shall be required to notify the county zoning agency of the proposed project before beginning construction. Ditching, excavating, dredging, dike and dam construction shall be allowed in wildlife refuges, game preserves, and private wildlife habitat areas for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

(j) The construction and maintenance of electric, gas, telephone water and sewer transmission and distribution lines, and related facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members, which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

**Note:** Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under s. 196.491, Stats., are not subject to the requirements of local ordinances.

(k) The construction and maintenance of railroad lines which cannot as a practical matter be located outside the wetland, provided that any filling, excavating,

ditching or draining necessary for the construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

(L) The maintenance, repair, replacement, and reconstruction of existing town and county highways and bridges.

**(4) PROHIBITED USES IN SHORELAND-WETLAND ZONING DISTRICTS.** Any use not permitted in sub. (3) is prohibited in a shoreland-wetland zoning district unless the wetland or portion thereof is rezoned by amendment of the county shoreland zoning ordinance in accordance with s. 59.69 (5) (c), Stats., and the procedures outlined in sub. (2) (c).

**NR 115.05 Minimum zoning standards for shorelands. (1) ESTABLISHMENT OF SHORELAND ZONING STANDARDS.** The shoreland zoning ordinance adopted by each county shall sufficiently control use of shorelands to afford the protection of water quality as specified in chs. NR 102 and 103. At a minimum, the ordinance shall include all of the following provisions:

(a) *Minimum lot sizes.* Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

1. 'Sewered lots.' Lots served by public sanitary sewer shall have a minimum average width of 65 feet and a minimum area of 10,000 square feet.

2. 'Unsewered lots.' Lots not served by public sanitary sewer shall have a minimum average width of 100 feet and a minimum area of 20,000 square feet.

3. 'Substandard lots.' A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following apply:

a. The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.

b. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.

c. The substandard lot or parcel is developed to comply with all other ordinance requirements.

4. 'Planned Unit Development.' A non-riparian lot may be created which does not meet the requirements of subd. 1. if the county has approved and recorded a plat or certified survey map including that lot within a planned unit development, if the planned unit development contains at least 2 acres or 200 feet of frontage, and if the reduced non-riparian lot sizes are allowed in exchange for larger shoreland buffers and setbacks on those lots adjacent to navigable waters that are proportional to and offset the impacts of the reduced lots on habitat, water quality and natural scenic beauty.

(b) *Building setbacks.* Permitted building setbacks shall be established to conform to health, safety and

welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution.

1. 'Shoreland setback.' Except where exempt under subd. 1m., a setback of 75 feet from the ordinary high-water mark of any navigable waters to the nearest part of a building or structure, shall be required for all buildings and structures. Where an existing development pattern exists, the shoreland setback for a proposed principal structure may be reduced to the average shoreland setback of the principal structure on each adjacent lot, but the shoreland setback may not be reduced to less than 35 feet from the ordinary high-water mark of any navigable waters.

**Note:** A property owner may seek a variance to a dimensional standard of the county ordinance and a county board of adjustment may review the request pursuant to s. 59.694(7)(c), Stats.

1m. 'Exempt structures.' All of the following structures are exempt from the shoreland setback standards in subd. 1.:

a. Boathouses located entirely above the ordinary high-water mark and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation.

**Note:** This chapter does not prohibit repair and maintenance of boathouses located above the ordinary high-water mark.

b. Open sided and screened structures such as gazebos, decks, patios and screen houses in the shoreland setback area that satisfy the requirements in s. 59.692(1v), Stats.

c. Fishing rafts that are authorized on the Wolf river and Mississippi river under s. 30.126, Stats.

d. Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are 2 meters or less in diameter.

e. Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with ch. Comm 83, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.

f. Walkways, stairways or rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of 60-inches in width.

2. 'Floodplain structures.' Buildings and structures to be constructed or placed in a flood plain shall be required to comply with any applicable flood plain zoning ordinance.

3. 'Boathouses.' The use of boathouses for human habitation and the construction or placing of boathouses beyond the ordinary high-water mark of any navigable waters shall be prohibited.

(c) *Vegetation.* To protect natural scenic beauty, fish and wildlife habitat, and water quality, a county shall regulate removal of vegetation in shoreland areas, consistent with the following:

1. The county shall establish ordinance standards that consider sound forestry and soil conservation practices and the effect of vegetation removal on water quality,

including soil erosion, and the flow of effluents, sediments and nutrients.

**Note:** In developing and applying ordinances which apply to shoreland areas, local units of government must consider other applicable law and programs affecting the lands to be regulated, e.g., law and management practices that apply to state and county forests and lands entered under forest cropland and managed forest land programs, and ss. 59.692(2)(a) and 59.69(4)(a), Stats.

2. To protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote preservation and restoration of native vegetation, the county ordinance shall designate land that extends from the ordinary high water mark to a minimum of 35 feet inland as a vegetative buffer zone and prohibit removal of vegetation in the vegetative buffer zone except as follows:

a. The county may allow routine maintenance of vegetation.

b. The county may allow removal of trees and shrubs in the vegetative buffer zone to create access and viewing corridors, provided that the combined width of all access and viewing corridors on a riparian lot or parcel may not exceed the lesser of 30 percent of the shoreline frontage or 200 feet.

c. The county may allow removal of trees and shrubs in the vegetative buffer zone on a parcel with 10 or more acres of forested land consistent with "generally accepted forestry management practices" as defined in section NR 1.25(2)(b), Wis. Adm. Code, and described in Department publication "Wisconsin Forest Management Guidelines" (publication FR-226), provided that vegetation removal be consistent with these practices.

d. The county may allow removal of vegetation within the vegetative buffer zone to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation creating an imminent safety hazard, provided that any vegetation removed under the permit be replaced by replanting in the same area as soon as practicable.

**Note:** Information regarding native plants, shoreland and habitat management is available from the University of Wisconsin-Extension publications website: <http://clean-water.uwex.edu/pubs/index.htm>.

e. The county may authorize by permit additional vegetation management activities in the vegetative buffer zone. The permit issued under this subd. par. shall require that all management activities comply with detailed plans approved by the county and designed to control erosion by limiting sedimentation into the waterbody, to improve the plant community by replanting in the same area, and to maintain and monitor the newly restored area. The permit also shall require an enforceable restriction to preserve the newly restored area.

(d) *Filling, grading, lagooning, dredging and excavating.* Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with the provisions of sub. (2), the requirements of ch. 30, Stats., and other state and federal laws where applicable, and only if done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat, and natural scenic beauty.

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(e) *Impervious surfaces.* Counties shall establish impervious surface standards to protect water quality and fish and wildlife habitat and protect against pollution of navigable waters. Impervious surface standards shall apply to the construction, reconstruction, expansion, structural alteration, replacement or relocation of any impervious surface, and shall require all of the following:

1. 'Calculation of percentage of impervious surface.' Percentage of impervious surface shall be calculated by dividing the surface area of existing and proposed impervious surfaces on a shoreland lot or parcel by the total surface area of that shoreland lot or parcel.
2. 'Impervious surface standard.' A county may allow up to 15% impervious surface on a shoreland lot or parcel.
3. 'Maximum impervious surface.' A county may allow more than 15% impervious surface but not more than 30% impervious surface on a shoreland lot or parcel, provided that the county issues a permit that requires a mitigation plan approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include existing or proposed measures that the county determines adequate to offset the impacts of the impervious surface on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the impervious surface being permitted.

*Note:* A property owner may seek a variance to a dimensional standard of the county ordinance and a county board of adjustment may review the request pursuant to s. 59.694(7)(c), Stats.

4. 'Existing impervious surfaces.' This chapter does not prohibit routine maintenance of all impervious surfaces that existed on the effective date of this rule ... [Legislative Reference Bureau insert date], or replacement of existing driveways, walkways, patios or similar surfaces at grade level.

(f) *Height.* To protect and preserve wildlife habitat and natural scenic beauty, on or after the effective date of this section ... [Legislative Reference Bureau insert date], a county may not permit any construction that results in a structure taller than 35 feet within 75 feet of the ordinary high-water mark of any navigable waters.

(g) *Nonconforming structures and uses.* 1. 'General rule for nonconforming uses.' Pursuant to ss. 59.69 (10) (a) and 59.692 (2) (a), Stats., an ordinance enacted under those provisions may not prohibit the continuation of the lawful use of a building, structure or property, that exists when an ordinance or ordinance amendment takes effect, which is not in conformity with the provisions of the ordinance or amendment.

2. 'Nonconforming use of temporary structure.' The continuance of the nonconforming use of a temporary structure may be prohibited.

3. 'Discontinued nonconforming use.' If a nonconforming use is discontinued for a period of 12 months, any future use of the building, structure or property shall conform to the ordinance.

4. 'Maintenance of nonconforming principal structure.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b)1. may be maintained and repaired within its existing building envelope.

*Note:* Maintenance and repair includes such activities as interior remodeling, plumbing, insulation, and replacement of windows, doors, siding, or roof.

5. 'Expansion of nonconforming principal structure.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b)1. may be expanded beyond its existing building envelope, provided that all of the following requirements are met:

- a. The use of the structure has not been discontinued for a period of 12 months.
- b. The existing principal structure is at least 35 feet from the ordinary high-water mark.
- c. No portion of the structure expansion will be located any closer to the ordinary high-water mark than the closest point of the existing principal structure.
- d. Unless all portions of the structure expansion are more than 75-feet from the ordinary high-water mark, the county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include measures that exist or are proposed to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the expansion being permitted.
- e. All other provisions of the shoreland ordinance shall be met.

*Note:* Other provisions include requirements such as height and impervious surface limitations.

6. 'Replacement or relocation of nonconforming principal structure.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b)1. may be replaced or relocated on the property provided all of the following requirements are met:

- a. The use of the structure has not been discontinued for a period of 12 months or more.
- b. The existing principal structure is at least 35 feet from the ordinary high-water mark.
- c. No portion of the replaced or relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.
- d. The county determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for replacement or relocation that will result in compliance with the shoreland setback requirement in par. (b)1.
- e. The county shall issue a permit that requires a mitigation plan that shall be approved by the county

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and implemented by the property owner by the date specified in the permit. The mitigation plan shall include measures that exist or are proposed to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the replaced or relocated structure being permitted.

f. The county shall issue a permit that requires that all other structures on the lot or parcel that do not comply with the shoreland setback requirement in par. (b)1. and are not exempt under par. (b)1m. to be removed by the date specified in the permit.

g. All other provisions of the shoreland ordinance shall be met.

**Note:** Other provisions include requirements such as height and impervious surface limitations.

7. 'Boathouses.' The maintenance and repair of nonconforming boathouses which extend beyond the ordinary high-water mark of any navigable waters shall be required to comply with s. 30.121, Stats.

(2) ESTABLISHMENT OF LAND DIVISION REVIEW. Each county shall review, pursuant to s. 236.45, Stats., all land divisions in shoreland areas which create 3 or more parcels or building sites of 5 acres each or less within a 5-year period. In such review all of the following factors shall be considered:

(a) Hazards to the health, safety or welfare of future residents.

(b) Proper relationship to adjoining areas.

(c) Public access to navigable waters, as required by law.

(d) Adequate storm drainage facilities.

(e) Conformity to state law and administrative code provisions.

(3) ESTABLISHMENT OF SANITARY REGULATIONS. Each county shall adopt sanitary regulations for the protection of health and the preservation and enhancement of water quality.

(a) Where public water supply systems are not available, private well construction shall be required to conform to ch. NR 812.

(b) Where a public sewage collection and treatment system is not available, design and construction of private sewage disposal systems shall, prior to July 1, 1980, be required to comply with ch. Comm 83, and after June 30, 1980, be governed by a private sewage system ordinance adopted by the county under s. 59.70 (5), Stats.

(4) ADOPTION OF ADMINISTRATIVE AND ENFORCEMENT PROVISIONS. The shoreland ordinance adopted by each county shall require all of the following:

(a) The appointment of an administrator and such additional staff as the workload may require.

(b) The creation of a zoning agency, as authorized by s. 59.69, Stats., a board of adjustment, as authorized by s. 59.694, Stats., and a county planning agency, as defined in s. 236.02 (1), Stats., and required by s. 59.692 (3), Stats.

(c) A system of permits for all new construction, development, reconstruction, structural alteration or moving of buildings and structures. A copy of all

applications shall be required to be filed in the office of the county zoning administrator.

(d) Regular inspection of permitted work in progress to insure conformity of the finished structures with the terms of the ordinance.

(e) A variance procedure which authorizes the board of adjustment to grant such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of the shoreland zoning ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, as long as the granting of a variance does not have the effect of granting or increasing any use of property which is prohibited in that zoning district by the shoreland zoning ordinance.

(f) A special exception (conditional use) procedure for uses presenting special problems.

(g) The county shall keep a complete record of all proceedings before the board of adjustment, zoning agency and planning agency.

(h) Written notice to the appropriate regional office of the department at least 10 days prior to any hearing on a proposed variance, special exception (conditional use) permit, appeal for a map or text interpretation, map or text amendment, or permit issued under sub.

(1) (b), and copies of all proposed land divisions submitted to the county for review under sub. (2).

(hm) Submission to the appropriate regional office of the department, within 10 days after grant or denial, of copies of any permit granted under sub. (1) (g), any decision on a variance, special exception or conditional use permit, or appeal for a map or text interpretation, and any decision to amend a map or text of an ordinance.

(i) Mapped zoning districts and the recording, on an official copy of such map, of all district boundary amendments.

(j) The establishment of appropriate penalties for violations of various provisions of the ordinance, including forfeitures. Compliance with the ordinance shall be enforceable by the use of injunctions to prevent or abate a violation, as provided in s. 59.69 (11), Stats.

(k) The prosecution of violations of the shoreland ordinance.

**History:** Cr. Register, July, 1980, No. 295, eff. 8-1-80; r. and recr. (2) (a) 3., am. (2) (a) 6., (2) (c) 3., 5., 7., 9., 10., (3) (d), (3) (e) 1. and cr. (2) (c) 11. and 12., Register, October, 1980, No. 298, eff. 11-1-80; correction in (5) (a) and (b) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1995, No. 477; corrections in (2) (a) 1., (b) 2., (d), (e) 1. to 4. (intro.), 8. and 9., (3) (e) 1., (5) (b), (6) (b) and (j) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**NR 115.06 Department duties. (1) ASSISTANCE TO COUNTIES.** To the full extent of its available resources, the department shall provide advice and assistance to counties in the development, adoption, administration and enforcement of their shoreland zoning and land division ordinances, seeking the highest practicable degree of uniformity consistent with the shoreland protection objectives found in s. 281.31, Stats. As a part of this effort, the department shall prepare a model shoreland zoning ordinance which counties

may use in meeting the requirements of s. 59.692, Stats., and this chapter.

**(2) REVIEW AND APPROVAL OF SHORELAND ZONING AND LAND DIVISION ORDINANCES.** When determining whether a shoreland zoning or subdivision ordinance or any subsequent amendment enacted by a county complies with s. 59.692, Stats., the department shall compare the ordinance and amendments with the minimum standards and requirements for shoreland regulation in this chapter.

(a) *Initial ordinance.* The department shall issue a certificate of compliance when a county has, in the opinion of the department, complied with s. 59.692, Stats., and this chapter.

(b) *Amendments to ordinance.* The department and each county shall assure that the county shoreland ordinance continues to comply with this chapter by doing the following:

1. 'County duties.' A county shall keep its shoreland zoning and subdivision ordinances in compliance with s. 59.692, Stats., and this chapter by doing all of the following:

a. A county shall amend its shoreland and subdivision ordinances to meet the minimum standards in this chapter within two years after the effective date of this rule ... [Legislative Reference Bureau insert date].

b. Pursuant to s. NR 115.05 (4) (h) and (hm), a county shall provide the department notice of hearing on any proposed ordinance amendment and a copy of any decision denying or enacting an amendment.

2. 'Department duties.' a. The department may periodically reevaluate county shoreland zoning and subdivision ordinances for continuing compliance with s. 59.692, Stats., and this chapter.

b. The department shall review any ordinance amendment enacted pursuant to subd. 1.a. and shall issue a certificate of compliance when the amended ordinance, in the opinion of the department, complies with s. 59.692, Stats., and this chapter.

(c) *Proposed amendments to shoreland-wetland districts.* The department shall review all proposed amendments to shoreland-wetland zoning districts pursuant to s. NR 115.04 (2), to determine whether an ordinance which is amended as proposed will comply with s. 59.692, Stats., and this chapter.

**(3) DETERMINATION OF NONCOMPLIANCE.** (a) *Failure to enact initial ordinance or amendments.* A county that does not have a shoreland zoning and subdivision ordinance, or that fails to amend its ordinance as required by sub. (2) (b) 1. in effect shall be deemed to be in noncompliance with s. 59.692, Stats., and this chapter. Pursuant to s. 59.692 (6), Stats., and after notice and hearing, the department shall adopt an ordinance if a county fails to do one of the following:

1. Draft and enact shoreland and subdivision ordinances or required amendments within a time period specified by the department.

2. Contract with a consultant to draft the shoreland and subdivision ordinances or required amendments and enact the ordinances within a time period specified by the department.

3. Cooperate with department staff to draft shoreland and subdivision ordinances or required amendments to be enacted by the county within a time period specified by the department not to exceed 180 days.

(b) *Failure to meet minimum standards in initial ordinance or amendments.* Counties which have shoreland zoning and subdivision ordinances or amendments that the department has reviewed under sub. (2) and found do not meet the minimum standards in this chapter shall be deemed to be in noncompliance with the requirements of s. 59.692, Stats., and this chapter, and the procedures in par. (a) shall apply. If a county fails to modify its ordinance to meet the minimum standards within 6 months after receipt of final amended Wisconsin wetland inventory maps for that county as required by s. NR 115.04 (2) (b), the department shall adopt an ordinance for the county, after notice and hearing, pursuant to s. 59.692 (6), Stats.

(c) *Extension of time.* The department may extend the time periods specified in pars (a) and (b) if it determines an extension is in the public interest.

(d) *Costs.* Pursuant to ss. 59.692 (6) and 87.30 (1) (c), Stats. the costs of any actions by the department under this subsection to adopt an ordinance or amendments shall be assessed against the county concerned and collected in substantially the same manner as other taxes levied by the state.

**(4) MONITORING.** It is the responsibility of the department, to aid in the fulfillment of the state's role as trustee of its navigable waters, to monitor the administration and enforcement of shoreland zoning and land division ordinances. In so doing, the department:

(a) Shall review decisions granting special exceptions (conditional uses), variances and appeals to ensure compliance with the applicable shoreland zoning ordinances and this chapter;

(b) May appeal the actions of county zoning officials to county boards of adjustment, under s. 59.694 (4), Stats.; and

(c) May seek court review of the decisions of boards of adjustment, under s. 59.694 (10), Stats.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; am. (3) (b), Register, October, 1980, No. 298, eff. 11-1-80; corrections in (1), (2) (a) and (c), (3) (a) (intro.) and (b), (4) (b) and (c) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

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## Chapter NR 115

### WISCONSIN'S SHORELAND MANAGEMENT PROGRAM

NR 115.01 Purpose.  
NR 115.02 Applicability.  
NR 115.03 Definitions.

NR 115.05 Shoreland regulation standards and criteria.  
NR 115.06 Department duties.

Note: Chapter NR 115 as it existed on July 31, 1980, was repealed and a new chapter NR 115 was created effective August 1, 1980.

**NR 115.01 Purpose.** (1) Section 59.692, Stats., requires counties to adopt zoning and subdivision regulations for the protection of all shorelands in unincorporated areas by January 1, 1968, and provides that if the department of natural resources determines, after notice and hearing, that a county has not adopted a shoreland ordinance by January 1, 1968, or that a county has adopted an ordinance which fails to meet reasonable minimum standards in accomplishing the shoreland protection objectives found in s. 281.31, Stats., the department is to adopt a shoreland ordinance to be administered by that county.

(2) Section 281.31, Stats., provides that shoreland subdivision and zoning regulations shall: "further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty."

(3) It is the responsibility of the department of natural resources, in the discharge of its mandate under ss. 59.692 and 281.31, Stats., to require adherence to specific standards and criteria for navigable water protection regulations and their administration. Section 281.31, Stats., provides that: "Such standards and criteria shall give particular attention to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating and water sports; the capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations."

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; reprinted to correct error, Register, December, 1980; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**NR 115.02 Applicability.** The provisions of this chapter are applicable to county regulation of the use and development of unincorporated shoreland areas. Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48 (13), Stats., applies, state agencies are required to comply with, and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance and repair of state highways and bridges, carried out under the direction and supervision of the Wisconsin department of transportation are not subject to local shoreland zoning ordinances, if s. 30.2022 (1), Stats., applies.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; am. Register, October, 1980, No. 298, eff. 11-1-80; correction made under s. 13.93 (2m) (b) 7., Stats.

**NR 115.03 Definitions.** For the purpose of this chapter.

(1) "Boathouse" means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of these structural parts.

(2) "County zoning agency" means that committee or commission created or designated by the county board under s. 59.69

(2) (a), Stats., to act in all matters pertaining to county planning and zoning.

(3) "Department" means the department of natural resources.

(4) "Flood plain" means the land which has been or may be hereafter covered by flood water during the regional flood. The flood plain includes the floodway and the flood fringe as those terms are defined in ch. NR 116.

(5) "Navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under s. 281.31 (2) (d), Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Stats., and this chapter do not apply to lands adjacent to farm drainage ditches if:

(a) Such lands are not adjacent to a natural navigable stream or river;

(b) Those parts of such drainage ditches adjacent to such lands were nonnavigable streams before ditching or had no previous stream history; and

(c) Such lands are maintained in nonstructural agricultural use.

Note: In *Mtenuch v. Public Service Commission*, 261 Wis. 492 (1952), the Wisconsin Supreme Court held that a stream is navigable in fact if it is capable of floating any boat, skiff, or canoe, of the shallowest draft used for recreational purposes. In *DeGayner and Co., v. Department of Natural Resources*, 70 Wis. 2d 936 (1975), the court also held that a stream need not be navigable in its normal or natural condition to be navigable in fact. The DeGayner opinion indicates that it is proper to consider artificial conditions, such as beaver dams, where such conditions have existed long enough to make a stream useful as a highway for recreation or commerce, and to consider ordinarily recurring seasonal fluctuations, such as spring floods, in determining the navigability of a stream.

(6) "Ordinary high-water mark" means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.

(7) "Regional flood" means a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics once in every 100 years.

Note: The regional flood is based upon a statistical analysis of streamflow records available for watershed and/or an analysis of rainfall and runoff characteristics in the general watershed region. The flood frequency of the regional flood is once in every 100 years. In any given year, there is a 1% chance that the regional flood may occur. During a typical 30-year mortgage period, the regional flood has a 26% chance of occurring.

(8) "Shorelands" means lands within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the flood plain, whichever distance is greater.

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(9) "Shoreland-wetland zoning district" means a zoning district, created as a part of a county shoreland zoning ordinance, comprised of shorelands that are designated as wetlands on the Wisconsin wetland inventory maps prepared by the department.

(10) "Special exception (conditional use)" means a use which is permitted by a shoreland zoning ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the board of adjustment or, where appropriate, the planning and zoning committee or county board.

(11) "Unnecessary hardship" means that circumstance where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the zoning ordinance.

(12) "Variance" means an authorization granted by the board of adjustment to construct, alter or use a building or structure in a manner that deviates from the requirements of a shoreland zoning ordinance.

(13) "Wetlands" means those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation, and which have soils indicative of wet conditions.

**History:** Cr. Register, July, 1980, No. 295, eff. 8-1-80; renum. (2) to (12) to be (3) to (13), cr. (2), r. and recr. (7), am. (11) and (13), Register, October, 1980, No. 298, eff. 11-1-80; corrections in (2) (a) 1. and (b) 2. made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**NR 115.05 Shoreland regulation standards and criteria.** (1) ESTABLISHMENT OF APPROPRIATE ZONING DISTRICTS. Counties shall adopt shoreland ordinances that include, at a minimum, zoning regulations for shoreland-wetland zoning districts. Other types of districts (such as general purpose, agricultural, industrial, commercial, residential, recreational, conservancy, or wetlands districts) may be created in addition to shoreland-wetland zoning districts.

(2) ESTABLISHMENT AND REGULATION OF SHORELAND-WETLAND ZONING DISTRICTS. (a) *County review of preliminary wetland inventory maps.* Before the department prepares final Wisconsin wetland inventory maps:

1. The department shall transmit to the county zoning agency designated under s. 59.69 (2) (a), Stats., copies of preliminary wetland inventory maps for that county.

2. The county zoning agency shall have 90 days to review the preliminary maps unless the review period is extended by written approval of the department, but in no case shall the review period extend for more than 180 days.

3. The county zoning agency shall hold a public hearing to solicit public comments on the preliminary wetland inventory maps. Notice of the time and place of the hearing shall be mailed to the town clerk of each town in the county and shall be published as a class 1 notice, under ch. 985, Stats.

4. On or before the last day of the review period, the county zoning agency shall return the preliminary maps to the department. If the county zoning agency believes that the preliminary maps are inaccurate, discrepancies shall be noted on the maps with an accompanying narrative explaining the problem areas.

5. The department shall schedule a meeting with the county zoning agency within 30 days of the return of the preliminary maps if the county zoning agency has indicated that they believe that there are inaccuracies on the maps.

6. After meeting with the county zoning agency to discuss apparent map inaccuracies, the department shall, at department expense, consult available soil survey maps and conduct on-site inspections, if appropriate, in order to evaluate the county recommendations, and shall then prepare the final Wisconsin wetland inventory maps for that county.

7. The adoption of a final Wisconsin wetland inventory map is a final decision of the department and may be reviewed as provided in ch. 227, Stats.

(b) *County adoption of shoreland-wetland zoning.* 1. Each county shall, within 6 months after receipt of final Wisconsin wetland inventory maps for that county from the department, zone all shorelands within the county that are designated as wetlands on the Wisconsin wetland inventory maps, in a shoreland-wetland zoning district.

2. Ordinance text and map amendments creating shoreland-wetland zoning districts shall be referred to the county zoning agency for public hearing as required by s. 59.69 (5) (c) 2., Stats.

3. The appropriate district office of the department shall be provided with a copy of the proposed text and map amendments and with written notice of the public hearing at least 10 days prior to such hearing.

(c) *Permitted uses in shoreland-wetland zoning districts.* Within shoreland-wetland zoning districts, counties shall permit the following uses subject to the general requirements of sub. (3), the provisions of chs. 30 and 31, Stats., and other state and federal laws, if applicable:

1. Hiking, fishing, trapping, hunting, swimming and boating.

2. The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops and that does not involve filling, flooding, draining, dredging, ditching, tiling or excavating.

3. The practice of silviculture, including the planting, thinning and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done except as required to construct and maintain roads which are necessary to conduct silviculture activities, which cannot as a practical matter be located outside the wetland, and which are designed and constructed to minimize the adverse impact upon the natural functions of the wetland, or except as required for temporary water level stabilization measures to alleviate abnormally wet or dry conditions which would have an adverse impact on the conduct of silvicultural activities if not corrected.

**Note:** Local units of government, in the development and application of ordinances which apply to shoreland areas, must consider other programs of statewide interest and other state regulations affecting the lands to be regulated, i.e. regulations and management practices applicable to state and county forests and lands entered under the forest cropland and woodland tax law programs.

4. The pasturing of livestock and the construction and maintenance of fences, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

5. The cultivation of agricultural crops if cultivation can be accomplished without filling, flooding or artificial drainage of the wetland through ditching, tiling, dredging or excavating except that flooding, dike and dam construction, and ditching shall be allowed for the purpose of growing and harvesting cranberries. The maintenance and repair of existing drainage systems (such as ditching and tiling) shall be permitted. The construction and maintenance of roads shall be permitted if the roads are necessary for agricultural cultivation, cannot as a practical matter be located outside the wetland, and are designed and constructed to minimize the adverse impact upon the natural functions of the wetland.

6. The construction and maintenance of duck blinds provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

7. The construction and maintenance of nonresidential buildings used solely in conjunction with the raising of waterfowl, minnows, or other wetland or aquatic animals, or used solely for some other purpose which is compatible with wetland preservation if such building cannot as a practical matter be located outside the wetland, not to exceed 500 square feet, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

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8. The construction and maintenance of piers, docks and walkways, including those built on pilings, provided that no filling, flooding, dredging, draining, ditching, tiling or excavating is done.

9. The establishment and development of public and private parks and recreation areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves and private wildlife habitat areas, provided that no filling is done and that any private wildlife habitat area is used exclusively for that purpose. The owner or operator of a new private recreation or wildlife area to be located in a shoreland-wetland zoning district shall be required to notify the county zoning agency of the proposed project before beginning construction. Ditching, excavating, dredging, dike and dam construction shall be allowed in wildlife refuges, game preserves, and private wildlife habitat areas for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

10. The construction and maintenance of electric, gas, telephone water and sewer transmission and distribution lines, and related facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members, which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

*Note:* Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under s. 196.491, Stats., are not subject to the requirements of local ordinances.

11. The construction and maintenance of railroad lines which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

12. The maintenance, repair, replacement, and reconstruction of existing town and county highways and bridges.

(d) *Prohibited uses in shoreland-wetland zoning districts.* Any use not permitted in par. (c) is prohibited in a shoreland-wetland zoning district unless the wetland or portion thereof is rezoned by amendment of the county shoreland zoning ordinance in accordance with s. 59.69 (5) (e), Stats., and the procedures outlined in par. (e).

(c) *Rezoning of shoreland-wetland zoning districts.* 1. Official ordinance amendments are required for any change in shoreland-wetland zoning. Such amendments shall be made upon petition in accordance with provisions of s. 59.69 (5) (e), Stats.

2. The county clerk shall submit a copy of every petition for an amendment to a shoreland-wetland zoning district to the appropriate district office of the department within 5 days of the filing of such petition with the clerk.

3. All proposed text and map amendments to shoreland-wetland zoning districts shall be referred to the county zoning for a public notice and hearing as required by s. 59.69 (5) (c) 2., Stats. The appropriate district office of the department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.

4. In order to ensure that the shoreland protection objectives found in s. 281.31, Stats., will be accomplished by the county shoreland ordinance, a county shall not rezone a shoreland-wetland zoning district, or portion thereof, if the proposed rezoning may result in a significant adverse impact upon any of the following:

a. Storm and flood water storage capacity;

b. Maintenance of dry season stream flow, or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;

c. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;

d. Shoreline protection against soil erosion;

e. Fish spawning, breeding, nursery or feeding grounds;

f. Wildlife habitat; or

g. Areas of special recreational, scenic or scientific interest, including scarce wetland types.

5. If the department determines that the proposed rezoning may have a significant adverse impact upon any of the criteria listed in subd. 4., the department shall notify the county zoning agency of its determination either prior to or during the public hearing held on the proposed amendment.

6. As soon as possible after holding a public hearing, the county zoning agency shall submit its written findings and recommendations to the county board. Said findings shall outline the reason for the agency's recommendations. After receipt of the county zoning agency's findings and recommendations, the board may approve or disapprove of the proposed amendment.

7. The appropriate district office of the department shall be provided with:

a. A copy of the county zoning agency's findings and recommendations on the proposed amendment within 10 days after the submission of those findings and recommendations to the county board; and

b. Written notice of the board's decision on the proposed amendment within 10 days after it is issued.

8. If the county board approves of the proposed amendment and the department determines, after review as required by s. NR 115.06 (2) (c), that the county shoreland zoning ordinance if so amended would no longer comply with the requirements of s. 59.692, Stats., and this chapter, the department shall, after notice and hearing, adopt a complying ordinance for the county, under s. 59.692 (6), Stats.

9. If the department has notified the county zoning agency that a proposed amendment may have a significant adverse impact upon any of the criteria listed in subd. 4., that proposed amendment, if approved by the county board, shall not become effective until more than 30 days have elapsed since written notice of the county board's approval was mailed to the department, as required by subd. 7. If within the 30-day period the department notifies the county board that the department intends to adopt a superseding shoreland zoning ordinance for the county under s. 59.692 (6), Stats., the proposed amendment shall not become effective while the ordinance adoption procedure is proceeding, but shall have its effect stayed until the s. 59.692 (6), Stats., procedure is completed or otherwise terminated.

(3) **ESTABLISHMENT OF ZONING REGULATIONS FOR SHORELAND AREAS.** The shoreland zoning ordinance adopted by each county shall provide sufficient control of the use of shorelands to afford the protection of water quality as specified in chs. NR 102 and 103. At a minimum, the ordinance shall include the following provisions:

(a) *Minimum lot sizes.* Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

1. Lots served by public sanitary sewer shall have a minimum average width of 65 feet and a minimum area of 10,000 square feet.

2. Lots not served by public sanitary sewer shall have a minimum average width of 100 feet and a minimum area of 20,000 square feet.

(b) *Building setbacks.* Permitted building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution.

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1. Unless an existing development pattern exists, a setback of 75 feet from the ordinary high-water mark of an adjacent body of water to the nearest part of a building or structure, shall be required for all buildings and structures, except piers, boat hoists and boat-houses.

2. Buildings and structures to be constructed or placed in a flood plain shall be required to comply with any applicable flood plain zoning ordinance.

3. The use of boathouses for human habitation and the construction or placing of boathouses beyond the ordinary high-water mark of any navigable waters shall be prohibited.

(c) *Trees and shrubbery.* The cutting of trees and shrubbery shall be regulated to protect natural beauty, control erosion and reduce the flow of effluents, sediments and nutrients from the shoreland area.

1. In the strip of land 35 feet wide inland from the ordinary high-water mark, no more than 30 feet in any 100 feet shall be clear-cut.

2. In shoreland areas more than 35 feet inland, trees and shrub cutting shall be governed by consideration of the effect on water quality and consideration of sound forestry practices and soil conservation practices.

3. The tree and shrubbery cutting regulations required by this paragraph shall not apply to the removal of dead, diseased or dying trees or shrubbery.

(d) *Filling, grading, lagooning, dredging, ditching and excavating.* Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with the provisions of sub. (2), the requirements of ch. 30, Stats., and other state and federal laws where applicable, and only if done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.

(c) *Nonconforming uses.* 1. Under s. 59.69 (10), Stats., the continuation of the lawful use of a building, structure or property, existing at the time an ordinance or ordinance amendment takes effect, which is not in conformity with the provisions of the ordinance or amendment, including routine maintenance of such a building or structure, shall not be prohibited, but the alteration of, addition to, or repair, over the life of the building or structure, in excess of 50% of the equalized assessed value of an existing nonconforming building or structure may be prohibited. If a county prohibits alteration, addition or repair in excess of 50% of the equalized assessed value of an existing nonconforming building or structure, the property owner may either appeal the decision to the county board of adjustment and seek court review if the board's determination is unfavorable, under s. 59.694 (4) and (10), Stats., or petition to have the property rezoned under sub. (2) (c) and s. 59.69 (5) (c), Stats.

2. The continuance of the nonconforming use of a temporary structure may be prohibited.

3. If a nonconforming use is discontinued for a period of 12 months, any future use of the building, structure or property shall conform to the ordinance.

4. The maintenance and repair of nonconforming boathouses which extend beyond the ordinary high-water mark of any navigable waters shall be required to comply with s. 30.121, Stats.

(4) **ESTABLISHMENT OF LAND DIVISION REVIEW.** Each county shall review, pursuant to s. 236.45, Stats., all land divisions in shoreland areas which create 3 or more parcels or building sites of 5 acres each or less within a 5-year period. In such review the following factors should be considered:

- (a) Hazards to the health, safety or welfare of future residents.
- (b) Proper relationship to adjoining areas.
- (c) Public access to navigable waters, as required by law.
- (d) Adequate storm drainage facilities.
- (e) Conformity to state law and administrative code provisions.

(5) **ESTABLISHMENT OF SANITARY REGULATIONS.** Each county shall adopt sanitary regulations for the protection of health and the preservation and enhancement of water quality.

(a) Where public water supply systems are not available, private well construction shall be required to conform to ch. NR 812.

(b) Where a public sewage collection and treatment system is not available, design and construction of private sewage disposal systems shall, prior to July 1, 1980, be required to comply with ch. Comm 83, and after June 30, 1980, be governed by a private sewage system ordinance adopted by the county under s. 59.70 (5), Stats.

(6) **ADOPTION OF ADMINISTRATIVE AND ENFORCEMENT PROVISIONS.** The shoreland ordinance adopted by each county shall provide for:

(a) The appointment of an administrator and such additional staff as the workload may require.

(b) The creation of a zoning agency, as authorized by s. 59.69, Stats., a board of adjustment, as authorized by s. 59.694, Stats., and a county planning agency, as defined in s. 236.02 (1), Stats., and required by s. 59.692 (3), Stats.

(c) A system of permits for all new construction, development, reconstruction, structural alteration or moving of buildings and structures. A copy of all applications shall be required to be filed in the office of the county zoning administrator.

(d) Regular inspection of permitted work in progress to insure conformity of the finished structures with the terms of the ordinance.

(e) A variance procedure which authorizes the board of adjustment to grant such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of the shoreland zoning ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, as long as the granting of a variance does not have the effect of granting or increasing any use of property which is prohibited in that zoning district by the shoreland zoning ordinance.

(f) A special exception (conditional use) procedure for uses presenting special problems.

(g) The county shall keep a complete record of all proceedings before the board of adjustment, zoning agency and planning agency.

(h) Written notice to the appropriate district office of the department at least 10 days prior to hearings on proposed variances, special exceptions (conditional uses), appeals for map or text interpretations, and map or text amendments, and submission to the same office of the department of copies of decisions on variances, special exceptions (conditional uses), appeals for map or text interpretations, and map or text amendments within 10 days after they are granted or denied.

(i) Mapped zoning districts and the recording, on an official copy of such map, of all district boundary amendments.

(j) The establishment of appropriate penalties for violations of various provisions of the ordinance, including forfeitures. Compliance with the ordinance shall be enforceable by the use of injunctions to prevent or abate a violation, as provided in s. 59.69 (11), Stats.

(k) The prosecution of violations of the shoreland ordinance.

**History:** Cr. Register, July, 1980, No. 295, eff. 8-1-80; r. and rec. (2) (a) 3., am. (2) (a) 6., (2) (c) 3., 5., 7., 9., 10., (3) (d), (3) (e) 1. and cr. (2) (e) 11. and 12., Register, October, 1980, No. 298, eff. 11-1-80; correction in (5) (a) and (b) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1995, No. 477; corrections in (2) (a) 1., (b) 2., (d), (e) 1. to 4. (intro.), 8. and 9., (3) (e) 1., (5) (b), (6) (b) and (j) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**NR 115.06 Department duties.** (1) **ASSISTANCE TO COUNTIES.** To the full extent of its available resources, the department shall provide advice and assistance to counties in the development, adoption, administration and enforcement of their shoreland zoning and land division ordinances, seeking the highest

**Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.**

practicable degree of uniformity consistent with the shoreland protection objectives found in s. 281.31, Stats. As a part of this effort, the department shall prepare a model shoreland zoning ordinance which counties may use in meeting the requirements of s. 59.692, Stats., and this chapter.

**(2) REVIEW AND APPROVAL OF SHORELAND ZONING AND LAND DIVISION ORDINANCES.** (a) Compliance with the requirements of s. 59.692, Stats., will be determined by the department by comparing the shoreland zoning and land division ordinance that has been enacted by a county with the minimum standards for shoreland regulation contained in s. NR 115.05. The department shall issue a certificate of compliance when a county has, in the opinion of the department, complied with s. 59.692, Stats., and this chapter.

(b) The department shall periodically reevaluate shoreland zoning and land division ordinances to ascertain their continuing compliance with s. NR 115.05. A county shall keep its shoreland ordinance current, effective and workable to retain its status of compliance.

(c) The department shall review all proposed amendments to shoreland wetland zoning districts pursuant to s. NR 115.05 (2) (c) 5., to ensure that an ordinance which is amended as proposed will retain its status of compliance with s. 59.692, Stats., and this chapter.

**(3) DETERMINATION OF NONCOMPLIANCE.** (a) Counties which do not have a shoreland zoning and land division ordinance in effect shall be deemed to be in noncompliance with s. 59.692, Stats., and this chapter. The department shall, pursuant to s. 59.692 (6), Stats., adopt an ordinance, after notice and hearing, if a county fails to either:

1. Proceed with the drafting and enactment of shoreland regulations within a given time period, or,

2. Contact with a consultant to draft the regulations within a given time period, or,

3. Cooperate with the staff of the department to draft the shoreland ordinance to be enacted by the county within a given time period. All costs for such action by the department shall be borne by the noncomplying county.

(b) Counties which have shoreland zoning and land division ordinances that do not meet the minimum standards contained in s. NR 115.05 shall be deemed to be in noncompliance with the requirements of s. 59.692, Stats., and this chapter. If a county fails to modify its ordinance to meet the minimum standards within 6 months after receipt of final Wisconsin wetland inventory maps for that county, the department shall adopt an ordinance for the county, after notice and hearing, pursuant to s. 59.692 (6), Stats.

**(4) MONITORING.** It is the responsibility of the department, to aid in the fulfillment of the state's role as trustee of its navigable waters, to monitor the administration and enforcement of shoreland zoning and land division ordinances. In so doing, the department:

(a) Shall review decisions granting special exceptions (conditional uses), variances and appeals to ensure compliance with the applicable shoreland zoning ordinances and this chapter;

(b) May appeal the actions of county zoning officials to county boards of adjustment, under s. 59.694 (4), Stats.; and

(c) May seek court review of the decisions of boards of adjustment, under s. 59.694 (10), Stats.

**History:** Cr. Register, July, 1980, No. 295, eff. 8-1-80; am. (3) (b), Register, October, 1980, No. 298, eff. 11-1-80; corrections in (1), (2) (a) and (c), (3) (a) (intro.) and (b), (4) (b) and (c) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

## John Lefebvre

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**From:** Gregg Schwalbach [grskls@att.net]  
**Sent:** Monday, June 22, 2009 11:01 AM  
**To:** John Lefebvre  
**Subject:** Marinette County Contact Us - Land Information

Email Address: grskls@att.net

First Name: Gregg

Last Name: Schwalbach

Address: 1035 Cheyenne Court

City: Hubertus

State/Province: Wisconsin

Zip Code: 53033

Phone Number: 262-349-5553

Fax Number:

Comments/Questions: June 22, 2009

John Lefebvre

Land Information Director

Marinette County, Wisconsin

Dear Mr. Lefebvre;

The purpose of this letter is to express my displeasure regarding the \$5 fee assessed in conjunction with updating the mailing address for property owned in Marinette County. About 2 weeks ago I telephoned the Land Information Office and requested to change the mailing address for two parcels of land that I own. I was subsequently mailed a form to fill out and return. When I read the form I was very surprised to learn that a \$5 check must be submitted along with the completed form.

This made absolutely no sense to me or my wife so I called your office and spoke with Debbie. She explained that the fee was established about 4 or 5 years ago by the County Board because of the large number of "snowbird" property owners who live in Wisconsin during the summer and in Florida during the winter, and change their property mailing address each time they move back and forth. She added that as a result she changes about 2,500 mailing addresses per year.

We are not "snowbirds" and feel that this policy is illogical and unfair. We have owned our property in Marinette County since 1990 and have moved only twice during this time period, including our move this year. I do not understand why the County would have a policy that discourages property owners, such as me, from updating their current mailing

address. It seems like I am being punished for being a responsible citizen.

I recently changed my mailing address with approximately two dozen businesses and other governmental agencies, and none of them charged a fee to update this information.

Therefore I respectfully request that the Board reconsider retaining this illogical and unfair policy. If the Board decides the policy should be kept, perhaps they can modify the policy so the fee applies only to the second and subsequent address changes made each calendar year.

Please ensure that this letter is forwarded to the County Board members for their consideration. Thank you.

Sincerely,

Gregg Schwalbach

*Marinette County GIS*

2009 Jan - June Web Activity Log

