

Wisconsin Counties Association ANNUAL CONFERENCE & Exhibit Hall 2022

8:00 - 9:00 AM

An Overview of County Zoning

Shoreland zoning



WCCA Spring Conference September 20, 2022

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~230 years ago

Northwest Ordinance established the Public Trust Doctrine saying "The navigable waters ... shall be common highways, and forever free."



~170 years ago

1848-WI became a state



Public Trust Doctrine

- The Wisconsin Constitution, adopted in 1848, says navigable waters are "common highways and forever free"
- This led to "The waters of WI belong to the people of WI" which is the basis of the Public Trust Doctrine
- State of WI has obligation to protect the public's rights in all navigable waters including boating, fishing, swimming & hunting
- Shoreland zoning is a key part of how we protect the public's rights in navigable waters

s. 281.31 Wisconsin Statutes

See short videos Champions of the Public Trust dnr.wi.gov/topic/waterways/about_us/doctrine.htm







"Timber living and dead, inextricably intermingled . . ."





 As the 1920's came to a close in Wisconsin, the University including Extension and others sought solutions to the problems of the cutover

What solution did the University propose?







Abandoned.

Courtesy W. A. Rowlands

1929, the WI Legislature amended the county zoning statutes to permit all counties to zone, and to exchange lands

Which 3 zoning districts were allowed?

farming, forestry, and "recreation"

1931 Attorney General was asked:

1. Can the county board, by formal action, compel a town board to remove a settler from a forestry or recreational zone, as determined by the county board, to an agricultural zone?

I should think this could be done directly, although a prohibition of the use of his land for agricultural purposes might practically so result. It may be, how ever, that such pressing considerations as fire hazard, or some other necessity, might furnish a ground for actual removal.

1931 AG provided his opinion on the constitutionality of county zoning...

"The county zoning statute is undoubtedly in the public welfare. The cut-over areas of northern Wisconsin speak as eloquently against haphazard development as any city condition..." "The spotting of these lands with remote or abandoned farms, resulting in sparsely settled districts with insufficient population or value to support roads and schools...the misdirected efforts to farm lands not well-suited to agriculture with resulting personal grief and social loss...all cry out for planning, for social direction of individual effort."

"...I believe the judicial tendency is going to be to recognize more and more the great social evil of uncorrelated and unrestrained individual and selfish enterprise, and hence to broaden its views of the power of government to plan the social and economic conditions of the present and the future."

– Attorney General Fred W. Wylie

- Rural zoning was "smart growth" ahead of its time (fiscally motivated)
- Zoning was only one part of a suite of efforts meant to deal with scattered settlement
- In the 1950s and 60s, WI was looking for economic development options for the north. Farming hadn't worked. Recreation and tourism related to lakes were seen as the best option.

Zoning in the Modern Era (1970-present)

- In 1965, the Legislature passed the Wisconsin Water Resources Act, including shoreland zoning and more
- Shoreland zoning is a key part of WI's Public Trust Doctrine - protecting the rights of all Wisconsin residents to fish, swim and recreate on navigable waters
- The pace and scale of shoreland development (and associated prices) was rather unprecedented in rural WI

HARMONY GROVE, COLUMBIA COUNTY (LAKE WISCONSIN)



Purposes of shoreland zoning include...

- Prevent and control water pollution
- Protect spawning grounds, fish and aquatic life
- Reserve shore cover and natural beauty



Water quality & economics Is there a connection?



"More polluted lakes have less valuable property than do cleaner lakes." E.L. David, *Water Resources Research*, 1968



Healthy watersheds make healthy lakes and higher property values

Water & economics

In Oneida County, the value of waterfront properties make up 76% of the county's total assessed value (2014)

Town	Total Valuation, \$	Waterfront Valuation, \$	% of Total
Cassian	218,136,000	164,512,800	75%
Crescent	225,180,200	164,517,000	73%
Enterprise	80,010,700	58,779,000	73%
Hazelhurst	310,586,900	259,902,800	84%
Lake Tomahawk	204,269,300	152,670,800	75%
Little Rice	66,136,500	44,177,600	67%
Lynne	26,833,000	16,766,200	62%
Minocqua	1,199,711,100	1,012,435,500	84%
Monico	20,036,900	8,788,400	44%
Newbold	475,529,300	342,777,400	72%
Nokomis	200,464,600	141,435,100	71%

~50 years ago

1968 – State set minimum shoreland standards

 Counties had until Jan 1, 1968 to adopt shoreland ordinances

When did your county adopt shoreland zoning?



Data from Witte (1970), Bosselman and Calliies (1971) and Weber and Peroff (1977)

~50 years ago

1968 – State set minimum shoreland standards

 Counties could be more protective or restrictive with the standards to effectively manage the resources relevant to their geographical location and development pressures.

Many counties had the minimums until...





Minimum standards for zoning shoreland wetlands in unincorporated areas were established in NR 115



Counties led...

- Many counties recognized inadequacies in 1968 state SL zoning law
 Local experience
 - New science
- Starting in 1990s, counties adopted higher standards



Higher standards adopted by counties...

Larger lot areas: 41
Larger lot widths: 43
Larger setbacks: 25
Larger buffer sizes: 17
Imp. surface stds: 17



Only 17 counties had no standards higher than state minimums

Lakes have tipping points



Future of our lakes?



June 19, 2017 – 3 Madison beaches closed due to algae blooms June 22 - Pewaukee Lake beach closed day before "Clean Water Festival" July 3 – Milwaukee South Shore beach closed 7 days in June July 4 – Algae consumes Delavan Lake, beach closures July 5 – Indian Lake fish kill could number in the thousands Mediocre & low-quality lakes are plentiful

 High quality lakes are special and take effort

In the last 15 years...

- 2002-2010: After 8 years of public input, 19 public hearings around the state, and over 14,000 public comments, statewide minimum shoreland zoning standards changed. Changed nonconforming structure standards and added impervious surface standards.
- 2012: State legislature said in Act 170 that counties could not be more restrictive than state standards regarding the regulation of NCS and substandard lots.
- 2013: NR 115 was changed requiring counties to allow lateral expansion of nonconforming structures and greater levels of impervious surfaces based on input from county zoning staff and a few state legislators.

2015: Act 55

- Counties can no longer have shoreland zoning standards that are any more restrictive (higher) than the state standards for any of their lakes and streams
- Made changes to other shoreland zoning standards.
- See 3 short videos about 2015-16 changes on YouTube. Search for "shoreland zoning"

NR 115 Shoreland Zoning Standards

- 1. Minimum Lot Sizes
- 2. Vegetation
- 3. Building Setbacks
- 4. Filling, grading, lagooning, dredging, ditching and excavating
- 5. Impervious Surfaces
- 6. Height
- 7. Nonconforming Structures and Uses

Effects of lot sizes

Higher standards by some counties300 foot lots22 homes

Round Lake

80 acres 1.3 miles of developable shoreline Current statewide shoreland standards

<u>Unsewered</u> 100 foot lots <mark>66 homes</mark>

<u>Sewered</u> 65 foot lots 105 homes

Round Lake

Effects of lot sizes

80 acres 1.3 miles of developable shoreline



Impacts of phosphorus

Phosphorus added here

- More algae & vegetation growth
- Unpleasant for swimming
- Lower oxygen
- More rough fish, less game fish

Shoreline Buffers & Setbacks

Areas of undisturbed soils and vegetation Provide natural shoreland functions: protects water quality, provides habitat for wildlife and fish

What happens when a shoreline buffer is cut?



In 2014 Vermont passed statewide shoreland zoning standards with 100' OHWM setbacks

 Shoreline bank is destabilized and eroded

- Soil washed into the lake contains phosphorus which increases algae growth
- Eroded soil covers spawning beds, smothering fish eggs
- Less shade leads to warmer water temperatures
- Habitat needed by birds, frogs and other wildlife is lost

Shoreline buffers



What can buffers do if they're big enough?



A 35 foot deep shoreline buffer does not keep bacteria from poop out of the water. In many situations, it doesn't keep P and sediment out of the water, and isn't enough for wildlife.

Impervious surfaces



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 Impervious surfaces can be thought of as biological deserts

 With no plants, animals cannot find food or shelter, making them easy prey, and making them more likely to die









1000 sq. ft. house footprint <u>400 sq. ft. driveway</u> 1400 sq. ft. total



10% of 20,000 sq. ft. lot impervious

1200 sq. ft. house footprint 800 sq. ft. driveway 2000 sq. ft. total

Gone

Iowa darter Black crappie Channel catfish Rock bass Yellow perch Horneyhead chub Sand shiner Southern redbelly dace Brook trout



15% of 20,000 sq. ft. lot impervious

1500 sq. ft. house footprint 740 sq. ft. garage 660 sq. ft. driveway <u>100 sq. ft. sidewalk</u> 3000 sq. ft. total

More species gone

Golden shiner Northern pike Largemouth bass Bluntnose minnow Johnny darter Common shiner



More Impervious Surface = Less Fish

Fish found in streams when impervious surface in the watershed was:

Less than 8%

8 - 12%

Greater than 12%



Current one-size-fits-all shoreland zoning standards allow:

- 15% impervious on all home lots
- 40% on all store & industrial lots
- Higher on "highly developed shorelines"

More Impervious Surface = Less Fish

More impervious surface causes





Trout are gone above 11% impervious



Larger and more frequent floods

Less groundwater leads to lower stream flows & warmer water temperatures during dry periods

Northern pike

- Northern pike and walleye are coolwater fish
- Runoff from impervious surfaces heats up lakes and rivers
- The DNR can't "fix" these lakes. Northern pike survival depend on zoning staff and property owners following impervious surface limits in shoreland zoning.



Northern Pike Kills July 2012 due to high water temperatures

More Impervious Surface = Less Fish

More sediments and algae growth make it difficult for some predator species that hunt by sight to find their food

More sediments

 cover spawning beds
 of fish such as
 walleye and
 smallmouth bass,
 depriving eggs of
 oxygen



The closer a structure is to the shoreline ... the greater impact it has on the waterway

Built at the shoreland setback Buffer in place to filter runoff

The closer a structure is to the shoreline ... the greater impact it has on the waterway

More pollutant-carrying runoff enters water No room for a buffer to hold soil in place and filter runoff Less shoreline habitat for eagles, loons, frogs, etc.

Shoreland ordinances regulate uses allowed in shoreland-wetlands

- 3.3 <u>PERMITTED USES</u>. (NR 115.04(3)) The following uses shall be allowed, subject to general shoreland zoning regulations contained in this ordinance...
- (1) Activities and uses which do not require the issuance of a zoning permit, but which must be carried out without any filling, flooding, draining, dredging, ditching, tiling or excavating:
 - (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;
 - (c)The pasturing of livestock;
 - (d)The cultivation of agricultural crops;
 - (e)The practice of silviculture, including the planting, thinning, and harvesting of timber; and
 - (f) The construction or maintenance of duck blinds. ...
- (3) Uses which require the issuance of a zoning permit and which may include limited filling, flooding, draining, dredging, ditching, tiling or excavating, but only to the extent specifically provided below:
 - (a) The construction and maintenance of roads which are necessary to conduct silvicultural activities or agricultural cultivation, provided that:
 - 1.The road cannot as a practical matter be located outside the wetland;
 - 2.The road is designed and constructed to minimize adverse impact upon the natural functions of the wetland enumerated in section 3.5(2);...
- (b) The construction or maintenance of nonresidential buildings, provided that:
 - 1.The building is essential for and used solely in conjunction with the raising of waterfowl, minnows or other wetland or aquatic animals; or some other use permitted in the shoreland-wetland district;

Other tools are needed to achieve lake goals

←Lake goals

Fishable, swimmable, clear water

State minimum SL stds (1968)

Other tools are needed to achieve lake goals

Lake goals

Fishable, swimmable, clear water

54 counties adopted higher standards for some or all of their lakes and streams (1968-2015)

State minimum SL stds (1968)

Other tools are needed to achieve lake goals

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Fishable, swimmable, clear water

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 State minimum SL stds (1968)
 Legislature requires one-size-fits-all standards (2015)

Other tools are needed to achieve lake goals

Lake goals

Fishable, swimmable, clear water

54 counties adopted higher standards for some or all of their lakes and streams (1968-2015)

 State minimum SL stds (1968)
 Legislature requires one-size-fits-all standards (2015)
 2016 & 2017 legislative changes

Review

- The qualit happening Some push back from
- Shoreland protect la
 Anorthern counties who want local control
- From 1968-2010 the state set in Shoreland standards, and 54 counties adopted ins standards for their local lakes and streams
- In 2015, the WI Legislature set one-size-fits-all shoreland standards statewide. Counties are currently not allowed to have higher standards.
- County shoreland ordinances now allow more lots, smaller setbacks and shoreline buffers, and rebuilding and expanding buildings close to the water. Many projects that used to require a variance don't now.



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Structures exempt from 75' setback



• Exempt from 75' setback

- Boathouses above OHWM
- Walkways, stairways, or rail systems necessary to access the shoreline (60" max)
- Open-sided and screened structures (gazebos) at least 35' back & meet add'l provisions
- Broadcast signal receivers
- Utility transmission and distribution lines, pole, tower, well pumphouse covers, POWTS
- Fishing rafts under 30.126
- New: Systems used to treat runoff from impervious surfaces
- New: Utilities authorized by DNR

2015-16 changes



- All exempt structures may be replaced within their 3-dimensional building envelope with no approval, fee or mitigation
- Counties must allow a boathouse above OHWM on all waterfront lots
- Roof of a flat boathouse may be used as a deck (no side walls or screens)
- Counties may continue to set standards for the number of boathouses per lot and square footage per boathouse as well as other requirements that would not prohibit the BH

Structures not meeting 75' setback



 Red house does not meet shoreland setback

• Could be:

- Nonconforming structure – lawful when constructed but does not comply with OHWM setback
- Allowed by variance
- Allowed by setback averaging
- Illegal structure

2015-17 changes

- Counties may allow higher impervious surface limits on commercial, industrial or business land uses and highly developed shorelines. IS not counted if treated/internally drained
- NCS and structures located at less than the shoreland setback by variance can be replaced in their current location if the activity does not expand the footprint
- NCS and structures located at less than the shoreland setback by variance can be expanded to 35 feet in height
- No approval, fee or mitigation required through shoreland zoning for replacement or vertical expansion
- A building permit, general zoning permit, floodplain zoning permit, etc. often needed

They all depend on healthy shorelines

SiteSkins

Questions? Comments?

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