

Report From Agency

REPORT TO LEGISLATURE

Revisions to NR 115, Wis. Adm. Code

Board Order No. WT-06-12
Clearinghouse Rule No.13 -051

Basis and Purpose of the Proposed Rule

Wisconsin's minimum shoreland zoning standards (NR 115) were originally written in the 1960's. Development patterns have changed significantly from a small, older family cottage to year round homes and multi-unit complexes with sizes proportionate to the high value of the shoreline property. In the years that shoreland zoning has been in place, extensive scientific research has shown that easily-implementable up-to-date minimum standards are critical to protecting Wisconsin lakes and streams. Revisions to the minimum shoreland zoning standards have been under discussion since 1988. An extensive review of modern scientific literature about fish and wildlife habitat requirements, prevention and control of water pollution, and preservation of shore cover for natural scenic beauty, concluded that to meet the statutory objectives of the program, improved minimum standards were needed for shoreland ordinances.¹

While many of the basic standards have remained unchanged since originally adopted nearly 40 years ago, the department began an extensive rulemaking process in 2001, with the rule going into effect on February 1, 2010. Since then, a number of counties raised concerns regarding the implementation and administration of the state's shoreland zoning standards in NR 115. The department agreed to revise the regulations to address key concerns relating to the impervious surface standards and nonconforming structure standards and to clarify a vegetative management and reporting standard. The proposed revisions to NR 115 are necessary to address the shoreland areas of the state that were developed prior to the revisions in NR 115 went into effect on February 1, 2010, because many of these areas already exceed the impervious surface standard and/or the maximum impervious surface standard. Any proposed development on these properties would result in an administrative and implementation burden on counties, which would have to require the property owners to either conduct mitigation or receive a variance for any future expansions.

After meeting with counties and other partners, the attached revisions to Ch. NR 115, Wis. Adm. Code are being proposed to provide more flexibility for owners of nonconforming structures and owners of property that is already highly developed and to clarify inconsistencies with the statutes and the vegetative management and reporting requirements under the rule.

The substantive changes would:

- Create a higher impervious surface standard for already highly developed areas.
- Ease application of impervious surface regulations to riparian lots or non-riparian lots entirely within 300 feet of the waterway.
- Address impervious surfaces that do not drain directly to a waterway or where runoff is being treated by an engineered system.
- Clarify the types of activities allowed when maintaining and repairing a nonconforming structure.
- Allow up to 200 sq. foot of lateral expansion over the life of the structure within the setback as long as the expansion is no closer to the waterway.
- Clarify that discontinuance language in the Code only applies to structures associated with a nonconforming use to reflect statutory language.

¹ Bernthal, T. October 1997. Effectiveness of Shoreland Zoning Standards to Meet Statutory Objectives: A Literature Review with Policy Implications. Wisconsin Department of Natural Resources.

- Eliminate the requirement to remove nonconforming accessory structures when replacing or relocating nonconforming structures.
- Eliminate a provision that states that boathouses shall be regulated under s. 30.121 to clarify that counties may regulate dry boathouses.
- Clarify that a permit is not required to remove invasive, damaged or diseased vegetation, or vegetation that poses a safety hazard.
- Clarify what materials must be submitted to the department.

Summary of Public Comments

The department scheduled five public hearings and accepted public comment from June 27th until September 9th, 2013. Public Hearings were held in Greenville, Delafield, Tomah, Spooner and Tomahawk. A total of 146 people attended the hearings, but only 44 people provided oral testimony. During the public comment period, the department received 410 comments, both written and oral, from individuals, organizations and local governments on the proposed rule revisions. Of the comments that were received, 93 comments were in support of the proposed revisions, 280 comments were opposed, and 37 comments were neutral. Of those that were opposed to the rule revisions there were 256 comments that were opposed because the rule was too permissive and 24 comments were opposed because the rule was too restrictive. A more detailed summary of public comments and the Department's responses are found in Attachment 1- DNR response to comments.

There will always be some controversy associated with shoreland zoning. The rule will probably never be able to satisfy everyone. However, the revision is a step in the right direction, easing the administrative burden on counties, clarifying several gray areas, using common sense and concepts that will work in the "real world," allowing local innovation to continue and balancing the protection of water quality, wildlife habitat and natural scenic beauty with the needs of today's riparian owners.

Throughout the public hearing process, the Department listened and made strides to produce the best rule possible to balance the statutory goals of the program with the understanding that private citizens need to have a certain degree of latitude when developing waterfront properties. Shoreland management is a balancing act, attempting to protect our navigable water resources while respecting the rights of individual landowners.

Modifications Made Following Hearings

During the public comment period the department received a number of suggested modifications to the proposed rule language including those from the Legislative Council Rules Clearinghouse. The department has considered the suggested modifications and has attempted to address a number of the suggested modifications through slight modifications in the proposed rule language. The changes provide clarity, flexibility and should address most of the concerns expressed. The suggested modifications are located in Attachment 1-DNR Response to comments. The modifications are broken into two sections: the comments from the Rules Clearinghouse and the other suggested modifications.

Appearances at the Public Hearings

The department scheduled five public hearings and accepted public comment from June 27th until September 9th, 2013. Public Hearings were held in Greenville, Delafield, Tomah, Spooner and Tomahawk. A total of 146 people attended the hearings, but only 44 people provided oral testimony. A detailed list of all persons who appeared at the hearings or submitted public comments may be found in Attachment 2.

Changes to Rule Analysis and Fiscal Estimate

Only minor modifications were made to reflect changes to the rule language after the public comment period. No changes were made to the fiscal estimate.

Response to Legislative Council Rules Clearinghouse Report

All Clearinghouse comments have been incorporated into the rule.

Final Regulatory Flexibility Analysis

This rule requires counties to adopt shoreland zoning ordinances. County shoreland zoning ordinances must meet or exceed the minimum standards established by the rule consistent with s. 59.692 Wis. Stats.. Any businesses in the shoreland zone have been complying with regulations since the late 1960's. This rule revision does not have a significant economic impact on a substantial number of small businesses so the small business analysis is not required.

Attachments

Attachment 1 –Public Comment Summary and Response

Attachment 2 –List of Persons who submitted public comments