



CR 90-111

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny  
Secretary

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STATE OF WISCONSIN )  
 )  
DEPARTMENT OF NATURAL RESOURCES )      ss

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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. WZ-33-90 was duly approved and adopted by this Department on February 28, 1991 and May 30, 1991. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have here-  
unto set my hand and affixed the  
official seal of the Department at  
the Natural Resources Building in  
the City of Madison, this 3<sup>rd</sup>  
day of July, 1991.

  
Bruce B. Braun, Deputy Secretary

(SEAL)

9-1-91

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
REPEALING, RENUMBERING, AMENDING AND CREATING RULES

IN THE MATTER of repealing s. NR 326.08; renumbering s. NR 326.03(1) to (9); amending NR 326(title), ss. 326.01(1), 326.02, 326.04(title), 326.06 and 326.07(1); and creating ss. NR 326.03(1) and (11) and 326.055 of the Wisconsin Administrative Code pertaining to construction standards for boat shelters in navigable waters

WZ-33-90

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 30.01(1c), 30.01(5), 30.12(3)(a)6. and 227.11(2)(a), Stats.  
Statutes interpreted: ss. 30.12(3)(a)6 and 30.13, Stats.

1987 Wis. Act 374 created a permit process for boat shelter construction in navigable waters and authorized the Department to develop rules dealing with the architectural and aesthetic features of boat shelters and the number of boat shelters that may be constructed adjacent to a parcel of land. Act 374 also provides that boat shelters which are removed seasonally do not require a permit. The rule also contains provisions regarding the locations where boat shelters may be constructed and the size and construction features of boat shelters.

The proposed rule amendments were developed in consultation with a citizen's advisory committee which included representatives of lake property owners groups, the hospitality industry, environmental groups, and the Department of Development.

SECTION 1. Chapter NR 326(title) is amended to read:

PIERS AND BOAT SHELTERS IN NAVIGABLE WATERWAYS

SECTION 2. NR 326.01 (1) is amended to read:

NR 326.01 (1) These rules are promulgated under ss. 30.03, 30.12, 30.13, 30.14, 30.15, and ~~227.014(2)(a) and (b)~~ 227.11, Stats., in order to provide consistency in the application of ss. 30.12 and 30.13, Stats., to the construction of piers, boat shelters and similar structures on the beds of navigable waterways as aids to navigation.

SECTION 3. NR 326.02 is amended to read:

NR 326.02 APPLICABILITY. (1) This chapter shall apply to all piers, ~~solid piers, or any other pier which requires a permit under s. 30.12, Stats., and~~ boat shelters constructed or maintained by riparians on the beds of navigable waterways for the purpose of providing improved navigation access to those waterways.

(2) The department shall apply this chapter only in response to:

(a) Complaint by a riparian, municipality, or any other person that a pier or boat shelter exists in navigable waters in violation of s.30.12 or 30.13, Stats.;

(b) Complaint by a riparian that an adjacent riparian's pier or boat shelter interferes with access to navigable water;

(c) Complaint by a riparian or any other person that a pier or boat shelter interferes with rights of navigation;

(d) Request by a riparian for information regarding standards to be applied to pier or boat shelter construction;

(e) Application by a riparian for authority to construct a solid pier ~~or~~ any other pier requiring a permit or a permanent boat shelter under s. 30.12, Stats.

SECTION 4. NR 326.03 (1) to (9) are renumbered NR 326.03(2) to (10), and NR 326.03(7) and (9) as renumbered are amended to read:

NR 326.03(7) "Pier" as defined in s. 30.01~~(4)~~(5), Stats., means any structure extending channelward from the shore with water on both sides, built or maintained for the purpose of providing a berthing or mooring place for watercraft or for loading or unloading cargo or passengers onto or from

watercraft and may include a temporary boat hoist without roof or walls. Such a structure may include a boat shelter which is removed seasonally.

(9) "Riparian" means an owner ~~or lessee~~ of land adjacent to ~~a stream or lake~~ navigable waters.

SECTION 5. NR 326.03(1) and (11) are created to read:

NR 326.03 (1) "Boat shelter" as defined in s. 30.01(1c), Stats., means a structure in navigable waters designed and constructed for the purpose of providing cover for a berth place for watercraft, which may have a roof but may not have walls or sides. Such a structure may include a boat hoist.

(11) "Visually intrusive" means clearly standing out from the shoreline background because of color or reflectivity when viewed from out on the water during the time when leaves are on deciduous trees.

SECTION 6. NR 326.04(title) is amended to read:

NR 326.04 PIER STANDARDS.

SECTION 7. NR 326.055 is created to read:

NR 326.055 BOAT SHELTER STANDARDS. Boat shelters shall comply with the standards in this section.

(1) GENERAL STANDARDS FOR PERMANENT AND SEASONAL BOAT SHELTERS. (a) A boat shelter may be placed and maintained only by a riparian.

(b) A boat shelter may not interfere with public rights and may not have an unreasonable adverse effect on aquatic habitat.

(c) A boat shelter may not interfere with the rights of other riparians and shall comply with the provisions of s. NR 326.07.

(d) A boat shelter shall allow the free movement of water underneath and may not cause formation of land on the bed of the waterway.

(e) A boat shelter shall comply with applicable provisions of any municipal ordinances adopted under s. 30.12(3)(a)6 and (c), Stats.

(2) LOCATION AND DESIGN STANDARDS FOR PERMANENT AND SEASONAL BOAT SHELTERS. (a) Except for designations under s. 30.275, Stats., a boat shelter may not be placed in any waterway designated by federal, state or local government as having outstanding scenic values.

(b) A boat shelter may not be visually intrusive as viewed against the shoreline. A seasonal boat shelter which was originally placed prior to the effective date of this rule ...[revisor insert date] and which is visually intrusive, but is otherwise in compliance with this section, may continue to be placed seasonally until January 1, 1996. Any seasonal boat shelter placement after January 1, 1996 shall comply with this section.

Note: For example a white shelter viewed against similarly colored structural development on or near the shoreline would comply with this subsection. The same shelter viewed against a naturally vegetated shoreline would not comply.

(c) All boat shelters shall be designed and used exclusively for the berthing of a single watercraft. Any boat shelter originally placed or permitted after the effective date of this rule ...[revisor insert date] may not exceed an outside dimension of 12 feet wide by 24 feet long on waters under 1000 acres in size and may not exceed an outside dimension of 14 feet wide by 24 feet long on waters 1000 acres and larger in size. The burden of proving that a boat shelter was placed prior to the effective date of this rule ...[revisor insert date] shall be on the owner. A seasonal boat shelter originally placed prior to the effective date of this rule ...[revisor insert date] and which does not comply with this subsection may not be expanded in size.

(d) A boat shelter shall be connected to adjacent uplands by a pier.

(e) A boat shelter may include a roof but may not include walls, sides or equivalent construction. A boat shelter roof shall be pitched not less than 1 foot nor more than 2.5 feet from the roof peak to the bottom of the eaves. Only the size and number of vertical components required to support the watercraft and any roof are permitted.

(f) Storage facilities may only be included above the eaves of a boat shelter.

(g) A boat shelter may include only a single sign necessary to identify the property and may only include lighting essential for safety and mooring.

(h) The number of boat shelters placed adjacent to a property is limited to one permanent and one seasonal shelter or 2 seasonal shelters for the first 100 feet or lesser amount of shoreline frontage. One additional seasonal shelter may be placed for each additional 50 feet of shoreline frontage in common ownership. For the purpose of this subsection, shoreline shall be measured along a straight line connecting points where property lines meet the ordinary high water mark. This subsection shall apply to all permanent shelters and seasonal shelters originally placed after the effective date of this rule ....[revisor inserts date].

(i) Permanent and seasonal boat shelters shall be placed as close together as practicable at a single location adjacent to each property. Adjacent lots in common ownership shall be considered a single property for the purpose of this subsection.

(3) SEASONAL BOAT SHELTERS. (a) A boat shelter which is completely removed from the waterway between December 1 and April 1 annually and which complies with subs. (1) and (2) and this subsection may be placed by a riparian without a permit from the department.

(b) A seasonal boat shelter may not extend beyond the line of navigation or an approved pierhead line.

(4) PERMANENT BOAT SHELTERS. (a) A boat shelter which is not removed seasonally as provided in sub. (3) may be authorized by the department upon application by a riparian if the construction complies with subs. (1) and (2) and the requirements of this subsection.

(b) No permit may be granted for a permanent boat shelter constructed after May 3, 1988 if the owner's riparian property also contains a boathouse over navigable waters or within 75 feet of the ordinary high water mark. Each permit issued for a permanent boat shelter shall contain a condition which provides that the permit becomes void if there is any subsequent construction of a boathouse over navigable waters adjacent to the owner's property or within 75 feet of the ordinary high water mark on the owner's property.

(c) A permit may not be granted for a permanent boat shelter to be placed on lakes or flowages of less than 500 acres or on rivers except the Mississippi river, the Wolf river from Lake Butte des Morts to the upstream limits of the village of Fremont, and the Fox river from the DePere dam to Lake Winnebago. For the purpose of this subsection a series of lakes or flowages which have a connection which is commonly navigated by motorized craft and which have a common water level shall be considered a single lake or flowage. Artificial mooring basins and navigation channels and reaches of rivers where water levels are controlled by a dam are considered part of the lake or flowage to which they are connected for the purpose of this subsection.

(d) No more than one permanent boat shelter may be permitted for each riparian property. Contiguous lots in common ownership shall be considered one property for the purpose of this subsection.

(e) A permanent boat shelter may not extend more than 30 feet from the shoreline or to the line of navigation, whichever is less, on rivers named in

par. (c) and on waters between 500 and 1000 acres in size and may not extend more than 50 feet from the shoreline or to the line of navigation, whichever is less, on waters 1000 acres and larger in size. For the purpose of this subsection the shoreline shall be established at normal summer low water levels.

(f) Permits for permanent boat shelters may only be granted for locations adjacent to developed shorelines. Developed shorelines are those where there are at least five principal structures including at least one on the applicant's property which are located within 500 feet of the proposed shelter site and which are visually intrusive as viewed from a location on the water.

SECTION 8. NR 326.06 is amended to read:

NR 326.06 COMPLAINTS. (1) Upon receipt of a complaint by any municipality or person under s. 30.14, Stats., the department shall investigate the pier, boat shelter or piers-related structure mentioned in the complaint to determine if ~~the pier~~ it conforms with applicable provisions of s. 30.12 or 30.13, Stats., and this chapter, and shall provide all known parties with the results of the investigation. The department may request such additional information as may be required from the complainant.

(2) Upon completion of the investigation, the department ~~shall~~ may conduct a hearing under s. 30.14, Stats.

(3) The burden of proving that ~~the~~ a pier or boat shelter is in violation of s. 30.12 or 30.13, Stats., and this chapter, is ordinarily on the complainant.

(4) This section does not limit in any manner the authority of the department to bring any enforcement action alleging that a pier or boat shelter adversely affects public rights in navigable waters.



SECTION 9. NR 326.07 (1) is amended to read:

NR 326.07 (1) ~~In response to a complaint under s. NR 326.06 relating to interference~~ In order to determine whether a pier or boat shelter interferes with the rights of an adjacent riparian, the department shall use the method outlined in this subsection which it determines most fully meets the Wisconsin supreme court ruling in *Rondesvedt v. Running*, 19 Wis. 2d 614(1962), that ". . . each must have his due proportion of the line bounding navigability and a course of access to it from the shore exclusive of every other owner, and that all rules for apportionment or division are subject to such modification as may be necessary to accomplish substantially this result."

SECTION 10. NR 326.08 is repealed

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on February 28, 1991 and May 30, 1991.

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin

July 3, 1991

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny  
Carroll D. Besadny, Secretary

(SEAL)

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Secretary

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July 3, 1991

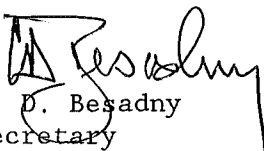
Mr. Gary L. Poulson  
Assistant Revisor of Statutes  
119 Martin Luther King, Jr., Blvd.

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WZ-33-90. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on \*Urban Affairs, Environmental Resources and Elections pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,

  
C. D. Besadny  
Secretary

Enc.