



Assembly Committee on Housing and Real Estate

2021 Assembly Bill 37 *The Presumption of Riparian Rights* *March 18, 2021*

Good morning Chair Jagler and members of the committee. My name is Sean Kennedy, and I am the Legislative Liaison for the Wisconsin Department of Natural Resources. Thank you for the opportunity to testify, for informational purposes, on Assembly Bill 37 (AB 37), related to the presumption of riparian rights.

It is the department's understanding that the intention of this bill is to provide clarification regarding landowner's rights to place waterway structures, such as piers, on inland waters, specifically flowages and artificial impoundments where the bed of the flowage may be owned by an entity other than the adjacent riparian landowner, and seeks to add clarification to the statutes in response to the 2018 *Movrich v. Lobermeir* Wisconsin Supreme Court decision. It is also our understanding that this bill creates a real-estate disclosure process when lands abutting navigable waterways are sold and establishes a process through which a project riparian must work with a hydropower company to review structures proposed to be placed upon the hydropower company's submerged lands.

The department has historically considered riparian owners to include those property owners with property abutting artificial flowages and impoundments. Pursuant to Ch. 30, Wis Stats., property owners that do not meet the definition of a riparian owner lack the authority to place waterway structures through an exemption or through a permit for these types of activities.

The Supreme Court decision creates some uncertainty in the ability for property owners abutting artificial flowages and impoundments to continue to place structures through exemptions or permitting. The department finds that proposed statutory changes to continue to treat property owners with property adjacent to artificial flowages or impoundments as riparians so they can apply for waterways permits would offer a reasonable pathway for common sense decision-making.

The department recognizes that the bill appropriately clarifies that this proposed legislation does not supersede the requirements of Chapter 30, Wis. Stats. Navigable waters are held within the public trust and the department has the constitutional and statutory responsibilities to ensure that structures and activities occurring in navigable waters do not conflict with the paramount public interest in those waters. The exercise of riparian rights is also qualified by the common law concept of reasonable use, which the department must incorporate in its Ch. 30 permitting decisions.

The department would note that in places in the state there are complex property ownership issues that arise as a result of historic development along waterfronts. The department does not understand this

proposal to affect those issues, and understands the presumption established by this bill to be rebuttable if the facts so dictated. The department also understands that AB 37 is not intended to override any obligations arising under existing law such as the prohibition on interference at remedial action sites where an engineering control like a cap installed over contaminated sediment is present on the bed of the waterway.

In conclusion, the proposal as written appears to be implementable by the department in its permitting role. The department would like to reiterate that we support the ability to recognize landowners adjacent to flowages and impoundments as riparian owners and allow them to work through existing DNR administrative processes to exercise such rights.

On behalf of the Department of Natural Resources, we would like to thank you for your time today. I am joined by Amanda Minks, Wetland and Waterway Section Chief, and Mike Kowalkowski, Legal Services attorney, who are available to address any questions that you may have.



To: Members, Assembly Committee on Housing and Real Estate

From: Tom Larson, Executive Vice President

Date: March 18, 2021

Re: AB 37/SB 46 – Restoring the Right to Place a Pier on Flowages

The Wisconsin REALTORS® Association (WRA) supports AB 37/SB 46, legislation seeking to clarify that all waterfront property owners, even those with land abutting flowages and artificial waterways, have the right to place a pier subject to the regulations in Chapter 30 of the Wisconsin Statutes.

Background – For over 140 years, Wisconsin law has recognized that owners of waterfront property have riparian rights, including the right to place a pier. See *Cohn v. Wausau Boom Co.*, 47 Wis. 314, 322, 2 N.W. 546 (1879). In 1959, the Wisconsin Legislature codified this right of waterfront property owners to place a pier. See Wis. Stat. § 30.13(1). In recent years, the legislature has further protected this right from permit requirements and enforcement actions if certain conditions are met. See Wis. Stat. §§ 30.12(1g)(f) and 30.12(1k).

In 2018, the Wisconsin Supreme Court, in *Movrich v. Lobermeier*, 2018 WI 9, ¶3, 379 Wis. 2d 269, 905 N.W.2d 807, declared that some waterfront property owners do not have a right to place a pier. Specifically, the Court held that owners of waterfront property along flowages and artificial waterways do not have the right to place a pier. *Id.* Because the lake beds of flowages and artificial waterways are privately owned, the Court reasoned that the owners of the lake beds can prohibit any pier from touching the bed or floating above it. *Movrich*, at ¶55.

Potential Impacts of Case – The *Movrich* case will likely have far-reaching impacts, possibly impacting a large number of waterfront property owners and businesses. Consider the following:

- **Thousands of waterfront property owners are impacted** -- The Court's ruling applies to all flowages and potentially other "man-made" waterbodies in Wisconsin.
 - According to the Wisconsin DNR's website, Wisconsin has approximately 260 flowages. <http://dnr.wi.gov/lakes/lakepages/Results.aspx?location=ANY&page=ANY&name=flowage&letter=ANY>.
 - Thousands of lakes in Wisconsin are considered "man-made" resulting from either the artificial raising of water levels or the damming of rivers and streams, including large water bodies such as Lake Koshkonong, Lake Wisconsin, and the various "chain of lakes" in areas like Minocqua and Eagle River.
- **All piers are prohibited, including floating piers** -- The Court's ruling applies broadly to (a) all piers, even floating piers, (b) existing piers that have been placed for decades, and (c)

waterfront property that has been assessed for property tax purposes as having pier rights for years. Because of the Court's ruling, affected property owners may now be forced to either remove their pier or pay several hundred dollars for "dock license fee" to keep their existing pier.

- **Affected waterfront property owners have made significant investments in piers and watercraft** -- Affected property owners have invested thousands of dollars on piers, boats and other recreational vehicles with the expectation they could be used to directly access the water from their property. Waterfront businesses such as restaurants, marinas and gas stations rely exclusively on customers who access their businesses by boat. These businesses have invested thousands of dollars on piers, decks, retaining walls, and other improvements to their property to attract these boating customers to their businesses.

SB 46/AB 37 does the following:

- **Restores the presumption of riparian rights for waterfront property owners**, unless those rights are specifically prohibited by the deed to the land, written agreement, or other recorded instrument. The riparian rights are subject to federal law, state law, or a federal energy regulatory commission (FERC) license.
- With respect to flowage beds owned by hydroelectric utilities, SB 46/AB 37 contains the following provisions:
 - Existing piers and structures are grandfathered. No fees can be charged unless the fee was authorized as part of an existing agreement.
 - New piers and structures must receive authorization from hydroelectric utilities, but authorization can be denied only if the placement of the structure would violate federal or state law, or invalidate a FERC license. A reasonable fee can be charged, but only in an amount necessary to administer the FERC license program. Fees can be appealed to the PSC.
 - A hydroelectric utility is immune from liability if someone gets hurt on the riparian's structure.
- **New disclosures are added to the Real Estate Condition Report/Vacant Land Condition Report** to make prospective buyers aware of the limited riparian rights possessed by waterfront property owners along flowages with beds owned by hydroelectric utilities.

We respectfully request that you support AB 37/SB 46. **This is the same bill that passed the Assembly and Senate Committee on Natural Resources and Energy with unanimous support last session**, but didn't get scheduled for the floor in the Senate due to the cancellation of the March floor date. Please contact us at (608) 241-2047 if you have any questions about this legislation.

Assembly Committee on Housing and Real Estate
Clerk Charlie Bellin
Charlie.Bellin@legis.wisconsin.gov
Re Riparian Rights Bill AB 37

Dear Committee members,

Thank you for the opportunity to testify via mail for this important issue. While I have attended and testified at three previous hearings, I am traveling and unable to attend this one. I will try to outline my concerns in as brief of fashion as possible. I am writing in support of AB 37.

My wife Dawn and I purchased a property on Lake Biron (Biron Flowage) approximately 5 years ago. We had searched for over 4 years trying to find a property near our home that we could use frequently without significant travel which would allow us to have a gathering place for our children and grandchildren that could fit within their busy schedules. It has been great watching our grandchildren swimming off our pier with endless "cannonballs" and other self-created dives and jumps. We also have a boat that serves for evening rides or tubing and now water skiing on short notice.

A critical part of our decision to purchase this property was knowing we had Riparian Rights and owned to the "low water mark" of the flowage as stated in property records. Many of our neighbors did not have Fee Simple ownership but rather a year-to-year license granted from Consolidated Water Power Company. As you can imagine, we invested significantly more to have the peace of mind that went with Fee Ownership. The previous owner had the property for about 20 years and never had to seek any permission from the Power Company for his family use of the property. That was a major selling point when we decided to purchase the property.

When we learned of the Lobermeier decision, I first thought there must be some mistake. It seemed unimaginable that our Pier Rights would be in jeopardy. As I talked with others in similar ownership situation, no one could believe what they were hearing.

Without this proposed legislation, we along with thousands of other property owners in Wisconsin could lose not only their full enjoyment of the Waterfront property but face significant value loss as well.

Our property has a Riprapped shoreline with rock and no available beach. Without a Pier, swimming would not be practical. We could also lose our right to place our boat lift. Essentially, we would go from owning waterfront property to owning "water view" property. This would trigger a devaluation that would likely leave us with property value of 50% of what we had. (I've been a Real Estate Broker for over 40 years and arrived at this figure based on professional experience as well as surveying numerous other Real Estate agents on this scenario). This will not only affect us and other Waterfront owners, but that value loss will likely place additional tax burden on all properties in the Townships where these properties exist.

I am hopeful that the State Legislature will act soon to remedy this problem. As you can imagine, we along with thousands of other Wisconsinites are anxiously awaiting your help.

Once again, thank you for the opportunity to testify via letter. This issue is extremely important to our family.

Sincerely,

Mike Spranger
4420 Black Forest Drive
Wisconsin Rapids, WI 54494
sprangerm@firstweber.com
715-323-0800

To: Members of the Wisconsin Assembly Housing and Real Estate Committee
From: Jerry and Gail Movrich
Date: March 5, 2021
Re: Assembly Bill 37 – Riparian Rights on Flowages

We are Jerry and Gail Movrich and live on the Sailor Creek Flowage in the Town of Fifield. Our legal case is Movrich vs Lobermeier. You may have received some communication from my brother, Dave Lobermeier, who opposes SB 46 and AB 37 and in doing so, has provided some misinformation about us, the facts of our case, and our stewardship of our property.

First, my husband Jerry and I are both law abiding and environmentally-responsible individuals, who have dedicated our professional lives to public service. Jerry was a teacher and high school principal. He retired from Stoughton School District. I was a procurement specialist and retired from UW-Madison. We retired in 2008 and moved back to our roots. We have always been active in the communities we have lived in. Here are a few examples: Girl Scout and 4-H Leader, Hospice Care Volunteer, Adopt-A-Highway Program, Optimist Club, Jaycees, Platteville Police/Fire Commission, Stoughton Hospital Board, Town of Pleasant Springs Board Member, Stoughton Community Service Award, Cemetery Volunteer, Santa's Elves Christmas Coordinators, Price County Historical Society/Board Member, School Board Member.

Second, my brother has provided misinformation about our legal case and our use of our property, and we would like to set the record straight. Dave falsely claims that we have violated several environmental laws and tried to get both the DNR and circuit court to agree with him. However, the DNR, Price County Zoning Department and the circuit court have all rejected Dave's claims and cleared us of any wrongdoing. We received a letter from DNR Conservation Warden Daniel Michels dated 9/22/2011, which states that he has investigated the accusations made to him and "it appeared the changes to the shoreline were not made recently and I found no evidence to show that the current property owners were responsible for making these changes; therefore, I will not be taking any enforcement action". In addition, we have a letter dated 4/5/2012 from Price County Zoning stating that "your shoreline meets requirements". Finally, the Price County Circuit Court Honorable Judge Madden issued a restraining order that prohibited my brother from his continued harassment of me and my husband. In that order, the judge ordered that my brother was "enjoined, restrained, and prohibited from coming on plaintiffs' said real estate and from interfering with or hindering the plaintiffs' exercise of their rights of ownership, including but not limited to the rights declared in this judgment." See Judgement Case 13CV78/13CV22 dated 1/30/2015.

Lastly, please remember that this legislation is critically important for thousands of waterfront property owners who, like us, purchased waterfront property with the expectation that we were riparian owners with full riparian rights including the right to place a pier. The price of the property and the taxes we have paid on that property for years reflects the fact that others believed so as well. We strongly encourage you to support Assembly Bill 37.

Thank you for your time and consideration.
Gail and Jerry Movrich
W6973 Dam Road
Fifield, WI 54524

DISCLAIMER

THIS CONDITION REPORT CONCERNS THE REAL PROPERTY LOCATED AT _____
_____ IN THE _____
(CITY) (VILLAGE) (TOWN) OF _____, COUNTY OF _____
STATE OF WISCONSIN.

THIS REPORT IS A DISCLOSURE OF THE CONDITION OF THAT PROPERTY IN COMPLIANCE WITH SECTION 709.02 OF THE WISCONSIN STATUTES AS OF _____ (MONTH) _____ (DAY), _____ (YEAR). IT IS NOT A WARRANTY OF ANY KIND BY THE OWNER OR ANY AGENTS REPRESENTING ANY PARTY IN THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THAT THE PARTIES MAY WISH TO OBTAIN.

A buyer who does not receive a fully completed copy of this report within 10 days after the acceptance of the contract of sale or option contract for the above-described real property has the right to rescind that contract (Wis. Stat. s. 709.02), provided the owner is required to provide this report under Wisconsin Statutes chapter 709.

NOTICE TO PARTIES REGARDING ADVICE OR INSPECTIONS

Real estate licensees may not provide advice or opinions concerning whether or not an item is a defect for the purposes of this report or concerning the legal rights or obligations of parties to a transaction. The parties may wish to obtain professional advice or inspections of the property and to include appropriate provisions in a contract between them with respect to any advice, inspections, defects, or warranties.

A. OWNER'S INFORMATION

A1. In this form, "aware" means the "owner(s)" have notice or knowledge.

A2. In this form, "defect" means a condition that would have a significant adverse effect on the value of the property; that would significantly impair the health or safety of future occupants of the property; or that if not repaired, removed, or replaced would significantly shorten or adversely affect the expected normal life of the premises.

A3. In this form, "owner" means the person or persons, entity, or organization that owns the above-described real property. An "owner" who transfers real estate containing one to four dwelling units, including a condominium unit and time-share property, by sale, exchange, or land contract is required to complete this report.

Exceptions: An "owner" who is a personal representative, trustee, conservator, or fiduciary appointed by or subject to supervision by a court, and who has never occupied the property transferred is not required to complete this report. An "owner" who transfers property that has not been inhabited or who transfers property in a manner that is exempt from the real estate transfer fee is not required to complete this report. (Wis. Stat. s. 709.01)

A4. The owner represents that to the best of the owner's knowledge, the responses to the following questions have been accurately checked as "yes," "no," or "not applicable (N/A)" to the property being sold. If the owner responds to any question with "yes," the owner shall provide, in the additional information area of this form, an explanation of the reason why the response to the question is "yes."

A5. If the transfer is of a condominium unit, the property to which this form applies is the condominium unit, the common elements of the condominium, and any limited common elements that may be used only by the owner of the condominium unit being transferred.

A6. The owner discloses the following information with the knowledge that, even though this is not a warranty, prospective buyers may rely on this information in deciding whether and on what terms to purchase the property. The owner hereby authorizes the owner's agents and the agents of any prospective buyer to provide a copy of this report, and to disclose any information in the report, to any person in connection with any actual or anticipated sale of the property.

CAUTION: The lists of defects following each question below are examples only and are not the only defects that may properly be disclosed in response to each respective question.

B. STRUCTURAL AND MECHANICAL

- | | YES | NO | N/A |
|---|--------------------------|--------------------------|--------------------------|
| B1. Are you aware of defects in the roof?
Roof defects may include items such as leakage or significant problems with gutters or eaves. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B2. Are you aware of defects in the electrical system?
Electrical defects may include items such as electrical wiring not in compliance with applicable code, knob and tube wiring, 60 amp service, or aluminum-branch circuit wiring. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B3. Are you aware of defects in part of the plumbing system (including the water heater, water softener, and swimming pool)?
Other plumbing system defects may include items such as leaks or defects in pipes, toilets, interior or exterior faucets, bathtubs, showers, or any sprinkler system. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B4. Are you aware of defects in the heating and air conditioning system (including the air filters and humidifiers)?
Heating and air conditioning defects may include items such as defects in the heating ventilation and air conditioning (HVAC) equipment, supplemental heaters, ventilating fans or fixtures, or solar collectors. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B5. Are you aware of defects in a woodburning stove or fireplace or of other defects caused by a fire in a stove or fireplace or elsewhere on the property?
Such defects may include items such as defects in the chimney, fireplace flue, inserts, or other installed fireplace equipment; or woodburning stoves not installed pursuant to applicable code. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B6. Are you aware of defects related to smoke detectors or carbon monoxide detectors or a violation of applicable state or local smoke detector or carbon monoxide detector laws?
NOTE: State law requires operating smoke detectors on all levels of all residential properties and operating carbon monoxide detectors on all levels of most residential properties (see Wis. Stat. ch. 101). | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B7. Are you aware of defects in the basement or foundation (including cracks, seepage, and bulges)?
Other basement defects may include items such as flooding, defects in drain tiling or sump pumps, or movement, shifting, or deterioration in the foundation. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B8. Are you aware of defects in any structure on the property?
Structural defects with respect to the residence or other improvements may include items such as movement, shifting, or deterioration in walls; major cracks or flaws in interior or exterior walls, partitions, or the foundation; wood rot; and significant problems with driveways, sidewalks, patios, decks, fences, waterfront piers or walls, windows, doors, floors, ceilings, stairways, or insulation. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B9. Are you aware of defects in mechanical equipment included in the sale either as fixtures or personal property?
Mechanical equipment defects may include items such as defects in any appliance, central vacuum, garage door opener, in-ground sprinkler, or in-ground pet containment system that is included in the sale. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B10. Are you aware of rented items located on the property such as a water softener or other water conditioner system or other items affixed to or closely associated with the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B11. Are you aware of basement, window, or plumbing leaks, overflow from sinks, bathtubs, or sewers, or other ongoing water or moisture intrusions or conditions? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B12. Explanation of "yes" responses _____

_____ | | | |

C. ENVIRONMENTAL

- | | YES | NO | N/A |
|--|--------------------------|--------------------------|--------------------------|
| C1. Are you aware of the presence of unsafe levels of mold? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| C2. Are you aware of a defect caused by unsafe concentrations of, or unsafe conditions relating to, radon, radium in water supplies, high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the property, lead in paint, lead in soil, or other potentially hazardous or toxic substances on the property?
NOTE: Specific federal lead paint disclosure requirements must be complied with in the sale of most residential properties built before 1978. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

- | | YES | NO | N/A |
|--|--------------------------|--------------------------|--------------------------|
| C3. Are you aware of the presence of asbestos or asbestos-containing materials on the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| C4. Are you aware of the presence of or a defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of hazardous or toxic substances on neighboring properties? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| C5. Are you aware of current or previous termite, powder post beetle, or carpenter ant infestations or defects caused by animal, reptile, or insect infestations? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| C6. Are you aware of water quality issues caused by unsafe concentrations of or unsafe conditions relating to lead? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| C7. Are you aware of the manufacture of methamphetamine or other hazardous or toxic substances on the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| C8. Explanation of "yes" responses _____ | | | |

D. WELLS, SEPTIC SYSTEMS, STORAGE TANKS

- | | YES | NO | N/A |
|---|--------------------------|--------------------------|--------------------------|
| D1. Are you aware of defects in a well on the property or in a well that serves the property, including unsafe well water?
Well defects may include items such as an unused well not properly closed in conformance with state regulations, a well that was not constructed pursuant to state standards or local code, or a well that requires modifications to bring it into compliance with current code specifications. Well water defects might include, but are not limited to, unsafe levels of bacteria (total Coliform and E. coli), nitrate, arsenic, or other substances affecting human consumption safety. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| D2. Are you aware of a joint well serving the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| D3. Are you aware of a defect related to a joint well serving the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| D4. Are you aware that a septic system or other private sanitary disposal system serves the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| D5. Are you aware of defects in the septic system or other private sanitary disposal system on the property or any out-of-service septic system that serves the property and that is not closed or abandoned according to applicable regulations?
Septic system defects may include items such as backups in toilets or in the basement; exterior ponding, overflows, or backups; or defective or missing baffles. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| D6. Are you aware of underground or aboveground fuel storage tanks on or previously located on the property? (If "yes," the owner, by law, may have to register the tanks with the Wisconsin Department of Agriculture, Trade and Consumer Protection at P.O. Box 8911, Madison, Wisconsin, 53708, whether the tanks are in use or not. Regulations of the Wisconsin Department of Agriculture, Trade and Consumer Protection may require the closure or removal of unused tanks.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| D7. Are you aware of defects in the underground or aboveground fuel storage tanks on or previously located on the property?
Defects in underground or aboveground fuel storage tanks may include items such as abandoned tanks not closed in conformance with applicable local, state, and federal law; leaking; corrosion; or failure to meet operating standards. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| D8. Are you aware of an "LP" tank on the property? (If "yes," specify in the additional information space whether the owner of the property either owns or leases the tank.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| D9. Are you aware of defects in an "LP" tank on the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| D10. Explanation of "yes" responses _____ | | | |

E. TAXES, SPECIAL ASSESSMENTS, PERMITS, ETC.

- | | YES | NO | N/A |
|--|--------------------------|--------------------------|--------------------------|
| E1. Have you received notice of property tax increases, other than normal annual increases, or are you aware of a pending property reassessment? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| E2. Are you aware that remodeling was done that may increase the property's assessed value? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

	YES	NO	N/A
E3. Are you aware of pending special assessments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E4. Are you aware that the property is located within a special purpose district, such as a drainage district, that has the authority to impose assessments against the real property located within the district?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E5. Are you aware of any proposed construction of a public project that may affect the use of the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E6. Are you aware of any remodeling, replacements, or repairs affecting the property's structure or mechanical systems that were done or additions to this property that were made during your period of ownership without the required permits?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E7. Are you aware of any land division involving the property for which a required state or local permit was not obtained?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E8. Explanation of "yes" responses _____			

F. LAND USE

	YES	NO	N/A
F1. Are you aware of the property being part of or subject to a subdivision homeowners' association?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F2. If the property is not a condominium unit, are you aware of common areas associated with the property that are co-owned with others?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F3. Are you aware of any zoning code violations with respect to the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F4. Are you aware of the property or any portion of the property being located in a floodplain, wetland, or shoreland zoning area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F5. Are you aware of nonconforming uses of the property? A nonconforming use is a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform to the use restrictions in the current ordinance.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F6. Are you aware of conservation easements on the property? A conservation easement is a legal agreement in which a property owner conveys some of the rights associated with ownership of his or her property to an easement holder such as a governmental unit or a qualified nonprofit organization to protect the natural habitat of fish, wildlife, or plants or a similar ecosystem, preserve areas for outdoor recreation or education, or for similar purposes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F7. Are you aware of restrictive covenants or deed restrictions on the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F8. <i>Other than public rights of ways</i> , are you aware of nonowners having rights to use part of the property, including, but not limited to, private rights-of-way and easements other than recorded utility easements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F9. Are you aware of the property being subject to a mitigation plan required under administrative rules of the Wisconsin Department of Natural Resources related to county shoreland zoning ordinances, which obligates the owner of the property to establish or maintain certain measures related to shoreland conditions and which is enforceable by the county?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F10. The use value assessment system values agricultural land based on the income that would be generated from its rental for agricultural use rather than its fair market value. When a person converts agricultural land to a non agricultural use (e.g., residential or commercial development), that person may owe a conversion charge. For more information visit https://www.revenue.wi.gov/Pages/FAQS/slf-useassmt.aspx or (608) 266-2486.			
a. Are you aware of all or part of the property having been assessed as agricultural land under Wis. Stat. s. 70.32 (2r) (use value assessment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Are you aware of the property having been assessed a use-value assessment conversion charge relating to this property? (Wis. Stat. s. 74.485 (2))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Are you aware of the payment of a use-value assessment conversion charge having been deferred relating to this property? (Wis. Stat. s. 74.485 (4))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- | | YES | NO | N/A |
|--|--------------------------|--------------------------|--------------------------|
| F11. Is all or part of the property subject to or in violation of a farmland preservation agreement?
Early termination of a farmland preservation agreement or removal of land from such an agreement can trigger payment of a conversion fee equal to 3 times the class 1 "use value" of the land.
Visit https://datcp.wi.gov/Pages/Programs_Services/FarmlandPreservation.aspx for more information. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F12. Is all or part of the property subject to, enrolled in, or in violation of the Forest Crop Law, Managed Forest Law, the Conservation Reserve Program, or a comparable program? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F13. Are you aware of a dam that is totally or partially located on the property or that an ownership in a dam that is not located on the property will be transferred with the property because it is owned collectively by members of a homeowners' association, lake district, or similar group? (If "yes," contact the Wisconsin Department of Natural Resources to find out if dam transfer requirements or agency orders apply.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F14. Are you aware of boundary or lot line disputes, encroachments, or encumbrances (including a joint driveway) affecting the property?
Encroachments often involve some type of physical object belonging to one person but partially located on or overlapping on land belonging to another; such as, without limitation, fences, houses, garages, driveways, gardens, and landscaping.
Encumbrances include, without limitation, a right or claim of another to a portion of the property or to the use of the property such as a joint driveway, liens, and licenses. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F15. Are you aware there is not legal access to the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F16. Are you aware of federal, state, or local regulations requiring repairs, alterations, or corrections of an existing condition? This may include items such as orders to correct building code violations. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F17. Are you aware of a pier attached to the property that is not in compliance with state or local pier regulations? See http://dnr.wi.gov/topic/waterways for more information. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F17m. Are you aware of a written agreement affecting riparian rights related to the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F17n. Are you aware that the property abuts the bed of a navigable waterway that is owned by a hydroelectric operator?
<i>Under Wis. Stat. s. 30.132, the owner of a property abutting the bed of a navigable waterway that is owned by a hydroelectric operator, as defined in s. 30.132 (1) (b), may be required to ask the permission of the hydroelectric operator to place a structure on the bed of the waterway.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F18. Are you aware of one or more burial sites on the property? (For information regarding the presence, preservation, and potential disturbance of burial sites, contact the Wisconsin Historical Society at 800-342-7834 or www.wihist.org/burial-information). | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F19. Explanation of "yes" responses _____

_____ | | | |

G. ADDITIONAL INFORMATION

- | | YES | NO | N/A |
|--|--------------------------|--------------------------|--------------------------|
| G1. Have you filed any insurance claims relating to damage to this property or premises within the last five years? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| G2. Are you aware of a structure on the property that is designated as a historic building or that all or any part of the property is in a historic district? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| G3. Are you aware of any agreements that bind subsequent owners of the property, such as a lease agreement or an extension of credit from an electric cooperative? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| G4. Are you aware of other defects affecting the property?
Other defects might include items such as drainage easement or grading problems; excessive sliding, settling, earth movements, or upheavals; or any other defect or material condition. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| G4m. <i>Is the owner a foreign person, as defined in 26 USC 1445 (f)? (E.g. a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate.) Section 1445 of the Internal Revenue Code (26 USC 1445), also known as the Foreign Investment In Real Property Tax Act or FIRPTA, provides that a transferee (buyer) of a U.S. real property interest must be notified in writing and must withhold tax if the transferor (seller) is a foreign person, unless an exception under FIRPTA applies to the transfer.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

G5. The owner has owned the property for _____ years.

G6. The owner has lived in the property for _____ years.

G7. Explanation of "yes" responses _____

Notice: You may obtain information about the sex offender registry and persons registered with the registry by contacting the Wisconsin Department of Corrections at <http://www.doc.wi.gov> or by phone at 608-240-5830

OWNER'S CERTIFICATION

NOTE: Wisconsin Statute section 709.035 requires owners who, prior to acceptance of a purchase contract or an option to purchase, obtain information that would change a response on this report to submit a complete amended report or an amendment to the previously completed report to the prospective buyer within 10 days of acceptance.

The owner certifies that the information in this report is true and correct to the best of the owner's knowledge as of the date on which the owner signs this report.

Owner		Date	_____
Owner		Date	_____
Owner		Date	_____
Owner		Date	_____
Owner		Date	_____

CERTIFICATION BY PERSON SUPPLYING INFORMATION

A person other than the owner certifies that the person supplied information on which the owner relied for this report and that the information is true and correct to the best of the person's knowledge as of the date on which the person signs this report.

Person		Items	_____	Date	_____
Person		Items	_____	Date	_____
Person		Items	_____	Date	_____

BUYER'S ACKNOWLEDGEMENT

The prospective buyer acknowledges that technical knowledge such as that acquired by professional inspectors may be required to detect certain defects such as the presence of asbestos, building code violations, and floodplain status.

I acknowledge receipt of a copy of this statement.

Prospective buyer		Date	_____
Prospective buyer		Date	_____
Prospective buyer		Date	_____
Prospective buyer		Date	_____
Prospective buyer		Date	_____

Information appearing in italics is supplemental in nature and is not required pursuant to Section 709.03 of the Wisconsin Statutes.

(e) "Project riparian" means an owner of land that abuts a navigable waterway, the abutting bed of which is owned by a *deeded navigable waterway bed owner or* hydroelectric operator.

(2) PRESUMPTION OF RIPARIAN RIGHTS. An owner of land that abuts a navigable waterway is presumed to be a riparian owner and is entitled to exercise all rights afforded to a riparian owner, including the right to place a pier, other structures, or deposits, even if the bed of the waterway is owned in whole or in part by another, unless those rights are specifically prohibited by the deed to the land, written agreement, or another recorded instrument. The exercise of these riparian rights is subject to the requirements of this chapter and if the waterway is within the boundaries of a project, the reasonable restrictions imposed by the hydroelectric operator necessary for the hydroelectric operator to comply with requirements imposed under state or federal law or a federal energy regulatory commission license.

(3) PROJECT RIPARIAN RIGHTS. (a) *Application to exercise riparian rights.* A project riparian may make written application to *the deeded navigable waterway bed owner or to* the applicable hydroelectric operator for permission to exercise a riparian right in a waterway within the *privately owned bed* or boundaries of a project, including the right to place a pier or other structures or deposits and the right to modify an existing structure authorized under par. (b), subject to the requirements of this chapter. The *deeded navigable waterway bed owner or* hydroelectric operator shall approve or deny an application under this paragraph no later than 60 days after receiving the application. The hydroelectric operator may deny an application under this paragraph only if necessary, for the hydroelectric operator to comply with requirements imposed under state or federal law or a federal energy regulatory commission license but may approve the application subject to reasonable restrictions necessary for the hydroelectric operator to comply with requirements imposed under state or federal law or a federal energy regulatory commission license. *The deeded navigable waterway bed owner or the* hydroelectric operator may charge an applicant a reasonable fee *to cover the deeded navigable waterway bed owner's* or the hydroelectric operator's administrative costs related to a structure or deposit that is approved under this paragraph.

(b) *Existing structures.* Notwithstanding par. (a), a project riparian may maintain a structure that was placed in a waterway within the *privately owned bed of a navigable waterway or* boundaries of a project prior to the effective date of this paragraph [LRB inserts date], subject to the requirements of this chapter and the reasonable restrictions imposed by the *deeded navigable waterway bed owner or* hydroelectric operator necessary for the hydroelectric operator to comply with requirements imposed under state or federal law or a federal energy regulatory commission license. A *deeded navigable waterway bed owner or*

hydroelectric operator may not charge a fee related to a structure authorized under this paragraph unless a fee is provided for in an agreement between the hydroelectric operator and the project riparian that existed

prior to the effective date of this paragraph [LRB inserts date].

(c) *Appeal to the commission.* A project riparian whose application is denied or approved with restrictions or who is charged an unreasonable fee under this subsection may appeal in writing to the commission. The commission may investigate the appeal and issue an order based on its investigation. The commission may not issue an order under this paragraph without a public hearing conducted in accordance with s. 196.26 (2).

(d) *Immunity from liability.* A *dede*ded navigable waterway bed owner or hydroelectric operator is not liable to any person for any injury or damage arising from a project riparian's use of the *privately owned bed of a navigable waterway or* hydroelectric operator's property as provided in this section.

(4) EFFECT ON ENFORCEABLE INTERESTS. Nothing in this section invalidates any interest, whether designated as an easement, covenant, equitable servitude, restriction, or otherwise, which is otherwise enforceable under the laws of this state.

SECTION 2. 709.03 (form) F18. and F19. of the statutes are renumbered 709.03 (form) F20. and F21.

SECTION 3. 709.03 (form) F18. and F19. of the statutes are created to read:

709.03 (form)

F18. Are you aware of a written agreement affecting riparian rights related to the property?

F19. Are you aware that the property abuts the bed of a navigable waterway that is owned by a *dede*ded navigable waterway bed owner or hydroelectric operator?

Under Wis. Stat. s. 30.132, the owner of a property abutting the bed of a navigable waterway that is owned by a *dede*ded navigable waterway bed owner or hydroelectric operator, as defined in s. 30.132 (1) (b), maybe required to ask the permission of the *dede*ded navigable waterway bed owner or hydroelectric operator to place a structure on the bed of the waterway.

.... ..

SECTION 4. 709.033 (form) E17. to E21. of the statutes are renumbered 709.033 (form) E19. to E23.

SECTION 5. 709.033 (form) E17. and E18. of the statutes are created to read:

709.033 (form)

E17. Are you aware of a written agreement affecting riparian rights related to the property?

.... ..

E18. Are you aware that the property abuts the bed of a navigable waterway that is owned by a *deeded navigable waterway bed owner or* hydroelectric operator? Under Wis. Stat. s. 30.132, the owner of a property abutting the bed of a navigable waterway that is owned by a *deeded navigable waterway bed owner or* hydroelectric operator, as defined in s.30.132 (1) (b), may be required to ask the permission of the *deeded navigable waterway bed owner or* hydroelectric operator to place a structure on the bed of the waterway.

....

BILL SECTION 6

SECTION 6. Nonstatutory provisions.

(1) REAL ESTATE CONDITION AND VACANT LAND DISCLOSURE REPORTS.

Notwithstanding s. 709.035, a property owner who furnished to a prospective buyer of the property an original or amended report before the effective date of this subsection need only submit an amended report with respect to the information required under s. 709.03 (form), 2019 stats., or under s. 709.033 (form), 2019 stats.

SECTION 7. Initial applicability.

(1) REAL ESTATE CONDITION AND VACANT LAND DISCLOSURE REPORTS. The creation of ss. 709.03 (form) F18. and F19. and 709.033 (form) E17. and E18. and the renumbering of ss. 709.03 (form) F18. and F19. and 709.033 E17. to E21. first apply to reports that are furnished on the effective date of this subsection.

SECTION 8. Effective dates. This act takes effect on the day after publication, except as follows:

(1) REAL ESTATE DISCLOSURE FORMS. The creation of ss. 709.03 (form) F18. and F19. and 709.033 (form) E17. and E18. and the renumbering of ss. 709.03 (form) F18. and F19. and 709.033 E17. to E21. and SECTIONS 6 (1) and 7 (1) of this act take effect on July 1, 2022.

(END)

RE: ASSEMBLY BILL 37
TO: Housing Committee and Real Estate
FROM: Robert C. Procter, Esq.
DATE: March 18, 2021

Dear Chair Jagler and Committee Members:

Thank you for the opportunity to provide this written testimony **in support of Assembly Bill 37** relating to the presumption of riparian rights on navigable waterways and real estate disclosures. I have been an attorney in Wisconsin for over 20 years focusing on real estate, and have been closely following this legislation. The hard work of your Committee and the interested parties has created a bill that addresses the concerns of many people. Most importantly, it protects the property rights and values of Wisconsin waterfront owners.

You have heard and will hear testimony about all of the features of this bill so I will focus on one issue that has come up at past hearings—the belief that riparian rights were generally granted in the deed used to convey the property to the new owner. I have been practicing law for 20 years, and have drafted and reviewed a large number of waterfront deeds. Rarely do I see a deed attempting to convey riparian rights. When I see the mention of riparian rights in deeds, it is because the seller is giving notice to the buyer that there are no riparian rights or the seller is attempting to restrict riparian rights.

In my experience, deeds were not and are not used to grant riparian rights. This is because riparian rights generally do not flow from the deed. Instead, they flow from common law. The Wisconsin Supreme Court has stated that: “The established rule of common law was that every riparian owner of a stream or lakeshore property had an equal right to the use of it for all reasonable and beneficial purposes, and it was this rule that early become the law in Wisconsin.” *State ex re. Chain O’Lakes Protective Ass’n v. Moses*, 53 Wis. 2d 579, 582 (1972). To have riparian rights, the land must adjoin a stream or a lake. *Stoesser v. Shore Drive Partnership*, 172 Wis. 2d 660, 665 (1993). Riparian rights spring from the ownership of the land, and not from any particular language in the deed. Moreover, in 1994 the Wisconsin Legislature passed a law restricting the ability of riparian land owners from transferring the riparian rights separate from conveying the land. Wis. Stat. § 30.133(1).

Unfortunately, the common understanding that real estate attorneys, licensed real estate brokers, and waterfront property owners had regarding riparian rights was recently clouded by the Wisconsin Supreme Court’s decision in *Movrich v. Lobermeier*. This legislation rectifies the negative impact that case had on Wisconsin’s waterfront property owners, and reestablishes clarity as to riparian rights.

It is very important to the people of Wisconsin that the legislature clarify and codify the riparian rights of waterfront property owners.



ROBERT BROOKS

STATE REPRESENTATIVE • 60th ASSEMBLY DISTRICT

Hearing Testimony
Assembly Committee on Housing and Real Estate
Thursday, March 18, 2021

Chairman Jagler and members of the Assembly Committee on Housing and Real Estate, thank you for affording me with the opportunity to testify on behalf of Assembly Bill 37, relating to: the presumption of riparian rights.

Movrich v. Lobermier issued a devastating blow to citizens who own land on one of Wisconsin's two hundred-forty flowages. Ultimately, the court ruled that the public trust doctrine does not allow landowners whose deed does not explicitly grant access to the waterbed of flowages, the ability to erect and maintain a pier. Thus, unless a landowners' deed grants the right to the waterbed beneath a flowage, the landowner cannot erect a pier.

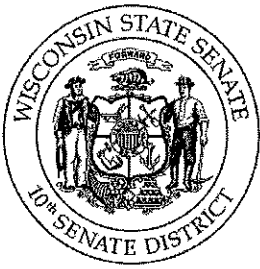
Justice Rebecca Bradley, in her dissent, stated, "riparian rights in Wisconsin are sacred." Assembly Bill 37 would protect the presumed riparian rights that innumerable Wisconsinites believe they are entitled to. In an effort to ensure the rights of these individuals are protected, Assembly Bill 37 establishes that landowners, whose property abuts a flowage or artificial waterway, be afforded the ability to exercise all riparian rights established under law, unless the deed to the property states otherwise.

Assembly Bill 37 does not make any changes to state environmental standards. In fact, these standards will be analogous to those in place prior to the Supreme Court's ruling in *Movrich v. Lobermier*. All land that abuts flowages will be treated as is under current law.

It is imperative to denote that this bill does not make it any easier to erect or maintain a pier and does not alter any language relating to siting, zoning, or mitigation.

Assembly Bill 37 is a common-sense proposal that makes riparian rights a priority.

I am happy to answer any questions you might have.



ROB STAFSHOLT

STATE SENATOR • 10th SENATE DISTRICT

(608) 266-7745
Toll Free: (800) 862-1092
Sen.Stafsholt@legis.wi.gov

P.O. Box 7882
Madison, WI 53707-7882

DATE: March 18, 2021
RE: **Testimony on Assembly Bill 37**
TO: Members of the Committee on Housing and Real Estate
FROM: Senator Rob Stafsholt

Thank you Chairman Jagler and members of the Assembly Committee on Housing and Real Estate for hearing Assembly Bill 37 relating to the presumption of riparian rights on navigable waterways and required real estate disclosures.

Last Session this bill passed the Assembly Floor and the Senate Committee on Natural Resources and Energy 5-0. It simply did not have time to be scheduled on the Senate Floor. A Wisconsin Supreme Court ruling (Movrich v. Lobermier) dealt a devastating blow to citizens who own land on one of Wisconsin's 240 flowages. Ultimately, the court ruled that the public trust doctrine does not allow landowners whose deed does not explicitly grant access to the water bed of flowages, the ability to erect and maintain a pier. Meaning that, unless a landowner's deed explicitly grants the right to the water bed beneath a flowage, a landowner cannot erect a pier.

As Justice Rebecca Bradley stated in her dissent, "riparian rights in Wisconsin are sacred." This bill will protect the presumed riparian rights that many Wisconsinites believe they are currently entitled to. To ensure the rights of these citizens are protected, this bill establishes that landowners, whose land abuts a flowage or artificial water way, have the ability to exercise all riparian rights established under law, unless the deed to the property explicitly states otherwise.

The bill changes no environmental standards that are found as they were prior to the Supreme Court decision. All land that abuts flowages will be treated as is under current law. This bill does not make it any easier to erect or maintain piers and does not change any language relating to siting, zoning, or mitigation relating to Wisconsin's shoreline zoning laws. This is a common sense bill that makes riparian rights a priority.

Again, thank you for allowing me to testify on Assembly Bill 37. I would appreciate your support on this important piece of legislation.

March 19, 2021

PUBLIC HEARING AB 37

PRESUMPTION OF RIPARIAN RIGHTS

1. Supreme Court validated my deed and my rights.

2. Cause of litigation

Seller misrepresented property & rights associated. MY RIGHTS - NOT HIS

Buyer "presumed" - did not do his due diligence

A buyer violated zoning/environmental laws having negative impact upon my property. Asked them to stop. They sued.

3. Author's proposed law:

holds harmless seller misrepresenting rights & selling MY rights for gain

holds buyer harmless for "presuming" and with no due diligence responsibility

treats private property owners rights differently - corporate vs private same deeds & rights yet not the same legal treatment

is discriminatory (item above)

is unconstitutional - it imposes the "taking" of my rights without a "police state" or exercising "eminent domain" actions

4. Has anyone reviewed our Citizens Proposed Amendment of February 2, 2021 which simply includes ALL property owners rather than just Hydro operators?

if so, why wouldn't this be satisfactory? I would comment more but I have not yet heard anyone state what problem is being addressed. Is there one or is the law being passed for a "maybe" future problem?

5. I urge you to vote NO on this bill as proposed and amended.

Any questions?

I will relinquish my remaining time to any committee member who can answer:

What are we fixing? Why doesn't protecting ALL owners rights provide a solution?

How is this new law interpreted when the water levels drop and MY bare ground is exposed? Note: this is a common occurrence on flowages. Please review the DNR attachment giving an example of a natural body of water of which the state holds in trust. Private land is still private land so the deeded owner controls it. Agree?

Is this law going to somehow be "retroactive"? My legal counsel advises that cannot happen.

Will the public need to litigate all of these matters using court time and spending unnecessary money?

This bill will certainly create more issues than it can possibly fix.

I will be attaching some supporting pages to assist you in making the right choice. VOTE NO on SB 37.

Thank you,

Dave Lobermeier

March 19, 2021

QUESTIONS I WOULD HAVE ASKED IF VERBAL TESTAMONY WERE GIVEN

Spanger:

States clearly he knew and does know the difference between the properties abutting a Hydro Operator's owned flowage bed verse a fee simple deed including the flowage bed. Mr. Spanger verbalized this same message at previous hearings. The seller explained the benefit of the fee simple deed and I would believe Mr. Spanger paid a bit more for the extra acreage and rights. Mr. Spanger performed his due diligence and bought what he wanted. The right way. He did not make assumptions and then complain about not getting what he thought he was getting. He bought a deed. Nothing more, nothing less.

Senators Stafsholt and Brooks:

Both claim the Supreme Court's Majority decision dealt a "devastating blow" to citizens. Yet I have asked for an estimate of how many citizens were hurt in the 3 years following the decision, I have never gotten ANY number. In fact when Sen. Testin & Rep. Brooks were asked at last year's senate hearing the same question, they had none. This lead to the comment made by one of the committee members, "sounds like a law looking for a problem".

Neither Sen. Stafsholt nor Rep. Brooks mention that this proposed law "TAKES MY RIGHTS FROM ME" in order to accomplish the solution they are intending. I believe in order for the State to take my rights there must be "Police State" or "Emminent Domain" action. Neither are present.

And they both support the Minority Judges opinion rather than the Supreme Court Majority decision.

Tom Larson:

Clearly states that a deed allows the owner to exclude so folks cannot place a pier on or over private land. Majority decision and long standing property law.

He then speaks in terms like, "will likely, far-reaching, possibly, a large number, even thousands of waterfront owners are impacted. I have again asked to list 100 or even 10 property owners who have been negatively impacted in the past 3 years. He also has not offered any evidence either by choice or perhaps he can't find them. I will give three family names of private owners who I know who will most certainly be negatively impacted day one of this new law: Lobermeier, Pettit and Kudik.

He also lists some of the large flowages in the state. One in particular is Lake Wisconsin. The bed of which is owned by Hydro Operators who are excluded from the law and are held harmless for injury. The new law doesn't fix anything there now does it. If I recall correctly, hundreds of miles of shoreline are in Lake Wisconsin.

He states how much money the "presumed Riparians" have spent buying their property. Well, so did I when I purchased my land. Property law clearly states "one cannot acquire more that the deed describes". BUT not under this new law. If I want it, all I have to do is "think or presume" I own it and I do.

He talks of the Hydro Operators rights to charge and exclude if required as well as being held harmless for injury. So why not all private owners?

And he talks of the new Condition Report. I like it and I recently signed one. Again, why not simply add "all private flowage bed owners?"

Movrich:

Interesting. First off there was never a restraining order issued. You can easily verify this by looking at CCAP. Next, I'm sure they do have a letter from zoning stating their property meets standards. They fail to state that this letter came

"after" they made the required restorations & changes. County records can verify this as well. As for the DNR, if anyone is interested I will gladly send you the photographs and you can decide for yourself if you see anything that looks new.

In summary, nothing they stated makes any difference. The Supreme Court Majority said I hold a valid deed and have the right of exclusion. Just like Judge Madden reminded me, don't trespass they cannot either. And that simply having an expectation does not give them rights. Remember, "one cannot acquire more than the deed describes".

Please vote NO on this bill or at least treat all property owners equal.

Dave Lobermeier

715-347-4853

Exhibits:

Exhibit A - Citizen's Proposed Amendment

Exhibit B - New Condition Report

Exhibit C - Fun Facts of Sailor Creek Flowage

Exhibit D - Low Water DNR Handout

WHAT DOES IT MEAN TO YOU?

If you are a riparian the land above the OHWM is your private domain. When the water levels drop below the OHWM, the riparian property owner has exclusive use of the exposed lake or river bed. Everyone has the right to use the water to swim, boat or walk as long as they "keep their feet wet." A waterfront property owner may prevent a member of the public from walking on the exposed bed of the waterway through non-structural means (fences and walls are not allowed, however temporary signs and verbal warnings are acceptable). Trespassing complaints are handled through the local sheriff's department or police department.

As a member of the public you need not worry about the location of the OHWM as long as you stay in the water. If you are navigating a water body and come across an obstruction you are allowed a reasonable portage, using the shortest distance possible, to go above the OHWM around the obstruction.

Many development activities above the OHWM require county permits. Some development activities above the OHWM require DNR permits; most development projects below the OHWM require DNR permits.

If you need to know more about the OHWM, contact the DNR Water Management Specialist at www.wisconsin.gov.



PUBL-WZ004 08REV

Ordinary High Water Mark (OHWM)



SHORE
WETLAND
Zoning

THE OHWM FORMS SEVERAL IMPORTANT BOUNDARIES. IN WISCONSIN, THE CITIZENS "OWN" THE BEDS OF NATURAL LAKES, WHICH ARE HELD IN TRUST FOR THEM BY THE STATE. THE OHWM IS THE DIVIDING LINE BETWEEN PUBLIC AND PRIVATE OWNERSHIP ON NATURAL LAKES. ON STREAMS, THE RIPARIAN LANDOWNER USUALLY OWNS THE BED TO THE CENTER OF THE STREAM, BUT THE PUBLIC HAS THE RIGHT TO USE THE WATER FOR ACTIVITIES SUCH AS CANOEING AND FISHING.

In 1914, the Wisconsin Supreme Court heard a trespass case where a citizen had been cited for hunting in an area of flooded vegetation. The court determined that the hunter was exercising his public rights because his boat was below the OHWM and then defined the OHWM as:

The area where 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.

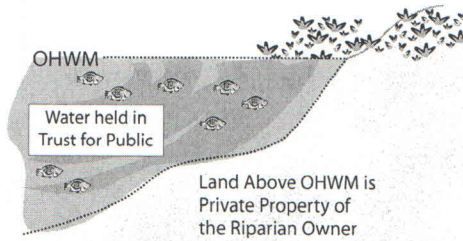
The OHWM is important to determine state and county jurisdictional areas, private vs public ownership, and where the public can navigate.

HOW TO FIND THE OHWM:

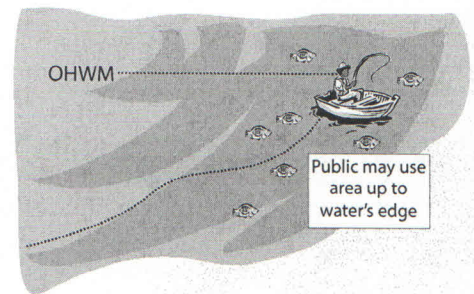
To locate the OHWM, go to your shoreline and look for obvious indicators of water. These indicators may include:

- stains on rocks or other shoreline structures
- bare dirt, marks on trees
- exposed roots running along the shore
- changes in vegetation from water plants to upland plants

Ordinary High Water Mark (OHWM)
Public may use area up to water's edge



When the Water Level is High



There are some water bodies where the OHWM can be more difficult to locate. These may include bogs, pothole lakes, fluctuating water levels due to natural or artificial impacts, rapidly urbanizing watersheds, altered shorelines, wetland fringes and the Great Lakes. In these cases contact the local DNR water management specialist. If your OHWM is for regulatory purposes, the final determination must be made by DNR staff.

When the Water Level is Low

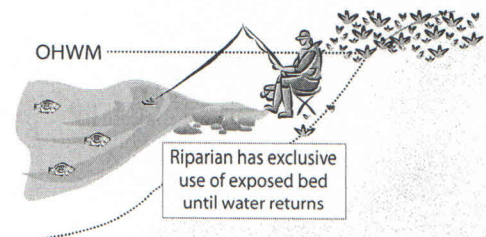


Exhibit "A"

Citizen's proposal

Analysis by the Legislative Reference Bureau

Under current law, a person who owns land that abuts a navigable waterway (commonly known as a riparian owner) is afforded certain rights. In general, these rights include reasonable use of the waterway and the right to place structures such as piers in the waterway. These rights may be limited by statute and may be subject to the riparian owner acquiring necessary permits. Courts have also held that these rights may be subservient to private property rights, where one person owns land adjacent to a navigable waterway, the bed of which is owned by another person. This bill creates a presumption that an owner of land that abuts a navigable waterway is a riparian owner and is entitled to exercise all rights afforded to a riparian owner, even if the bed of the waterway is owned in whole or in part by another. The bill provides that the exercise of riparian rights remains subject to current law requirements and riparian rights may not be exercised if prohibited by the deed to the land or another written agreement or recorded instrument. The bill provides for reasonable restrictions on the exercise of riparian rights necessary for *a deeded navigable waterway bed owner* or the operator of a hydroelectric project to comply with requirements imposed under state or federal law or a federal energy regulatory commission license. If the bed of a navigable waterway is owned by *a deeded navigable waterway bed owner* or *an* operator of a hydroelectric project, the bill authorizes a riparian owner to apply to the applicable *deeded navigable waterway bed owner* or hydroelectric operator for permission to exercise a riparian right within the *privately owned navigable waterway bed* or hydroelectric project boundaries. A *deeded navigable waterway bed owner* or hydroelectric operator may approve or deny such a request, but *a hydroelectric operator* may deny a request only if necessary, to comply with requirements imposed under state or federal law or a FERC license. Finally, the bill requires the real estate condition and vacant land disclosure reports to include specific disclosures relating to riparian rights and ownership of a waterbody bed.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 30.132 of the statutes is created to read:

30.132 Riparian rights. (1) DEFINITIONS. In this section:

(a) "Commission" means the public service commission.

(b) "Hydroelectric operator" means an operator of a project.

(c) "*Deeded navigable waterway bed owner*" means a private property owner in possession of a validated deed containing a bed that underlies a navigable waterway.

(d) "Project" means a hydroelectric project regulated by the federal energy regulatory commission or the department.

(e) "Project riparian" means an owner of land that abuts a navigable waterway, the abutting bed of which is owned by a *deeded navigable waterway bed owner or* hydroelectric operator.

(2) PRESUMPTION OF RIPARIAN RIGHTS. An owner of land that abuts a navigable waterway is presumed to be a riparian owner and is entitled to exercise all rights afforded to a riparian owner, including the right to place a pier, other structures, or deposits, even if the bed of the waterway is owned in whole or in part by another, unless those rights are specifically prohibited by the deed to the land, written agreement, or another recorded instrument. The exercise of these riparian rights is subject to the requirements of this chapter and if the waterway is within the boundaries of a project, the reasonable restrictions imposed by the hydroelectric operator necessary for the hydroelectric operator to comply with requirements imposed under state or federal law or a federal energy regulatory commission license.

(3) PROJECT RIPARIAN RIGHTS. (a) *Application to exercise riparian rights.* A project riparian may make written application to *the deeded navigable waterway bed owner or* to the applicable hydroelectric operator for permission to exercise a riparian right in a waterway within the *privately owned bed* or boundaries of a project, including the right to place a pier or other structures or deposits and the right to modify an existing structure authorized under par. (b), subject to the requirements of this chapter. The *deeded navigable waterway bed owner or* hydroelectric operator shall approve or deny an application under this paragraph no later than 60 days after receiving the application. The hydroelectric operator may deny an application under this paragraph only if necessary, for the hydroelectric operator to comply with requirements imposed under state or federal law or a federal energy regulatory commission license but may approve the application subject to reasonable restrictions necessary for the hydroelectric operator to comply with requirements imposed under state or federal law or a federal energy regulatory commission license. *The deeded navigable waterway bed owner or the* hydroelectric operator may charge an applicant a reasonable fee *to cover the deeded navigable waterway bed owner's* or the hydroelectric operator's administrative costs related to a structure or deposit that is approved under this paragraph.

(b) *Existing structures.* Notwithstanding par. (a), a project riparian may maintain a structure that was placed in a waterway within the *privately owned bed of a navigable waterway or* boundaries of a project prior to the effective date of this paragraph [LRB inserts date], subject to the requirements of this chapter and the reasonable restrictions imposed by the *deeded navigable waterway bed owner or* hydroelectric operator necessary for the hydroelectric operator to comply with requirements imposed under state or federal law or a federal energy regulatory commission license. *A deeded navigable waterway bed owner or*

hydroelectric operator may not charge a fee related to a structure authorized under this paragraph unless a fee is provided for in an agreement between the hydroelectric operator and the project riparian that existed prior to the effective date of this paragraph [LRB inserts date].

(c) *Appeal to the commission.* A project riparian whose application is denied or approved with restrictions or who is charged an unreasonable fee under this subsection may appeal in writing to the commission. The commission may investigate the appeal and issue an order based on its investigation. The commission may not issue an order under this paragraph without a public hearing conducted in accordance with s. 196.26 (2).

(d) *Immunity from liability.* A *deeded navigable waterway bed owner or* hydroelectric operator is not liable to any person for any injury or damage arising from a project riparian's use of the *privately owned bed of a navigable waterway or* hydroelectric operator's property as provided in this section.

(4) EFFECT ON ENFORCEABLE INTERESTS. Nothing in this section invalidates any interest, whether designated as an easement, covenant, equitable servitude, restriction, or otherwise, which is otherwise enforceable under the laws of this state.

SECTION 2. 709.03 (form) F18. and F19. of the statutes are renumbered 709.03 (form) F20. and F21.

SECTION 3. 709.03 (form) F18. and F19. of the statutes are created to read:

709.03 (form)

F18. Are you aware of a written agreement affecting riparian rights related to the property?

F19. Are you aware that the property abuts the bed of a navigable waterway that is owned by a *deeded navigable waterway bed owner or* hydroelectric operator?

Under Wis. Stat. s. 30.132, the owner of a property abutting the bed of a navigable waterway that is owned by a *deeded navigable waterway bed owner or* hydroelectric operator, as defined in s. 30.132 (1) (b), maybe required to ask the permission of the *deeded navigable waterway bed owner or* hydroelectric operator to place a structure on the bed of the waterway.

....

SECTION 4. 709.033 (form) E17. to E21. of the statutes are renumbered 709.033 (form) E19. to E23.

SECTION 5. 709.033 (form) E17. and E18. of the statutes are created to read:

709.033 (form)

E17. Are you aware of a written agreement affecting riparian rights related to the property?

....

E18. Are you aware that the property abuts the bed of a navigable waterway that is owned by a *deeded navigable waterway bed owner or* hydroelectric operator? Under Wis. Stat. s. 30.132, the owner of a property abutting the bed of a navigable waterway that is owned by a *deeded navigable waterway bed owner or* hydroelectric operator, as defined in s.30.132 (1) (b), may be required to ask the permission of the *deeded navigable waterway bed owner or* hydroelectric operator to place a structure on the bed of the waterway.

.....

BILL SECTION 6

WRA has already changed this for Hydro. (Attached)

SECTION 6. Nonstatutory provisions.

(1) REAL ESTATE CONDITION AND VACANT LAND DISCLOSURE REPORTS.

Notwithstanding s. 709.035, a property owner who furnished to a prospective buyer of the property an original or amended report before the effective date of this subsection need only submit an amended report with respect to the information required under s. 709.03 (form), 2019 stats., or under s. 709.033 (form), 2019 stats.

SECTION 7. Initial applicability.

(1) REAL ESTATE CONDITION AND VACANT LAND DISCLOSURE REPORTS. The creation of ss. 709.03 (form) F18. and F19. and 709.033 (form) E17. and E18. and the renumbering of ss. 709.03 (form) F18. and F19. and 709.033 E17. to E21. first apply to reports that are furnished on the effective date of this subsection.

SECTION 8. Effective dates. This act takes effect on the day after publication, except as follows:

(1) REAL ESTATE DISCLOSURE FORMS. The creation of ss. 709.03 (form) F18. and F19. and 709.033 (form) E17. and E18. and the renumbering of ss. 709.03 (form) F18. and F19. and 709.033 E17. to E21. and SECTIONS 6 (1) and 7 (1) of this act take effect on July 1, 2022.

(END)

Exhibit "B" Condition Report

- | | YES | NO | N/A |
|---|--------------------------|--------------------------|--------------------------|
| F11. Is all or part of the property subject to or in violation of a farmland preservation agreement?
Early termination of a farmland preservation agreement or removal of land from such an agreement can trigger payment of a conversion fee equal to 3 times the class 1 "use value" of the land.
Visit https://datcp.wi.gov/Pages/Programs_Services/FarmlandPreservation.aspx for more information. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F12. Is all or part of the property subject to, enrolled in, or in violation of the Forest Crop Law, Managed Forest Law, the Conservation Reserve Program, or a comparable program? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F13. Are you aware of a dam that is totally or partially located on the property or that an ownership in a dam that is not located on the property will be transferred with the property because it is owned collectively by members of a homeowners' association, lake district, or similar group? (If "yes," contact the Wisconsin Department of Natural Resources to find out if dam transfer requirements or agency orders apply.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F14. Are you aware of boundary or lot line disputes, encroachments, or encumbrances (including a joint driveway) affecting the property?
Encroachments often involve some type of physical object belonging to one person but partially located on or overlapping on land belonging to another; such as, without limitation, fences, houses, garages, driveways, gardens, and landscaping. Encumbrances include, without limitation, a right or claim of another to a portion of the property or to the use of the property such as a joint driveway, liens, and licenses. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F15. Are you aware there is not legal access to the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F16. Are you aware of federal, state, or local regulations requiring repairs, alterations, or corrections of an existing condition? This may include items such as orders to correct building code violations. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F17. Are you aware of a pier attached to the property that is not in compliance with state or local pier regulations? See http://dnr.wi.gov/topic/waterways for more information. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F17m. Are you aware of a written agreement affecting riparian rights related to the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F17n. Are you aware that the property abuts the bed of a navigable waterway that is owned by a hydroelectric operator?
<i>Under Wis. Stat. s. 30.132, the owner of a property abutting the bed of a navigable waterway that is owned by a hydroelectric operator, as defined in s. 30.132 (1) (b), may be required to ask the permission of the hydroelectric operator to place a structure on the bed of the waterway.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F18. Are you aware of one or more burial sites on the property? (For information regarding the presence, preservation, and potential disturbance of burial sites, contact the Wisconsin Historical Society at 800-342-7834 or www.wihist.org/burial-information). | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F19. Explanation of "yes" responses _____

_____ | | | |

G. ADDITIONAL INFORMATION

- | | YES | NO | N/A |
|---|--------------------------|--------------------------|--------------------------|
| G1. Have you filed any insurance claims relating to damage to this property or premises within the last five years? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| G2. Are you aware of a structure on the property that is designated as a historic building or that all or any part of the property is in a historic district? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| G3. Are you aware of any agreements that bind subsequent owners of the property, such as a lease agreement or an extension of credit from an electric cooperative? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| G4. Are you aware of other defects affecting the property?
Other defects might include items such as drainage easement or grading problems; excessive sliding, settling, earth movements, or upheavals; or any other defect or material condition. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| G4m. Is the owner a foreign person, as defined in 26 USC 1445 (f)? (E.g. a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate.)
<i>Section 1445 of the Internal Revenue Code (26 USC 1445), also known as the Foreign Investment In Real Property Tax Act or FIRPTA, provides that a transferee (buyer) of a U.S. real property interest must be notified in writing and must withhold tax if the transferor (seller) is a foreign person, unless an exception under FIRPTA applies to the transfer.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

January 16, 2017

SAILOR CREEK FLOWAGE

FUN FACTS

1. 51 parcels surrounding SCF (best estimate from Price County WG Extreme map)
2. 26 of these parcels include private ownership of SCF bed. As shown on attached Price County WG Extreme map.
3. 17 parcels (abutting SCF in area outlined in red. These outlined area do not show any ownership. It is believed that these parcels have reverted to the County. Undisputed area.
4. 8 parcels remain (shaded yellow) on Price County WG Extreme, are all involved in this case. Approx 13.4 total acres. None of these parcels show ownership into SCF.