



Review of Shoreland Management Program Underway

A diverse advisory committee met November 21 and December 12 in Rosholt to begin updating shore protection rules with a goal of

better protecting lakes and rivers while providing landowners more flexibility in how they develop their waterfront property.

The newly created group is charged with helping Department of Natural Resources staff revise 34-year-old shoreland protection standards overwhelmed by a rapid pace and pattern of development. Those standards are intended to protect water quality, scenic beauty, fish and wildlife habitat, and recreation in lakes

and rivers in unincorporated areas by setting minimum lot sizes, how far structures need to be set back from the water, and limits on clearing shoreline trees and other plants. Counties are required to adopt and enforce these minimum state standards or can choose to adopt more protective ones.

“What we’ve tried to do with this advisory committee is get a broad view geographically and interest-wise to help us balance public and private rights,” says Al Shea, who directs the DNR Bureau of Watershed Management. “We wanted to have people who have to live with the rules every day because they own waterfront property or they develop and sell it, people who have to interpret, administer and enforce the rules, and people who represent

“What we’ve tried to do with this advisory committee is get a broad view geographically and interest-wise to help us balance public and private rights.”

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Does the “typical” waterfront development reflect the original intent of the Shoreland Management Program?

Next Round of Flood Control Grants Begin

The DNR, recognizing a responsibility to protect life, health, and property from flood damages, offers this grant assistance package to all cities, villages, towns and metropolitan sewerage districts concerned with municipal flood control management.

The primary goal of this program is to acquire and remove structures in the floodplain. Grant dollars can also be used to pay for floodproofing structures, acquiring land and easements for flood storage,

restoring riparian areas, constructing flood control facilities, and paying for engineering and other administrative costs.

Completed applications must be received and postmarked no later than April 15, 2003.

For more information, contact Barb Ingram, Grants Program Manager, at 608-267-7152 or go to www.dnr.state.wi.us/org/caer/cfa/Ef/flood.grants.html

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Urban Storm Water: Enhancing Programs at the Local Level

In Chicago, February 17 - 20, 2003, the US EPA Region 5 office is hosting a fifth in a series of water quality conferences.

At this national conference, state-of-the-art storm water technologies and implementation programs will be presented that have proved successful in local communities.

On Monday, February 17, three special all-day preconference workshops will be presented:

#1) Smart Watersheds: Building Municipal Programs to Restore Urban Watersheds, presented by the Center for Watershed Protection.

#2) Countdown to the Phase II Implementation Deadline: Putting the Final Touches on Your Storm Water Permit,

presented by Tetra Tech, Inc. and

#3) Certified Professional in StormWater Quality (CPSWQ) Exam Review Course, presented by Certified Professional in Erosion and Sediment Control, Inc.

Other sessions Tuesday through Thursday include "Conservation Design Strategies and Natural Resource Protection", "Low Impact Design for Storm Water Control", "Linking Flood Control and Storm Water Management" and "Strategies for Effective Public Education and Involvement".

The full conference program, including registration information, is available at: www.chicagobotanic.org/research/conference/stormwater

Water Resources



A Citizen's Guide to Lake Protection:

www.pca.state.mn.us/water/lakeprotection.html

A Stream Corridor Protection Strategy for Local Governments:

www.virginia.edu/ien/stream%20guide_final.pdf%202

Does Open Space Pay?:

<http://ceinfo.unh.edu/nrgn1010.pdf>

DUCKDATA, A Bibliographic Data Base of North American Waterfowl (Anatidae) and

Their Wetland Habitats:

www.nwrc.gov/duckdata/duckdata.html

UWEX Center for Land Use Education:

www.uwsp.edu/cnr/landcenter/

USGS, Effects of Lawn Fertilizer on Nutrient Concentration in Runoff from Lakeshore Lawns, Lauderdale Lakes, Wisconsin:

<http://wi.water.usgs.gov/pubs/wrir-02-4130/wrir-02-4130.pdf>

Wisconsin's Hazard Mitigation Programs:

http://badger.state.wi.us/agencies/dma/wem/mit_home.htm

Working Trees For Communities:

www.lgean.org/documents/working%20trees.pdf

Applying the 50% Rule - What to Include in the Limit?

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The Department of Natural Resources is often asked for its legal opinion in relation to the 50% rule as it applies to legal nonconforming structures within the shoreland and floodplain zone, specifically how to account for costs associated with various projects to modify, structurally alter or add on to nonconforming structures.

The reference most often referred to when analyzing costs associated with maintenance and repairs, structural alterations, and additions to nonconforming structures is the Wisconsin Supreme Court's decision in *Marris v. City of Cedarburg* 176 Wis. 2d 14, 498 N.W.2d 842 (1983). The recommendations below are based on the Department's interpretation of the *Marris* case and other Wisconsin common law.

Additions and Reconstruction

It is the Department's legal opinion that all costs associated with additions or completely rebuilding a portion of an existing structure should be included to determine if the 50% limit has been exceeded. In the *Marris* decision, although the specific issue that was before the Court involved determining what the term "structural repairs" meant as it was used in the City of Cedarburg's zoning ordinance, the Supreme Court sought to give some general guidance:

"We construe structural repairs in this ordinance to include work that would convert an existing building into a new or substantially different building. . . . We also construe structural repairs in this ordinance to include proposed improvements that would contribute to the longevity or permanence of the building. This characterization of structural repairs satisfies the public interest in eliminating nonconforming uses. If work indefinitely prolonging the natural life of nonconforming buildings were permitted, the



purpose of zoning to achieve uniformity would be defeated." . . .

*"However, under our characterization of structural repairs an owner is permitted to modernize facilities. The right to continue a use existing at the time a zoning restriction becomes effective necessarily embraces preservation of that use. Therefore proposed improvements such as the addition of acoustical ceilings or the installation of heating, electricity, plumbing (including fixtures) or insulation might not ordinarily be regarded as structural repairs. Such improvements might be characterized as remodelling, or as improving the appearance or efficiency of a nonconforming use or structure." *Marris v. City of Cedarburg* 176 Wis. 2d 14 at pp. 37 - 38.*

Notice that the court says "might not ordinarily be regarded as structural repairs." This indicates to the Department that there are times when the Court would consider these types of improvements to be "structural repairs." It is the Department's legal opinion that those times include when a new addition is being added or a portion of the existing structure is being completely rebuilt. In those

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situations, the cost of “work that would convert an existing building into a new or substantially different building” would be counted toward the 50% limit, including the cost of the electrical, plumbing and heating systems that are part of a new addition or completely rebuilt portion of the existing structure

Maintenance and Non-Structural Remodelling

The Supreme Court did, however, state that there are some instances where costs associated with a project are not “structural repairs or structural alterations”, and should not count towards the 50% limit. In the Marris decision, the Supreme Court stated that:

“ . . . under our characterization of structural repairs an owner is permitted to modernize facilities. The right to continue a use existing at the time a zoning restriction becomes effective necessarily embraces preservation of that use. Therefore proposed improvements such as the addition of acoustical ceilings or the installation of heating, electricity, plumbing (including fixtures) or insulation might not ordinarily be regarded as structural repairs. Such improvements might be characterized as remodelling, or as improving the appearance or efficiency of a nonconforming use or structure . . . Likewise, repairs that are reasonably necessary to prevent deterioration might not be classed as structural repairs . . . It is in the community’s interest that buildings be maintained in good, safe and sanitary condition . . . We recognize that any modernization or maintenance carries with it some possibility of extending the life expectancy of the nonconforming use. Yet, in order to respect ownership rights, some modernization and maintenance must

be permitted.” Marris v. City of Cedarburg 176 Wis. 2d 14 at pp. 38 – 39.

To summarize the paragraph above, the kind of work that would not be included for the purpose of applying the “50% rule,” **as long as this work is not part of a project to add a new addition or completely rebuild a portion of the existing building**, are such things as:

- Replacing siding
- Replacing shingles
- Replacing windows or doors that are the same size as the existing windows or doors that are being replaced
- Painting
- Installing or replacing acoustical ceilings
- Installing or replacing insulation, and
- Repairing or improving an existing plumbing or electrical system.

Labor Costs

To ensure equity among owners of nonconforming structures, labor costs and the value of donated labor should be included in all projects, regardless of whether the property owner pays the labor costs. If labor costs are not included in projects where the homeowner or a friend provides the labor at no cost, it would enable some properties to benefit from much larger and more expensive projects than others. Traditionally, in situations where the labor cost has not been accounted for, the county will use the average cost of similar work done by contrac-

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tors in the area to account for that portion of the project's cost.

“Damaged or Destroyed” Structures

A statutory provision was included in the 1997-99 State Budget Bill which was passed by the State Legislature and signed by former Governor Thompson on October 14, 1997 that affects nonconforming structures. With the adoption of s. 59.692(1s), Wis. Stats., counties cannot restrict the restoration of shoreland nonconforming structures damaged or destroyed by violent wind, vandalism, fire or flood if the structures are restored to the size, location and use they had prior to the damage or destruction.

This legislation prevents counties from requiring structures to be rebuilt in compliance with the county shoreland zoning ordinance when nonconforming structures are damaged, by one of the above referenced natural disasters, in excess of 50% of their assessed value after October 14, 1997, and prevents counties from imposing cost limitations on the reconstruction of “damaged or destroyed” structures.

As written, this legislation applies only to shoreland ordinances adopted under s. 59.692, Wis. Stats. Restrictions on reconstruction or repair of nonconforming structures that are located outside of the shoreland zone, which were adopted under s. 59.69, Wis. Stats., would not be affected. Please note that the language affects only restrictions relating to the reconstruction or repair of damaged nonconforming structures, not to restrictions relating to their expansion. Furthermore, the statute applies only to damage or destruction caused by “violent wind, fire, flood or vandalism,” and not to damage or destruction caused by deliberate acts, old age or dilapidated condition. Counties may continue to impose limits on, or prohibit entirely, the reconstruction of nonconforming structures deliberately destroyed or which collapse due to poor repair. Counties may also continue to impose limits on the expansion of existing nonconforming structures.

Nonflood Disasters in Floodplains

For floodplain areas, another recent statutory change allows a legal nonconforming structure that was damaged or destroyed by a nonflood disaster to be rebuilt or repaired to its pre-disaster condition and use provided that the structure will meet the minimum requirements in the federal floodplain management regulations, which are enumerated in 42 USC 4001 - 4129.

Please remember that a structure which is located in both the shoreland and floodplain zone must meet the more restrictive of the two sets of regulations.

The statutory change can be found in section 87.30 (1d), Wis. Stats., and states:

(1d) IMPROVEMENTS TO NONCONFORMING BUILDINGS.

(a) In this subsection:

1. “Nonconforming building” has the meaning specified by rule by the department for purposes of floodplain zoning under this section and includes a building with a nonconforming use.

2. “Nonconforming use” has the meaning specified by rule by the department for purposes of floodplain zoning under this section.

3. “Nonflood disaster” means a fire or an ice storm, tornado, windstorm, mudslide or other destructive act of nature, but excludes a flood.

(b) For nonconforming buildings that are damaged or destroyed by a nonflood disaster a floodplain zoning ordinance shall permit the repair, reconstruction or improvement of any such nonconforming building, in order to restore it after the nonflood disaster except as provided in par. (c).

(c) A floodplain zoning ordinance may not permit the repair, reconstruction or improvement of a nonconforming building if the nonconforming building, after repair, reconstruction or improvement, will fail to meet one or more of the minimum requirements applicable to such a nonconforming building under 42 USC 4001 to 4129 or under the regulations promulgated thereunder.

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the public's interest in clean water, scenic beauty, good habitat and recreational opportunities.”

Groups invited to participate on the advisory committee include waterfront property owners, developers, local government officials, conservation groups, agricultural interests, and property rights advocates.

The advisory committee will help develop options to be shared with the general public at a series of statewide listening sessions in fall 2003. Feedback from those sessions will shape the draft package of rules proposed for public hearings in late fall 2004. In addition, materials the advisory committee members receive for their meetings will be available on the DNR Web site, as well as copies of research underpinning the review and revision. From the DNR Web site home page www.dnr.state.wi.us, use the “Go to some topics” drop down menu and select “shoreland management.”

Lawmakers created the shoreland management program in 1966, responding to concerns that development was threatening water quality, scenic beauty and habitat along lakes – all public rights protected under Wisconsin's Constitution and courts' interpretations of it.

DNR, university, and other experts wrote the minimum standards based on the science and political realities of the time, according to a 1997 EPA-funded review of the standards. The review found the standards inad-

equate to protect water quality, habitat and natural beauty. As well, the standards contained clauses that are difficult for counties to interpret and enforce, which has created loopholes that thwarted their intent of the standards, the review authors concluded.

NR 115 Advisory Committee Representatives

The members and the group or interest they represent are:

- Todd Ambs, Wisconsin River Alliance
- Paul Mongin, Wisconsin Conservation Congress
- Miles Benson, Governor's Council on Forestry
- William Pielsticker, Trout Unlimited
- Earl Cook, Springbrook, waterfront property representative
- Scott Craven, UW - Madison, Department of Wildlife Ecology
- Jerry Deschane, Wisconsin Builders Association
- Michael Dresen, UWSP, Center for Land Use Education
- Phillip Gaudet, Wisconsin County Code Administrators, Washington County
- Elmer Goetsch, Wisconsin Association of Lakes
- Karl Kastrosky, Wisconsin County Code Administrators, Bayfield County
- Paul Kent, attorney, Davis & Kuelthau, S.C., Madison
- Pam LaBine, Wisconsin County Code Administrators, Forest County
- John Larson, Applied Ecological Services, Inc.
- Tom Larson, Wisconsin Realtors Association
- Paul McGinley, UWSP, College of Natural Resources
- Chip Nielsen, Vilas County Planning & Zoning Committee

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- Mark O'Connell, Wisconsin Counties Association
- Nancy Russell, Walworth County Planning & Zoning Committee
- Glenn Schiffmann, Natural Resources Board appointee
- Richard Stadelman, Wisconsin Towns Association
- Roland O. Tonn, Wisconsin Chapter of the American Planning Association
- Jim Wise, Environmentally Concerned Citizens of Lakeland Areas
- Paul Zimmerman, Wisconsin Farm Bureau Federation

Multi-Hazard Mapping Site a Big Success

Little more than six months after it was introduced, a website designed to give the public access to a nationwide coverage of digitally available multi-hazard maps and supporting data from federal, state and local sources is operating at an annual rate of more than 800,000 hits and 225,000 unique visitors, according to officials of the Federal Emergency Management Agency (FEMA).

The maps are available on the Internet at www.HazardMaps.gov. The user can view maps by hazard theme or create a custom view showing areas of hazard overlap. In addition, FEMA says, more sophisticated users such as state or local government technicians can download Geographic Information Systems (GIS) files—an important tool in land-use planning, hazard mitigation, and disaster preparedness and response—and upload their own hazard map data.

“Using our new site to make maps available to appropriate state and local governments enables them to inform the general public about hazards and gain support for mitigation activities and a range of other efforts,” Anthony S. Lowe, administrator of FEMA's Federal Insurance and Mitigation Administration said. “For instance, a local official may need to plan

Floodplain and Shoreland Management Notes.

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“Floodplain and Shoreland Management Notes” is published by the Wisconsin Department of Natural Resources, Bureau of Watershed Management. Its purpose is to inform local zoning officials and others concerned about state and federal floodplain management and flood insurance issues, shoreland and wetland management, and dam safety issues. Comments or contributions are welcome. Contact Gary Heinrichs, Editor, at 608-266-3093 or Gary.Heinrichs@dnr.state.wi.us

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countywide evacuation routes or develop land-use zoning maps. Knowing the historical overlap of events such as floods, hurricanes, earthquakes and severe winds, for example, would be an important factor in the process.”

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Photos provided by DNR staff and Bob Korth, UWEX.

Don't forget to check out the DNR's own interactive maps for dam safety and floodplain analysis at: www.dnr.state.wi.us/org/water/wm/dsfm/section/mapindex.htm

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Upcoming Events

January 2003

January 23 - 24, Green Lake - SWCS Annual Meeting "Keeping the Land in Land Use Planning". For more information, go to www.uwsp.edu/cnr/landcenter/events.html

January 30, Stevens Point - NR 115 Advisory Committee Meeting on Shoreland Setbacks and Buffers. For more information, contact Toni Herkert, WDNR, at 608-266-0161 or Toni.Herkert@dnr.state.wi.us

February 2003

February 15, Waukesha - Southeast Region Lake Protection Workshop: Local Solutions through Local Leadership - It's up to you! For more information, contact Susan Tesarik, Wisconsin Association of Lakes, at 608-662-0923 or go to www.wisconsinlakes.org

March 2003

March 30, Location to be determined - NR 115 Advisory Committee Meeting on Development Density. For more information, contact Toni Herkert, WDNR, at 608-266-0161 or Toni.Herkert@dnr.state.wi.us

April 2003

April 10 - 12, Green Bay - Wisconsin Lakes Conference, Silver Reflections, Golden Projections, 25 Years of Lake Partnerships. For more information, go to www.wisconsinlakes.org

April 15 - Deadline for applications for Municipal Flood Control Grant Program. For more information, contact Gary Heinrichs, WDNR at 608-266-3093 or Gary.Heinrichs@dnr.state.wi.us