

Wisconsin Shoreland Zoning Over the Years

In case you thought that protecting our lakes and rivers was a recent idea...



Photo courtesy of Robert Korth

1787—2010

- 1787** The Northwest Ordinance that applied to Wisconsin said “The navigable waters ... shall be common highways, and forever free.”
- 1848** The Wisconsin Constitution said “The navigable waters ... shall be common highways, and forever free.”
- 1899** The Wisconsin Supreme Court said “The legislature has no more authority to emancipate itself from the obligation resting upon it...to preserve for the benefit of all people forever the enjoyment of the navigable waters within its boundaries, than it has to donate the school fund or the state capitol to a private purpose.” *Priewe v. WI Land & Improvement Co.*
- 1935** Counties were given the legal authority to apply zoning along natural water courses.
- 1966** As part of the Water Resources Act, the Wisconsin Legislature charged counties with zoning shorelands in unincorporated areas to uphold the Public Trust Doctrine to protect navigable waters for all.
- Late '60s** Statewide administrative rule for shoreland zoning (NR 115) set minimum standards. Counties could adopt these minimum standards or choose to protect their lakes and streams more. For instance, Portage County, which has a number of trout streams and small lakes, adopted a 100 foot shoreline setback for structures, whereas the state minimum standard was a 75 foot shoreline setback. Counties continued to make these local decisions for over 35 years, until Act 55 was passed in 2015. Act 55 said counties could not be more restrictive than the state (minimum) standards.
- 1971** All Wisconsin counties had adopted and were administering a shoreland ordinance.
- 1980s** Wetland protection was added to shoreland zoning.
- 1995** Based on scientific studies of lakes and rivers and waterfront property values in the 30 years after 1966, and based on their own local experience of whether shoreland zoning did or did not effectively protect their lakes, a number of counties began classifying their lakes and rivers, and adopting more protective shoreland standards for the lakes and rivers most sensitive to development such as small lakes with no water flowing in or out, and trout streams. Nineteen counties completed this process between 1995 and 2005. Additional counties adopted shoreland zoning standards more protective than the state minimums without classifying their lakes and streams.
- 2002** Revising state minimum shoreland standards began with an advisory group and then two statewide rounds of public hearings.
- 2010** Statewide minimum shoreland zoning standards changed. After eight years of public input, 19 public hearings around the state, over 14,000 public comments, and agreement from the Wisconsin Builders Association, Wisconsin Realtors Association, Wisconsin Association of Lakes and the River Alliance of Wisconsin, nonconforming structure standards were changed and impervious surface standards were added.

2012—2016

- 2012** State legislature adopted Act 170 which said counties, cities and villages could not be more restrictive than state standards (NR 115) regarding the regulation of nonconforming structures and substandard lots. This was the first time in that the Legislature changed state shoreland zoning standards to a cap or upper limit, instead of a lower limit for protection, which they had been since 1966. Counties were no longer allowed to set local standards that were more restrictive/protective of lakes and rivers regarding the regulation of nonconforming structures and substandard lots. The bill (SB 472) that led to this act was introduced by Senators Lasee and King; Cosponsored by Representatives Tiffany, Steineke, Murtha, Litjens, Rivard, Jacque and Spanbauer.
- 2013** Statewide minimum shoreland zoning standards (NR 115) were changed requiring counties to allow lateral expansion of nonconforming structures and greater levels of impervious surfaces based on input from a few legislators and county zoning staff.
- 2015** In the 2015 budget bill, known as Act 55, Representative Adam Jarchow from Balsam Lake proposed removing local shoreland zoning control from counties, to make shoreland zoning regulations one-size-fits-all across the state. Joint finance members Senator Tom Tiffany from Hazelhurst/Minocqua and Representative Amy Loudenbeck from Clinton introduced these changes as motion 520, item 23 on May 20, 2015 during the budget bill negotiations. The state budget, including these changes to shoreland zoning, was approved by the Joint Finance Committee on July 3, 2015 and signed by Governor Scott Walker on July 12, 2015. As a result, counties can no longer have shoreland zoning standards that are any more protective or restrictive than the state standards for any of their lakes and streams. No approval, fee or mitigation to rebuild or expand nonconforming structures to a height of 35 feet if the footprint is not expanded.
- 2016** Act 167 says no approval, fee or mitigation to repair, replace, rebuild or remodel the following structures in the same footprint and within the existing three dimensional building envelope within the shoreland setback: boathouses above the OHWM; walkways and stairways; fishing rafts, broadcast signal receivers; utility lines, poles and towers. Higher levels of impervious surfaces (30-60%+) allowed in more shoreline areas. Changes to setback averaging. The bill (AB 603) that led to this act was introduced by Representatives Jarchow, Duchow, Ballweg, R. Brooks, Czaja, Hutton, Knodl and A. Ott; Cosponsored by Senators LeMahieu and Kapenga.
- Act 391 says a county may not require any approval, fee or mitigation to rebuild or expand up to 35 feet in height structures within setback allowed by a variance granted before July 13, 2015 if footprint is not expanded. The flat roof of a boathouse may be used as a deck if requirements are met. Public utilities are exempt from county permits and fees for work occurring in the shoreland zone if either of the following occur: DNR issues a permit to the utility, or when no DNR permit is issued for the construction or maintenance of a utility facility, the utility conducts the work in a manner that utilizes best management practices to infiltrate or control storm water runoff. A professional land surveyor may determine the ordinary high water mark for regulatory purposes if DNR doesn't have the OHWM on the web. The bill (AB 582) that led to this act was introduced by Representatives Jarchow, Allen, Craig, Czaja, Knodl, Hygren, Petersen, R. Brooks, Schraa, and Tauchen; cosponsored by Senators Lasee, LeMahieu and Nass.
- Act 387 redefines "boathouse" as a structure with one or more walls or sides that has been used for one or more years for the storage of watercraft and associated materials which has one or more walls or sides, regardless of the current use of the structure.

