

Memorandum

To: All REALTORS®
From: Tom Larson, Director of Regulatory and Legislative Affairs
Date: July 19, 2007
Re: Proposed Changes to Wisconsin's Shoreland Zoning Regs. (NR 115)

After 5 years of advisory committee meetings, 8 listening sessions, 11 public hearings and comments from over 50 thousand people, the DNR is unveiling its latest draft of proposed changes to the state's shoreland zoning regulations (NR 115). This draft of the rule focuses more on the impact of development on water resources, than arbitrary locations on where development should and should not occur. Is this a better approach to regulating development near our waterways? You tell us. Whether good or bad, these rules will impact the use and value of waterfront property, as well as the selling and marketing of that property.

The DNR will be holding 7 public hearings around the state during July and August to educate the public about the proposed changes to NR 115 and obtain feedback. It is important for REALTORS® and waterfront property owners attend these public hearings and provide the DNR staff with feedback on proposed changes that they like or dislike. If you are unable to attend one of the public hearings, you also have the opportunity to submit written comments directly to the DNR.

To assist in this effort, I have prepared some talking points on the key issues that will likely be of most concern to REALTORS® and the property owners they represent. In addition, I have included some information about the upcoming public hearings and the process for submitting written comments. Finally, I have included a matrix showing the proposed changes and how they differ from current law.

Again, this information is not intended to assist you in understanding the rule and how it may impact property owners. Others may present the same information in a different manner, emphasizing the need to have greater regulation of development to control any adverse environmental impacts it may cause.

Lastly, it is important to remember that these are only minimum statewide standards. Counties are free to adopt more restrictive standards if they wish. If you have questions or comments about the information, the proposed changes, or the public hearings, please feel free to contact me (tlarson@wra.org) at 608-240-8254.

Public Hearing Locations

July 24 – Wausau – North Central Technical College – Health and Science Building Auditorium – 1000 West Campus Drive, Wausau, WI 54401 (715) 675-3331

July 25 – Rhinelander – High-School Auditorium – 665 Coolidge Avenue, Rhinelander, WI 54501 - (715) 365-9500

July 26 – Rice Lake – Blue Hills Masonic Center - 225 West South Street, Rice Lake, WI 54868

Note: The Masonic Center is near the college on the corner of Pioneer Avenue and South Street – There is no phone available at this location.

July 31 – Tomah – Farmers & Merchants Bank, Community Room – 1001 Superior Avenue, Tomah, WI 54660 (608) 372-2126

August 2 – Green Bay – Neville Museum Theater – 210 Museum Place, Green Bay, WI 54303 - (920) 448-4460

August 7 – Waukesha County Technical College – Pewaukee Campus - Richard T. Anderson Education Center – 800 Main Street, Pewaukee, WI 53072 (262) 691-5566 or www.WCTC.edu

August 8 – Stoughton – Opera House - 381 E. Main Street, Stoughton WI 53589 (608) 873-7523

Note: The Opera House is on the second floor of the City Hall, a red brick building at the corner of Fifth and Main (Hwy. 51). Look for the clock tower.

Public Hearing Format

4:30 – 5:30 p.m. DNR Presentation

The DNR staff will be discussion the rule and why they think modifications are necessary. This is an opportunity to get an overview of the rule and ask questions about the concepts being discussed.

5:45 – 8:00 p.m. Public Comment Period

This is your opportunity to provide feedback on the proposed rule. Questions will not be answered at this time. If you want to ask questions, please attend the DNR presentation or contact the DNR directly. You will be asked to fill out slips to speak and time will be allotted depending upon how many people sign up to speak. The DNR will have a tape recorder and will be taping your testimony.

Written Comments

If you are unable to attend one of the public hearings or if you prefer to submit written comments, please send your comments to Toni Herkert, Bureau of Watershed Management P.O. Box 7921 Madison, WI 53707 or e-mailed to toni.herkert@dnr.state.wi.us. Written comments will be accepted until September 7, 2007.

Key Talking Points

I have included the following talking points to assist you if you are testifying at one of the public hearings or if you wish to submit written comments to the DNR. Feel free to develop your own talking points and/or positions on these issues.

- 1. Impervious surface standards will limit the size of new homes and remodeling projects within 300 feet of the water**

- a. **Proposal** – New construction (w/in 300 feet of water) -- No more than 10% of the lot can be covered in impervious surfaces (concrete, black top, footprint of structure, etc.). This includes roof tops, sidewalks, driveways, patios, and any other surface that will not allow water to infiltrate the ground. The impervious surface limit is raised to 20% of the entire lot if the property owner meets mitigation standards. (Note – gravel may be an impervious surface if it is compacted and prevents water from infiltrating into the ground.) This provision is triggered only when a structure is constructed, expanded or replaced. It does not apply to existing structures where there is no new construction activity.

Existing principal structures (w/in 300 feet of water) – impervious surface area is 15% of entire lot area (w/out mitigation) and 20% of entire lot area (w/mitigation) for expansions or replacements.

- b. **Example** – On a typical 10,000 sq. foot lot (65’x154’), no more than 20% of the lot can be covered with impervious surfaces (if the property owner is willing to perform mitigation). This means that only 2,000 sq. ft. of impervious surface is allowed. If you assume that the average driveway is 200 sq. ft. (25’x8’), this means that you have 1,800 sq. ft. to build a house, garage, driveway, patio and other impervious surfaces. (Note – a driveway, patio and sidewalk can be pervious if designed using the appropriate materials. However, these materials can be expensive.)
- c. **Current law** - Current law does not impose any impervious surface standards.
- d. **Comments** - This provision is intended to better control runoff from property into our lakes and streams, but it will have a significant impact on the size of homes and the amount of development that can occur on waterfront property. The impervious surface limits seem overly strict, and property owners should be given the option to exceed these standards if their site is professionally engineered to control runoff in an equal, if not better, manner.

2. **Increased minimum lot size standards for all new single-family and commercial development**

- a. **Proposal** – Requires all buildable lots to be
 - i. a minimum of 20,000 square feet, and
 - ii. at least 100 feet wide at the OHWM **and** the building setback line (75 ft. from OHWM)
- b. **Current law** – Allows sewered lots to be a minimum of 10,000 square feet with a minimum width of 65 feet (can be measured anywhere). (Unsewered lots must be 20,000 square feet and 100 feet wide).

- c. **Comments** – This will require larger lots for new development in areas serviced by sewer than what is permitted today, and could make some existing lots unbuildable or nonconforming. (Note – existing, substandard lots are grandfathered if (a) the lot was recorded at the county register of deeds office, (b) the lot complied w/all applicable regulations at the time it was recorded, and (c) the lot will comply with all other standards in the county’s zoning ordinance (including new impervious surface standards).

3. New standards for measuring lot widths.

- a. **Proposal** -- All lots (new and existing) must be 100 feet wide at both the water (OHWM) and at the 75 foot setback. (See note above relating to grandfathering of existing, substandard lots.)
- b. **Current law** – Lots can be measured anywhere.
- c. **Comments** -- The new lot measurement requirement may create problems for areas with steep slopes, unique natural features or changing topography. Ultimately, this provision will result in larger waterfront lots which will further increase the price of waterfront property and put it further out of reach for most Wisconsin residents.

4. Homes located between 35 ft. and 75 ft. of OHWM (nonconforming structures) can be expanded.

- a. **Proposal** – Homes located between 35 and 75 ft. of OHWM can be expanded vertically as long as the expansion does not exceed the 20% impervious surface limit. Also, these homes may be expanded horizontally if the expansion meets all of the following requirements:
 - i. There is not a “compliant building location” (at least 30 feet deep and meets setback requirements) on the property
 - ii. The expansion is no closer to the water.
 - iii. Mitigation requirements must be met
 - iv. Does not exceed 20% impervious surface limit.
- b. **Current law** -- Current law does not prohibit the expansion of nonconforming structures. However, many counties have adopted a 50% rule which limits expansions to 50% of the homes assessed value.
- c. **Comments** – The proposal prohibits all horizontal expansions of nonconforming structures in this area if a new house can be built behind the 75-foot setback, even if the expansion itself occurs behind the 75-foot setback. However, no limits (except 35 foot height limit (see below) and impervious surface standards) are placed on vertical expansion.

5. **Homes located closer than 35 ft. from the OHWM (nonconforming structures) cannot be expanded**
 - a. **Proposal** – If any part of a home or structure is located closer than 35 ft. from the OHWM, the home or structure cannot be expanded.
 - b. **Current law** – Current law does not prohibit the expansion of nonconforming structures. However, many counties have adopted a 50% rule which limits expansions to 50% of the homes assessed value.
 - c. **Comments** – A prohibition on expansion will limit the usability of the home and could impact the value. By prohibiting any expansion of these structures, the rule effectively requires the house to be torn down and rebuilt behind the setback if the property owner wants to increase the size of the home. It would seem more logical (and consistent with the objective of this rule) to allow some expansion of these structures in exchange for mitigation.

6. **A nonconforming structure may be completely replaced under some circumstances.**
 - a. **Proposal** – A nonconforming structure may be replaced (torn down and rebuilt), if
 - i. No compliant building location (behind setbacks and at least 30 feet deep) exists on the lot
 - ii. The structure is not located between 35 feet and the OHWM (Note – if the nonconforming structure is located between 35 feet and the OHWM, the structure can be rebuilt if it is rebuilt in the most compliant building location possible, and all other requirements are met)
 - iii. The replacement structure has the same footprint (no bigger)
 - iv. Mitigation requirements are met
 - b. **Current law** -- Counties are not required to place limits on expansions or repairs. However most counties limit repairs and maintenance, by ordinance, to 50% of the home's value.
 - c. **Comments** – This provision allows property owners to replace nonconforming structures as long as the replacement will not have any greater adverse impacts to the environment.

7. **Unlimited maintenance and repair of ALL nonconforming structures is allowed.**
 - a. **Proposal** – Nonconforming structures are allowed to be maintained and repaired without any limits on the amount of maintenance and repair.

- b. **Current law** – Counties are not required to place limits on expansions or repairs. However, most counties limit repairs and maintenance, by ordinance, to 50% of the home’s value. The goal is to limit the functional life of these homes so that they are eventually torn down or brought into compliance (which usually means moved behind the setback line).
- c. **Comments** – This is a good change for property owners and a change in philosophy by the DNR. This provision should make a lot of property owners happy. In those counties that do not place restrictions on maintenance and repair of nonconforming structures, this will not change anything.

8. Flexible minimum lot-size requirements for multi-family and planned-unit developments.

- a. **Proposal** -- Counties may create smaller lot size requirements for multi-family development. Also, counties may create smaller lot size requirements for planned residential developments in exchange for larger shoreland buffers, larger lot sizes or larger setbacks on those lots adjacent to the water.
- b. **Current law** – All sewered lots must be a minimum of 10,000 square feet with a minimum width of 65 feet. (Unsewered lots must be 20,000 square feet and 100 feet wide).
- c. **Comments** – This provision would make shoreland zoning consistent with most other general zoning ordinances and, thus, would allow higher-density development in areas where the county feels is appropriate.

9. Prohibits dry boathouses over 250 square feet.

- a. **Proposal** – All dry boat houses above 250 square feet are prohibited. (Note – Wet boat houses are regulated by Chapter 30 of the Wisconsin Statutes, not NR 115.)
- b. **Current law** – The size of boathouses is not regulated by NR 115. Counties generally have their own requirements.
- c. **Comments** – This will be a bigger issue in some areas of the state, than others.

10. New requirement for how 75-foot setback is to be measured.

- a. **Proposal** – The 75-foot setback is to be measured from the OHWM to the point of the structure that is nearest to the OHWM.
- b. **Current law** – Does not specify how the setback is to be measured.

- c. **Comments** – Some counties measure the setback to the base of the building or structure and do not count overhangs. Accordingly, some decks and overhangs extend beyond the 75-foot setback line. (Note – the rule grandfathers all counties who measured to the base of the building prior to the effective date of the rule. They can continue to measure to the base of the building for new structures, but only the roof can extend no more than 3 feet beyond the setback. Decks and other overhangs must be behind the setback.)

11. Setbacks may be reduced, if necessary.

- a. **Proposal** – The 75-foot setback may be reduced (i.e., buildings can be built closer to the water than 75 feet) if all the following requirements are met:
 - i. No compliant building location on the lot with a depth of at least 30 feet
 - ii. The depth of the structure is limited to 30 feet
 - iii. The lot was a legal lot of record and met all the applicable lot size requirements at the time the lot was created
 - iv. Setback cannot be reduced beyond 50 feet
 - v. Cannot disturb soil or remove vegetation between 35 feet and OHWM
 - vi. Must meet impervious surface and mitigation standards
- b. **Current law** – Setback may be reduced if existing development pattern exists (i.e., if the surrounding properties are built closer to the water)
- c. **Comments** – Unlike current law, this provision will only allow reduced setbacks only if your lot would otherwise be unbuildable. Nevertheless, many lots may still be unbuildable (or at least unmarketable) because of the impervious surface requirements. Additionally, this provision will force some homes to be built further away from the water than their neighbors.

12. Vegetation and removal requirements will create smaller views to water for some lots

- a. **Proposal** - No vegetation can be removed outside access corridor within 35 ft. of OHWM except exotic or invasive species, damaged vegetation, diseased or vegetation that presents an imminent safety hazard. “View and access corridor” is defined as “40 ft. or 30% of lot width at OHWM (whichever is less) for lots with 200 ft. of frontage or less” or “20% of lot width at OHWM for lots with more than 200 ft of frontage.”

- b. **Current law** - No clear cutting of trees or shrubs within 35 ft. of the OHWM; a view corridor of 30 ft for every 100 ft of frontage is allowed.
- c. **Comments** - The limits on tree removal are more restrictive than current law. Lots with less than 150 ft of frontage will have a smaller access corridor through which they can view and access the water. For example, a 65-foot wide lot, would now have only a 19.5 foot view access corridor, rather than 30 feet.

13. Vegetation can be removed outside of view and access corridor only in limited circumstances.

- a. **Proposal** – Vegetation cannot be removed outside of view and access corridor (w/in 35 of the OHWM), unless the vegetation qualifies as one of the following:
 - i. Exotic or invasive species
 - ii. Damaged vegetation
 - iii. Vegetation that must be removed to control vegetation
 - iv. Vegetation that poses imminent safety hazard
- b. **Current law** – Trees and shrubs can be removed as long as the area is not clear cut.
- c. **Comments** – This proposed change is trying to prevent vegetation removal for simply cosmetic reasons. Vegetation can be removed for environmental or safety reasons, but not because you think it would better without it.

14. When a new home is built, a secondary shoreland buffer must be maintained or established.

- a. **Proposal** – When a new home is being built, property owners cannot remove all trees and plants (and may have to plant new trees and plants) on property between 35 feet and 75 feet from the water.
- b. **Current law** – Tree cutting is governed by impact on water and sound forestry practices.
- c. **Comments** – It's is not clear whether the proposed changes are a significant change from current law. One could argue that it is just a more detailed explanation of what is currently required. Others may claim that this provision is intended to prevent manicured lawns in the secondary buffer. Counties will have broad latitude in interpreting this provision.

15. New mitigation requirements when setback and impervious surface standards are not met.

- a. **Proposal** – Property owners must perform mitigation if they want to exceed the impervious surface standards or expand existing nonconforming structures. All mitigation must be proportional to the anticipated impacts of the project. Mitigation standards will be

established by the counties, but must meet the following performance goals:

- i. Protect and enhance water quality by controlling rainfall to the maximum extent practicable (i.e., maintain pre-development runoff volume)
- ii. Protect wildlife in the primary buffer by maintaining, restoring or enhancing natural shoreland habitat or plant communities
- iii. Protect natural scenic beauty by maintaining or restoring shoreland vegetation or other natural features

b. **Current law** – Mitigation is not required.

c. **Comments** – Most of the mitigation requirements are reasonable. However, it will be extremely difficult (if not impossible) to maintain pre-development runoff after construction activities. It is far more reasonable to require 80 to 90% of pre-development runoff volume.

16. New 35-foot building height requirement.

a. **Proposal** – All residential structures within 300 feet of the OHWM must be no taller than 35 feet.

b. **Current law** – No height requirement.

c. **Comments** – This applies only to structures constructed after the effective date of the rule. This will limit the ability to construct new homes on sloping lots. The rule does not specify where the height must be measured from (the road, lowest point on the lot, base of the structure), so it is seemingly left to the counties to make this determination.

17. Counties must review all land divisions.

a. **Proposal** -- Counties must review all land divisions and reconfigurations of land 5 acres or less

b. **Current law** -- Counties must review all land divisions in shoreland areas that create 3 + parcels or building sites of 5 acres or less w/in a 5-year period.

c. **Comments** -- This will increase regulatory oversight in those counties which currently only review land divisions of a certain size. This provision could delay approval process for some land divisions and increase the costs of obtaining the permits, but could ensure greater conformity with standards.

18. Counties must adopt new zoning permit system (if they don't already have one)

- a. **Proposal** -- Counties are required to adopt a new zoning permit system (in addition to a building permit system) which require property owners to obtain a permit indicating what the zoning is and what can be constructed on that property
- b. **Current law** – Counties are not required to issue zoning permits
- c. **Comments** – This will be another permit that property owners are required to obtain. Another fee and possible delays in the building process.