

Getting in Tune with Wisconsin Water Law And Shoreland Permits – Part 1

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Outline

1. The Partnership – Our Public Trust Doctrine
2. Shoreland Zoning Basics
3. Status of NR 115 Revisions

The Public Trust Doctrine

- Article IX, Section 1 of the Wisconsin Constitution
 - Came from the governing of the Northwest Territory well before Statehood
 - Establishes “navigable waters” – defined in Chapter 30, Wisconsin Statute
- Further defined by case law and statute.
- Citizens have pursued legal and legislative action to clarify or change how it is interpreted and implemented

The Public Trust Doctrine

- Assures public rights in waters
 - Wisconsin lakes and rivers (navigable waters) are public resources
 - Wisconsin's navigable waters are owned in common by all Wisconsin citizens
 - Wisconsin's navigable waters are “common highways and forever free”, and are held in trust by the Department of Natural Resources – i.e. the State shall intervene to protect these public rights

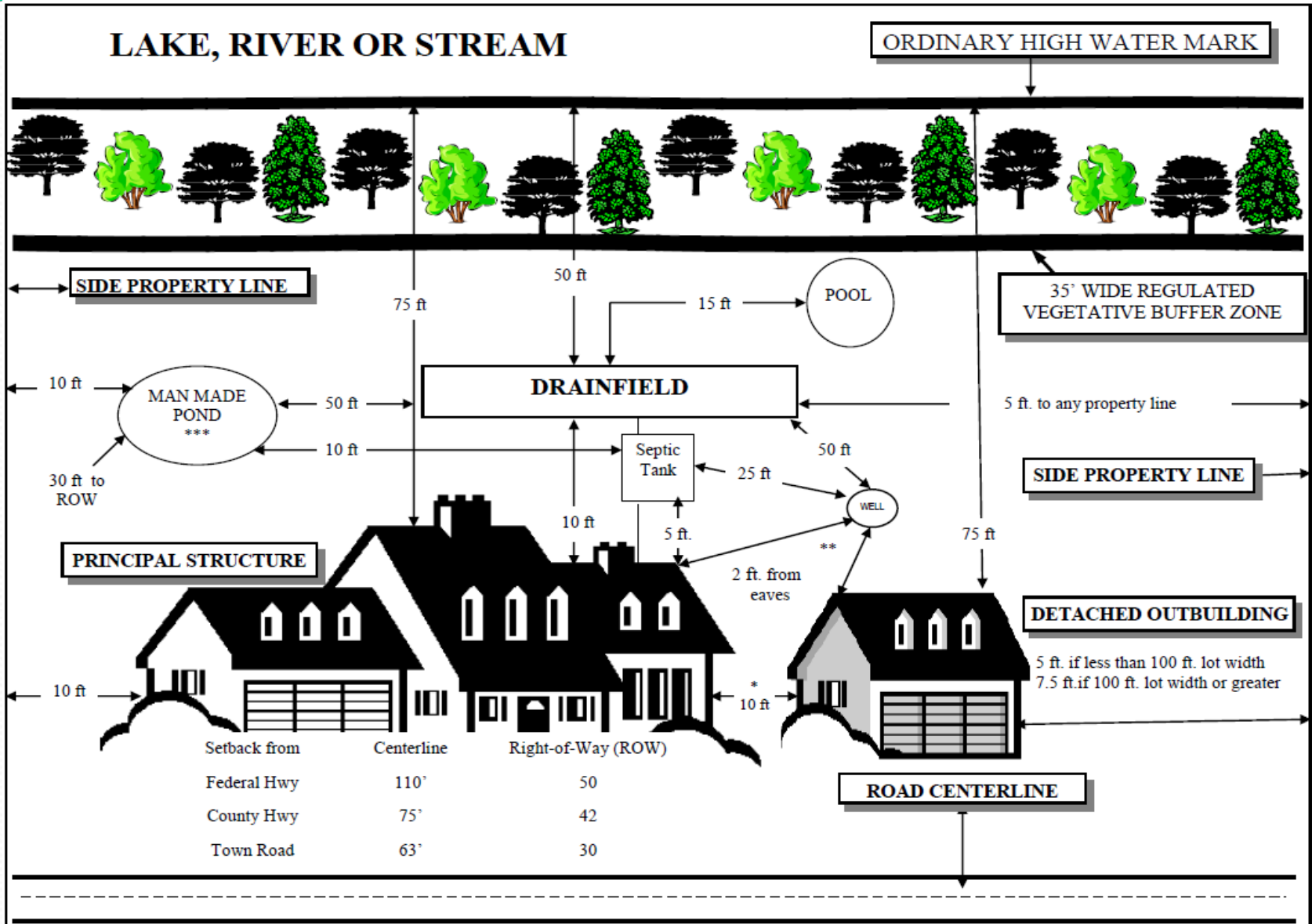
The Public Trust Doctrine

- Assures public rights in waters – the public can:
 - Use navigable waters (boat, fish, hunt, ice skate, swim, etc)
 - Enjoy the natural scenic beauty of navigable waters
 - Enjoy the quality and quantity of water that supports the above

The Public Trust Doctrine

- Riparian owners hold rights in the water adjacent to their property
 - Use of the shoreline
 - Reasonable use of the water
 - Right to access the water
- WI State Supreme Court has ruled that when conflicts between riparian rights and public rights exist, the public's rights are primary, and riparian rights are secondary

2) Shoreland Zoning



Shoreland Zoning Overview

- Goal of shoreland zoning is to limit direct and cumulative impacts of shoreland development on:
 - Water quality
 - Near-shore aquatic, wetland, and upland wildlife habitat
 - Natural scenic beauty

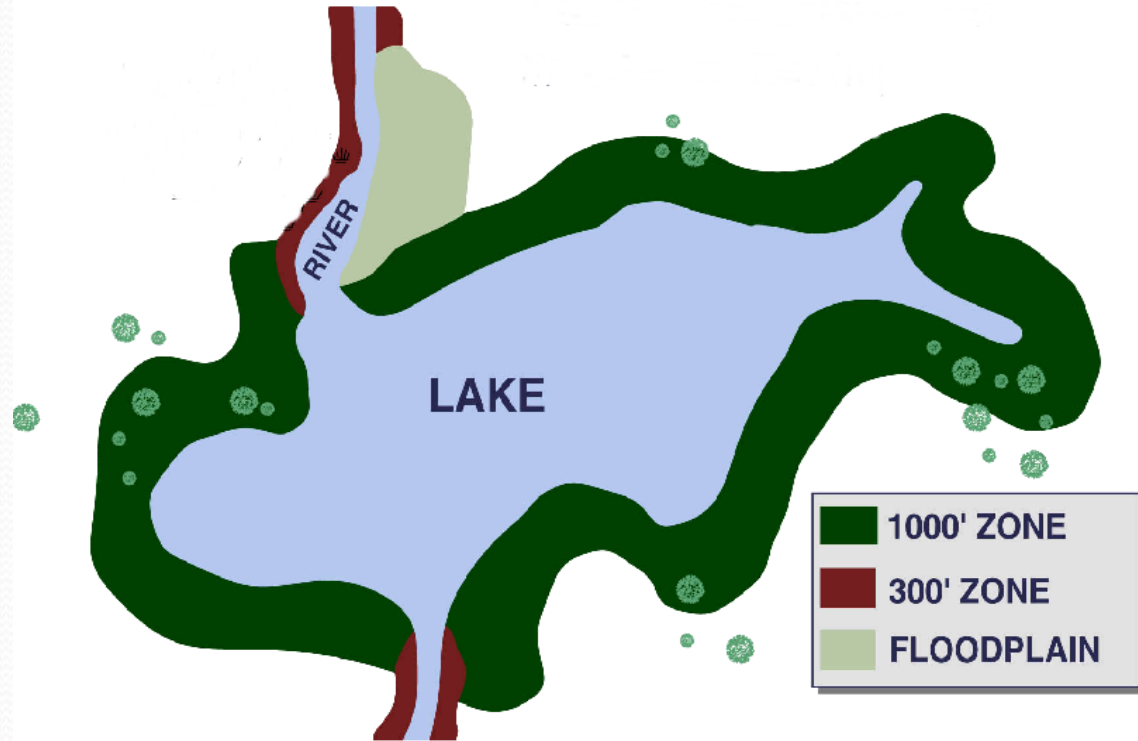
Shoreland Zoning Overview

- Grounded in the “Public Trust Doctrine”
- Shoreland zoning established under S. 281.31, s. 59.692, 62.231, 61.351, Wisconsin Statute
- Shoreland zoning applies to areas adjacent to and along navigable waters

Shoreland Zone

What is it?

Where is It?



- The areas that shoreland zoning applies to.
- Established June 1966, Water Resources Act (now NR 115).
- Applies statewide to all unincorporated areas.
- Applies to areas annexed after May 7, 1982 or municipalities incorporated after April 30, 1994
- Different rules pertain to shoreland zoning in cities and villages (NR 117) AND the Lower St. Croix Riverway (NR 118)

3) Wisc. Admin. Code NR 115

- It's almost time for lunch, so let's talk about State Regulations!
- (Better to do that before than after lunch)

Status of NR 115 Revisions

- Five Public Hearings held in August 2013
- Some Additional Revisions Proposed
- NR Board Approved the Proposed Revisions on December 11
- Governor Approved the Proposed Revisions on March 27
- Legislative Committees Review and Approval
- JCRAR Review – completed. Projected to become effective/published on Oct. 1st, 2014

DNR PERMANENT ADMINISTRATIVE RULE PROMULGATION PROCEDURE

Phase I. INITIATION

1. Form 1000-006 (pink sheet) and scope statement (scope) completed, and approved by the Secretary.

2½

2. Scope submitted to and approved by Governor.

3

3. Scope submitted to LRB for publication in the Administrative Register.

3¼

4. Form 1100-001A (yellow sheet) for NRB scope approval completed and approved by the Secretary.

3½

5. Form 1100-001 (green sheet) for NRB scope approval completed and approved by the Secretary.

4½

6. NRB meeting requesting approval of the scope.

5½

Phase II. RULE DEVELOPMENT AND HEARINGS

7. Proposed rule language prepared in Board order format, including analysis.

8½

8. Solicitation notice for information and ad-vice on the economic impact of the proposed rule prepared.

9½

9. Board order and solicitation notice from steps 7. and 8. approved by the Secretary.

10½

10. NRB notified of Department intent to solicit information with Board order and solicitation notice attached.

10¾

11. Board order and solicitation notice sent to affected businesses, et. al, and posted on web sites. (30-day response time assumed)

11

12. FE/EIA prepared based on information received in step 11, while satisfying coordination requirements

13½

13. Yellow sheet for NRB hearing authorization and public hearing notice approval completed and approved by the Secretary.

14

14. Green sheet package for NRB hearing authorization and public hearing notice approval completed and approved by the Secretary.

15

15. NRB meeting requesting hearing authorization and approval of public hearing notice.

16

16. Rule and FE/EIA submitted to the Legislative Council, et.al.

16½

17. Public hearing notice submitted to LRB and to the Wisconsin State Journal for publication.

16½

18. Report from the Legislative Council received.

17½

19. Public hearings held.

18

Phase III. RULE ADOPTION

20. Rule and FE/EIA modified as necessary based on public comments received.

19½

21. Yellow sheet for NRB adoption completed and approved by Secretary.

20

22. Green sheet package for NRB adoption finalized and approved by Secretary.

21

23. NRB meeting requesting adoption.

22

Phase IV. GOVERNOR AND LEGISLATIVE REVIEW

24. Rule submitted to and approved by the Governor.

22½

25. Report to the legislature and notice of submittal completed.

23

26. Report and notice from step 23. submitted to the chief clerks of each house of the Legislature, and notice submitted to LRB

23½

27. Report and notice referred to Legislative standing committees in each house of the Legislature.

23¾

28. Standing committees' review completed.

25¾

29. Rule referred to the Joint Committee for Review of Administrative Rules (JCRAR).

26

30. JCRAR review completed.

28

Phase V. Promulgation

31. Rule signed by the Secretary and filed with LRB.

28½

32. Rule proof received from LRB, reviewed and returned.

30

33. Rule is published and becomes effective.

31

Status of NR 115 Revisions – County Deadline

- NR Board Approved the Proposed Deadline Extension on December 11, 2013
- DNR Secretary Stepp signed an Executive Order on January 15 to extend the deadline for counties to revise/update shoreland zoning ordinances to May 1, 2016.
- In 2014, finished the legislative review and approvals, deadline likely Oct 1, 2016.

Status - Proposed NR 115 Revisions

- Impervious Surface Standards
- Nonconforming Structure Standards
- Vegetative Management Standards
- Reporting Standards

Impervious Surfaces

- What is an impervious surface?
 - An area that releases all or a majority of the precipitation that falls on it.
 - Includes rooftops, sidewalks, driveways, parking lots, etc.
- What are the water quality impacts of impervious surfaces?
 - Erosion
 - Runoff = More pollutants entering the water
 - Increased algae growth
 - Fewer fish, insect, and other aquatic species

Overview of Proposed I.S. Standards Revisions

- Limit application of impervious surface standards to only riparian lots OR non-riparian lots that are entirely within 300 feet of the OHWM.
 - Eliminates application to portions of parcels

Overview of Proposed I.S. Standards Revisions

Optionally, a county may exclude the following impervious surfaces from impervious surface limit calculations:

- I.S. with runoff that is treated by an engineered or other-type system or device OR
- I.S. with runoff that discharges to internally drained pervious areas that retain the runoff on the parcel to allow infiltration

Overview of Proposed I.S. Standards Revisions

- Optionally, a county can create a higher impervious surface standard for existing **“highly developed shorelines”** that are either:
 - “Urbanized Areas” or “Urbanized Clusters” in the 2010 US Census
 - Commercial, industrial, or business land use as of January 31, 2013

Overview of Proposed I.S. Standards Revisions

- Optionally, a county can include “additional areas” of “**highly developed shorelines**” that meet the following:
 - Has at least 500 feet of shoreline
 - As of February 1, 2010, the area has either:
 - Majority of lots developed with >30% I.S. area OR
 - Lots are on a lake serviced by a sewerage system

To obtain approval from the Department for an “additional area”, the county shall provide data to the Department that demonstrates these criteria are met.

Overview of Proposed I.S. Standards Revisions

For **Highly Developed Shorelines:**

- Impervious Surface Standard:
 - No permit needed:
 - residential land use with up to 30% I.S.
 - commercial, industrial or business land use with up to 40% I.S.
 - Permit with mitigation for expansion over the standard
- Maximum Impervious Surface Standard:
 - Residential land use = 40% I.S.
 - Commercial, industrial, or business land use = 60% I.S.

Summary

- Wisconsin Water Law
 - Public Trust Doctrine
 - Shoreland Zoning (local government rules, State Standards)
 - NR 115 Rule Revisions
- Next, after Lunch, the other Water Permits (see Carrie Webb)



Questions??

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