

Bruce Neeb, Government Outreach Supervisor

Broad title, three hats:

- Supervise staff administering about two dozen grant and loan programs (WWTPs, community drinking water systems, parks, trails, boat landings, purchase of lands and easements under Stewardship, Lake and River Planning and improvement projects, Control of AIS).
- Personally administer 10 of those programs,
- Coordinate department's protection of public access to rivers, lakes and streams throughout our 19 county West Central Region.

## SLIDE 1 (Title)

Four things:

- Talk about state law and administrative codes that define the responsibilities of towns and counties to protect public access to waters.
- Discuss the process for legally abandoning public access to navigable water.
- Talk about the importance of knowing where these access sites are in your communities, availability of resources to help you identify them.
- Talk about the range of DNR grant programs available to improve access sites.

Also like to get some sense from you as to your familiarity with the issue of public access to water, and if you've had some experience with it, maybe see if we can share it for the benefit of all of us.

You should each have a copy of a hand-out that has the pertinent sections of State Statute and Administrative Code that we'll be talking about. You may want to take that home with you. You'll see I've added the Web addresses for our Water Access Abandonment Web site and our Grants Web Site to it on page two, along with my contact information.

To start off, can I ask for a show of hands and ask how many of you here today actually live on water or own waterfront property?

Do any of you live next to a park or a boat landing or some other land that serves as a public access to water?

- How many of you would say that, overall, living next to a public access to water has been a positive experience?
- Anyone here feel that it's been negative? What's been negative? (Provides a sense of why we see requests to allow discontinuance.)

Parks, boat landings, \_\_\_\_ - What other kind of sites provide public access points to water?

- We've got Road ROW's that extend to the water? Couple of examples here.....

SLIDE 2 (Road end, NOR)

SLIDE 3 (Road end, Chip. City)

#### SLIDE 4 (Perch Lake)

And in some cases, we've got roads that parallel the water – the road ROW extending to the water's edge.

Anything else we're missing that provides public access to water?

- Bridge crossings.
- Platted access sites....

#### SLIDE 5 (Platted Access)

Another show of hands here... How many of you are familiar with the state platting law, Chapter 236, and the standard it sets for public access to water in subdivisions?

- Can anybody tell me what that standard is? If you look at the front of your handout, you'll see the language from section 236.16. It sets the standard at 60 linear feet of public access for every half mile of shoreline.

#### SLIDE 6 (Boy Fishing)

So, why the half-mile standard? I can't speak for the legislative intent. But I do ask folks to consider how far they'd like to see their 10-year-old son or grandson have to peddle his bike down a town road or county highway with a fishing pole and a tackle box in hand. Were any of you ever that 10-year-old?

#### SLIDE 7 (Dry Hydrant)

Any of you have dry hydrants on your lakes or in your towns, or places where fire tank trucks can get access to the water to fill up? Any idea who owns the land the hydrant is on? Access sites have a lot of values to a lot of different people, and it's something we don't always think about.

#### SLIDE 8 (Platted access 2)

Show of hands, here! Have any of you witnessed or been a participant in an effort to discontinue a public access to water? Can someone give me an example of one of the reasons for the request? Another?

Can't tell you how many requests we've had to approve a discontinuance because somebody's built on a platted access. Dad's passed on. Mom's moved to assisted living and the kids are trying to figure out what to do with the lake house. They decide to sell and a title search shows that the garage was built on a strip of platted access. Anybody run into this kind of situation? What happened?

Anyone else have an experience with a discontinuance they can share? What was the situation?

## SLIDE 9 (Rope, no Trespass)

Any one here familiar with section 66.1006 Stats., and the requirement that towns and counties get approval from the DNR before discontinuing an access to water? It's there on your handout, along with administrative code that lays out the process for seeking that approval.

## SLIDE 10 (Trophy Home)

Something people don't often realize is if a town discontinues a public access to the water without DNR approval, the discontinuance has no effect under the law. Joe may go ahead and build his nice house on the access, but folks are still technically within their rights to use it.

In this case, the Town board may want to give Joe a sign for his front door that says "Please knock and wipe your boots before dragging your ice fishing gear through the kitchen."

Abandonment of platted access also requires approval from a circuit court. We always recommend the town secure DNR approval before petitioning for approval from the court.

## SLIDE 11 (NR 1.92)

So, how to secure DNR approval? Page two of your handout includes NR 1.92, Wis. Administrative code. You'll see there's a public notice requirement and some fairly limited conditions under which the department can grant an approval:

Bottom line, in almost all circumstances, access needs to be replaced with access of equal or superior utility in protecting the public's right to get to and use the water. You need to look at both the quantity of access in terms of linear feet of shoreline, and the quality of the access.

## SLIDE 12 (Cathedral Pines)

Can you fish there, swim there, launch a canoe, is there parking? Is there potential for any of these uses in the future? What's the scenic character? Is the site good for bird watching or simply looking out over the water and listening to the lapping of the waves? Might you want to have a picnic there?

Courts have ruled that these are incidental uses of public waters that the department has to consider when reviewing requests to vacate public access. It goes well beyond the question of whether you can launch a boat at the site. There are all sorts of values afforded by lesser access sites. Each of these needs to be considered as you develop a plan for discontinuing and replacing an access.

### SLIDE 13 (NR 1.92 Process)

So, how does NR 1.92 work?

### SLIDE 14 (Town Provides Resolution)

Once the town or county, and the folks requesting the discontinuance have a plan, the town or county needs to draft a resolution identifying the access to be discontinued and that which is to replace it. The resolution has to be sent to the DNR at least 10 days before it's taken up for consideration and...

### SLIDE 15 (Initial DNR Review)

We do our initial review of the plan. Water access coordinators, like myself, will ask the area fisheries manager and conservation warden to take a look at it and see if it's in the ballpark of offering equal or superior public access to the water. If we don't think so, we'll work with the requester to explore other ideas.

### SLIDE 16 (Public notice, comment period)

If we think it is, we'll ask for legal descriptions and some additional details, and publish a public notice that gives people 30 days to tell us about their use of the existing site or their interest in its use, and to tell us whether they feel the proposed replacement meets the test of being equal or superior.

### SLIDE 17 (Possible hearing)

People can also request a hearing before an administrative law judge if they're concerned the proposal doesn't meet that test. An administrative hearing can tie you up for months. I recently had a case that lasted more than three years with appeals.

In a lot of cases, though, the town or county and the interested parties are able to put together a replacement that makes sense... something anyone can look at and say "Yep, that will be better."

It's not always easy to come up with a replacement that will provide equal or better quantity and quality of access, especially given the value of waterfront property.

### SLIDE 18 (Parking pad, sign)

Some communities have asked if they can make improvements at another, nearby access site in a way that will result in an overall improvement to access to that part of the waterway. Maybe that involves putting in a fishing pier, or parking, a trail, and signage that identifies the access as being there. And that's something we'll consider.

## SLIDE 19 (Board members at Access)

But, again, the public has the right to weigh in on the proposal, and we've got to consider the intent of state law to provide access at regular intervals approximating one half mile.

Once we've reviewed the comments that have come in, if the Department or an administrative law judge determines the proposal does meet the test of providing equal or improved access...

## SLIDE 20 (Findings, Conclusion, Order)

...The department will issue a Findings of Fact, Conclusions of Law and Order. That's a legal record that includes legal descriptions of the properties and can be used by the party taking ownership of the discontinued access to show they have clear title to the property.

Questions?

## SLIDE 21 (Subdivision Plat)

How many of you think your town boards or lake associations are aware of all the public access sites on the waters in your town?

- Has anyone gone through the original subdivision plats to identify platted access sites?

By the way, there is no requirement in state law that platted access sites be developed in any way or even identified by signage. If you go out and look, you can find surveyor markers in the ground. But in many cases it will take that or review of records like this to find them.

## SLIDE 22 (Tax Parcel Data)

Has anyone looked at county land records or tax parcel data to identify platted access or other shore frontage under public ownership?

Many County Land Records offices now have GIS Based Tax Parcel Data mapping systems that allow you to zoom in to specific areas. This can tell you who, if anyone, is paying taxes on that property -- or, if it's in public ownership.

## SLIDE 23 (Poss. Pine Lake Access)

Anyone have an idea as to why it might be in the town's interest to know where these sites are?

- Available for public use:
  - o Quality recreation close to home

- Lakes and rivers strong selling points to people who be considering moving to your community – quality of life.

#### SLIDE 24 (Neshonoc Path)

- Important element of recreational planning in your communities.
- Make sure the folks who live next to these sites are aware of the public interest associated with them.

#### SLIDE 25 (NOR Dock, Lawn)

- Keep folks from simply claiming the site and building on it as this couple did.
- Protect their kids and a future town board from having to deal with a clouded title when it's time to sell.

#### SLIDE 26 (Chippewa City Winter)

- Have any of you ever been drawn into conflicts associated with these sites?  
When an ice fisherman who's been using the site for years suddenly finds a no trespassing sign and goes head to head with the neighbor?

#### SLIDE 27 (Co. Hwy XX, No Trespass)

- Bottom line is lake communities can avoid a lot of conflict and legal problems for their residents if they openly maintain an inventory of public access sites to water and prevent people from unlawfully privatizing them.

#### SLIDE 28 (Apple River Access)

There is now a requirement in applications for our Lake, River and Aquatic Invasive Species control grants that the applicant provide a map of all known public access to the water – not just boat landings and public parks.

#### SLIDE 29 (Jordan Lake Access)

Our grant application and guidelines booklets explain we're also asking the applicant to show road ends on water and platted access sites. If you haven't identified these, the work associated with conducting access inventories is an eligible expense under most of the grant programs.

Our Small Scale Lake Planning grants are easy to apply for and can provide up to \$3,000 to cover staff time and other costs associated with looking over original plats and title records, visiting the sites, checking their status, photographing them, mapping.

#### SLIDE 30 (Right Boundary Sign)

- Some of the programs can also cover the cost of signage that you might use once you've identified the boundaries of your water access sites. Lakes, Rives and Aquatic Invasive Species Control Grants are just a few of the programs I administer in the West Central Region.

#### SLIDE 31 (Grants Web Page)

On the last page of your hand-out, there's a URL or web link for our DNR Grants web page. That will link you to a full run-down of the grant programs my counterparts and I administer and will put you in touch with the appropriate contact anywhere in the state.

#### SLIDE 32 (Jordan Canoe Site)

If you want to improve water access sites, we can help you develop parks with a number of Stewardship grant programs including Urban Rivers, Acquisition and Development of Local Parks, Federal Land and Water Conservation funding.

#### SLIDE 33 (Glen Lake Pier)

We can help you develop accessible fishing piers and shorefishing stations with Federal Aids in Sportfish Restoration or in combination with park development projects.

#### SLIDE 34 (Otter Lake Landing)

Another program I administer here in the DNR's West Central is Recreational Boating Facilities. With that we can help you put in boat landings, courtesy docks, and support facilities including restrooms, parking and access roads.

#### SLIDE 35 (Otter Lake Approach)

Each of these programs involves a cost share, typically covering 50% of the cost of your project. The facilities you develop need to be available for use by people with disabilities so they have to be designed to ADA standards.

#### SLIDE 36 (Otter Lake Parking)

Engineering and design costs are eligible expenses, so those can be included with your project.

#### SLIDE 37 (Contract your Grant Specialist)

My counterparts and I can also help you in the early planning stages to make sure your project is eligible and help you with your application. These are competitive programs as we work with limited funding, but by contacting us early we can help you develop the best possible application.

#### SLIDE 38 (Bruce Neeb, etc.)

As I said, contact information is available on our Grants Web Page along with details, application forms and descriptions of the various programs. Definitely worth looking at. Hopefully we have time for additional questions?

#### SLIDE 39 (Thanks!)