

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: 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 1960's: 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 40 years, until the 2015 budget bill which 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. Out of the 71 Wisconsin counties with shoreland zoning, 54 adopted more protective standards than the state minimums for some of 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 were 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: State legislature adopted Act 170 which said counties, cities and villages could not be more restrictive than state standards (NR 115) regarding 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.

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 limited input.

2015: In the 2015 budget bill 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 on May 20, 2015 during the budget bill negotiations. The state budget, including these changes to shoreland zoning, was 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.

2015-2017: Additional changes to shoreland zoning were made by the Wisconsin Legislature:

- All exempt structures may be replaced within their three-dimensional building envelope with no approval, fee or mitigation through shoreland zoning. Exempt structures include boathouses above the OHWM; walkways and stairways; fishing rafts, broadcast signal receivers; utility lines, poles and towers. Permits and fees for building permits, general zoning and/or floodplain zoning are often still needed.
- Nonconforming structures and structures located at less than the shoreland setback by variance can be:
 - replaced in their current location if the activity does not expand the footprint
 - expanded to 35 feet in height
 - No approval, fee or mitigation required through shoreland zoning for replacement or vertical expansion. A building permit, general zoning permit, and/or floodplain zoning permit are often needed for these replacements or vertical expansions.
- Boathouses:
 - Counties must allow a boathouse above OHWM on all waterfront lots. They can regulate size.
 - The roof of a flat boathouse may be used as a deck (no side walls or screens)
- Counties may allow higher impervious surface limits on commercial, industrial or business land uses and highly developed shorelines (30-60%+). Impervious surfaces are not counted if they are treated or internally drained (not draining to a lake or stream).

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