Wagner, Carmen (DNR)

From: Herkert, Toni
Sent: Tuesday, October 07, 2003 10:15 AM
To: 'bjhammes@gundluth.org'
Subject: RE: Comments on NR 115 proposed changes

Thank you for your in depth responses to the work we have put together this far. We have a long way to go with the revision and will keep your comments in mind. In addition, we will be having listening sessions coming up soon and it would be wonderful t get interested individuals like yourself to participate in the sessions. Listening sessions are an additional step in the process before we go to public hearing. Sessions in your area include on November 13 in EauClaire at the DNR regional headquarters and one in Onalaska at the city hall on December 1.

Thank you again for your insight. I appreciate the time and energy you have put into reviewing the advisory committee proposals. Please check the websight periodically to get updated information.

Toni

Toni Herkert
Shoreland Management Team Leader
Dam Safety, Floodplain and Shoreland Management Section
Bureau of Watershed Management
Wisconsin Department of Natural Resources
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-----Original Message-----
From: bjhammes@gundluth.org [mailto:bjhammes@gundluth.org]
Sent: Tuesday, October 07, 2003 9:17 AM
To: Herkert, Toni
Subject: Comments on NR 115 proposed changes

Dear Toni

My wife and I owned a cottage on the Mississippi River just south of Lock and Dam # 6 at Trempealeau, WI. This cottage has been part of my wife's family since 1925 when it was first owned by Judge Cowie of Whitehall, WI.

I am impressed and support most of the changes recommended by the Advisory Committee. While I have feelings about proposal A or B, I would like to state my concern about two parts of the proposal as it applies to the Mississippi shore line.

1. The Mississippi is a dynamic river that is being controlled by a federal agency. Two points:

A. Determining the OHWM is a bit difficult as the water is always changing. It changes from season to season and depending on rainfall from year to year. So while this standard is easy and clear on lakes and most streams in Wisconsin, the Mississippi is just a much bigger system with a lot more variability. I worry that the standard will be applied inconsistently and subjectively. Minimally I think the standard should be the lowest possible pool stage.

B. More importantly, the OHWM has changed dramatically since our cottage was built because of the lock and dams. When our cottage was built, it clearly was 75 feet back from the shoreline. Since the dams have been built and the water level raised by at least 5 feet, the

shoreline is much closer. It does not seem fair that we should now be considered nonconforming with the setback when the shoreline has changed because of a social policy to build dams.

I believe that the set back along the Mississippi should be listed as 35 feet to provide a primary buffer for any existing structures. Since building in the floodway is not possible, this is the only standard that you need.

2. Natural buffers are more difficult on the Mississippi. We need a different standard.

For a mile or so below Lock and Dam #6 there are summer cottages. A very small number given the length of the Mississippi on the Wisconsin border. These cottage make little or no impact on water quality (we have a sewer system) or wild life. These cottages have two types of shoreline. 1) some cottages are near the water level and the shoreline is determined by the river. The river could cover the shoreline in sand in a flood one year and take it all away the next. Attempting to plant vegetation would be futile. The rest of the cottages are on high ground with step banks down to the river. With permits, these banks have been protected with riprap for over 50 years in most cases. It is unclear to me how these areas of riprap could be returned to natural vegetation without causing serious erosion. The DNR and Army Corps routinely puts riprap on the natural islands to protect them from erosion.

In short, it is not clear to me how any of the cottages on our section of the Mississippi could comply with the requirement to have a primary buffer of native shoreland vegetation. We either must use riprap to protect the banks from erosion created by flooding and wave action or we live at water level and really have little control of the vegetation given the power flooding conditions that shift the shoreline and deposit or take away sand.

I believe the requirements for the primary buffer must be written to make an expection for shore line where flood conditions require use of rock for protection of erosion or prevent any ability to control the shore line by planting vegetation.

The only thing I could see is to plant swamp birch and maples in the riprap or at the shoreline to meet the standard for the viewing access corridor.

I ask the Advisory Committee to take these unique qualities and history of the Mississippi shoreline into consideration when making it final decisions. Not doing so will create an unrealistic and impossible situation with the property owners along the Mississippi.

I would appreciate any feed back or comments from you.

Sincerely,

Bud Hammes
1005 Lauderdale Pl N
Onalaska, WI 54650
608-783-9288

Toni Herkert
Shoreland Management Team Leader
DNR WT/2
Box 7921
Madison, WI 53707-7921

RECEIVED
DEC 2 2 2003
BUREAU OF
WATERSHED MANAGEMENT

Dear Toni Herkert,

Now that a revision is about to be made in the NR115, after 35 years, we hope that it will not end up as a warmed over version of the original NR115. I have expressed my personal opinions on the individual NR115 Advisory Committee recommendations through our Forest County Lake Association. Here, I offer 4 suggestions relating to the revision process as a whole:

1. MAXIMIZE THE MINIMUM

If NR155 is considered to be the **minimum** standard for counties to follow, along with the counties to have the option of passing a more strict version, then maximize the minimum! The pressures by special interests to erode the current NR115 have greatly increased in the last decade. That will continue.
Fewer counties will be able to pass any ordinances that will be more restrictive than the minimum NR155. Efforts will be made to weaken this minimum. So, move to keep these new minimum NR155 standards as high as possible. If you err, err on making the minimum high, rather than permissive.

2. DEFINE AND TIGHTEN

Along with any change in wording, take out all the nebulous meanings. Make clear and definable statements about the regulations. Plug any loopholes.

3. FLEXIBLE APPLICATION

There are a few of the new NR115 proposed rules that will be difficult to apply fairly and equally to all situations. These ordinances need to be identified and noted. Conditions vary from lake to lake and even lot to lot. The strict application of these specific ordinances can be fair and reasonable in one case and unfair and unreasonable in another.

This is where the option for flexible application needs to be given to the local county zoning personnel.

There are many of us who oppose this kind of latitude, based on the special interests and the pressures on county zoning decision makers. It is true that we know of at least one or more county zoning administrators and zoning committees who currently interpret the zoning ordinances to almost, if not over, the point of their violation. This is often combined with the infrequent enforcement of the existing ordinances.

In order to balance this option of granting local zoning personnel flexibility in applying specific ordinances to individual situations, I make the following suggestion:

4. IMPROVED STATE OVERSIGHT AND ENFORCEMENT

A more active DNR role in enforcement is needed. The current revision of NR115 needs to contain a specific provision that gives the DNR or some other state authority the power to maintain oversight in the local application of the new NR115. In addition, there needs to be a clear process to administer enforcement where there is an egregious, or routinely subtle violation, distortion, and weakening of these ordinances. This needs to include a simple and easy method for a group of locally concerned citizens to bring documented violations to the attention of the state authorities and to expect a prompt and uncomplicated investigation and enforcement.

One might say that this option already exists. If it does exist, it needs some major revision, because many of us in at least one county can testify that it has not been working.

If something like this cannot be incorporated in the plan, then the flexibility to give local county zoning authorities latitude in applying certain ordinances should not be included in the NR 115 revision.

THE ROLE OF VARIANCES

Although this does not seem to be directly involved in the NR115 revision, it might be related to its final effectiveness. The state needs a revision in the definition of, or criteria for, what makes a variance allowable. Under the current criteria, few if any variances are given. The Board of Adjustment does not function. Citizens can be faced with what seem like unreasonable options. Anger increases, along with opposition to all restrictions. The result is that in some cases the local Zoning Administrator makes "executive" decisions to get around the situation. No Board of Adjustment involvement. A hodgepodge of weakened or violated ordinances.

A well defined and somewhat flexible criteria for considering the approval of a variance application which would involve a Board of Adjustment should fit in well and enhance the new NR 115.

Congratulations on the fair and systematic way you have proceeded in dealing with this revision process. Thanks for receiving this input. Best wishes in your completion of this much needed project.

Clifford H. Haskins
5290 So. Silver Lake Rd.
Laona, WI 54541
December 19, 2003

ROGER E. HEINECK, D.D.S.
1004 East Second Street
Neillsville, WI 54456

Telephone: (715) 743-3317

RECEIVED
DEC 17 2003
BUREAU OF
WATERSHED MANAGEMENT

December 15, 2003

Carmen R. Wagner, AICP
DNR WT/2 Box 7921
Madison WI 53707-7921

Dear Ms. Wagner:

Thank you for your prompt reply in providing me with more information on NR 115 Rule Revision. As indicated by phone, I have a dedicated interest in this matter stemming from a recent experience in pursuit of a building permit for my non-conforming structure in the town of Komensky, Jackson County. In that regard, over 50 different hearings, court appearances, briefs filed, etc. occurred, as well as over $10,000 in expenses on my part. Of course, the cost to the town, county, and state was also considerable in addition to the many hours and miles traveled by numerous individuals.

All of the above would have been unnecessary and the permit obtained without incident had the structure been located 1/4 mile north of its present location (Clark County). Clark County eliminated the 50% rule some time ago in response to property holder complaints and has had a simple workable system that seems to keep everyone happy. In my pursuit of a permit, variances from both the town of Komensky and Jackson County were obtained (twice), but because an objection can be presented when variances are issued, the DNR was able to derail the process after a great deal of effort on their part. Never in the process was there any attempt at a compromise or cooperation on their part. It was an adversarial confrontation from the start.

The sad part of my experience is that this property has been a dream project of mine for over 50 years. I have cared for it in a manner befitting its natural beauty. We have tried to keep it in as natural state as possible with no cutting or other invasive practices. I was not pleased when the power company had to cut a right -of-way! We are located on the East Fork of the Black River and are the only structure in many miles of stream frontage. We have no neighbors and have no effect upon the stream whatsoever. Most people canoeing past do not even see the building because it is so well blended into the surroundings, high on a rock outcropping, hidden by large white pine, maple, and birch. Everyone who has visited the site has been impressed! So, you can possibly understand my frustration when finally, after retirement, I wanted to expand the building so my family could utilize it in the manner I had envisioned.

ROGER E. HEINECK, D.D.S.
1004 East Second Street
Neillsville, WI 54456

Telephone: (715) 743-3317

You have revived my hopes with the revision process now in place. I understand and agree completely with the need for zoning and restriction of development in regard to our waterways. In my travels around our state, I have seen many objectionable practices, especially with new construction. However, in regard to a well established non-conforming building such as ours, where all the environmental requirements are in place, there needs to be room for a property owner's right to utilize it in a more liberal manner than the present 50% rule that Jackson County allows. Hopefully, the rule revisions envisioned by your committee can satisfy the needs of property holders and protect our environment at the same time.

If I can be of any assistance in this matter, please feel free to call me at any time. I will be in Tucson, AZ for four months beginning in January. My phone number there is (520) 883-2877. Thank you again for your prompt and courteous response.

Sincerely,

Roger E. Heineck D.D.S.

Roger E. Heineck, D.D.S.

December 27, 2003

Jim Hemmerich
W345 N 5298 Tearney Road
Okauchee, WI 53069

RECEIVED
DEC 31 2003
BUREAU OF
WATERSHED MANAGEMENT

RE: NR 115 Comments

To Whom it May Concern:

"The public is coming to recognize that their stake in the waters of Wisconsin is threatened today. Concerned riparians, as well as those whose access to lakes is through public areas, are alarmed by the pressures on our lake created by the lack of stewardship that some shoreline owners demonstrate." (Nancy Hill, 920 745-3076)

I don't know Nancy Hill, but this is her statement. Another one I hear regularly is that Ohio burned down one of her rivers, I believe the Cuyahoga. The conditions which allowed them to burn down a river were directly attributed to the rapist industrial complex. I understand that a significant part of the logging industry in the Pacific Northwest was shut down completely, and many jobs eliminated, to save the Spotted Own, which it turns out, easily nests in billboards.

The DNR is a bureaucratic administrative body, without a single elected official. What is the governing philosophy of the DNR? Where has there ever been a debate at a state-wide level as to the philosophy that governs the DNR? Where does it say in the constitution of the United States that people should be considered to be second-class citizens, behind every possible ecological consideration? Who decided that ecology is the the first god, the first altar , of the United States? Who says so? Who agrees? Where are the rights to liberty (and property) on which this country was founded, and guaranteed by the Constitution? Where is the government "of the people, by the people, and for the people"?

I don't have a problem with a fact statement that "some people, in the absence of laws, are lousy stewards", however, I would also note that "some people, in the presence of laws, are lousy stewards." The laws are not the difference; the moral fiber of the people is the difference.

I also don't have a problem with a fact statement that "some people, with the presentation of facts, will change their behavior". On the other hand, very often even the presentation of facts will not change behavior, witnessed by our problems with weight and smoking. Again, the facts are not the issue, the moral fiber is the issue.

My concern over NR 115 is that all of these laws are intended to limit the rights and conduct of some group of citizens. They are usually couched in altruistic terms by people who are not particularly affected, often some semblance of "the majority". They often

reflect a bias by the people who champion them that the best solution would actually be to simply remove people from the situation, and the problem would go away.

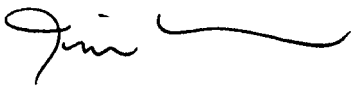
Little or no attention is paid any more to the rights of liberty or property, and in fact, to even raise the issue is to put yourself on the side of the "rapacious evil others", subject to bombing and other violence by the radical environmental terrorists.

As for the impact on the people directly affected, "tough luck for them". The government since the introduction of the income tax in 1913 has no trouble in confiscating rights and property, and no interest whatsoever in considering any compensation. (The modern thought seems to be "whatever you might have, consider it temporary, because ultimately it is ours") In the old days, this was called "taxation without representation". In the new days, it should be still be called "taxation without representation." Just because you can fashion a "special interest majority" to overwhelm a "minority" through the process of electing "special interest representatives", doesn't make if constitutional or right.

What kind of country have we become? People are afraid of the retributive power of the DNR, the IRS, and the government in general, and the word is, "don't mess with them, they will get you back."

This certainly isn't the country the founders intended for us to be, and it doesn't have to be the country we become. As for NR 115, the gradual erosion of our rights and liberties continues under the oldest slogan of them all, "well, it sure is better than what it replaces." Better for whom?

Unenthusiastically yours,



Jim Hemmerich
Chairman, Okauchee Lake Management District (OLMD)
Okauchee Lake, Wisconsin

Writing as a private citizen,
and with no claim of representation of the OLMD

Wagner, Carmen (DNR)

From: Ghst10s@aol.com

Sent: Monday, November 10, 2003 5:12 PM

To: Herkert, Toni

Subject: shoreland

I received the Fall Loon Watch publication and checked out NR 115 on the DNR website. I feel these things are reasonable and necessary to preserve our lakes and rivers. However, I question the enforcement. I am frustrated when I see shoreland property owners either out of ignorance or out of total disregard of shoreland zoning/standards go ahead do things to their property frontage without any repercussions. On our lake along I have seen frontage cleared, sand beaches made, retaining walls built, and permanent storage buildings and decks built. I have checked with and reported to county zoning and DNR and nothing happens. As I said, I think these regulations such as the NR115 revision are necessary, but there needs to be enforcement to go with it.
On a slightly different shoreland issue; has the DNR considered swimming rafts that are left floating off shore from Apr/May to Oct/Nov with really very limited use. Are there any regulations on these and will there be any changes regarding leaving these anchor more or less permanently all season?
Peter Hensel
Appleton

Wagner, Carmen (DNR)

From: Anne Huebner [aehuebner52@yahoo.com]

Sent: Monday, December 22, 2003 4:12 PM

To: Herkert, Toni

Cc: aehuebner52@yahoo.com

Subject: comments of NR 115

Dear Toni, I have appreciated getting all the mailings on the progess of re-doing NR 115 and I have read all the mailings. I was out of town at the time of the one "listening session" in the Northeast Wisconsin area, and therefore, sending you my comments.

As an INTRODUCTION, I want to let you know I live in what the DNR wants to keep calling a "nonconforming" house. My house is 624 square feet on 45 feet of waterfront and set back 32 feet from the OHWM. This is my only house; it is all I could afford after looking for 15 years; and I live here year round. I also live in harmony with the natural world. I pulled out 2 old failing septic systems and replace with a holding tank, which I fill up every 3 months. Being a professional forester, I re-did the rip rap along my shoreline by planting Wisconsin native grasses, sedges, and blue flag iris. I actually had 3 frogs living in the sedges this summer. I own a small alumacraft boat with a new 4 stroke engine and most of the time, I travel the lakes by kayak. I do not have a lawn on the lakeside and only a small section in the back of the house, which I do not fertilize.

SPECIFIC COMMENTS:

1. The proposal appears very biased in favor of big houses and big properties. I don't understand why the advisory group proposes to require a house to be at least 750 square feet in order to expand.

2. Stop using the term nonconforming. 60-80 percent of the houses on the Three Lakes chain are "nonconforming". These houses are NOT going to go away. Dry wells and failing septic systems are the greatest polluters of the lakes, then comes the huge gas guzzling 2 stroke engines. I can show you 3 dry wells within 200 feet of my house and the septic drain field next door to me is very likely draining sewage directly into the ground water..and into the lake.

3. I bought my house knowing I would never expand it up or out on any side. However, I will do whatever has to be done to maintain, including structural maintenance, to my house. These small houses are not going away and please stop trying to make them go away. These buildings around the lakes are looking more and more like something out of Aspen, Colorado. Please do not try to restrict what maintenance, of any kind, can be done to existing houses...I'm not talking about expansions of any kind; I'm talking about keeping a house livable as a primary residence. The group's proposal to restrict structural repairs to 50 percent of the value of the house is outrageous given that the smallest properties on the small parcels of lakefront all went up the highest in assessment and taxes this year. My house and property assessment was increased by 100 percent and my taxes went up $200, when all the wealthier people I know with big houses and large waterfronts are paying $200-500+ less in taxes this year! If your group is not aware of this, they should be in order to be effective as an advisory group. There is good reason why many people are outraged, and not just the hard core property rights folks who believe they can do whatever they want to do on their properties, regardless of the environmental and aethestic impacts. I believe there is a limit to property rights and I am also a middle aged single woman with most of my life's equity in this home. AGAIN, do not try to limit any kind of repair or maitenance on any existing home... instead, work with the counties to ensure those homes close to the water have efficient septic systems and are not otherwise polluting the groundwater and lakes.

2. Get rid of trying to define "an average property size". Please explain in next round of notes why you would not allow the same owner of 2 adjacent properties with a minimum of 100 feet and on the public records as a lot to build on or sell that lot.

3. The expansion of up to 2500 square feet in the secondary buffer is excessive. Basically, if someone wants to do a whole new house or big expansion within 75 feet, then they should move the house back and start over.

4. The main problem in Wisconsin with county zoning committees and the DNR is a total lack of consistency. I would like to invite your group to do a tour of a one mile stretch of Bonkowski Road, where I live. A new house is going in exactly 75 feet from the water and because they built a 12 foot high foundation, they are now filling in horizontally with 20 feet of soil. Another old A-frame house was torn down and a larger complete new one going in with no building permit posted. A multi-millionaire just poured a 27 x 27 square foot, 8 inch thick concrete foundation 5 feet from the rip rap for a boat house. The permit says it was to be 12 feet from the OHWM. There was no size limitation on the permit, although it did say no septic or living quarters. That boathouse 5 feet from the water is bigger than my entire home. Another owner of a 500 foot lot for sale, mostly in wetlands, has cleared out over 50 percent of the vegetation, including trees along approximately 200 feet of shoreline. The entire character of that shoreline is changed forever. This all is addition to the numerous dry wells and failing septic systems on my road.

Thank you,

Anne E. Huebner, Ph.D., Natural Resource Consultant
7226 Bonkowski Rd.
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715-546-2279

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