TAINTER/MENOMIN LAKE IMPROVEMENT ASSOCIATION, INC.

People uniting to protect our resources

P.O. Box 185
Menomonie, WI 54751

RECEIVED
DEC 31 2003
BUREAU OF
WATERSHED MANAGEMENT

December 28, 2003

Re Comments on NR 115

Thank you for this opportunity to respond to the anticipated changes to NR115. . The Board of Directors of our Association has studied, discussed and prepared these thoughts and concerns. We speak as one voice as we seek to remedy unclear regulations and definitions (the clear-cutting issue), continuing disregard for and lack of enforcement of the shoreland regulations, general disregard for impact of local decisions on neighbors, community and the future of our waters. We've tried to be concise in our responses and you'll notice they are enumerated for clarity.

I. THANKS! The DNR proposal and methodology for change for shoreland management offers an excellent framework for discussion of possible changes to the current regulations. Thank you!

II. LACKING TRUE CONCERN FOR THE WATERS. Overall, it seems that there is no true sense of an effort to increase the level of concern for the quality of shoreland and its impact on the Waters of Wisconsin.Some of the options provided by the Advisory Committee make uses more restrictive, while others are less restrictive. For example, the starting point for any changes to the shoreline buffer should include a sketch of the existing trees and general discription of all the vegetation. Cutting within the VAC must be preceded by an approved plan for cover to prevent erosion. There must be clarity about what may be done with the existing trees in the buffer outside the 30 foot VAC. An owner should be permitted to remove undesirable or deformed trees that are preventing the normal growth of more desirable trees. Removed trees should be replaced with appropriate trees or shrubs to create or maintain a natural appearance. Fines are okay, but they don't fix the problem. There must be a mechanism requiring replanting/repair of buffer zones. There must be a mechanism to disallow shoreland clearing even if there is no intent of building or remodeling.

III. LANDOWNER AWARENESS. Actual and potential landowners/shoreland residents often are not aware of the myriad issues and impacts their presence will have on this specific threatened ecosystem. How does this landowner, or potential landowner, obtain assistance in making a shoreland use plan before purchase of the land, before planning the building or remodeling project? It seems the concept of a "one stop shopping center" is needed--one place to find out all about shoreland concerns and owner responsibilities.Our Board suggests structuring partnerships with the mandated Town Plan Commissions. These commissioners (all local residents) are most aware of their town needs, goals, guidelines, plans. They would receive training in shoreland management, perhaps by UWExtension sponsored ETN programs. Any purchase of shoreland property, any new building or remodeling on the shoreline or other site that would impact the waters would require a permit given by the Town. Support to the town would be provided by qualified water quality experts from Lake Associations or Districts, local experts on vegetation and

plantings, and other entities determined by each Town. A list of water-friendly builders, planners, landscapers etc would be available. The Town would serve as this "one-stop shopping center" for potential users of the shoreland.

Suggested approaches would require all remodeling, new construction or upgrading of a sewer system to create a plan with drawing of existing buildings and landscaping including layout and description of turf, vegetation, steps. This plan would be on file. The plan could be hand written or drawn to reasonable scale-- a landscape architect would not be required. This plan would carry the weight of law with the Town having the authority to require the plan to be followed.

In addition to the Plan Commission and its cadre of support persons, an enhanced DNR webpage with lists of vendors, professionals, designers and visuals of appropriate shoreline home construction and vegetative enhancement would be valuable.

IV. HABITAT LOSS. We have come to an understanding that wildlife species are limited more by habitat loss rather than hunting or fishing violations. Within DNR's present staffing (including game wardens), we would like to see more emphasis given to lakeshore zoning enforcement rather than game quotas. In other words, game wardens observe and report the conditions of the shoreland as it effects fish and wildlife sustainability. This would mean enforcing shoreline zoning. As far as NR 115, this would effect the decision on boathouses (deny boathouses).

V. NON-CONFORMING STRUCTURES. In either buffer, nonconforming structures should only be maintained , not enlarged vertically or footprint. We understand the difficulties of administrating the current nonconforming structure rules. However, the disregard that people have is because these rules have never been enforced. Seminars sponsored by the St. Croix Basin Water Resources Planning Team, held yearly at Trollhagen in Dresser, Wisconsin. always have a session on the importance of across- the-board- enforcement so staff is not caught up in rationalizing each request it denies, or feeling a denial cannot be made because of previous concessions.

VI. VIEWING ACCESS CORRIDOR. Should be no more than 30 feet. Examples of vegetative management (trimming) must be available to show that clearing is unnecessary.

VII. PRIMARY BUFFER VEGETATION. What exactly is "native" vegetation? Surely some interspersed customary perennials could add color and interest and still protect the water.

VIII. PUBLIC TRUST DOCTRINE AND RESPONSIBILITY. There are other important issues, but our Board feels these are among the most important. As a Lake Association composed primarily of lakeshore residents, we feel obliged to respect the burden of change required of our neighbors in the agricultural community. Thus, we must honor our public trust responsibility by insisting upon and helping residents provide shorelands that protect water quality and scenic beauty for all citizens.

Barbara Thomas, President

Jerry Bowker, David Whiteley, Bill Olson, Barbara Thomas
for the Tainter Menomin Lake Improvement Association Board of Directors

XVI. DOCUMENTATION FOR THE PUBLIC RECORD

Comments from the listening sessions will be accepted until December 31, 2003. Comments can be emailed to Toni Herkert, Shoreland Management Team Leader at Toni.Herkert@dnr.state.wi.us or comments can be mailed to her at DNR WT/2, Box 7921, Madison, WI 53707-7921. If you have questions, Toni can be contacted at (608) 266-0161. More detailed information on the Shoreland Management Program revision is available at: www.dnr.state.wi.us/org/water/wm/dsfm/shore/news.htm

If you would like your comments to be part of the public record for the NR115 rule revision, please, at a minimum, provide your name. The remaining information is voluntary. Please print legibly.

Date: 12-30-03

Name: Barbara Thomas, President

Address: Tainter-Menomin Lake Improvement Assoc
PO Box 185 Menomonie WI

Phone: 715 235 9771

Email: thomash@uwstout.edu

Would you like to receive email updates about the status of the NR 115 revision process?

☒ Yes ☐ No

Wagner, Carmen (DNR)

From: David M Thorson [dthorson@centurytel.net]
Sent: Wednesday, December 31, 2003 1:07 PM
To: Herkert, Toni
Subject: NR 115 Comments

smile.tiff ATT66576.txt NR 115 POA Comments.pdf

Greetings Toni,

I was at the first listening session at Spooner and I would like to submit comments for the Advisory Committee's consideration.

I am President of the Property Owners Association, Inc. of the Barnes/Eau Claire Lakes Area of Bayfield & Douglas Counties and submit these comments on their behalf. Our membership includes about 430 people.

We are in favor of a much stronger NR 115.

Please enter these comments into the public record.

Dave Thorson
46830 Cranberry lake Road
Gordon, WI 54838

Telephone: 715-376-4260
email: dthorson@centurytel.net

PS - We appreciate your hard work as Team Leader in overseeing the efforts of the committee. Thank you!

I'm getting these to you on December 31 at about 1 pm - why wait until the last minute?

Property Owners Association, Inc.

Barnes/Eau Claire Lakes Area

46830 Cranberry Lake Road
Gordon, WI 54838

December 28, 2003

NR 115 Advisory Committee
Toni Herkert - DNR Contact
WDNR
101 S. Webster
Box 7921
Madison, WI 53707

Advisory Committee:

I represent a group (about 430) of lakeshore owners that care about the lakes of Wisconsin and are concerned about what the future holds for these valuable and beautiful gems. One of our primary goals of our Association is awareness and education about lakes and about what it takes to be good lakeshore stewards. Although not "perfect" stewards by any means, we realize that small things that we do can lead to improvements in our lakes and their many associated resources. Therefore we have intense interest in this revision process.

We have, as citizens, placed an immense and important task in your hands and we sincerely hope you are using your best vision to protect these lakes that we hold dear. Your task is long-term in scope and we hope you can look past the short-term blurred vision of the few and take a clear view of what the vast majority of citizens want our lakes to be in the distant future. Our lakes are in jeopardy and this trend needs to be reversed. Please put the needs of the resource first in any recommendations you make.

First, I want to thank you for your hard work in taking on a task of prime importance to the people of Wisconsin. Wisconsin's 15,000 lakes give us a sense of identity and a value that is impossible to measure. Each and every one of those lakes belongs to the 5.3 million citizens of Wisconsin and each of those lakes are of incredible value to us all.

The future of these waters is, as you know, at risk. Demand and prices for lakeshore property is at an all time high with chances for the average family to afford such a luxury remote. So it is of a sense of resource protection and also a sense of urgency to upgrade protection measures for the lakes themselves and to the citizens who share in their ownership.

Therefore it is imperative that our lake resources obtain protection from unacceptable impacts. We have often used 'maintaining water quality' as the prime goal for lake protection, but there is much, much more to lake protection. In addition to water quality, lakes support other resources or resource values important to us all: the fishery, lake dependent wildlife, unique plantlife, riparian values, and aesthetic values like natural beauty, all needing protection. All of these resources or resource values are identified in the Wisconsin's Public Trust Doctrine for navigable waters, that identifies both ownership definitions and protection needs.

Enacting laws and regulations for protection of natural resources is a juggling act that involves social considerations, economic considerations, considerations for the needs for the natural resource, and , of course, political considerations. In the case of NR 115, the regulation is nearly 40 years old. During this time period many things pertaining to lake protection have changed. The magnitude of the impacts, the loss of lakes dependent resources, and the public's apparent apathy toward lake protection all point to the need for stronger protection. Without stronger NR 115 regulations, the impacts to lakes and associated resources will continue to whittle away at water quality, fish and wildlife habitat, and natural beauty.

In the past 40 years we have seen the traditional lake cabin with a privy out back becoming extinct and replaced by lakeshore castles that are being squeezed into lots as narrow as 60 feet. We have witnessed the cabin of the 60s which was used for a couple weeks in the summer plus a few weekends, now being used full time with associated impacts stretching into 365 days each year. We have observed the small wild lake used by the wildlife being pressured into development of all sorts. And we have seen lake lots, once going for a few thousand dollars now being sold for hundreds of thousands, and this is without a home or development of any kind.

You have undoubtedly heard the expression that "they aren't building any more lakes." This limit to the supply along with the high demand is putting accelerated pressures on lakes, on water quality, on the fish and wildlife, and on the natural scenic beauty we as citizens expect to see when we visit a Wisconsin lake.

Now is the time for action, as impacts continue to erode the lake values important to Wisconsin citizens, before we go over the edge of any recovery potential. Lakes and lakeshores are resilient and they can recover if given a chance. A stronger NR 115 is that chance.

There is a spectrum of impacts existing on Wisconsin lakes. At one end there is the over-developed lake that little resembles a natural lake. At the other end is the wilderness lake where man has had little influence. The first end of the spectrum are the lakes that need strong measures to restore lake values. The second end needs strong measures to protect them from unacceptable negative impacts, leaving them in a close to wild character. This spectrum, by the way, is a latitude thing, and can be spread from south to north, just as Wisconsin's population is spread across the state. That population density figure is creeping north just as sure as the sun rises in the east. The demands and impacts on our lakes, however, is creeping significantly faster rate as vacation homes of today are being designed as retirement homes for tomorrow.

So please take the route that Aldo Leopold would in designing a new NR 115. Leopold says in his essay A Land Ethic that ***"a thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise."***

Note: Specific comments are attached.

Sincerely,

David M. Thorson - President
Property Owners Association, Inc.
Barnes/ Eau Claire Lakes Area
Bayfield & Douglas Counties

Tel.: 715-376-4260
E-mail dthorson@centurytel.net

General Comments and Suggestions:

Miscellaneous Comments

1 Range of Setback Alternatives Our first comment is that no where in your proposals, do you explore the need for and an analysis of expanding the minimum setbacks. In 1966 when NR 115 was first introduced it was 75 feet and there are many studies that show this is not sufficient for protection of many lake values and lake dependent resources. Recognizing that this may not sit well with many folks, it should have at least been explored. Consideration of setbacks of 100 feet would have defined the range of alternatives considered.

2 More Than One Set of Guidelines Being somewhat familiar with the lakes of Wisconsin. the north lakes more so than those of the south, the lakes of the north are definitely more natural than those highly developed lakes further south. Possibly there might be two sets of guidelines: one for the highly developed lakes, and another for the more natural lakes. It may just be that one size does not fit all.

3 Goals for the Future In 1973 the Clean Water Act identified goals that the nations waters were to be "swimmable and fishable" by a particular date. Possibly some sort of goals could be established with definable and measureable results or goals. Without such direction for Wisconsin lakes, we may just be "whistling in the wind" when it comes to lake protection and lake restoration. Through the identification of a goal for a particular lake, it may encourage lakeshore and watershed owners to work toward an achievable goal. This may be separate from the NR 115 regulations, but it could be a recommendation to the DNR and the Legislature from the committee.

I Shoreland Buffers

1 Dead and Dying Trees There needs to be some better definitions and recommendations regarding dead and dying trees. A general belief that dead and dying trees may be removed is the wrong message to give to the public. Anyone with this narrow view will find that every dead tree will be a safety hazard and will cut them all down. NR 115 could have some verbiage that illustrates the values of dead trees to wildlife, to biodiversity, and to people who can have years of enjoyment from the activity associated with dead trees, both standing and on the ground.. Snags are probably the most interesting piece of wildlife habitat on their property. Please include some better recommendations in NR 115.

2 Clearcutting of the VAC The word "clearcutting" is a word that means different things to different people. To a forester it is a tool in scientific management of forests and to the "tree hugger" crowd it is an environmental disaster. It is just too ambiguous a word to use in NR 115. The proposal eliminates the use of the word "clear-cut" which I support. I suggest that "clearcutting" be replaced with such wording as **"selective cutting."** The "clearcut" visual corridor is too often an eyesore from the lake, and an unacceptable impact to the land it is cut from. A visual corridor can be created using selective cutting and selective pruning of limbs. Such practices can not only provide a degree of visual beauty from the lake, it can enhance the view from the picture window or deck too. And it goes a long way in better protection of the values and functions important to lakeshores and riparian areas

3 Primary Buffer Recreational Pad - I would propose that a **recreational pad** be allowed within the primary buffer zone. Such an allowance would let the riparian enjoy a lakeside recreational experience. A picnic table, a sitting bench, a couple of lawn chairs to sit and relax, read a book, listen to the loons, or cook a burger for supper would be a desireable ammenity and would allow the riparian reasonable use of this area, while protecting a majority of the functions and values of this zone.. Restrictions on size (100 square feet), visual blending (earth tone colors), types of allowable and a permeable surface (pea gravel or an organic mulch) would be the minimum standards for this pad. This would be allowed only on level to gently sloped ground. If on steep ground a similar recreational pad would be allowed to be constructed. Setbacks from the OHWM would be established (ie - 10 feet) Highly erodable soil or wet soil areas may be excluded from this allowance.

Such a provision might be construed by the lawyer types as being part of the "rights of the riparian" under the Public Trust Doctrine (PTD) and covered as a "reasonable use of the water" and possibly under the "access to the water" portions of the PTD. Such a provision may also somewhat appease the "landowner rights" people's concerns. This proposal provides some balanced use of the primary buffer setback and reduces the argument that the state is "taking" property from individuals.

III Nonconforming Structures

We support allowance of NCS in the secondary buffer as long as it is landward of the footprint. The proposal says that "landward or vertical expansion is preferred" This is language that is too weak.

Landward should be theonly expansion allowed. No exceptions. Expansion across the slope is not acceptable in this secondary buffer. Nothing is accomplished in terms of better lake protection in this language. Horizontal expansion across the landscape does nothing toward restoring the values or functions provided by the buffer.

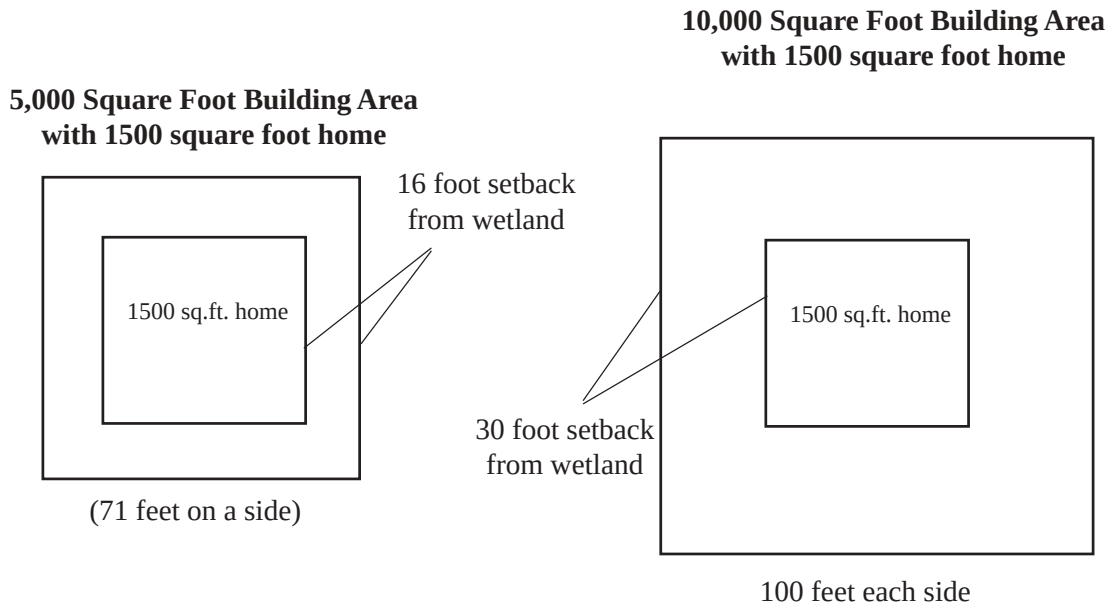
Vertical expansion may be allowed under "special circumstances" as defined by the counties. Such circumstances may be that the other building on the lake have two stories. Otherwise it is not allowed as it detracts from the "enjoyment of natural scenic beauty" as defined in Public Trust Doctrine language on public rights .

If there is no possibility for landward expansion - too bad..

IV Minimum Lot Size

Minimum Buildable Area: Proposal A suggests a 5,000 square foot minimum of buildable area for a lot being platted. This is way too small. Assuming this area is square in shape its size would be 71 feet by 71 feet or about 1/8 acre. Then put a square home on this "postage stamp" of 1500 square feet and it would be 39 feet by 39 feet. Such a scenario would result in the home to be about 16 feet away from the wetland or floodway. See diagrams below. (71 - 39 = 32 ft 32 feet/2 = 16 feet). Do the math, this is way too close and threatens the lake just as much as being 16 feet away from the shoreline. A 10,000 square foot minimum buildable area under the same building scenario would allow for 30 feet between the home and the floodway or wetland. Still way too close. In order to adequately protect the lake and its dependent resources, I wouuld suggest that the lot should only be allowed in a plat if the buildable area is 20,000 square feet as Proposal A in Minimum Size for New Lots as suggested above. New lots have to provide the lake protection needed. This problem is what got us into trouble with sub-standard lots allowed in plat approval in the past. Do not repeat the same mistakes of the past.

In addition, there is absolutely no room for an effective subsurface wastwater system to be developed in either case.



VIII Filling, Grading, ...

Erosion Control In the Filling and Grading section there should be some sort of erosion control guidelines. During construction, exposed soils are open to wind and rain erosion and these oftentimes directly flow into the lake, especially when on a slope. Additionally, sand, gravel, topsoil and other fill materials are brought to the site and dumped in piles and are often exposed to the elements for months. Erosion of these materials is contributing to water quality degradation, sedimentation, and destruction of fish and wildlife habitats. Although an added cost to building projects, many of these situation can be mitigated with little effort or cost. The proper placement of a few hay bales, the installation of inexpensive filter fences , or covering a pile of topsoil with a $10 plastic tarp can stop these problems. NR 115 should address this with some sort of state guides for erosion control near lakes, especially if the site is on a slope.

IX Impervious Surface Provisions

Without more information on the BMPs, this is difficult to comment on. At first glance the 2500 square foot maximum is fairly restrictive. A home 1500 sq. ft. and a 2 car garage (9oo square feet) pretty much takes up the allowable. Then add a cement or asphalt pad in front of the garage and a short sidewalk and you have easily exceeded the max. This, I believe, is a typical home these days. A close look at the science behind this will be needed to make significant comments.

The BMPs to offset surface runoff problems and to allow for adequate infiltration may be expensive to accomplish and may even cause more problems that they cure. A drainage tile sustem of some sort may disturb things more than doing nothing.

I support the idea, but possibly this may be duplicating the benefits and reasons of high quality buffers.

XIV Sanitary Regulations

I agree that this is a duplication of Comm 83. However it appears that Comm 83 is ineffective and not practiced, enforced, or funded in counties throughout the state.

There needs to be a concerted effort by the state to see that this is seriously adopted by all. The Department of Commerce is not the agency to oversee this. The DNR with its Conservation Officers is about the only agency designed for enforcement, and “wardens” are the primary and most probable personnel to observe and enforce this rule. We often hear that counties are “monitoring the situation” but are not really doing anything.

If the DNR and Commerce, along with the Wisconsin Association of Counties would talk about this, a program could be developed to inspect septic systems that would not add costs to government, as the landowwner would pay the fees for inspection and the associated costs. It is their responsibility to protect public waters.

Conclusion:

The Property Owners Association, Inc. of the Barnes/Eau Claire Lake Area of Bayfield and Douglas Counties is supportive of the efforts of the NR 115 Advisory Committee. We are in favor of stronger rules to protect our lakes and their dependent natural resources.

Such protection is not only for the benefit of the natural resources, but will protect lake and economic values of the people who love lakes. Clean, clear lakes with an abundance of fish, wildlife, and natural beauty have a significantly higher economic value than lakes without these things.

When future generations look back at the way this generation has cared for (or not cared for) the lakes of Wisconsin, we hope they look back with thanks for the things we do today. We must protect our lakes both for us and for future Wisconsin citizens. There should not really be controversy with these proposals as everyone should look to the future and select protection over negative impacts. That is just common sense. Unfortunately there are some who have no ability to look any farther that their pocketbook or beyond the short-term thinking of “what’s in it for me today.” Please don’t let these kinds of people have their way.

Thank you!

Dave Thorson - POA President and Watershed Forester

→ TONI

TOWN OF MUKWA
E8514 Weyauwega Rd., New London, WI 54961
Phone/Fax 920 982-9890

December 24, 2003

RECEIVED
DEC 26 2003
BUREAU OF WATERSHED MANAGEMENT

Rich Wedepohl
Toni Herkert
Wisconsin DNR
101 South Webster Street
Madison, WI 53707-7921

To Whom It May Concern,

Our (Town of Mukwa) concern is about the current intention on a NR-115 "rewrite". Specifically, this proposed legislation would have adverse effect on Wolf River rafts, small movable structures, and recreational vehicles currently using our Wolf River System. Our Town lies on both shores of the Wolf for a considerable distance west of the City of New London.

The DNR, raft owners, and all of the Towns(along the Wolf River) in both Outagamie and Waupaca Counties have drafted a raft ordinance that has been successfully followed for many years. Raft permits are issued from one to three years, depending on the local(town) ordinance. Each town has a duly-appointed "raft inspector" who must verify that these rafts are afloat at least 14 consecutive days.

The new NR-115 would jeopardize the above stated agreements among all of the above-stated parties. It is now necessary that the language within NR-115 specifically exempt these "permitted rafts", and thus have their related language fall under NR-324.

The small-movable-structures issue needs to be realistically refined to larger movable structures. This is in regard to issues such as: the conversion of an anchored-houseboat/pontoon boat into a more permanent structure along the river. Local government(s) need State help to draft realistic laws to hinder and hopefully eliminate this type of waterway abuse.

Thank you for reading these real concerns.

Mukwa Town Board

Walter Heise, Chairman
Neil Freeman, Supervisor
Michael G. Wundrock Supervisor

cc: Dan Helf, DNR-Wolf River Water Team Leader
Mark Beilfuss, Conservation Warden New London Area