

Do the revised statewide shoreland zoning standards in ch. NR 115 apply to villages or cities?

General Information

In 1968, the Wisconsin legislature created shoreland zoning by enacting ss. 59.692 and 281.31 of the Wisconsin Statutes (Wis. Stats.). In those statutes the legislature distinguished between unincorporated and incorporated areas (villages and cities) of a county by authorizing the statutes (with 2 exceptions) to apply only to unincorporated areas. See s. 59.692(1m), Wis. Stats.

Ch. NR 115, Wis. Admin. Code, is an administrative rule the Department of Natural Resources (DNR) created to help it administer ss. 59.692 and 281.31, Wis. Stats. Since the legislature did not require villages or cities to adopt shoreland zoning under s. 59.692, DNR - an administrative agency with powers granted to it by the legislature - may not require villages or cities to zone shorelands within their boundaries under ch. NR 115 unless the legislature revises s. 59.692 to apply to villages and cities.*

The legislature did create 2 exceptions to the general rule that shoreland zoning under s. 59.692 does not apply to villages or cities. The exceptions apply to shorelands in unincorporated areas subject to county shoreland zoning, but later incorporated into or annexed by a village or city after the dates specified in s. 59.692(7). The exceptions ensure that shorelands in unincorporated areas subject to shoreland zoning will continue to receive the protection that shoreland zoning provides to water quality, natural scenic beauty, and fish and wildlife habitat even if the area in which those shorelands are located is later annexed or incorporated. The exceptions provide that:

- A village or city must have shoreland zoning standards that apply to shorelands within unincorporated areas of a county that the village or city annexes into its municipal boundaries after May 7, 1982. See s. 59.692(7)(a), Wis. Stats.
- A village or city created by a town incorporating after April 30, 1994, must have shoreland zoning standards that apply to shorelands within the newly incorporated area. See s. 59.692(7)(ad), Wis. Stats.

Do the revised statewide shoreland standards in ch. NR 115 apply to shorelands annexed by a village or city on or before May 7, 1982? What about shorelands in areas of a town incorporated as a village or city on or before April 30, 1994?

No. S. 59.692, Wis. Stats., and ch. NR 115 do not apply to these shorelands in villages and cities. Villages and cities are required by separate statutes and rules to zone wetlands in shorelands within their municipal boundaries.*

* The legislature did enact specific shoreland zoning statutes for villages and cities which only require villages and cities to zone wetlands within village or city shorelands. See ss. 61.35 and 62.23, Wis. Stats., and ch. NR 117, Wis. Admin. Code.

What about shorelands annexed by a village or city after May 7, 1982, or in areas of a town incorporated as a village or city after April 30, 1994?

The statute requires a village or city that includes such shorelands to choose from four options to ensure that the shorelands continue to receive protection at least as protective as that provided by the county shoreland zoning standards that applied when the shorelands were annexed by or incorporated into the village or city. See s. 59.692(7)(a)(intro.), 1., 2., and 3. and 59.692(7)(ad) (intro.), 1., 2., and 3., Wis. Stats.

Do the revised statewide shoreland standards in ch. NR 115 apply to shorelands annexed by a village or city after May 7, 1982 or in areas of a town incorporated as a village or city after April 30, 1994?

If a village or city annexed or incorporated shorelands before February 1, 2010 – the effective date of ch. NR 115 – then the revised statewide shoreland standards in ch. NR 115 do not apply to those shorelands. Under its general zoning powers, a city or village may update its shoreland ordinance that applies to those annexed or incorporated shorelands, but may not make that ordinance less restrictive than the shoreland zoning ordinance now in effect for those annexed or incorporated shorelands.

If a village or city annexed or incorporated shorelands on or after February 1, 2010, the analysis is more complex. The Department is developing further guidance for those annexed or incorporated shorelands. Please contact the Department or discuss the facts of your situation with your counsel.

For further questions please contact 608-261-6430 or heidi.kennedy@wisconsin.gov.