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☞ Details: Emergency Rules by Department of Natural Resources

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2003-04

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)



DuWayne Johnsrud

State Representative

January 23, 2003

Joint Committee on the Review of Administrative Rules

Dear Co-chairs Grothman and Leibham and committee members:

I am here to ask you to suspend portions of Chapters NR 115 and NR 116 because the DNR is arbitrarily (*based on random choice or impulse and despotic, unrestrained power*) and capriciously (*guided by a whim, impulsively*) using these rules to push people out of their homes.

Hundreds of people reside at least part of the year in the flood plain of wonderful rivers like the Mississippi, the Wisconsin, the St. Croix, and the list goes on. In 1980, the federal government attempted to alleviate property loss during flooding by managing the way these areas were developed.

But the DNR went a step farther and said the people who were already living in the shadow of these great rivers had to go. By forcing property owners to neglect maintenance of their homes and cabins, the DNR wants these people and their buildings to just fade away with no compensation for the land they are losing.

These people should be able to stay and today the legislature can offer relief.

- Federal Code does not prohibit the improvements that many people have made. FEMA rules prohibit substantial improvements only if they will result in an increase in flood levels (44 CFR Ch. 1).
- FEMA's 50% rule applies to individual projects and *not* to improvements over the life of the building or structure.
- **Minnesota** is consistent with federal rules, **Iowa** even encourages floodproofing.
- But our DNR says that improvements to nonconforming structure may not exceed 50% of the structure's assessed value *over the life of the structure*.
- Flood proofing is not a substantial improvement, it only moves the building up and out of floodwaters and would actually decrease the flood level.
- Flood proofing really is just maintenance because it does not expand the footprint of a building, does not create a different type of use and, does not increase the owner's enjoyment of the property.

-MORE-

Page 2, January 23 – Rep. Johnsrud testimony to members of the JCRAR

- Even the court decisions upon which DNR bases their interpretations of their own rule (*Marris v. City of Cedarburg*) concede:

“We recognize that any modernization or maintenance carries with it some possibility of extending the life expectancy of the nonconforming use. Yet, in order to respect ownership rights, some modernization and maintenance must be permitted.”

- Flood proofing has definitely improved the appearance of many of these buildings.

- DNR’s 50% rule is not realistic. Who keeps a database of home improvement projects and adds them up until they equal 50% of each building’s assessed value?

- Rules really are capricious. Just look at the Monona Terrace Convention Center. Why should that be acceptable for the nice people in Madison but no one else?

It is easy to dwell on the technical aspects, but the only thing that needs to be decided is whether-or-not to tell these folks that they have to leave their homes.

I have at least one constituent who is being forced off of his property on the Mississippi River. The federal government had already burned his parent’s farm on land that is now the Kickapoo Valley Reserve.

Two changes would help treat the folks who own this property with respect:

1. The Joint Committee for Review of Administrative Rules and the DNR should work together to identify practices like flood proofing that could be allowed.
2. Make DNR rules consistent with MN, IO and FEMA by deleting references the 50% rule applying “over the life of the building or structure”

Chapters NR 115 and 116 are not serving people or the environment and we need to provide relief for the folks who live in these areas.

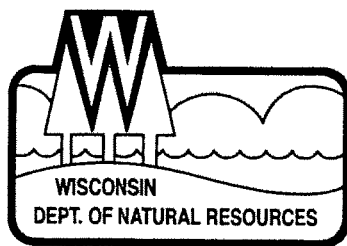
Sincerely,

DuWayne Johnsrud
State Representative
96th Assembly District

Attached: Excerpts from NR 115, NR 116, and 44 CFR Ch. 1



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES



Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY 608-267-6897

February 7, 2003

Representative Glenn Grothman, Co-Chair
Joint Committee for the Review of Administrative Rules
Room 15 North
State Capitol
Madison, WI 53708

Senator Joe Leibham, Co-Chair
Joint Committee for the Review of Administrative Rules
Room 409 South
State Capitol
Madison, WI 53707

Dear Representative Grothman & Senator Leibham:

This is in response to the Joint Committee for Review of Administrative Rules' (JCRAR) motion made on January 23, 2003, requesting that the Department of Natural Resources amend s. NR 116.15(1) to provide that ordinary maintenance and repairs to a floodplain nonconforming structure include the costs of floodproofing that structure.

The Department will begin the administrative rule-making process to address this issue by providing the scope statement to the Natural Resources Board as required under s.227.135 as soon as possible.

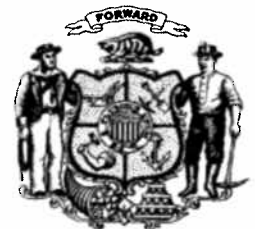
Sincerely,

Scott Hassett
Secretary

cc: Todd Ambs - AD/5
Al Shea - WT/2



WISCONSIN STATE LEGISLATURE





DuWayne Johnsrud

State Representative

January 23, 2003

Joint Committee on the Review of Administrative Rules

Dear Co-chairs Grothman and Leibham and committee members:

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But the DNR went a step farther and said the people who were already living in the shadow of these great rivers had to go. By forcing property owners to neglect maintenance of their homes and cabins, the DNR wants these people and their buildings to just fade away with no compensation for the land they are losing.

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-MORE-

- Even the court decisions upon which DNR bases their interpretations of their own rule (*Marris v. City of Cedarburg*) concede:

“We recognize that any modernization or maintenance carries with it some possibility of extending the life expectancy of the nonconforming use. Yet, in order to respect ownership rights, some modernization and maintenance must be permitted.”

- Flood proofing has definitely improved the appearance of many of these buildings.
- DNR’s 50% rule is not realistic. Who keeps a database of home improvement projects and adds them up until they equal 50% of each building’s assessed value?
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It is easy to dwell on the technical aspects, but the only thing that needs to be decided is whether-or-not to tell these folks that they have to leave their homes.

I have at least one constituent who is being forced off of his property on the Mississippi River. The federal government had already burned his parent’s farm on land that is now the Kickapoo Valley Reserve.

Two changes would help treat the folks who own this property with respect:

1. The Joint Committee for Review of Administrative Rules and the DNR should work together to identify practices like flood proofing that could be allowed.
2. Make DNR rules consistent with MN, IO and FEMA by deleting references the 50% rule applying “over the life of the building or structure”

Chapters NR 115 and 116 are not serving people or the environment and we need to provide relief for the folks who live in these areas.

Sincerely,

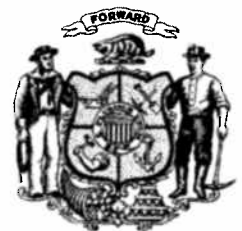


DuWayne Johnsrud
State Representative
96th Assembly District

Attached: Excerpts from NR 115, NR 116, and 44 CFR Ch. 1



WISCONSIN STATE LEGISLATURE



February 10, 2003

Joint Committee on the Review of Administrative Rules
ATTN:Representatives Grothman and Leibham

Dear Committee Members:

As a 23 year member of the board of directors of the Mt. Trempealeau Corporation, 12 of which I served as President, I would like to express my opinion of the concerns of Representative DuWayne Johnsrud. Mt. Trempealeau Corporation is a nonprofit organization representing approximately 100 property owners along or near the Mississippi River just below Lock & Dam #6 near Trempealeau, WI. I have been a property owner in that area since 1972 and have spent every summer of my life there, as my parents and grandparents have also owned property there. I, therefore, have a lifelong vested interest in what has happened, and will happen in the future, with legislation concerning our area.

In a letter to the Joint Committee on the Review of Administrative Rules dated January 23, 2003, Representative Johnsrud asks the committee "to suspend portions of Chapters NR 115 and NR 116 because the DNR is arbitrarily and capriciously using these rules to push people out of their homes". I have enclosed a copy of his letter but want to emphasize two changes that Representative Johnsrud is urging the Joint Committee to make:

1. To work together to identify practices like flood proofing that could be allowed.
2. Make DNR rules consistent with MN, IA, and FEMA by deleting references the 50% rule applying "over the life of the building or structure".

He also goes on to say "Chapters NR 115 and 116 are not serving people or the environment and we need to provide relief for the folks who live in these areas".

On behalf of the Mt. Trempealeau Corporation, I would like to strongly encourage you to seriously consider legislation that would go along with Representative Johnsrud's recommendations. We are not asking to be able to build from the ground up, to add more structures to the floodway, to further contribute to the problems of flooding along the Mississippi River, or do anything to harm the environment. We only want to maintain and protect our present structures without the restrictions we now face. I'm hoping that you will agree that this does not seem to be an unreasonable request.

Sincerely,

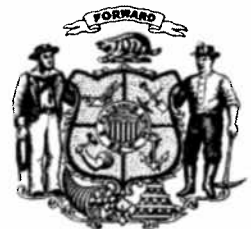


Scott A. Lee, Vice President
Mt. Trempealeau Corporation

cc: Representative Gronemus, Representative Johnsrud, Paul Hendrickson, James Curtis



WISCONSIN STATE LEGISLATURE



Mount Trempealeau
Corporation



March 27, 2003

The Honorable DuWayne Johnsrud
Chairman - Natural Resources Committee
Room 323 North, State Capital
P.O. Box 8952
Madison, WI 53708-8952

Re: Changes to NR 116

Dear Representative Johnsrud:

On behalf of the Mount Trempealeau Corporation, I am writing you in your capacity as chairman of the Natural Resources Committee. We are in complete agreement with the concerns you expressed in your January 23, 2003, letter to the Joint Committee on the Review of Administrative Rules. We have repeatedly experienced how "... the DNR is arbitrarily and capriciously using these rules to push people out of their homes."

Since the DNR will be formulating changes to NR 116 over next several months, we ask that you and the Natural Resources Committee support more equitable changes that:

1. Allow for flexibility in floodproofing of nonconforming, habitable structures. Because of differences in construction and base elevations, the new regulations must allow for floodproofing by elevation on piers and continuous wall foundations as well as by "wet floodproofing" as is recommended by FEMA in its publication 312, *Homeowner's Guide to Retrofitting: Six Ways to Protect Your House from Flooding* (1998).
2. Consider floodproofing to be maintenance. Any previous costs for floodproofing would not count against any financial caps on improvements.
3. Allow for improvements and modifications if they are less than 50% of the property's value per project (rather than over the lifetime of the structure).
4. Allow for any improvements or modifications that are above the flood protection elevation and do not increase the amount of obstruction to flood flows.

We would urge that the revised NR 116 be no stricter than what is currently permitted under FEMA guidelines. These changes are needed to place Wisconsin in accord with its neighboring states.

The Mount Trempealeau Corporation was organized in 1971. Its membership primarily consists of property owners located near the Mississippi River below Lock & Dam No. 6 in the Town of Trempealeau, Wisconsin. The area involves approximately 100 year-round and summer residences that are zoned in the "floodway." A number of residences were originally constructed in the 1920-30s, prior to the construction of the lock and dam system. Many others have been present for 40 or 50 years and all of the residences predate the enactment of the Trempealeau County floodplain zoning ordinances in 1971.

Our members have taken significant strides in recent years to improve their properties by making them more compatible with the environmental concerns of the river. A Sanitary District, approved by the DNR, was formed and the properties are now serviced by a municipal sanitary sewer system. Property owners each incurred substantial assessments relating to the sewer service, and there are no more unsafe septic systems or drain fields within the sewer district. In addition, a local power utility received authority to install underground natural gas pipelines throughout the area. Natural gas service is readily available to each of the properties. There are also electrical power and telephone lines. In 2002, property owners contributed \$127,000.00 in property taxes.

The Board of Directors, representing the Mount Trempealeau Corporation and its members, hope you will help support the needed changes to NR 116 as outlined above. We hope that you will keep us informed of the progress of changes and any public hearings that might be held on this matter. We would like the opportunity to review and comment on any drafts or proposed changes to NR116. We ask for your support so as to enable the affected tax paying property owners to protect, maintain, and improve their property in a fair and equitable manner. Thank you for your consideration.

A copy of this letter is being sent to each member of the Natural Resources Committee as well as the Chairs of the Joint Committee on the Review of Administrative Rules.

Very truly yours,

M. Paul Hendrickson

M. Paul Hendrickson
President, Mount Trempealeau Corporation
411 1st Avenue, PO Box 233
Holmen, WI 54636

Mount Trempealeau Corporation Board Members:
Barbara Hammes, 1005 Lauderdale N., Onalaska, WI 54650
Scott Lee, 24880 2nd, Trempealeau, WI 54661
Connie Doerre, 1233 Farnam, La Crosse, WI 54601

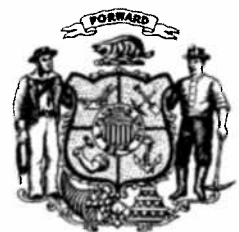
Phil Nietz, pnietz@prosourceone.com
Joe Skemp, 519 S. 15th, La Crosse, WI 54601
Jim Curtis, 505 King, La Crosse, WI 54601
Dick Jesseski, N10396 Birch, Trempealeau, WI 54661

cc: Assembly Representatives:

Garey Bies
Spencer Black
Barbara Gronemus
Scott Gunderson
Judy Krawczyk
Mark Miller
Alvin Ott
Mark Pettis
John Steinbrink
Mary Williams



WISCONSIN STATE LEGISLATURE



APR 10 2003

April 8, 2003

Senator Joseph Leibham
P. O. Box 7882
Madison, WI 53707-7882

Dear Senator Leibham:

My name is Mike McQuin and I live in Westby, Wisconsin. In 1970 I was an infantry platoon leader in the Americal Division serving in South Vietnam. I was seriously wounded by a booby trap on June 16, 1970, which resulted in the loss of both legs.

In 1985 my wife, Donna and I bought a 1200 sq. ft. cottage in the Trempealeau area on Round Lake. In 1988 the DNR approved connecting all existing cottages to sewer and natural gas. In 1994 a 20' X 30' \$40,000 addition was approved by Trempealeau County and the DNR for my neighbor John Hedges' home.

Since purchasing this residence in 1985, I have had one entrance/exit (ingress/egress). My insurance agent told me in the summer of 2002 that I should have two entrances/exits for this residence or risk losing my homeowner's insurance. He cited the safety issues of having one entrance/exit for a building this size. According to the Wisconsin State Building Code Comm 21.03... #2 at least 2 exits shall be from the second floor. Of course, this is for a legally conforming residence building.

In October, 2002 I requested a building permit from Kevin Lien, Trempealeau County Zoning Administrator for a 10' X12' deck with steps coming to ground level covered by a roof. Mr. Lien said he had to talk to Mark Stephenson of the BRF DNR office. After a few days I called Mr. Lien and was told that I couldn't get a building permit because I had a "legally non-conforming" building, because I was in a flood zone. Therefore, one entrance/exit is all that was required for such a residence. He said I could request a \$200.00 variance, but he would guarantee that would be denied.

In November 2002 I received a copy of a correspondence/memorandum of Linda Meyer, Bureau of Legal Services of DNR, dated July 26, 2002 from the Office of State Representative Barbara Gronemus. This memorandum was addressed to all city, village, town and county zoning ordinances. The memorandum calls for "reasonable accommodations"... by zoning administrators and zoning boards to provide handicapped persons with equal housing opportunities. (see pg 1)

The DNR memorandum also cites the 1993 Wisconsin Supreme Court Decision of Marris vs. City of Cedarburg. The decision attempted to determine whether the city of Cedarburg's Zoning Board's "action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment." (See pg 14 of Marris Dec) The Court found that..."repairs that are reasonably necessary to prevent deterioration might not be classed

as structural repairs. It is in the community's interest that buildings be maintained in good, safe and sanitary condition. We recognize that any modernization or maintenance carries with it some possibility of extending the life expectancy of the nonconforming use. Yet, in order to respect ownership rights, some modernization and maintenance must be permitted." (See pgs 38-39).

I believe the action of the Trempealeau Zoning Administrator and the DNR represent its will to eliminate all legally non-conforming use buildings in the flood zone. Like most things in life, living in a flood zone has been an experience of both joy and sorrow. Most people who have buildings in these areas understand this fact. However, a lot of worry and expense could be eliminated if the county and the DNR would allow flood proofing of cottages along with the safety improvements for these buildings.

Enclosed you will find a letter from State Representative DuWayne Johnsrud to Co-Chairs Grothman and Leibham and committee members of the Joint Committee on the Review of Administrative Rules. You will also find a letter I received from Kevin Lien and the DNR about what they would allow and the "conditions of the permit." The ramp and landings would be approximately 511 sq. ft. You will also find a copy of Ron Seely's article in the Wisconsin State Journal concerning this issue. Also please find enclosed blueprint of my proposed deck and roof along with DNR proposal. I believe that with everything being equal that all buildings should have at least two points of ingress/egress, whether they are legally conforming or non-conforming. I talked to a local structured home (mobile home) salesperson lately and he told me that their company has at least two points of ingress/egress on their homes to as low as 500 sq. ft. I guess I don't understand how all legally conforming homes in the State of Wisconsin have to have two points of ingress/egress and structured homes down to 500 sq. ft. have two points of ingress/egress. Yet one point of ingress/egress is sufficient for legally non-conforming buildings. From a safety aspect alone this just doesn't make sense. In 1988, sewer and natural gas were hooked up to existing cottages in the area. I believe this was a great idea since it improved the sanitary condition of each cottage and as a result eliminated the problem of pollution with private septic systems. In 1994 a 20' X 30' addition was approved by Trempealeau County Zoning and the DNR for my neighbor, John Hedges. I don't think my 10' X 12' covered deck is in the same class as that addition, yet I'm being denied a building permit. I would like the J.C. R. A.R. to address the safety issue mentioned in the Marris decision by allowing flood proofing and safety improvement (a second exit) for legally non-conforming buildings throughout the state.

In closing, I started on this long journey in July 2002, and hopefully it will reach its conclusion with modification of DNR Chapter NR116. If this is possible my long journey will have been worth it. I am hopeful that there will be reasonableness and common sense used in modifying these rules.

I have talked to a lot of State Senators and Representatives during this journey. I would like to thank you at this time for your support along with the support of your wonderful staff. Without your help and cooperation I would not be thinking so positively about these possible changes. I would like to express a special thanks to you and Patrick of

your staff. He was always willing to listen to me no matter how busy he was – and he was so supportive.

Thanks again and you're all invited to the (hopefully) grand opening of the "World Famous Round Lake Taj Mahal" in (?).

Sincerely,

Mike McQuin

Vander Sanden, Patrick

From: Delaporte, Maggie
Sent: Tuesday, April 22, 2003 6:44 PM
To: Vander Sanden, Patrick
Subject: FW: McQuin

FYI-This is something to keep in your McQuin file.

-----Original Message-----

From: Heinen, Paul H
Sent: Tuesday, April 22, 2003 03:59 PM
To: Delaporte, Maggie
Subject: RE: McQuin

Unless he accepts the conditions given to him for his construction, yes we are.

paul

-----Original Message-----

From: Delaporte, Maggie
Sent: Tuesday, April 22, 2003 3:08 PM
To: Heinen, Paul H
Subject: RE: McQuin

Hi Paul:

Thanks much for getting back to us so quickly. Rep. Grothman's very appreciative as well. Are we to assume we're at an impasse?

-----Original Message-----

From: Heinen, Paul H
Sent: Tuesday, April 22, 2003 08:59 AM
To: Delaporte, Maggie
Subject: FW: McQuin

Maggie

More info on Mr. McQuin and his request for a deck and stairs.

Paul

-----Original Message-----

From: Shea, Allen K
Sent: Tuesday, April 22, 2003 8:36 AM
To: Heinen, Paul H
Cc: Hassett, P. Scott; Wedepohl, Richard E
Subject: FW: McQuin

As you can see below, the issue is not if he can have a deck and wheel chair egress to meet the Commerce code and the American's With Disabilities Act. He can! The issue is that he wants to have a deck the size he wants and stairs (hard to compute given his disability). So, I don't think Mr. McQuin has been totally forthcoming in his Legislative contacts. I suggest relaying the info below to Rep. Grothman.

-----Original Message-----

From: Wedepohl, Richard E
Sent: Monday, April 21, 2003 4:07 PM
To: Shea, Allen K
Subject: McQuin

<< File: Feingold L123 McQuin.doc >>

Al, this was recently sent by Paul Heinen. Not sure if you knew that Trempealeau County has offered Mr. McQuin a second access that would comply with the ADA requirements. According to the field staff and ZA Mr. McQuin did not wish to have a ramp with appropriate sizing for wheelchairs that was offered up by the county. He wanted