

Repeal of s. 59.692(7) Shoreland zoning for Annexed and Incorporated Areas

Content of Bill & Implications

- Repeals all provisions requiring cities and villages to implement shoreland zoning on lands that are annexed or incorporated after the dates specified in the statute. Repeals references to shoreland zoning in s. 59.692 and Ch. 66, Wis. Stats.
 - The purpose of these statutory requirements is to ensure some consistency by maintaining water quality, fish and wildlife habitat and natural scenic beauty of our waterways for areas that have been regulated under county shoreland zoning for over 40 years but have been annexed within the past two decades.
 - This legislation would encourage annexation or incorporation of areas to avoid shoreland zoning and would allow numerous communities statewide, who are currently enforcing shoreland zoning, to repeal their ordinance.
 - This legislation would result in significant degradation of our waterway. Shoreland zoning requires minimum lot sizes, setback, maintenance of shoreland vegetation. Numerous studies have shown that these standards are important to protect the water resources of Wisconsin.

Recommendations

- Simplify the statutory language but do not completely eliminate all requirements for cities and villages to implement shoreland zoning regulations for annexed or incorporated lands.
 - This would clarify that cities and villages are only required to adopt an ordinance that complies with the minimum statewide standards at the time of annexation or incorporation but do not need to be at least as restrictive as the county's shoreland zoning ordinance.
 - It would ease administration and implementation because the city or village would not need to keep track of which county ordinance was in place and the city or village would not have to implement different ordinances for each annexed area.
 - This would maintain the basic minimum standards and protections afforded to our state water resources under the shoreland zoning program.

Section 1. Amend s. 59.692(6m) to read:

59.692(6m) For an amendment to an ordinance enacted under this section that affects an activity that meets all of the requirements under s. 281.165 (2), (3) (a), or (4) (a), the department may not proceed under sub. (6) or (7) (b) or (e), or otherwise review the amendment, to determine whether the ordinance, as amended, fails to meet the shoreland zoning standards.

Section 2. Instead of repealing it entirely, s. 59.692(7), should be amended to read:

59.692(7) (a) Provisions of a county shoreland zoning ordinance that are enacted under this section that were applicable, prior to annexation, to any shoreland area annexed by a city or village after May 7, 1982, shall continue in effect and shall be enforced after annexation by the annexing city or village unless any either of the following occurs:

1. The city or village enacts, administers and enforces a zoning ordinance, for the annexed area, that complies with the shoreland zoning standards, ~~and that is at least as restrictive as the county shoreland zoning ordinance.~~

~~2. After annexation, the city or village requests the county to amend the county shoreland zoning ordinance as it applies to the annexed area to delete or modify provisions that meet the specifications under par. (ag), the county enacts the amendment and the city or village administers and enforces the amended ordinance as it applies to the annexed area.~~

~~3. 2.~~ After annexation, the city or village requests that the county shoreland zoning ordinance, as it applies to the annexed area, continues to be in effect and enforced by the county and the county agrees to enforce the ordinance.

(ad) Provisions of a county shoreland zoning ordinance that are enacted under this section that were applicable, prior to incorporation, to any shoreland area that is part of a town that incorporates as a city or village under s. 66.0203, 66.0211, 66.0213 or 66.0215 after April 30, 1994, shall continue in effect and shall be enforced after incorporation by the incorporated city or village unless any either of the following occurs:

1. The city or village enacts, administers and enforces a zoning ordinance that complies with the shoreland zoning standards, ~~and that is at least as restrictive as the county shoreland zoning ordinance.~~

~~2. After incorporation, the city or village requests the county to amend the county shoreland zoning ordinance as it applies to the incorporated area to delete or modify provisions that meet the specifications under par. (ag), the county enacts the amendment and the city or village administers and enforces the amended ordinance.~~

~~3. 2.~~ After incorporation, the city or village requests that the county shoreland zoning ordinance, as it applies to the incorporated area, continues to be in effect and enforced by the county and the county agrees to enforce the ordinance.

(ag) ~~For purposes of pars. (a) 2. and (ad) 2., the types of provisions that may be deleted or modified are those that establish specified land uses or requirements that are associated with those uses and that are not necessary to effect the purposes of s. 281.31 (1) that relate to the protection of navigable waters.~~

~~(ar) The county may not enact an amendment under par. (a) 2. or (ad) 2. that is less restrictive than the shoreland zoning standards.~~

~~(aw) Any amendment enacted under par. (a) 2. shall apply only to the annexed area of the city or village requesting the amendment.~~

(b) If the department determines that a zoning ordinance enacted by a city or village under par. (a) 1. or (ad) 1. does not meet the shoreland zoning standards ~~or is not as restrictive as the county shoreland zoning ordinance~~, the department shall, after providing notice and conducting a hearing on the matter, either issue an order declaring the city or village ordinance void and reinstating the applicability of the county shoreland zoning ordinance to the annexed or incorporated area or issue an order declaring the city or village ordinance void and adopting an ordinance for the annexed or incorporated area for the city or village that does meet the shoreland zoning standards, ~~and that is at least as restrictive as the county shoreland zoning ordinance.~~

(c) If the department determines that an amendment enacted by a county under par. (a) 2. or (ad) 2. does not meet the shoreland zoning standards, the department, after providing notice and conducting a hearing on the matter, shall issue an order declaring the amendment void and shall

~~reinstate the applicability of the county shoreland zoning ordinance, that was in effect before amending the ordinance, to the annexed or incorporated area.~~

(d) As far as applicable, the procedures set forth in s. 87.30 apply to this subsection.

(e) Paragraphs (a) and (ad) do not apply to wetlands in shorelands that are governed by the provisions in s. 61.351 or 62.231.

CORRESPONDENCE/MEMORANDUM

DATE: September 30, 2003

FILE REF: 2003 Assembly Bill 527

TO: Carmen Wagner - WT/2
Richard Wedepohl - WT/2

FROM: Linda Meyer - LS/5

SUBJECT: Proposed Changes to 2003 AB 527, to Simplify Shoreland Zoning Requirements for Annexed and Incorporated Shoreland Areas

I've attached a copy of 2003 Assembly Bill 527 and a copy of the bill history. I have generated this memo to put on paper the specific amendments to AB 527 that we discussed in general terms at the Shoreland Management Team meeting last week. Hopefully, this specific proposal can be presented to the legislators who introduced this bill, in an effort to convince them to amend it as follows:

Section 1. Instead of deleting all references to sub. (7), 59.692 (6m) should be amended to read:

59.692 (6m) For an amendment to an ordinance enacted under this section that affects an activity that meets all of the requirements under s. 281.165 (2) or (3)(a), the department may not proceed under sub. (6) or (7)(b) or (c), or otherwise review the amendment, to determine whether the ordinance, as amended, fails to meet the shoreland zoning standards.

Section 2. Instead of repealing it entirely, section 59.692 (7), Stats., should be amended to read:

59.692 (7)(a) Provisions of a county shoreland zoning ordinance that are enacted under this section that were applicable, prior to annexation, to any shoreland area annexed by a city or village after May 7, 1982, shall continue in effect and shall be enforced after annexation by the annexing city or village unless any either of the following occurs:

1. The city or village enacts, administers and enforces a zoning ordinance, for the annexed area, that complies with the shoreland zoning standards and that is at least as restrictive as the county shoreland zoning ordinance.

2. ~~After annexation, the city or village requests the county to amend the county shoreland zoning ordinance as it applies to the annexed area to delete or modify provisions that meet the specifications under par. (ag), the county enacts the amendment and the city or village administers and enforces the amended ordinance as it applies to the annexed area.~~

3. After annexation, the city or village requests that the county shoreland zoning ordinance, as it applies to the annexed area, continues to be in effect and enforced by the county and the county agrees to enforce the ordinance.

(ad) Provisions of a county shoreland zoning ordinance that are enacted under this section that were applicable, prior to incorporation, to any shoreland area that is part of a town that incorporates as a city or village under s. 66.0203, 66.0211, 66.0213 or 66.0215 after April 30, 1994, shall continue in effect and shall be enforced after incorporation by the incorporated city or village unless any either of the following occurs:

1. The city or village enacts, administers and enforces a zoning ordinance that complies with the shoreland zoning standards and that is at least as restrictive as the county shoreland zoning ordinance.

2. After incorporation, the city or village requests the county to amend the county shoreland zoning ordinance as it applies to the incorporated area to delete or modify provisions that meet the specifications under par. (ag), the county enacts the amendment and the city or village administers and enforces the amended ordinance.

3. After incorporation, the city or village requests that the county shoreland zoning ordinance, as it applies to the incorporated area, continues to be in effect and enforced by the county and the county agrees to enforce the ordinance.

~~(ag) For purposes of pars. (a) 2. and (ad) 2., the types of provisions that may be deleted or modified are those that establish specified land uses or requirements that are associated with those uses and that are not necessary to effect the purposes of s. 281.31 (1) that relate to the protection of navigable waters.~~

~~(ar) The county may not enact an amendment under par. (a) 2. or (ad) 2. that is less restrictive than the shoreland zoning standards.~~

~~(aw) Any amendment enacted under par. (a) 2. shall apply only to the annexed area of the city or village requesting the amendment.~~

(b) If the department determines that a zoning ordinance enacted by a city or village under par. (a) 1. or (ad) 1. does not meet the shoreland zoning standards or is not as restrictive as the county shoreland zoning ordinance, the department shall, after providing notice and conducting a hearing on the matter, either issue an order declaring the city or village ordinance void and reinstating the applicability of the county shoreland zoning ordinance or issue an order declaring the city or village ordinance void and adopting an ordinance for the annexed or incorporated area for the city or village that does meet the shoreland zoning standards and that is at least as restrictive as the county shoreland zoning ordinance.

~~(c) If the department determines that an amendment enacted by a county under par. (a) 2. or (ad) 2. does not meet the shoreland zoning standards, the department, after providing notice and conducting a hearing on the matter, shall issue an order declaring the amendment void and shall reinstate the applicability of the county shoreland zoning ordinance, that was in effect before amending the ordinance, to the annexed or incorporated area.~~

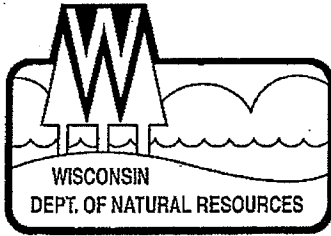
(d) As far as applicable, the procedures set forth in s. 87.30 apply to this subsection.

(e) Paragraphs (a) and (ad) do not apply to wetlands in shorelands that are governed by the provisions in s. 61.351 or 62.231.

Section 3. Section 66.0203 (10) should not be repealed or amended.

Sections 4 to 10. Sections 66.0213, 66.0215, 66.0217, 66.0219 and 66.0223 should not be amended.

Please let me know if you have any questions about the changes to 2003 AB 527 that I am recommending. Thank you.



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

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2005 Assembly Bill 299, Committee on Natural Resources
Department of Natural Resources Testimony
Richard Wedepohl, Chief, Dam Safety/Floodplain/Shoreland Section
April 27, 2005

The department is providing testimony for informational purposes on the proposal to eliminate shoreland zoning requirements from annexed areas given that we believe a change to the statute is desirable. **However the department would be opposed to the current proposal which totally eliminates controls on lands that have been in existence since 1968.**

Shoreland zoning has provided standards to near shore areas for almost 40 years for the protection of water resource values, water quality, recreation, fish and wildlife habitat, and natural scenic beauty. And for over two decades this protection applied to all shorelands by requiring controls on lands after annexation or through incorporation as a city or village.

Shoreland zoning provides for setbacks of structures from waterways, minimum lot sizes, and for controls on cutting important shoreland vegetation.

If this bill is approved as currently written, protections from development on lands adjacent to navigable waters would be much reduced. For example, individual homes could be built right up to the water's edge - just because they now happened to be located within a city or village. No minimum lot sizes would be required so several homes could be built where only one structure was previously allowed. Most importantly, the protection offered by shoreland buffers would be lost given there would be no requirement to have them in place.

It has been said that protection would still be available for all shorelands under NR 151, the runoff management rule. It is important to know that these regulations **do not apply** to areas where land disturbance is less than 1 acre, as would be the case for most individual residential lots. For those larger developments that would be subject to NR 151, in most cases setbacks of between 10 and 50 feet are required, as opposed to the 75 foot setback required under current shoreland zoning law. Also, protective area buffer requirements under NR 151 are much weaker with blue-grass lawns being in compliance, for example.

As for the current statute, there are problems that the department would like to see corrected. Under current law any areas annexed must continue to retain the same standards that are present in the county ordinance at time of annexation. In many cases county ordinances are more restrictive or do not fit well with ordinances in effect by the city or village. Also given that some county ordinances frequently change, there have been circumstances where some cities have been forced to apply several different ordinance requirements in different areas just because the annexation occurred at different times. The department would support changes that would simplify zoning requirements in annexed areas but would oppose total elimination. Specifically we would propose that minimum shoreland zoning standards continue to be applied in any new annexed areas, but that local communities be allowed to develop their own ordinances as long as they met minimum standards established by NR 115.

Summary

Protections, that have worked well for almost 25 years, would be lost if this bill were adopted as written. However changes to the statute, which would simplify administration by cities and villages, would be welcomed.

RECEIVED

MAR 9 1995

DATE: March 8, 1995

TO: Kate Fitzgerald - WZ/6

FROM: Linda Meyer - LC/5 LM

Bureau of Water
Regulation & Zoning

FILE REF: Shoreland Zoning

SUBJECT: Proposed Statutory Amendments That the Bureau of Water Regulation and Zoning May Want to Add to Its List of Legislative Proposals

As a result of reviewing the draft letters that you gave to me today, I noticed some inconsistencies in 1993 Wisconsin Act 329 (relating to the continued effect of county shoreland zoning ordinances on shorelands that are located in an annexed area or a newly incorporated city or village) which I hadn't noticed before. I am sending this memo to you to suggest that the Bureau of Water Regulation and Zoning ask for statutory changes to correct these inconsistencies the next time that the Bureau has the opportunity to do so.

There is no provision in either section 66.012(5) or 66.018(5) that is comparable to the new requirement in sections 66.021(8) and (15) and 66.025, Stats., that requires the Secretary of State to forward a copy of the ordinance of annexation to the DNR. I think that we should ask for a statutory change that would require the Secretary of State to send a copy of the description and plat of the new municipality to DNR as well as the other designated state agencies in sections 66.012(5) and 66.018(5), Stats., in those instances where the new village or city includes territory that was subject to a county shoreland zoning ordinance prior to incorporation.

There is another inconsistency in section 59.971(7) (as amended by 1993 Wisconsin Act 329). Although there are a number of other places in that subsection where the terms "administers and enforces" are used, only the word "enforced" appears in section 59.971(7)(a)(intro.). Section 59.971(7)(a)(intro.) should be amended to read: ". . . shall continue in effect and shall be administered and enforced after annexation by" Likewise, sections 59.971(7)(a)3 and 59.971(7)(ad)3 should be amended to read: ". . . continue to be in effect and that the ordinance be administered and enforced by the county and the county agrees to administer and enforce the ordinance."

Section 59.971(7) could have been drafted in such a way that the terms "enforced" and "enforces" were used to include both administration and enforcement when violations are discovered, but it is confusing as the statute is currently written because the statute sometimes uses the phrase "administers and enforces" and sometime just uses "enforced." The intent is not clear and should be clarified.



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny, Secretary
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June 17, 1991

IN REPLY REFER TO: 3550

Mr. Walter Tarmann, Director
Waukesha County Park and Planning Department
500 Riverview Avenue
Waukesha, WI 53186

SUBJECT: Zoning of Lands Annexed to Cities and Villages where the Navigability of Streams is Recently Recognized/Lands Not Identified as Shoreland on County Zoning Maps

Dear Mr. Tarmann:

Your staff recently inquired about what zoning would apply to land annexed to the City of Waukesha, and more recently to the Village of Pewaukee.

As I understand the fact situations, in both cases the lands are along waterways recently recognized to be navigable. The lands were not indicated as shoreland on the county zoning map and so no use designation was adopted by the county prior to annexation.

As you know, Section 59.971 (7), Wis. Stats., provides, in part:

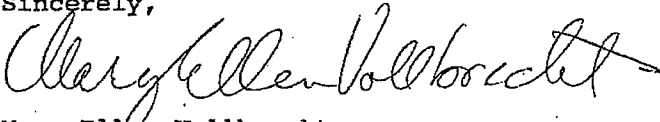
"An ordinance enacted under this section by a county continues in effect in any shoreland area annexed by a city or village after May 7, 1982 unless the city or village adopts, maintains and enforces a zoning ordinance which complies with the requirements of this section to the extent possible and which is at least as restrictive as the county shoreland zoning ordinance."

Although Waukesha County may not have been aware of the navigability of the waterways, the county shoreland and conservancy/wetland zoning regulations apply to all areas that meet the definitions of shoreland and wetland district areas. The shoreland district is established by the definitions of "shoreland" and "navigable waters" in Section 2.02 of the ordinance. The conservancy/wetland district is established by the definition of the district in the text of the ordinance at Section 5.01. The general shoreland provisions (Section 3) and the conservancy/wetland provisions (Section 5) of the Waukesha County ordinance are not dependent on the existence of maps showing shoreland or C-1 boundaries. Adopting zoning maps does not change the overall applicability of the general shoreland zoning provisions and the C-1 district provisions to areas that meet the district definition in the text but are not shown on the map.

On the other hand, the Waukesha County ordinance does not contain a use designation for the lands. The City of Waukesha and Village of Pewaukee may adopt any use designation. Waukesha County no longer has jurisdiction to adopt a use designation for the two areas.

If you have any questions, please feel free to contact me (608-266-6883) or Linda Meyer of our Bureau of Legal Services at 608-266-7588.

Sincerely,



Mary Ellen Vollbrecht
Shoreland Management Specialist
Bureau of Water Regulation and Zoning

cc: Dick Mace/Kathy Moore, Waukesha County Park & Planning - -
Frank Hitchcock, City of Waukesha
Frank Paulis, Village of Pewaukee
Linda Meyer, LC/5
~~Kate Fitzgerald, SED-Milwaukee~~

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: April 3, 1996 Shoreland Guidance Ref: 96-01
TO: District Directors
FROM: Margie Devereaux – WZ/6

Distribution: WRZ Program Staff
County Zoning Administrators
Municipal Clerks
Legal Services
Department of Justice – Environmental Unit

Insertion: Ch.4 Floodplain/Shoreland Mgt. Guidebook
REPLACES 8/22/95 PROGRAM GUIDANCE TITLED
“SHORELAND ZONING ADMINISTRATION IN ANNEXED
AREAS”

**SUBJECT: SHORELAND ZONING ADMINISTRATION
IN ANNEXED AND NEWLY INCORPORATED AREAS**

The purpose of this document is to provide guidance for understanding the provisions of s. 59.971(7), Stats. Regarding the applicability of *shoreland*^{*} zoning to annexed and newly incorporated shoreland areas and to provide recommendations for implementing those provisions. The statute only applies to shoreland annexed after May 7, 1982 or incorporated after April 30, 1994.

Within s. 59.971(7), Wisconsin Statutes, paragraph (a) addresses annexed areas and Paragraph (ad) addresses newly incorporated areas. The requirements for annexed areas and newly incorporated areas are the same, with the exception of the effective date of the statutory requirements.

Understanding the Statute.

Section 59.971(7), Wis. Stats., says that those provisions of a county shoreland ordinance (e.g. structure setbacks from waterways, vegetation cutting restrictions, filling and grading provisions) in effect at the time of annexation/incorporation shall continue in effect and must be enforced by the annexing/incorporating city or village unless the city or village enacts, administers and enforces a zoning ordinance for the annexed/incorporated area that is at least as restrictive as the county shoreland zoning ordinance in effect at the time of annexation/incorporation. It is the city or village's responsibility to administer the provisions unless the municipality requests, and the county agrees, that the county will enforce the shoreland ordinance as it applies to the annexed/incorporated area.

In other words, the annexing/incorporating municipality essentially inherits the county's shoreland provisions for the annexed/incorporated area although after annexation/incorporation the city or village may request the county to amend the county shoreland zoning ordinance as it applies to the annexed/incorporated area to delete or modify certain provision. Only those provisions which

*land within 1,000 ft. of the ordinary high water mark (OHWM) of a navigable lake, pond, or flowage or within 300 feet of the OHWM of a navigable stream or river or to the landward side of the floodplain, whichever distance is greater.



establish specified land uses (include zoning districts) or requirements associated with those uses that are not necessary for the protection of navigable waters may be deleted or modified.

Wetlands within shorelands that are subject to zoning required by s. 61.351 or 62.231, Wis. Stats., are not subject to the statutory requirements discussed above (see s. 59.971(7)(e), Wis. Stats.). Requirements for shoreland-wetlands are discussed in some detail on p. 4.

What does "at least as restrictive" mean? The annexing/incorporating municipality has the option of either continuing to administer the provisions of a county shoreland ordinance or of enacting, administering and enforcing an ordinance which is **at least as restrictive** as the county shoreland zoning ordinance in effect at the time of the annexation. This means that the annexing/incorporating municipality must adopt provisions that are at least as restrictive as the county's ordinance even if a county has adopted shoreland zoning provisions that are more restrictive than the minimum standards of NR 115, Wis. Adm. Code, (such as 100 ft. waterway setback instead of 75 ft.).

In the absence of a statutory definition of "as restrictive" we must rely on the dictionary definition of "restrictive" and on general zoning law. There are three general types of ordinance provision: dimensional standards, performance standards and use designations. Comparisons of dimensional standards and performance standards are straightforward (e.g. a 100 ft. setback is more restrictive than a 75' setback; requiring zero increased discharge over undeveloped conditions is more restrictive than requiring zero increased discharge over current site conditions). An ordinance which allows fewer and less intensive uses is the more restrictive. Uses are generally ranked from least intensive to most intensive as follows: conservancy – residential – commercial – industrial.

Where a city or village chooses to adopt its own ordinance for annexed/incorporated areas, the adopted ordinance must contain a parallel provision that is at least as restrictive (by the tests above) as each provision of the county ordinance. Restrictions refer to the substantive provisions, e.g. 75 ft. setback or use designations (zoning districts). A city or village ordinance can be "as restrictive" as the county's shoreland zoning ordinance even where the city or village does not utilize the same ordinance administration procedures as the county uses. However, the procedures must comply with the minimum requirements of the standards established in the NR 155, Wis. Adm. Code. For example, the annexing/incorporating municipality is required to provide notice to the Department in advance of public hearings, and of decisions made on proposed variances, special exceptions (conditional uses), appeals, and text and map amendments.

Given the requirement of having to be "at least as restrictive" as the county's shoreland ordinance, can the annexing/incorporating municipality change zoning districts within the shoreland after annexation/incorporation? Land use designations adopted under the authority of s. 59.971, Stats. (Zoning of Shorelands on Navigable Waters) are assumed to be adopted to further the purposes of shoreland zoning. In order to be as restrictive as the county shoreland ordinance, the annexing/incorporating municipality is essentially locked into the shoreland use designations in place at the time of annexation/incorporation. The only way that the zoning district can be changed after annexation/incorporation is if the city or village is successful in its petition to the county requesting that the county shoreland zoning ordinance as it applies to the annexed/incorporated area be amended to change the land use district designation (see s. 59.971(7)(a)2. and (ag), Wis. Stats.) where the county determines that the district designation is not necessary to protect navigable waters. In cases where the use districts were adopted by the county under s. 59.971, Stats., and a use designation is not desirable or appropriate for the intended use of the parcel, it would be advantageous to apply to the

county to have the zoning changed prior to annexation/incorporation so that is not necessary to petition the county to amend the land use district after annexation/incorporation. Specified land uses (zoning districts) which were clearly adopted by the County under the general zoning provisions of s. 59.97, Stats. and not under s. 59.971, Stats. can be amended by the annexing/incorporating municipality after annexation/incorporation following a standard amendment process (without the county's involvement). 59.69

How can a municipality be sure that what they've adopted is "as restrictive"? Just as DNR is required to review shoreland, wetland and floodplain ordinances for compliance with state standards, the agency will review amended city or village ordinances for annexed/incorporated areas to assure that they are as restrictive as the county shoreland ordinance and that the amended ordinance complies with the shoreland zoning standards. ("Shoreland zoning standard" means a standard promulgated as rules by the Department (e.g. NR 115). See s. 59.971(1)(c)). If an amended ordinance for an annexed/incorporated area does not comply with the appropriate requirements and the municipality does not voluntarily alleviate the problem, DNR will initiate procedures to reinstate the county shoreland zoning provisions. (See s. 59.971(1)(c), Wis. Stats.) Statutes require that the DNR charge the municipality for the costs of reinstatement and that cities and villages administer the reinstated provisions. (See s. 87.30(1)(c), Wis. Stats.)

If the county did not have the area identified as shoreland on its zoning maps, is the annexing municipality still required to adhere to the annexed/incorporated shoreland provisions?

Although the county may not have been aware of the navigability of the waterway, or did not have the shoreland zone mapped, this does not change the applicability of the county shoreland zoning provisions to the parcel. All counties have adopted shoreland zoning ordinances, but very few of them have adopted county zoning maps showing the boundaries of the shoreland area nor have they identified all of their navigable waterways. Many navigability determinations and associated shoreland zones are not identified until such time as a development is being proposed. If the site in fact meets the definition of shoreland (see definition on p. 1), the requirements of s. 59.971(7), Wis. Stats., apply.

What provisions apply to the shoreland-wetlands in the annexed/incorporated area? Due to the exemption in s. 59.971(7)(e), Wis. Stats., the county's regulations governing shoreland-wetlands do not apply to wetlands in the annexed or incorporated shoreland area that are subject to zoning required by s. 61.351 or 62.231, Wis. Stats. All shoreland-wetland areas within the municipal boundary of a city or village are subject to the provisions of NR 117, Wis. Adm. Code and s. 62.231 or 61.351, Stats. If a municipality has a shoreland-wetland ordinance in place at the time of annexation, the ordinance and map would have to be amended to include any additional shoreland-wetland(s) located within the annexed area. An annexing municipality that previously did not have any shoreland-wetlands and newly-incorporated areas containing shoreland-wetlands must adopt a shoreland-wetland zoning ordinance (pursuant to s. 61.351 Wis. Stats. or 62.231, Wis. Stats. and NR 117, Wis. Adm. Code).

What about annexed floodplain areas? When a city or village annexes/incorporates land, all of the county's zoning ordinance regulations continue in effect, without change, and must be enforced by the annexing/incorporating village or city until such time as the regulations are officially changed by the municipal governing body (See s. 59.97(7), Wis. Stats., and s. 66.012(7), Wis. Stats.) If there is a floodplain area present within the annexed/incorporated parcel, the annexing/incorporating municipality essentially inherits the county's floodplain zoning regulations until the municipality adopts and enforces its own ordinance which meets the requirements of Ch. NR 116, Wis. Adm. Code.

Considerations for Adopting Shoreland Ordinance Provisions for Annexed/Incorporated Areas

1. It is important to remember that s. 59.971(7), Stats. requires that the shoreland zoning provisions in place at the time of annexation be enforced by the annexing municipality. Therefore, later annexations may be subject to county ordinance provisions different from those of earlier annexations. This must be accounted for when creating zoning districts. Thus, it is generally not an acceptable approach to create only one shoreland zoning district to cover all shoreland annexations because the applicable county provisions may change for subsequent annexations. In theory, new zoning districts would only have to be formed if the county shoreland ordinance has been amended to be more restrictive since the last annexation. However, it may be easier administratively to simply create a new district if there has been an amended county shoreland ordinance since your last annexation. This will prevent the need to evaluate the relative restrictiveness of the new provisions by incorporating the appropriate county shoreland requirements of their entirety. For a streamlined option, rather than repeating the entire text of the shoreland provisions, subsequent districts can reference all of the applicable regulations in the initial district(s) but must include any different regulations that were a result of a change to the county shoreland ordinance since the creation of the previous shoreland zoning districts.
2. Administrative provisions of your existing ordinances may be incorporated into a new shoreland ordinance by reference. **However, be sure that all the required notices to DNR are included in these sections.** The county shoreland ordinance should have provisions (required by NR 115.05(6)(h)) for written notice to DNR "at least 10 days prior to hearings on variances, special exceptions (conditional uses), appeals for map or text interpretations, and map or text amendments" and submittal to DNR of "copies of decisions on variances, special exceptions (conditional uses), appeals for map or text interpretations, and map or text amendments within 10 days after they are granted or denied." These notice provisions must be included in ordinances adopted for annexed/ incorporated areas.
3. Land division review and sanitary regulations that are part of a county shoreland zoning ordinance must be incorporated into the city or village ordinance unless the county amends the ordinance as it applies to the annexed/incorporated area. If the city or village has more restrictive provisions, they also apply.
4. Any city or village zoning provisions adopted pursuant to s. 62.23 Wis. Stats., which are applicable to shoreland areas and which differ from but are more restrictive than the county shoreland zoning provisions are applicable to annexed areas to the extent of the greater restrictions. For example, if the county's setback averaging provisions would allow a structure to be placed 52 ft. from the ordinary high water mark but the municipality has a 60 ft. minimum waterway setback requirement, the 60 ft. setback would apply.
5. Under s. 66.30, Wis. Stats., municipalities may enter into cooperative agreements for the provision of services. This would allow cities and villages to contract with the county or town governments for some administrative components of the shoreland zoning program, for example permit issuance and inspection. However, such a cooperative agreement may not include enforcement or quasi-judicial decisions (variances, appeals, conditional use permits). The city or village must provide for its own Board of Appeals to decide appeals and variance requests, and either a Board of Appeals or Zoning Agency to handle applications for special

exception (conditional use) permits unless the requirements in s. 59.97(7)(a)3 are satisfied, in which case the County Board of Adjustment could decide appeals and variance requests for the annexed/incorporated shoreland area and the County zoning agency, County Board or the County Board of Adjustment could handle applications for special exception (conditional use) permits.

Drafted by: Kate Fitzgerald
Sue Jones
Reviewed by: Linda Meyer
Scott Hausmann
Larry Larson



Testimony on Assembly Bill 75: Shoreland Zoning for Annexed/Incorporated Areas
by the Wisconsin Department of Natural Resources

before the

Assembly Committee on Natural Resources and Sporting Heritage

April 10, 2013

Thank you for the opportunity to testify today regarding Assembly Bill 75 relating to the application of shoreland zoning to land that has been annexed or incorporated. My name is Pamela Biersach. I am the director of the Watershed Management Bureau at the Wisconsin Department of Natural Resources.

The Shoreland Management Program is a partnership between local and state government to balance private property rights with the protection of water resource values: water quality, recreation and navigation, fish and wildlife habitat, and natural scenic beauty along navigable lakes and rivers by establishing statewide minimum standards including lot sizes, building setbacks from the water's edge, and limits on tree removal.

Tourism is a \$13 billion dollar a year industry in Wisconsin and sport fishing, alone, is a \$2.3 billion dollar industry in our state that supports more than 30,000 jobs. Wisconsin's water resources include more than 50,000 miles of rivers and streams, more than 15,000 inland lakes, and more 1,017 miles of Great Lakes shoreline. The shoreland zone which falls under the jurisdiction of ch. NR 115, Wis. Admin. Code, is defined in s. 59.692 (1)(b), Wis. Stats., as:

- the area within 1,000 feet of the ordinary high water mark of navigable lakes, ponds, and flowages; and
- the area within 300 feet of the ordinary high water mark of navigable rivers and streams, or to the landward side of the floodplain, whichever distance is greater.

Section 59.692(7), Wis. Stats., requires the zoning of shorelands on navigable waters by counties in unincorporated areas and by cities and villages in areas annexed after May 7, 1982 and areas

incorporated after April 30, 1994. These statutory provisions were created in 1982 and 1994 to ensure consistent application of the basic protections afforded by the shoreland zoning standards.

Studies have shown that the shoreland zoning standards protect the water quality and fish and wildlife habitat in Wisconsin's lakes and rivers. The proposed legislation would result in shoreland areas, many of which are already developed, that would no longer be required to meet minimum lot sizes, setbacks for structures from water and restrictions on vegetation removal.

I'm happy to answer your questions.

Assembly Bill 75 – Shoreland Zoning on Annexations

Assembly Committee on Natural Resources & Sporting Heritage

By Representative Jeff Mursau

April 10, 2013

Chairman Ott and Committee Members,

Thank you for scheduling a hearing on AB 75, legislation to help eliminate dual zoning laws in Wisconsin cities and villages.

Under current law, counties are required to enact shoreland zoning ordinances for unincorporated areas. Current law also requires villages and cities to continue enforcing county shoreland zoning ordinances after an unincorporated area is annexed into a village or city.

In Wisconsin, shoreland zoning laws can create dual sets of zoning laws within the same municipality in certain circumstances. Dual laws pose significant problems because county zoning is based on low-density rural housing patterns with larger lot sizes, fewer streets, and a lack of urban services. In contrast, municipal zoning is based upon a higher-density pattern of smaller lots, more streets, and typically with urban services like sewer, water, and other utilities.

AB 75 eliminates the requirement that annexing cities and villages keep and enforce the county's shoreland ordinance on annexed parcels after annexation has been completed.

This bill recognizes and accommodates the inherent differences between rural and urban communities. While AB 75 removes dual zoning ordinances in cities and villages, all of the environmental safeguards are left in place under Ch. 30, NR 151 and NR 216.

Thank you again for hearing this bill today, I am happy to take any questions you might have.

Public Hearing on AB 75 – relating to the applicability of a county shoreland zoning ordinance in a shoreland area annexed by, or incorporated as, a city or village.

The Village of Harrison supports the adoption of AB 75.

- The Village of Harrison was just recently incorporated from the Town of Harrison in Calumet County within the past couple of months. One of the reasons for incorporation was to have more control over zoning and land use decisions. Currently, those properties in the village that are within the shoreland areas are still subject to county shoreland zoning standards. The village zoning and the county shoreland zoning apply different standards that often make it difficult and confusing for residents, business owners, and developers.
- Eliminating the requirement that county shoreland zoning ordinances remain in effect will allow cities and villages to provide an equitable enforcement of zoning throughout their jurisdiction for new and existing developments.
- Counties may set shoreland zoning standards that are more restrictive than those found in the Wisconsin Administrative Code, which the city or village must continue to enforce. These more restrictive provisions may not be in line with the goals and objectives of a city or villages comprehensive plan.
- County shoreland standards vary from county to county. A city or village that is in more than one county must administer and enforce varying standards throughout its jurisdiction. This causes confusion and unfair administration of zoning standards.
- The interpretation of shoreland areas varies from county to county. Typically, shoreland areas are 300-feet from a navigable stream or river and 1,000-feet from a navigable lake or pond. Some counties are interpreting stormwater ponds as navigable ponds. This interpretation is creating additional shoreland areas in developments where there were no shoreland areas prior to the development.
- Passage of AB 75 will eliminate some of the confusion when it comes to zoning and will give cities and villages greater control when approving and siting new developments.



RIVER ALLIANCE OF WISCONSIN

Representative Al Ott, Chair
Assembly Committee on Natural Resources and Sporting Heritage
Room 323 North
State Capitol
P.O. Box 8953
Madison, WI 53708

April 10, 2013

RE: AB 75 Relating to: the applicability of a county shoreland zoning ordinance in a shoreland area annexed by, or incorporated as, a city or village.

Dear Representative Ott and the members of the Committee,

The River Alliance of Wisconsin was an active partner with the DNR, together with Wisconsin Lakes, the Wisconsin Builders Association and the Wisconsin Realtors Association, representatives of the Wisconsin Code Administrators for seven years in the creation of the current shoreland zoning standards in NR115. There were many hard-fought compromises in the rule but in the end we supported the rule because we thought it balanced competing interests and because scientific research so clearly demonstrated that implementing these practices prevents water pollution and keeps people safe.

AB 75 is concerning to us because it would have the effect of removing shoreland protections from the very parcels of land that are most in need of it: low-density areas along waterways that may be undergoing rapid development as they are annexed to municipalities.

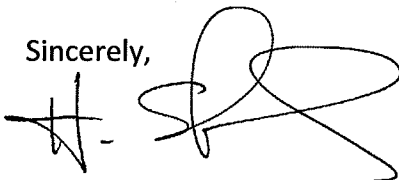
The way Wis. Stat. 59.692(7) is currently written can make it complicated for a growing municipality to manage the various county shoreland zoning ordinances that come attached to the annexed properties. The proposed solution in this bill – to simply remove the county shoreland zoning standards altogether– will create more problems than it will solve. The language in 59.692(7) was drafted in the first place to stop the common practice of getting land annexed to avoid any zoning. The reality is that few municipalities have any shoreland zoning ordinances and those that do have much less restrictive zoning than the county or NR115. Cities

are already densely developed and urban waterfront lots are smaller and less able to incorporate impervious surface limitations and adequate buffers and setbacks. But annexed land that is added to the municipal boundary is not limited by these existing conditions and should be required to meet at least statewide minimum protections. Removing protective shoreland zoning will not only degrade water quality of rivers and lakes in these areas but may also exacerbate building in floodplains with increased risk to public health and safety.

There is a reasonable fix: rather than eliminate shoreland protection altogether, this bill should incorporate minimum shoreland protections that are consistent and predictable for municipalities yet still maintain reasonable protection for shorelines and water quality. Cities and villages can be required to adopt ordinances that comply with the minimum statewide standards in effect at the time of annexation which do not change frequently as county ordinances may. This recommended change would address the complexity of Wis. Stat. 59.692(7) as it is currently written, yet avoid re-opening a back-door route to unzoning. This is the recommendation that has been made by agency experts both at the time the original bill was introduced in 2003 and in this most recent round.

I am happy to discuss this further at any time and thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Sarakinos', with a large, stylized flourish extending to the right.

Helen Sarakinos
Policy Director



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E-mail: league@lwm-info.org
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To: Assembly Committee on Natural Resources and Sporting Heritage
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: April 10, 2013
Re: **Support for AB 75, Eliminating Requirement that County Shoreland Zoning Ordinances Remain in Force After Annexation or Incorporation.**

The League of Wisconsin Municipalities supports AB 75, eliminating the requirement that a city or village continue to apply and enforce the county shoreland zoning ordinance that was applicable to the territory before it was annexed or incorporated. We believe this change makes sense and will eliminate confusion about which jurisdiction's shoreland regulations apply to annexed parcels. Under current law, different land use regulations can apply to different parcels abutting the same body of water within the same municipality depending on if the area in question was annexed or not. The bill treats shoreland ordinances the same as any other municipal ordinance. Upon annexation, the county's ordinance no longer applies and the annexing municipality's regulations govern. Municipal flood plain zoning and other land use regulations will sufficiently address concerns about development along water fronts.

We urge you to recommend passage of AB 75. Thanks for considering our comments on this bill.



Memorandum

To: All Legislators
From: Tom Larson, Vice President of Legal and Public Affairs
Date: April 10, 2013
Re: AB 75 – Shoreland zoning after annexation

The Wisconsin REALTORS® Association (WRA) supports AB 75, legislation that would allow cities and villages to apply their own shoreland zoning standards to newly annexed property in shoreland areas.

Background

Under current law, when a property owner annexes property into a city or village, the zoning regulations of the city or village apply. The city or village get to decide whether the property is zoned for residential, commercial or agricultural use, the density of the development, and other standards related to the development of the property.

However, if the annexed land is within 1000 feet of a lake or pond (300 feet of a river or stream), the city or village cannot change the zoning standards on the land after it is annexed. The county's shoreland zoning regulations (which must meet the minimum standards adopted by the DNR) continue to apply.

Problems With Current Law

The application of county shoreland zoning standards to cities and villages is inappropriate for the following reasons:

- **County shoreland zoning standards are designed for land in unincorporated areas that is not serviced by public sewer and water.** They are inappropriate for cities and villages that have the public services to develop at higher densities.
- **Maintaining county shoreland zoning standards is a barrier to economic development.** If a property owner annexes land into a city or village that is zoned agricultural or low-density residential, the property owner is prohibited from changing the zoning of the property to a higher, more economically-productive use appropriate for commercial or higher density development. This prevents communities from growing, and threatens the economic vitality of our state.

April 9, 2013

- **County shoreland zoning standards promote inefficient uses of land and higher public service costs.** County shoreland zoning standards generally require development to occur at lower densities than what is allowed under city or village zoning standards. Lower-density standards require more land to accommodate development and result in more expensive public service costs, such as sewer and water.

Most importantly, **this bill does not eliminate shoreland zoning standards in newly annexed areas.** It simply allows for cities and villages to adopt their own zoning standards in shoreland areas, like they currently do in non-shoreland areas.

We encourage you to support the shoreland zoning after annexation amendment. If you have any questions, please contact me at (608) 241-2047.



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MEMORANDUM

TO: Honorable Members of the Assembly Committee on Natural Resources and Sporting Heritage

FROM: Daniel Bahr, Legislative Associate *DB.*

DATE: April 10, 2013

SUBJECT: Opposition to Assembly Bill 75

Under current law, county shoreland zoning policy applies to areas annexed by a city or village in an area subject to shoreland zoning. In the case of an annexation, regardless of whether the annexing city or village has its own shoreland zoning policy, the municipality is required to enforce county shoreland zoning in the applicable area. Assembly Bill 75 eliminates the aforementioned provision. Under Assembly Bill 75, annexation to a city or village with no shoreland zoning ordinance in place would exempt annexed areas from county shoreland zoning.

The Wisconsin Counties Association opposes AB 75 in its current form. The greatest concern we have with the bill is that it has a high potential of creating inconsistent standards for shoreland zoning around the same lake. Further, the bill would provide a "back door" policy of avoiding shoreland zoning through annexation to a municipality with no shoreland zoning ordinance.

We suggest the bill be amended to state that county shoreland and floodplain zoning provisions are no longer applicable after annexation if the local municipalities have existing zoning code language that is at least as restrictive as the provisions of NR 115 (shoreland) and NR 116 (floodland).

Again, WCA opposes Assembly Bill 75 in its current form and encourages the committee to consider reasonable amendments to this bill based upon our concerns.

Thank you for considering our comments. Please feel free to contact WCA for further information.