



LEGAL UPDATE

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A MONTHLY GUIDE TO WISCONSIN REAL ESTATE LAW & POLICY

Shoreland Zoning Update 2016

As part of the 2015-16 legislative session successes was legislation concerning a series of private property issues. Some of these important measures protect private property rights while others remove regulatory barriers to residential and commercial development. The developments highlighted in this *Legal Update* address the new provisions enacted regarding shoreland zoning and the shifting in authority in shoreland zoning regulation.

The shoreland zoning legislative developments highlighted in this *Legal Update* include the history of shoreland zoning, recasting Wis. Admin. Code chapter NR 115 as uniform not minimum standards, removal of DNR ability to appeal variance decisions, 75-foot building setback and setback averaging, structure maintenance and replacement for shoreland and nonconforming structures, impervious surfaces, vegetative buffer zones, ordinary high water mark determinations, nonconforming structures, substandard lots, and other shoreland zoning provisions.

Shoreland Zoning History

Starting in 1966, Wisconsin lawmakers required that counties follow the minimum shoreland zoning standards created by the Wisconsin Department of Natural Resources (DNR) when regulating the use of property near lakes, rivers, streams and other navigable waterways. These standards applied to all land within 1,000 feet of the ordinary high water mark (OHWM) of a lake, pond or flowage, as well as land within 300 feet of the OHWM of a navigable stream or river. Because the state standards were minimum standards, counties were permitted to create standards that are more restrictive.

Since the 1960s these DNR standards, embodied in Wis. Admin. Code chapter NR 115, have been modified only twice. In 2009, the rules were revised to include impervious surface regulations, more restrictions on cutting trees and shrubs near the water, and greater flexibility for property owners to maintain and improve nonconforming structures. In 2013, the rules were revised again in response to complaints from county zoning administrators and property owners who believed the 2009 changes were overly restrictive and would create unreasonable hardships for new development.

Despite the recent modifications to Wis. Admin. Code chapter NR 115, there continued to be concerns regarding the ability of counties to adopt more restrictive regulatory standards. For example, the DNR imposes a 75-foot building setback from the water, but some counties have adopted a greater setback of 125 feet on developed lakes and up to 175 feet on undeveloped lakes. In addition, other counties have adopted larger minimum lot size requirements in an effort to limit development densities near the water.

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① MORE INFORMATION

For a history of the progression of the NR 115 shoreland zoning ordinance requirements, see "Clear as Mud: Five things REALTORS® should know about the new changes to shoreland zoning regulations," in the October 2015 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/Oct15/Shoreland, "Urban Waters: New Law Provides More Regulatory Flexibility in Urban Shoreland Areas," in the December 2013 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/Dec13/Zoning and "The Top 10 Things REALTORS® Should Know About the New Shoreland Zoning Regulations," in the May 2010 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/May10/ShorelandZoningRegulations.