

Shoreland Zoning

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- SB459/AB600
- AB603/SB477
- Shoreland Ordinance Revision

~230 years ago

- Northwest Ordinance established the Public Trust Doctrine saying "The navigable waters ... shall be common highways, and forever free."



The map shows the Northwest Territory (1787) in black, with state boundaries in white. The Great Lakes are labeled in yellow. The Mississippi River and Ohio River are labeled in blue. A legend on the left lists statehood dates: Ohio: 1803, Indiana: 1816, Illinois: 1818, Michigan: 1837, Wisconsin: 1848, Minnesota: 1858. A note indicates that the remainder of MN was added via 1818 Convention & Louisiana Purchase.

~170 years ago

- 1848- WI Constitution also said "The navigable waters ... shall be common highways, and forever free."
- 1899- WI Supreme Court agreed that preserving navigable waters was a state obligation

Northwest Territory (1787)

Shoreland Zoning History

- The Wisconsin Constitution, adopted in 1848, says navigable waters are "common highways and forever free".
- This led to "The waters of WI belong to the people of WI" which is the basis of the Public Trust Doctrine.
- State of WI has obligation to protect the public's rights in all navigable waters including boating, fishing, swimming & hunting.
- Shoreland zoning, adopted in 1966, protects public rights through its purposes.

Shoreland zoning, adopted in 1966, protects public rights through its purposes.

SHORELAND ZONING (NR 115)

- Purpose (Wis. Stat. § 281.31)
 - Preserve the safety and well being of the people who utilize the shoreland.
 - Aid in the prevention and control of water pollution.
 - Protect spawning beds, fish and aquatic life.
 - Control building sites, placement of structures and land uses.
 - Preserve shore cover & natural scenic beauty.

SB459/AB600

- Navigable Water "Property Rights" Bill
- Amendments to Wis. Stat. ch. 30
 - Navigable Waters, Harbors & Navigation
- (Wis. Stat. chs. 31 & 281)

SB459/AB600

- An exemption from most permit requirements when dredging in an artificial waterbody not hydrologically connected to a navigable water body, though a permit would be required to construct or enlarge an artificial waterbody within 500 feet.

SB459/AB600

- Sets limitations on how DNR designates sensitive natural areas in lakes and streams, called Areas of Special Natural Resource Interest (ASNRI).
- Allows general permit for seawall replacement in certain ASNRI's.

SB459/AB600

- Modifies boathouse definition so that it only needs to have been used for boat storage for a year or more at some point to qualify as a boathouse.
- Foundation repair included under allowable maintenance.

SB459/AB600

- Limits DNR's ability to regulate boat shelters in regards to their number and distance from shore.
- Requires DNR to consider factors such as property and economic values when issuing water level for dams.

SB459/AB600

- Limits DNR review of "practicable alternatives" when permitting impact to a wetland less than 2 acres for the following activities :
 - Single-Family Residence
 - Barn or Farm Buildings
 - Small Business Project
- Development prior to July 2012.
- Practical alternatives consistent with and proportional to the impact.

SB459/AB600

Provisions removed from bill by amendment

- 30 cubic yards removal per year.
- State owned lake bed transfer to private owner.
- Reduced restrictions on rip rap.

AB603/SB477

- 2015 Budget Bill Provisions
 - Act 55
- Wisconsin Act 167
 - Codifies Act 55.
 - 3 new amendments.

Revised NR 115

- 8+ years of Advisory Committee Mtgs.
 - WCCA, WAL, Builders, Realtors, River Alliance
- Listening Sessions, Open Houses, Public Comments.
- 2012 - Act 170
- 2015 - Act 55
- 2016 – Act 167

Wisconsin Administrative Code Chapter NR 115

- Sets forth minimum standards for County regulation of the use and development of unincorporated shoreland areas.
- with Act 55 they are now the minimum and the maximum.

Act 55

- Changes the authority counties have in the development of a shoreland ordinance that is more restrictive than NR 115 and changed other shoreland zoning standards.

Summary of Act 55 - no longer allowed by law

- A shoreland zoning ordinance (county, village or city) may not:
- regulate a matter more restrictively than is the shoreland zoning standard.
- require establishment of a vegetative buffer on previously developed land or expansion of an existing vegetative buffer.
- Regulate outdoor lighting for residential use.

A shoreland zoning ordinance may not:

- Regulate the maintenance, repair, replacement, restoration, rebuilding or remodeling of a nonconforming structure if the activity does not expand the footprint. No approval, fee or mitigation required.
- Require the inspection or upgrade of the structure before the sale/transfer of the structure may be made.
- Regulate the vertical expansion of a nonconforming structure unless the expansion is greater than 35' above grade level. No approval, fee or mitigation required.

A shoreland zoning ordinance may not:

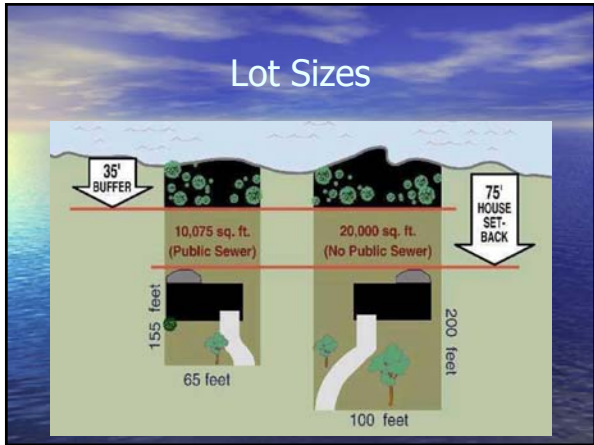
- Establish standards for impervious surfaces unless the standards provide that a surface is considered pervious if the runoff from the surface is treated by a device or system, or is discharged to an internally drained pervious area that retains the runoff on or off the parcel to allow infiltration into the soil.
- Regulate the construction of a structure on a substandard lot in a manner that is more restrictive than the shoreland zoning standards.

No longer allowed by law cont.

- The DNR may not issue an opinion on whether or not a variance should be granted or denied without the request of a county Board of Adjustment (BOA).
- The DNR may not appeal a BOA decision.

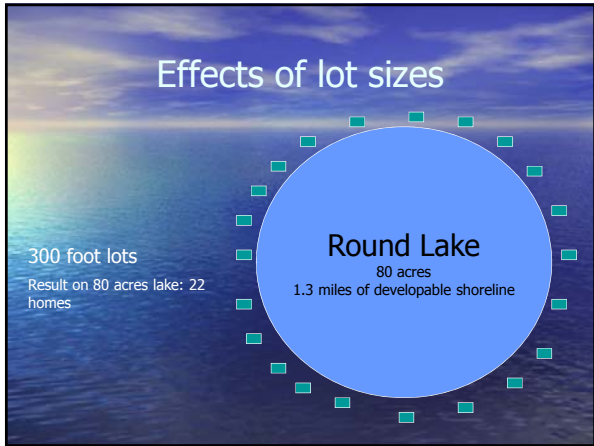
NR 115 Shoreland Zoning Standards

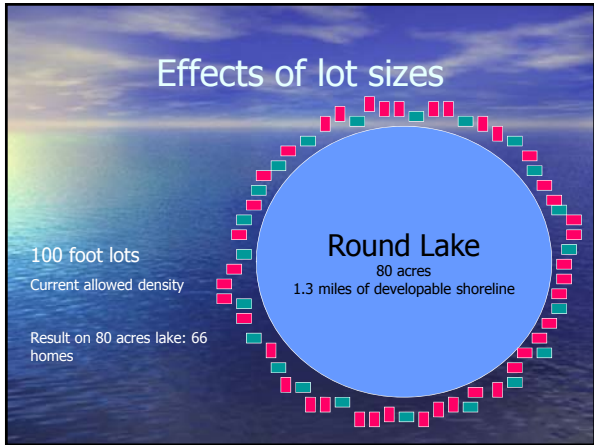
- 1. Lot Sizes
- 2. Building Setbacks
- 3. Vegetation
- 4. Filling, grading, lagooning, dredging, ditching and excavating.
- 5. Impervious Surfaces
- 6. Height
- 7. Nonconforming Structures and Uses.



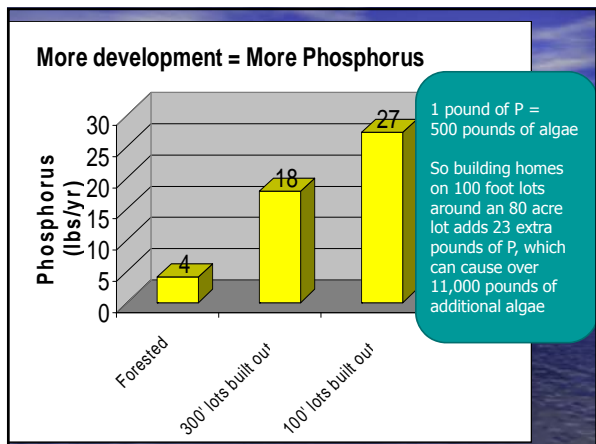
Lot Sizes

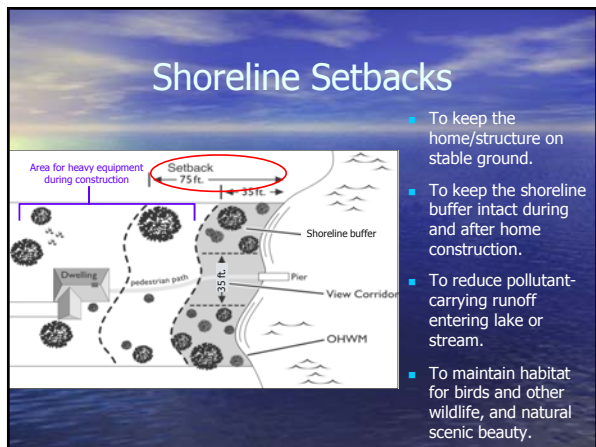
- Shoreland zoning ordinance may not require lot sizes larger than the minimum lot size identified in NR 115.05(1)(a).
 - Measurement of average lot width can continue to be defined by the counties.
 - Measured it at water's edge and at building line.











Building Setbacks

- Required setback is 75' or an average setback if the proposed development qualifies.
- All structures are required to meet the setback from the OHWM unless they are identified and qualify as an exempt structure.

Structure

- Definition Act 55 – a principal structure or any accessory structure including a garage, shed, boathouse, sidewalk, stairway, walkway, patio, deck, retaining wall, porch or fire pit.
- Statute uses word “including” rather than “means” which means this is an illustrative list – therefore all structures are included. Ex. Barns, silos, swimming pools, etc.

NR 115(1)(b)1m. Exempt Structures

- Now have to allow all exempt structures.
 - Boathouses above the OHWM, located in the access & viewing corridor, do not contain plumbing and are not used for human habitation.
 - Open-sided and screened structures that satisfy 59.692(1v). Still have to establish a vegetative buffer.
 - Fishing rafts under 30.126.
 - Broadcast signal receivers.

Exempt structures continued

- Utility transmission and distribution lines, etc. well pumphouse covers, POWTS.
- Walkways, stairways, or rail systems that are necessary to provide access to the shoreline and area a maximum of 60 inches wide.

Exempt Structures cont.

- Can create requirements for exempt structures as long as they don't effectively prohibit the exempt structure.
- Can't regulate in a less restrictive or more restrictive manner.
- Exempt structures are conforming structures - NOT considered nonconforming structures.

Boathouses

- Can create requirements for boathouses.
- The standard that is being regulated is the water setback – a boathouse is exempt from that standard. As long as the requirement doesn't effectively prohibit the boathouse other aspects can be regulated. Size, color, roof pitch, etc.

Exempt -Open-sided structures

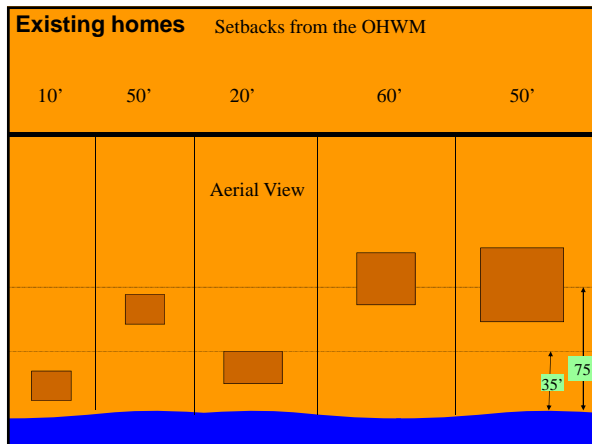
- Used for proposed structures of 200 sq. ft. or less located within the shoreland setback area that meet all requirements. Existing structures within the setback are nonconforming structures unless they are exempt or have been illegally constructed.
- Shoreland setback area means an area that is within a certain distance of the OHWM in which construction/placement of structures has been limited or prohibited.

Special Zoning Permission Required

- Part of the structure nearest to the water is located at least 35' landward from the OHWM
- Total floor area of ALL of the structures in the shoreland setback area will not exceed 200 sq.ft.
- The structures has no sides or has open or screened sides.
- County must approve a plan that will be implemented by the owner of the property to preserve/establish a vegetative buffer zone that covers at least **70%** of the half of the shoreland setback that is nearest the water.

Averaging


- All counties now required to administer per NR 115.05(b)1. "where an existing development pattern exists, the shoreland setback for a proposed principal structure may be reduced to the average shoreland setback of the principal structure on each adjacent lot, but the shoreland setback may not be reduced to less than 35 feet from the OHWM.



Vegetative Buffers

- Vegetative buffer zone = area from the OHWM to a minimum of 35' landward. Cannot establish a larger VBZ as it would be more restrictive than the minimum required.
- Viewing corridor 35' for every 100' and allowed to run contiguously.
- A county shoreland ordinance may not require a person to establish a vegetative buffer on previously developed land and from expanding an existing buffer.
 - Establishment of veg. buffer can remain an OPTION for mitigation purposes.
 - Open sided structure exemption requirement to establish the vegetative buffer remains in effect.

What happens when a shoreline is clear cut?

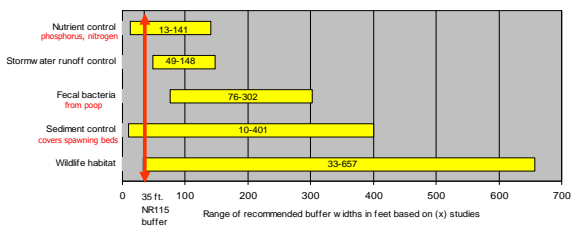


Developed site in Vermont

- Shoreline bank is destabilized, resulting in loss of land
- Soil erosion covers spawning beds, reduces fish habitat, and feeds algae growth
- Loss of shade leads to warmer water temperatures, especially in streams
- Loss of habitat for birds, frogs and other wildlife
- Loss of natural scenic beauty

What can buffers do if they're big enough?

Recommended Shoreline Buffer Widths A Research Summary



Purpose	Recommended Buffer Width Range (feet)
Nutrient control (phosphorus, nitrogen)	13-141
Stormwater runoff control	49-148
Fecal bacteria from poop	76-302
Sediment control (covers spawning beds)	10-401
Wildlife habitat	33-657

Review of 52 U.S. studies by Aquatic Resource Consultants, Seattle WA

A 35 foot deep shoreline buffer does not keep bacteria from poop out of the water. In many situations, it doesn't keep P and sediment out of the water, and isn't enough for wildlife.

Filling, Grading, Dredging, Ditching, & Excavating

- Filling & Grading Allowable Activities
 - Minor projects.
 - Done in a manner to minimize erosion and sedimentation.
 - Protect against erosion by rip rap, vegetative cover or bulkhead.
 - State permitting.


Filling, Grading, Dredging, Ditching, & Excavating

- CUP requirements:
 - Filling or grading on slopes $\geq 20\%$
 - Filling or grading more than 1,000 square feet on slopes $> 12\%$ and $< 20\%$.
 - Filling or grading more than 2,000 square feet on slopes 12% or less.
 - Ponds or wetland scrapes > 2 acres.

Shoreland zoning standards protect property values

Less clear water = Lower waterfront property values

- A study of over 1200 waterfront properties in Minnesota found when water clarity went down by 3 feet, waterfront property values around these lakes went down by tens of thousands to millions of dollars



What shoreland practices make water less clear?

- Soil erosion
- Rooftops and pavement close to the water cause runoff that carries pollutants to waterway
- No shoreline buffer to filter runoff

See Protecting Your Waterfront Investment at uwsp.edu/cnr-app/duel/Documents/Water/ShorelandInvestment2013.pdf

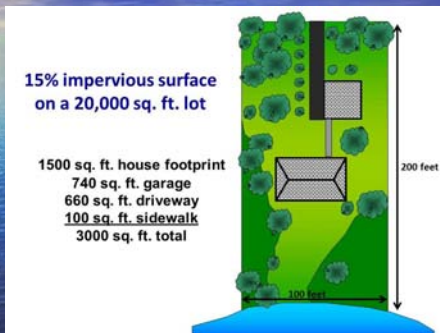
Impervious Surface Standards

- What is an impervious surface (IS)?
 - An area that releases all or a majority of the precipitation that falls on it.
 - Roofs, driveways, patios, sidewalks, etc.

Impervious Surface Standards

- What is the standard?
 - For riparian lots, or non-riparian lots that are entirely within 300 feet of the OHWM.
 - Up to 15% impervious.
 - Between 15% - 30% with mitigation.
 - Impervious surfaces within 300 feet of OHWM divided by lot area.

Impervious Surfaces



Impervious Surface Standards

- What is the standard?
 - Keep the impervious surfaces you have.
 - County MUST exclude IS that treated by stormwater ponds, rain gardens or other engineered systems.

Impervious Surface

- Application
 - Impervious surface standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface that is or will be located within 300 feet of the ordinary high water mark of any navigable waterway on any of the following:
 - a. A riparian lot or parcel.
 - b. A non-riparian lot or parcel that is located entirely within 300 feet of the ordinary high-water mark of any navigable waterway.

Impervious surfaces are hard surfaces like roofs, driveways, parking areas and patios

More Impervious Surface = Less Fish

Fish found in streams when impervious surface in the watershed was:


Less than 8%	8 - 12%	Greater than 12%
<p style="text-align: center;">More Impervious Surfaces in Watershed →</p>		
<ul style="list-style-type: none"> • Iowa darter • Black crappie • Channel catfish • Yellow perch • Rock bass • Hornhead chub • Sand shiner • Southern redbelly dace 	<ul style="list-style-type: none"> • Golden shiner • Northern pike • Largemouth bass • Bluntnose minnow • Johnny darter • Common shiner 	<ul style="list-style-type: none"> • Golden shiner • Northern pike • Largemouth bass • Bluntnose minnow • Common shiner
<ul style="list-style-type: none"> • Creek chub • Fathead minnow • Green sunfish • White sucker • Brook stickleback 	<ul style="list-style-type: none"> • Creek chub • Fathead minnow • Green sunfish • White sucker • Brook stickleback 	<ul style="list-style-type: none"> • Creek chub • Fathead minnow • Green sunfish • White sucker • Brook stickleback
<p style="text-align: center;">→ Fewer species of fish</p>		

2008 study of 164 WI lakes found the same trend

See Impervious Surfaces: How They Impact Fish, Wildlife and Waterfront Property Values – handout and video at uwsp.edu/cnr-ap/clue/Pages/publications-resources/water.aspx

More Impervious Surface = Less Fish

- More sediments and algae growth make it difficult for some predator species that hunt by sight to find their food
- More sediments cover spawning beds of fish such as walleye and smallmouth bass, depriving eggs of oxygen
- More runoff leads to warmer waters that eliminate fish like northern pike & trout



Wisconsin Loons More Likely Found on Lakes with Clearer Water

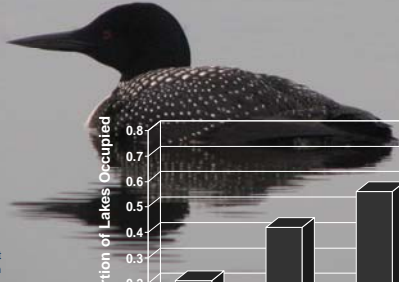
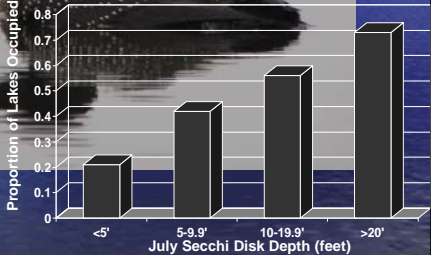


Photo credit Doug Killian



July Secchi Disk Depth (feet)	Proportion of Lakes Occupied
<5'	~0.2
5-9.9'	~0.45
10-19.9'	~0.6
>20'	~0.75

2013 additions to impervious surface standards

- Counties may create "highly developed shorelines"
 - Urbanized Areas or Urbanized Clusters in 2010 US Census.
 - Commercial, Industrial or Business land use as of January 31, 2013.
- Counties may add additional areas if all of the following standards are met.
 - At least 500 feet of shoreline and;
 - Majority of lots exceeded 30% impervious by Feb 1, 2010 or;
 - Lots are located on a lake that is sewered.

2013 additions to impervious surface standards



- For Highly Developed Shorelines
 - Residential land use: A county may allow 30% IS without a permit, and up to 40% IS with mitigation.
 - Commercial, industrial or business land use: A county may allow 40% IS without a permit, and up to 60% IS with mitigation.

Impervious Surfaces

- Manitowoc County Highly Developed Shoreline.
 - Pigeon Lake
 - Little Pigeon Lake

Impervious Surfaces –Act 55

- Counties are required to adopt provisions within their impervious surface standards that allow an impervious surface to be considered pervious if the runoff from the impervious surface is treated by a device or system or is discharged to an internally drained pervious area on or off-site.
 - Only entitled to the exemption when it can be demonstrated that the runoff is being treated or is internally drained.
 - A maintenance plan and recorded agreement ensures the systems/area are fully operational and will continue to do so. Protects subsequent property owners.
 - Device/area receiving the runoff fails, the impervious surface is no longer exempt and compliant and is considered impervious.

Height

- Purpose is to protect the natural scenic beauty from the water.
- Height is regulated to a maximum of 35' from the OHWM to the 75' setback.
- Height beyond the 75' setback is generally 60'.

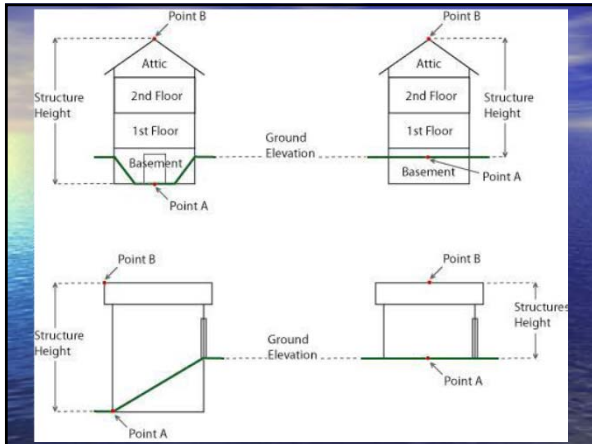
Why 35' height standard on shoreline buildings?



Lake of the Ozarks, Missouri

Height - Measurement

- Measurement is: Typically to roof ridge. Chimneys, etc. have not been typically counted in the measurement.
- Model ordinance diagrams.



Non-Conforming Structures

- A lawfully placed structure that does not comply with the required setback from the ordinary high water mark as identified in NR 115.05(1)(b).
- Structure may also be nonconforming for general zoning, floodplain zoning, etc. but is not affected by the statutory changes under Act 55.

The closer a structure is to the shoreline
...the greater impact it has on the waterway.

- More pollutant-carrying runoff makes it to the lake or stream.
- Less shoreline habitat for loons, eagles, frogs, etc.
- Less natural scenic beauty.

The photograph shows a two-story wooden cabin with a green roof and a balcony, situated on a rocky shoreline next to a body of water. A boat is docked in front of the cabin. The cabin is built on a slight rise from the water's edge.

Structures that do not meet the NC definition.

- Exempt structures listed in NR 115.05(1)(b)1m.
- Structures that meet the required or average setback from OHWM.
- Structures that were granted a variance.
 - A structure for which a variance was granted under the zoning provisions in effect is not considered non-conforming.
 - The existence of such a variance does not prevent the structure from being classified as non-conforming if some other characteristics of the use or structure fail to comply with the requirements.
- Structures that have been illegally constructed.
 - Structures that were illegally constructed but exceed the ten year limitation for enforcement in 59.692(1t) do not become a legal structure or a nonconforming structure just because enforcement action has not been taken.

Nonconforming Structures - activities now allowed

- Shoreland ordinance cannot regulate the maintenance, repair, replacement, restoration, rebuilding or remodeling of a nonconforming structure if the activity does not expand the footprint. No approval, fee or mitigation required.
 - Includes principal and accessory structures.
 - No approval = no permit.
 - Floodplain, sanitary, building permits, general zoning permits are all still required.

Nonconforming structures – activities allowed cont.

- Vertical expansion of a nonconforming structure without approval, a fee or any mitigation requirements.
 - New definition includes accessory structures therefore vertical expansion of accessory structures is now allowed.
 - 2nd story to a garage.
 - Replace patio with an elevated deck.
 - Changing roof pitch and side wall height on shed.

Nonconforming Principal Structure: activities that still require a permit

- Expansion beyond the setback.
- Relocation of NC structure.
 - Principal structure is 35' from OHWM.
 - Mitigation required.
 - All other ordinance provisions are met.
 - No compliant location.
- Lateral expansion of 200 square feet if:
 - Principal structure is 35' from OHWM.
 - Mitigation required.
 - All other ordinance provisions are met.

Interaction with other enabling statutes.

- Act 55 did not modify a county's authority to enact or enforce ordinances under other statutes.
- Act 55 only modified the provisions in s. 59.692, which relates to county shoreland zoning.
 - s. 59.69 (general zoning) .
 - S. 236 (Land Division).
 - 87.30 (floodplain).
 - 91.30 (farmland preservation).
- Each of these statutes identify the purpose, standards and applicability.

Regulating Other Matters

59.692(1d)(b) allows counties to regulate "matters" that are not regulated by a shoreland zoning standard in NR 115 listed below:

- Minimum lot sizes, Building setbacks, Vegetation, Filling, grading, lagooning, dredging, ditching and excavating, Impervious surfaces, Height and Nonconforming structures and uses.

Address the purposes of s. 281.31

Need to further the purpose in 281.31

- to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.

Examples of other matters:

- Dune, escarpment, wetland regulations
- Density Requirements
- Land uses
- Land suitability
- Woodland Cutting

Bluff Protection Area

- Lake Michigan Shoreline
 - Bluff stable slope angle calculation.
 - 2.5 times bluff height.
 - Shoreline recession rate calculation.
 - 2' per year x 50 year design life.

Act 167 Additions

- Existing Exempt Structures.
- Reduced Principal Structure Setback.
 - Averaging
- Highly Developed Impervious Surface Standards.

Act 167 Additions

- Existing Exempt Structures
 - Boathouses, open sided structures, satellite dishes, walkways and stairways.
- May be maintained, repaired, replaced, restored, rebuilt and remodeled provided it does not expand the footprint.

Act 167 Additions

- Existing Exempt Structures cont.
- Prohibits counties from requiring any approval or imposing any fee or mitigation requirement for the activities specified.
- Permits and fees under floodplain zoning, general zoning, sanitary codes or building codes still apply.

Act 167 Additions

- Reduced Principal Structure Setback
 - Allows one-sided averaging.
 - Principal structure located within 75 feet on one side only.

Act 167 Additions

- Highly Developed Impervious Surface Standards.
 - Added third category.
 - Majority of lots in a 500' length of shoreline are less than 20,000 sq. ft.

Shoreland Ordinance Revision

- Required revision by October 1, 2016.
- Planning & Park Commission
 - March-April
- Manitowoc County Board of Supervisors
 - April-May