

State dictates changes to land development and environmental protection policies

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Members of the Polk County Environmental Services Committee were presented a first draft of a revised Storm-water and Erosion Control Ordinance at their regular meeting on August 22.

Over the last few years a pendulum swing in long established environmental protection policy is taking place as the State of Wisconsin strengthens the rights of property owners by lessening the jurisdictional province of local government. Recently, the State of Wisconsin has compelled counties to revise a number of ordinances. In addition to its storm water and erosion control ordinance, the County is also working on state mandated revisions to its land-use and shore land protection rules and to how it issues conditional use permits.

Many of the laws forcing changes to local oversight and enforcement were championed by area State Representative Adam Jarchow and include changes to shore land protection and the recently enacted Act 67, known as the Homeowners Bill of Rights. After serving two terms as State Representative, Jarchow recently announced his retirement from the State Legislature, and is not running for re-election.

One example of the weakening of local regulatory oversight in favor of strengthening property rights is the state mandated changes to Shore Land Protection Zoning. These state imposed changes allow residents of lakeshore homes to more easily construct garages, patios and decks within 75 feet of the ordinary high water mark. These changes, enacted two-years ago, have stimulated much lakeshore construction as lake homeowners can now build additions or otherwise use their lakeshore lands in ways that for fifty years have been repressed. An upcoming meeting of the Polk County Board of Adjustment has five lakeshore property owners requesting variances to shore land setback protection laws, including the construction of two garages, two decks and a campground.

Far-reaching impacts, unintended consequences

Back in the 1960's and 1970's, the federal government, spurred by a growing concern and awareness for the environment, passed a number of laws regulating land development and earth disturbing activities. Local politicians, including Wisconsin's United States Senator and Clear Lake native Gaylord Nelson and Minnesota's U.S. Senator Walter Mondale, spearheaded some of the most prominent laws at that time, including the Clean Air and Clean Water Acts.

Passage of these, and other environmental protection laws, has had a tremendously positive impact upon improving the quality of our air and water.

Northwest Wisconsin, perhaps more than any other place in the nation, is at the forefront of that era in time when the modern environmental movement was birthed. Gaylord Nelson, forever enshrined as 'the father of Earth Day', along with Mondale, spurred the creation of the Wild and Scenic Rivers Act, giving federal protection to the Saint Croix and Namekagon river systems. Today, these rivers are said to be some of the least polluted river systems in the nation.

Besides the obvious benefit to the quality of our air and water, these regulations also resulted in far-reaching changes to the character and economy of local communities; the unintended consequences not always with such clearly defined positive benefit. The Wild and Scenic Rivers Act, for instance, was not without its controversy, as the federal government, through force of law, seized property or otherwise removed hundreds of residents from privately owned river fronted homes.

Where have all the cabins gone?

An example of the far-reaching impact of environmental protection law and its unintended consequences is the increasingly high-end privatization of our lakeshore lands. Fifty years ago, storm water and erosion control ordinances were enacted as offshoots of the Clean Air and Clean Water Acts. The intent of the law was to limit runoff and erosion from developed areas into our lakes, rivers and streams. One element of the law was to establish minimum setback requirements for home or other construction along our waterways. These shore land protection provisions deemed hundreds of Northwood cabins, and the resorts that once populated these lakes, to be non-conforming uses. Resorts along our lakes were prevented from making major renovations, rebuilds or expansion to the cabins near the shoreline and, in some cases, restricted an owner's ability to sell the property. Once the cabins deteriorated they were to be removed. The result over time was the closing of hundreds of resorts throughout the north woods and their eventual replacement with large-lot lakeshore homes capable of meeting the now stringent setback requirements. The vacationing public, from cities such as Milwaukee and Minneapolis, and countless small towns and villages in between, could no longer have that readily available and affordable 'up-north' experience these resorts provided.

Intentionally or otherwise, the character of our north woods has changed as public use and enjoyment of these cabin fronted lakeshore resorts disappear and our lakeshore lands become increasingly privatized. Obviously, there are other factors involved in forcing these changes, but it is into the push/pull of these unintended consequences, and the alleged over-reach of environmental

protection law onto the rights of property owners, that the pendulum swing in regulatory oversight is now taking place.

Protect and preserve?

The Polk County storm water and erosion control ordinance, which regulates storm water runoff and land development activities, is now in process of incorporating state imposed changes to regulatory oversight. As Land and Water Resources Department Director Tim Ritten presented the first draft of statutory changes to the Environmental Services Committee on August 22, he apologized for not hyper-text highlighting the proposed wording changes, explaining if he were to do so the entire 30 plus page document would be highlighted. Such is the apparent breadth and scope of state mandated changes to the law.

It is anticipated that revisions to the storm water and erosion control ordinance, as well as changes to issuance of conditional use permits, will be completed at year end. All wording changes, before being adopted at the county level, must be reviewed and approved by the State Department of Natural Resources, in order to ensure compliance with state mandates.

"It's a first rough draft in modifying the ordinance that we have in order to meet the new state requirements established under NR 151," Ritten told committee members as he passed around the draft ordinance. "The state dictates to us how we are to regulate things," Ritten explained.

As the paradigm shift in statutory oversight and regulation of land development activity is now taking place, its far-reaching impacts are yet to be determined. Can local surface and ground water be protected without adversely impacting property owners right to full utilization of their lands? Can we protect both the environment and preserve property rights? These are the implicit questions being grappled with as counties throughout Wisconsin incorporate state imposed changes to its enforcement and regulation of environmental protection laws.

In other committee business, Corporation Counsel Jeff Fuge announced that the Woodley Dam site, acquired by the County through tax lien forfeiture, has now been cleared for sale. The site consists of 27 acres and includes a snow mobile trail easement. Fuge explored with the committee the possibility of parceling out the snow mobile easement so it becomes a de facto public recreation corridor. It was proposed that a new legal description be developed that maintains the snow mobile easement as county owned land. Once executed, the remaining acreage, including the dam site, can be made available for purchase. Fuge also announced that if the Stower Seven Lakes Trail were to be made open to ATV's the county would have to reimburse the State \$868,000 for a 2010 DNR grant to resurface the trail in crushed limestone. At

an August 14 Trail Planning subcommittee meeting the amount of reimbursement was speculated upon but uncertain.