



ADAM JARCHOW

STATE REPRESENTATIVE • 28TH ASSEMBLY DISTRICT

Testimony on AB 603

Assembly Committee on Natural Resources and Sporting Heritage

Public Hearing: Wednesday, January 6, 2016 – 10:01 a.m.

State Capitol – 417 North

At the request of the Wisconsin Counties Association, we are introducing this bill to clarify certain provisions of Wisconsin's shoreland zoning program. Today, we bring before you a bill that does four things in relation to shoreland zoning.

The first provision relates to setback averaging. This would give counties the opportunity to require greater setbacks when there is an existing development pattern along a shoreline because of prior setback requirements. NR 115 will continue to be the law regarding setbacks from the originally high water mark (OHWM). In addition, it codifies current law that if principal structures exist on adjacent lots within 250 feet of a proposed principal structure in both directions along a shoreline, the setback may be the average of the setbacks on each adjacent lot. That setback may be no less than 35 feet.

This bill clarifies that certain structures listed as exempt structures in NR 115 are still exempt structures.

It allows a county to be able to limit dry boathouse repair and replacement within the original three dimensional envelope as opposed to the footprint.

Finally, this bill clarifies and provides counties with other options to calculate impervious surfaces. DNR shoreland zoning standards must prohibit a roadway or sidewalk from being considered an impervious surface.



DEVIN LEMAHIEU

STATE SENATOR

DATE: January 6, 2016
RE: **Testimony on 2015 Assembly Bill 603**
TO: The Assembly Committee on Natural Resources and Sporting Heritage
FROM: Senator Devin LeMahieu

Mr. Chairman and committee members, thank you for taking time today to discuss Assembly Bill 603 regarding the restrictions in a county shoreland zoning ordinance on activities within the shoreland setback area.

AB 603 codifies into law current DNR shoreland zoning standards that require a setback of 75 feet from the ordinary high-water mark (OHWM) to the nearest part of a building or structure while providing counties with flexibility in cases where an existing development pattern exists. Under this bill, when there is an existing development pattern, counties can establish a median average setback that may exceed the 75-foot standard. The same standards would also apply inversely with a minimum setback of 35 feet. In the absence of a development pattern the customary setback of 75 feet would apply.

This bill also codifies into law current DNR shoreland zoning standards that exempt from the general setback requirements the construction of boat houses located completely above the OHWM. In addition AB 603 specifies that a non-conforming structure located within the 75-foot setback can be rebuilt or repaired providing the structure remains inside the original three dimensional footprint.

I encourage you to vote yes to AB 603 to add flexibility and clarity to shoreland zoning ordinances. Thank you for your consideration.



CINDI DUCHOW

STATE REPRESENTATIVE • 99th ASSEMBLY DISTRICT

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The State of Wisconsin has many lakes of varying sizes that are located in very diverse geographic areas. Homes and dwellings built on lakes in the northern part of the State have setbacks that can be vastly different from those of the south. For many years, local government adapted laws to protect property owner's needs in their respective geographic area. State Budget Act 55 takes away local control of these setbacks and applies a "one size fits all" rule to shoreland zoning by allowing homes and dwellings to be built as close as 75 feet from shore without regard to the size, depth and slope of the shoreline properties. Allowing structures to be built at the 75 foot set back will adversely impact property values in my district and many other districts in our State. For example, the Town of Delafield, in which half of Pewaukee Lake is located, has had a shoreland set back of 150 feet since the 1970's which is administered through Waukesha County. Some properties on the lake have sold for more than 1 million dollars without a structure on them. The investment people have made into their properties is substantial. They made these investments assuming the nearly 50 year old zoning code would be there to protect their property, homes and investment. Under Act 55, someone could buy a property on Pewaukee Lake, tear the dwelling down and rebuild 75 feet from the shoreline even though their neighbor's homes are 150 feet off of the lake. This would block the viewing corridors of their homes and undoubtedly lower their property values.

Assembly bill 603 corrects the shoreland setback changes made in Act 55 to allow shoreland set-back averaging. Shoreland averaging sets the shoreland setback of dwellings based on the average setback on the neighboring properties. This adjustment will protect the viewing corridor and the property values of the already existing adjacent homes that would be negatively affected by a setback of 75 feet.

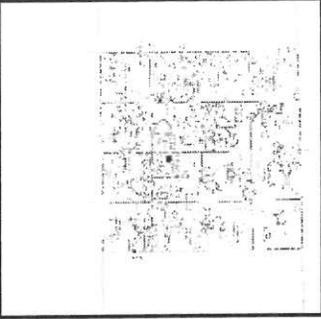
People are pulling building permits now to start projects this spring. We need to pass this bill now so property owners do not have deal with the negative consequences of structures being built in front of their homes and diminishing their property values.

For my district and many others in Wisconsin, it is imperative we pass AB 603 this session so my constituents do not have to deal with the negative consequences of the State budget language. I ask for your support.



LAND INFORMATION SYSTEMS DIVISION

Waukesha County GIS Map



Legend

- Municipal Boundary_1K
- FacilitySitePoint_1K
- Building Footprints_1K
- Railroad_1K
- TaxParcel_1K_Labels
- SimultaneousConveyance
- Assessor Plat
- CSM
- Condo Plat
- Subdivision Plat
- TaxParcel_1K
- Cartoline_1K
- <all other values>
- EA-Easement_Line
- PL-DA
- PL-Extended_Tie_Line
- PL-IA
- PL-Meander_Line
- PL-Note
- PL-Original_Parcel_Line
- PL-PT
- PL-Tie
- PL-Tie_Line
- ROW_CL
- RR_CL
- RW_Radius
- SD-SD_Block_O_100
- SD-SD_Block_O_200
- Road Centerlines_1K
- Band Centerline_1K

Notes:

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Assembly Committee on Natural Resources and Sporting Heritage
Assembly Bill 603

January 6, 2016

Thank you Chairman Ott and Committee members for the opportunity to testify for information today regarding Assembly Bill 603 relating to county shoreland zoning ordinance and activities within the shoreland setback. My name is Pam Biersach and I am the director of the Watershed Management Bureau at the Wisconsin Department of Natural Resources.

The Shoreland Management Program is a partnership between state and local government that requires development near navigable lakes and streams to meet statewide minimum standards. The shoreland zoning standards 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.

The shoreland standards within NR 115 administrative code, created in 1966, were set as the minimum requirement and allowed counties to be more restrictive. 2015 Act 55 amended the authority counties have in the development of a shoreland ordinance that is more restrictive than the shoreland zoning standards contained in NR 115.

The department appreciates the author's effort to bring statutory clarity and certainty from shoreland zoning rules in NR 115. AB 603 codifies into law some of the current shoreland zoning standards in NR 115 and also makes changes to and creates additional standards not currently regulated in NR 115.

Section 1 of AB 603: Current law s. 59.692(1k)(a)2 prohibits county shoreland zoning ordinances from prohibiting or regulating the maintenance, repair, replacement, restoration, rebuilding, or remodeling of nonconforming structures if the activity does not expand the structure's footprint. Additionally, an ordinance cannot require any approval, fee or mitigation for those activities.

AB 603 would extend the prohibition to include structures that are identified as exempt from meeting the required water setback. Section 5 of the bill says, "a county shoreland zoning ordinance may restrict these activities if the expansion is beyond the three-dimensional building envelope."

The department has questions that we have recently shared with the author regarding:

- County requirements and permits for new versus existing exempt structures
- The date, sizes and process to recognized, allow and calculate highly developed shorelines, respectively
- A uniform average setback when a county require a setback greater than 75'
- Calculation of reverse averaging when there are multiple structures within 200' of a proposed principal structure.

The department and is looking forward to working with Representative Jarchow on these questions.

Thank you again, Chairman Ott, for the opportunity to testify. I'm happy to try answering any questions you may have.

Paul Farrow
County Executive

Dale Shaver
Director



Waukesha County

Department of Parks and Land Use

DATE: January 6, 2016
TO: Assembly Natural Resources and Sporting Heritage Committee
FROM: Dale R. Shaver
Director
SUBJECT: Support for Assembly Bill 603

On behalf of Waukesha County, I submit this letter of support for Assembly Bill 603 relating to restrictions in a county shoreland zoning ordinance on activities within the shoreland setback area.

Specifically the bill provides flexibility to average structure setbacks based on existing development patterns on adjoining lots. In Waukesha County portions of Pewaukee Lake have existing development patterns with setbacks greater than 75 feet. This flexibility will protect the viewing corridor and property values of the already existing adjoining structures who would be affected negatively by the placement of a new structure with a setback of only 75 feet.

The bill also clarifies that a lawfully constructed structure that no longer conforms to current shoreland codes can be rebuilt within the original footprint and its previous height. Allowing for reconstruction within the three-dimensional building envelope provides an assurance for the existing property owner while preserving view corridors and values of adjoining properties.

If you have any questions please feel free to call me at (262) 548-8310.

I'm Paul Matthiae from Three Lakes, just south of Eagle River. I am secretary of the 48 year old Three Lakes Waterfront Association. We have 1,020 members and actively monitor 7,500 acres of water related issues on our chain of lakes. We have a 15 member board that I m here to represent.

The authors of the Bill, AB603, should be ashamed of themselves; as should the Legislature if it is passed. This is one of a series of Bills, already enacted, proposed, and in preparation, that are designed to strip the WDNR of its regulatory authority which has evolved over the past 3 to 4 decades to assure that the minimal standards of the State as they had been developed, would protect our waters, wetlands and shorelines then and for future generations. Similarly, Bill AB603 and others have removed local control from Counties, preventing them from enacting regulations where the citizens of these Counties have determined the need for stricter shoreland, lakes and wetlands regulation. Counties created stricter regulations when they recognized that State minimal standards could not address all lake and shoreline situations adequately. We are strongly opposed to this Bill and others that corrupt the DNR ability to set science based standards and restrict local control.

Once, Wisconsin was praised and looked up to by professional resource managers nationwide for its' leadership in protecting its' land and water resources. Those days are numbered if this Legislature continues on its' present course of regressive legislation.

Where are the Warren Knowles' and Gaylord Nelson's of today? Certainly not in this Legislature which is fast becoming an embarrassment to the citizens of the State and the Wisconsin Conservation Ethic.

January 4, 2016



150 East Gilman St. Suite 2600
Madison, WI 53703
P 608-255-1000
cleanlakesalliance.com

**Testimony to Wisconsin Assembly Committee on Natural Resources
and Sporting Heritage regarding AB 603**

*Elizabeth Katt Reinders, Deputy Director
Clean Lakes Alliance*

January 6, 2016

Thank you Chairman Ott and committee members. My name is Elizabeth Katt Reinders, and I'm the Deputy Director for the Clean Lakes Alliance. We are a nonprofit organization whose main focus is improving water quality in the Yahara River watershed, which includes the Madison-area lakes. We are a non-partisan quality of life organization comprising a very diverse group of private and public, urban and rural stakeholders, including lakeshore property owners and other residents, businesses, farmers, and government. Among our stakeholders are those who live on the lakes, who use the lakes for recreation, and businesses who depend on the lakes – whether it's to sustain their lake-related business, those who sell homes on the lake, or who rely on the lakes and the quality of life they provide to attract top talent to their company. We believe healthy lakes, healthy communities and a healthy economy go hand in hand.

Our approach to addressing the water quality challenges we face is through a combination of urban and agricultural measures. We make the business case for voluntary conservation, and we work for smart, effective policy. Local government is a leader in solving our water quality problems, and their effectiveness is crucial to the success of our community efforts.

I'm here today because AB 603 does not restore the local control that was lost in the shoreland zoning policy that passed in the state budget bill. Unfortunately, as drafted, the bill threatens to undercut the progress we have made in phosphorus reductions and water quality improvements in this watershed by preventing local communities from being innovative in their solutions to local challenges.

NR 115 zoning standards for shorelands were written to be minimums; the intent was that counties would tailor the standards to meet the needs of their lakes and their communities. Minimum standards are not adequate to meet the diverse needs across the state. One size can't fit all when our state's lakes range from Trout Lake in the Northwoods to Lake Mendota here in Madison. Moreover, some lakes are in watersheds with impaired waters and TMDL requirements, where communities may need to go beyond statewide minimum standards to achieve their water quality goals. Local communities need to be able to use tools that are effective in improving or protecting water quality and that are cost-effective.

In addition to the loss of local control, the state budget bill brought changes that prohibit counties from requiring vegetative buffers, which protect water bodies from erosion and runoff that carries nutrients and other pollutants. Buffers are an important tool in protecting and improving water quality, and AB 603 does nothing to address this concern, which we raised in our discussions during budget deliberations.

We, and others throughout the state, have made significant community investment in cleaning up our lakes through diverse coalitions. AB 603 undermines these efforts by removing important tools from the suite of practices that help achieve water quality improvements, and by stifling innovation and preventing local governments and communities from tailoring shoreland zoning standards to their specific needs.

We respectfully request that you to work with stakeholders to amend AB 603 to address the issues that have been raised.

Thank you.

WHEELER, VAN SICKLE & ANDERSON, S.C.
a Wisconsin Service Corporation

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TESTIMONY OF
WILLIAM P. O'CONNOR

Representing the
WISCONSIN SHORELAND INITIATIVE

January 6, 2016

2015 ASSEMBLY BILL 603

I am appearing today on behalf of the Wisconsin Shoreland Initiative a coalition of some seventy lake associations and thousands of lakefront property owners across Wisconsin. Most of my work for the Wisconsin Shoreland Initiative involves legal review and analysis and not legislative advocacy. This morning I am pinch hitting for the Initiative's legislative representative Mary Panzer who is out of the state this week on a visit to an aging family friend scheduled months ago.

For 35 years now, I have been in private practice here in Wisconsin, focusing on land and water law. Over that time I have represented scores of lake property owners, dozens of lake associations and local governments and statewide associations with interests in real property law ranging from the Wisconsin Society of Land Surveyors to the Wisconsin Association of Lakes. I have appeared in numerous land and water cases before the Wisconsin Supreme Court. My goal is not to flyspeck the provisions of Assembly Bill 603, but instead to provide the Committee with background on evolving state policy on the management of Wisconsin's lakes and especially the role of local governments in lake management.

Wisconsin's 15,000 lakes are recognized as a globally significant natural resource. Our lakes are probably the signature resource of the state. Millions of Wisconsinites and out of state visitors recognize them as a treasure. Those who have enjoyed the special privilege of owning waterfront property know how central that experience is to Wisconsin's heritage.

Governor Thompson used to chide his Minnesota counterpart about their "Land of 10,000 Lakes" license plates because we have half again more than that. Ours range from the world's largest – Lake Superior – to 134 different "Mud Lakes", not to mention "Mud Hen" "Mud Flats" and 3 "Little Mud Lakes." Lake Superior, the largest freshwater lake on the planet contains more than a tenth of the fresh water on the earth. Every other lake is smaller of course. Some have been developed with relatively small lots and reasonably affordable cabins and cottages. Others have shorelines developed with year-round homes, especially in the counties surrounding Milwaukee and other cities. Some lakes have crystal clear, clean water. Others, sadly, have been degraded by pollution. Some are busy with boaters on summer weekends. Some still provide a more wilderness experience. Wisconsin's lakes truly present options for everyone.

But the heritage of family camps and cabins and memorable fishing trips, the property surrounding lakes is a critical economic asset. Although the State does not track lake property values with any real precision, it is clear that the ribbon of property along lake shores is a huge contributor to local tax bases in practically every county. Just to cite a couple of telling examples, it is estimated that waterfront property constitutes more than 3/4ths of all the value of taxable property in Vilas County. There are only less than eight hundred lakefront parcels in the four townships that surround Big Green Lake, all included within the boundaries of the Green Lake Sanitary District. But the assessed value of those parcels totaled more than \$833 million in 2015. That's more than 37% of the taxable property in all of Green Lake County. So the stakes are high. It matters to the families that own lakefront property how neighboring land is used and developed. For them, a place at the lake is not just place where treasured experiences are gathered, it is a major pocketbook issue.

Generations of lawmakers have recognized the huge policy challenge of effectively managing Wisconsin's lakes to ensure that we can maintain this critical economic asset and pass our remarkable lake heritage on to our kids and grandchildren. Even before statehood, the Territorial Legislature considered and adopted Session Laws addressing lake management issues in various local communities, a pattern that continued after Statehood in 1848. Widespread use of automobiles made lakes – even those in far Northern Wisconsin – accessible to anglers and folks looking for a recreational escape. The Roaring Twenties brought development in the state to a whole new level as investors purchased large tracts and subdivided them into lakefront lots. That pattern paused when the Great Depression hit in the 1930s, but surged back after World War II.

The consequences of uncontrolled lakeshore development became an important political issue in the 1960s. In the 1961 Session, the Legislature authorized the State Conservation Commission to classify lakes and streams to improve fisheries and other management issues. Using that authority, later transferred to DNR, the State established some stream classes, including the widely-known Class 1 and Class 2 Trout Streams. But DNR never did classify lakes. Maybe it was just too complicated. Should the

classification be based on size, location, fisheries or water quality? Recreational use or boating congestion? Water chemistry? Wildlife value? Or what? Despite their importance (economic and otherwise) lakes have never been classified by the State of Wisconsin and substantially all of Wisconsin law references simply "lakes" and makes no distinction between the smallest and world's largest lake or the 15,000 between.

For at least 50-years, it has been the policy of the state to manage lakes through a shared state/local approach. In the 1965 Session, then-Governor Knowles signed bipartisan legislation requiring counties to enact shoreland zoning ordinances meeting "minimum standards" (including minimum lot area, minimum average lot width and minimum building setbacks) established by the Conservation Commission (later DNR) in the late 1960s. By 1969, every county regulated shoreland development, focused on these key standards. In many counties, elected county supervisors adopted shoreland ordinances following the state minimum standards, but others (especially in areas blessed with extensive lakes) determined to establish standards that went beyond the state minimums where they considered suitable to address local conditions. Many lakes in Wisconsin were developed as they were because of the preferences of landowners, rather than any legal requirements. Lakes with shorelines platted in the 1920s often featured relatively small lots. On others, large parts of the shoreline are still held in larger parcels, with homes and cabins set so far back into forested shore that you might not even see them. Each lake has its own special history reflected in patterns of development. But a huge proportion of waterfront development in this state was constructed consistent with the setbacks, average lot width and other standards adopted in those 1960s era ordinances.

Another key step in this story took place in the 1997 Session, when the Legislature expressly authorized counties to classify lakes and provided financial assistance to counties to do that. Lake classification allowed counties to set different standards for lakes with different characteristics. This permitted the adoption of shoreland development standards that reflected the special histories and characteristics of lakes. Finally, counties and towns could adopt development standards that would preserve the variety of lakeshore environments, rather than the "one size fits all" previously required. In the nearly 20 years since it was enacted, lake classification has been a genuine success, praised by many property owners who hope to maintain the lakefront character they have enjoyed for generations, whatever that has been.

Whether or not they were tweaked through recent lake classification efforts, critical standards for shoreland development were set locally, by the elected officials citizens and lake property owners encounter at their churches and hardware stores. They were developed following active involvement by the people who most use our lakes, including fisherman who use public access sites and shoreland property owners. Those folks attended sometimes tedious meetings in local courthouses and town halls. Their voices were heard by the decision makers in their communities during the summer season when people are focused on a very special part of their lives in Wisconsin.

There are reasons why – after considerable public discussion -- some town and county boards set shoreland standards different than the state minimums. On Lake Superior, for example, greater building setbacks have been required on portions of the shore to protect buildings from erosion that sometimes comes when powerful storms break on to red clay shores. On other lakeshores, deeper setbacks just happened because the first one to build a cabin decided to set it back from the shore and neighboring cottages were built respecting that line. Some communities determined to codify those existing setback lines to protect the value of existing structures. As the seasons turn, you should expect to hear from constituents whose property values have been hurt by newly authorized near-shore construction that blocks views families have enjoyed for decades.

I urge the members of this Committee and your colleagues in both houses of the Legislature to take a pause, when summer comes back (and it will) visit with constituents hunt and fish and go boating and own lakefront property before you make further changes in the ground rules for shoreland development. And consider the wisdom of policies that evolved over decades in this lake-rich state where we recognize that you can't effectively manage 15000 widely different lakes from here in Madison. Policies that recognize that this will only work if we have an effective state-local effort that recognizes local conditions, the science of lakes and their ecosystems and the interests and wishes of citizens and property owners. You might consider formation of a blue ribbon or Legislative Council Committee bringing together policy makers (state and local) with lake users and the property owners who have a deep stake in the policies you adopt. Thank you.

MEMORANDUM

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

FROM: Daniel Bahr, Government Affairs Associate

DATE: January 6, 2016

SUBJECT: Support of Assembly Bill 603

Thank you for the opportunity to address Assembly Bill 603 (AB 603), which relates to restrictions on county shoreland zoning ordinances and on activities within the shoreland setback area. Senator Devin LeMahieu and Representative Adam Jarchow drafted AB 603 at the request of the Wisconsin Counties Association (WCA) as a follow up to changes made to county shoreland regulations in 2015 Wisconsin Act 55. AB 603 addresses the following issues:

Setback Averaging: Counties will continue to use the NR 115, 75-foot setback from the ordinary high watermark (OHWM) as a general rule. However, if principal structures exist on adjacent lots and within 250 feet of a proposed principal structure in both directions along the shoreline, the setback distance may be reduced to the average of the setbacks on each adjacent lot, but no less than 35 feet.

In addition, AB 603 also states that if principal structures exist on adjacent lots and within 200 feet of a proposed principal structure in both directions along the shoreline and both are set back more than 75 feet from the OHWM at the setback that was required at the time each was built, the county shoreland zoning ordinance may establish a setback equal to the average of the distance the neighboring principal structures are set back from the OHWM.

Non-Conforming Structures: Allows for limitation of the expansion of a non-conforming structure being replaced within the 75-foot setback to the original three-dimensional envelope.

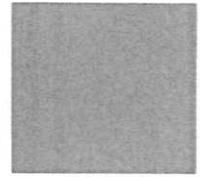
Height Limitations: Allows a county to limit the replacement of a “dry boathouse” within the 75-foot setback within the original three-dimensional envelope.

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Impervious Surfaces: AB 603 requires the DNR shoreland zoning standards to prohibit a roadway or sidewalk from being considered an impervious surface. The bill also makes adjustments to impervious surface standards for areas that are not highly developed.

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

Mrs. Lisa Conley
516 Lac La Belle Drive
Oconomowoc, WI 53066
(262) 567-5947
Lconlev101@gmail.com



January 5, 2016

Representative Alvin Ott, Chairman
Assembly Committee on Natural Resources and Sporting Heritage
Room 323 North, State Capitol
Madison, WI 53708

RE: AB 603 County Shoreland Ordinance Restrictions

Dear Representative Ott and members of the Assembly Natural Resources and Sporting Heritage Committee;

As a longtime lake property owner in Waukesha County, I wish to strenuously object to provisions in AB 603 that further erode the county's ability to regulate setbacks and non-conforming structures.

If we allow more structures in the shoreland area, and prevent counties from using their good local judgment to protect the most scenic and sensitive lakes, and areas of our lakes and shorelands, the beauty and health of our lakes and shorelands will surely be degraded.

Our local officials are most familiar with the unique qualities of the lands and waters of their jurisdiction. They should not be prevented from taking action to protect these resources that are the basis of their local economy and the value of the properties within – mine included.

Sincerely,

A handwritten signature in cursive script that reads "Lisa Conley".

Mrs. Lisa Conley



Statement in opposition to Assembly Bill 603

Submitted by

Doug Edwards
115 Chestnut Street
Madison, WI 53726

My wife and I own property in Vilas County and have enjoyed the lake and woods around our home for many years. We recently learned that Assembly Bill 603 has been proposed which, if passed, will threaten the quiet, solitude and beauty we've come to expect in the Northwoods.

Developers who bought land for prices reflecting known restrictions recommended by a DNR intent on protecting habitat and property value are now trying to extract unfair profits on the backs of those of us who have abided by those rules. We expect you, our representatives, to protect our property like it was your own. The regulations in place are there because studies have determined they will preserve and conserve our resources well into the future and will serve the majority of interests best. Do not allow those with financial conflicts of interest and political connections to rush legislation through committees, legislation that circumvents well-intentioned and studied policy. If changes are warranted, let them come from reasoned discussion among local property owners with the insight of DNR professionals. We don't need developers telling us how we ought to be enjoying our property.

Thank you for your consideration.