

**Structures in Public Waters Advisory Committee Meeting
Brainerd Fire Department
Meeting Notes
February 12, 2009**

Attending:

Mike Duval, DNR Fisheries
Patty Gould-St. Aubin, Itasca Realty
Al Grabowski, Landowner
Kenneth Grob, Hubbard County COLA
Doug Houge, Crow Wing County
Terry Neff, MACPZA
Rick Pelletier, MN Federation of Bass Anglers
Paul Radomski, DNR Ecological Resources
Molly Shodeen, DNR Waters
Sam Stern, POPULAR
Bob Tyson, Good Ol Days Resort
Don VanderMey, FLOE International
Henry VanOffelen, MN Center of Environmental Advocacy
Michele Walker, DNR Waters
Kenzie Phelps, MN Waters

Staff:

Julie Ekman, Permit Programs Supervisor
Tom Hovey, Public Waters Hydrologist
Bruce Gerbig, Rulewriting Hydrologist
Erika Rivers, Facilitator
Felicia Barnes, Planner

Information Sharing

Members were asked to share their discovery of information relevant to the structures discussion. Items that were provided by members are listed below:

- The question of what is a “marina” vs. a “large dock system” was raised.
- Will sand blankets be considered a structure, and thus incorporated into these rule changes? Some would like the AIZ to include sand blanket and APM; others would like to see them excluded.
- Some members would like coloration of structures to be incorporated into rule; others do not.
- How will these rules address illegal docks that are pre-existing? Will there be a timeline to remove big docks after rules are promulgated? If grandfathering were to become part of rule, what date should be used? Some argue that it should be the date the rules are promulgated;

others argue that some existing dock systems were never legal so cannot be grandfathered. (* Tom will provide chronology of dock rules at the next meeting—what was legal and when.)

- Storage of docks in the off-season often occurs in both the AIZ and the SIZ. How will that be addressed in rule?
- PUD Docking—the Shoreland Rules Advisory Group would like this Structures Advisory Group to address PUD docking systems in this rules process.
- This issue of “Riparian Rights” came up again; Tom passed out a DNR statement with case law citations on what riparian rights are.
- Depth requirement
- There was consensus around the table that whatever rule recommendations come out of this group should be clear and certain; our chief aim needs to be easy-to-understand rules
- The dock rules also need to be consistent with shoreland rules. Tom Hovey and Paul Radomski will communicate to make sure the two processes complement one another
- Some members on the advisory group advocate for different dock rules for different lake classes.
- The dock industry would like to see additional discussion on the economic impact of changing dock rules. Tom Hovey noted that such a discussion is a required part of the SONAR, and the issue was added to the next meeting’s agenda.
- The new rules should make another docks-related General Permit unnecessary.
- Several in the group would like the rules to address mooring facilities for trailer parks.
- The point was made that non-riparian owners have the right to use the entire surface of public waters when legal access is gained, so this advisory group can’t only consider riparian rights when making recommendations on the new rules.
- Dock owners need to be educated that lakes are a public resource, and anglers have as much right to use those resources surrounding and beneath docks/structures as the landowner does.

DNR Dock Survey Results

It was mentioned that the survey was a tool for information purposes, and should be viewed as such (e.g., some on the advisory committee raised concerns about its statistical significance, sampling method and the wording of questions). The survey is closed and it will take a while to compile the information. It will require some cleaning because there are duplicates that have to be removed and the valid responses have to be gone through. The responses that were received from the 25,000 postcards that were mailed will be separated out so we may get an idea of how many of those responded. Sam Stern also conducted a dock survey and distributed the results to the group.

Tom provided some basic information about the responses that have been received. Almost every county is represented. Those that own waterfront and those that don't are both well represented. Overall, people were fairly modest in what they thought is reasonable with 4' to 6' being wide enough for most access docks. People were not interested in regulation of the length of docks or the color of canopies. There was a split with regard to private docks that should be allowed – divided between 1 or 2 and based on shoreline owned. There was also a split for the amount of shoreline a property owner should be able to occupy or disturb- between 25-50 ft. and no limit. People generally think an important part of their boating experience is the naturalness of the lake, fishing and water quality.

Erika asked the committee how they would like to use the information from the survey. Below are the responses:

Setting aside those 20% that want no regulation, we get a feel for what people have to begin to help to create thresholds. One will get a general sense of how the public feels about some of the critical issues. Questions 15 (how many private docks should be allowed per riparian lot), and 16 (what is a reasonable amount of shoreline occupied by private structures such as docks, lifts, and canopies), provide information that we should pay attention to, and use to guide our work. Views of riparian and non-riparian owners should weigh into this process.

DNR will have more information on the dock survey data at the next meeting. It will also be posted on the web site.

POPULAR Survey:

Sam Stern mentioned that Poll Daddy (survey software) was used to conduct the survey and only one response per person was allowed. Respondents were primarily POPULAR members. Sam offered the following comments based on the information received from survey: 1) The committee review all the comments received (from both surveys). 2) The POPULAR survey shows how a slightly different spin on the question will make a difference in the answer. 3) There is a need for rules to be reasonable, enforceable, affordable, etc. 4) DNR shouldn't create rules that will make more people non-compliant. 4) A difference noted between the two surveys is the POPULAR survey adds extra elements for people to think about (e.g., ADA accessibility). 5) Some may view it a "taking" if the regulations are more restrictive.

There is a sense that if the revised rules are more restrictive this would be considered a situation where the government "takes" your property and one would be entitled to compensation. Tom Hovey will request information from the Attorney General's office on this matter.

Michele Walker will send out information on how many dock permit applications have been received in her area.

Enforcement

Tom mentioned that it came across at the last meeting that Enforcement wasn't planning on conducting any additional enforcement of structures. Julie and Tom met with Enforcement's John Hunt. It was clarified that the intent was not that there would be no enforcement, but the rules have to be enforceable. A CO has to be able to visually see that there is a problem. Enforcement does have priorities that are generated by the season, etc.

It was asked, what is the role of the local government or water safety patrol for enforcement? If it is a water resource law it is appropriate for the CO to enforce. An example of a local government enforcement issue would be a PUD with a centralized dock system. If it becomes illegal it is a county government (local) issue authorized by a conditional use permit. It was also mentioned that the local rules are not administered consistently across the State. There was a point made that the regulations should be enforceable without adding the need for additional resources that will result in the rules not being enforced. Consistency of enforcement is also important. And it

was mentioned that just because a law is not enforced consistently and at all times, it is not necessarily a bad law. Sometimes enforcement happens in waves, and enforcement is not possible at every infraction (traffic law example).

Aquatic Impact Zone (AIZ)

What we heard during the dock general permit process is we need to be consistent, and that the problem of shoreline impact needs to be addressed more holistically. The AIZ would limit the amount of frontage affected, similar to Aquatic Plant Management concept or sand blanket rules that have been in effect for many years. Instead of a square footage, a linear length along the shoreline could be used. The DNR Aquatic Plant Management rules use this concept (50 feet or ½ length of shoreline). This would be an easy concept to enforce. This zone defines a near-shore area lakeward of the OHW. The committee was asked to review and comment on the definition for the Aquatic Impact Zone in the preliminary draft. Comments generated included:

- Where would a swimming beach be safely located?
- Create discreet use areas – swimming, dockage, etc. all uses overlap.
- Simplify definition to state the near shore area lakeward of the OHW.
- Concern that those that have large lots and have multiple areas to access the lake that they be able to maintain what they have.
- Concern to define the types of facilities so that the public know what is included.
- Assumption that this is a box where all the cumulative effects are located.
- Was the intent to capture what is included in 6115?
- Need to address contiguous versus non-contiguous aquatic zones.
- Remove the mention of facilities – we are talking about access to public waters.
- What is the appropriate footage to include in the definition? Suggestion for 8 feet. “Out to 8 feet or up to navigable depth”. Define navigable depth later.

There was group consensus on the concept of the near shore area.

The committee came up with the following two re-writes of the definition for consideration:

Aquatic impact zone. “Aquatic impact zone” means that portion of the surface and beds of public waters located between the ordinary high water level and the navigable depth.

Aquatic impact zone. “Aquatic impact zone” means that portion of the surface and beds of public waters located between the ordinary high water level and the navigable depth wherein recreational users and riparian landowners may access public waters.

A handout was provided on the suggested alternative provision to Subpart 4. No permit required. (8). The committee had the following suggestions/comments:

- Do we only want to talk about structures or other activities in the aquatic impact zone?
- This language would cover 80% of situations.
- Activities outside the zone would require a permit?
- Depth issue is critical. What depth we allow a dock to go out to is important.
- Add navigable depth or X number of feet.

- It was clarified that this is for activities that will not require a permit.

Suggested revised language to (8):

(8) the total continuous linear extent parallel to the shoreline of all structures shall not exceed more than ??? feet or one-third of the length of a person's shoreline, whichever is less, with the following exceptions:

The committee was then asked to think about a reasonable footage to include in (8). The following comments/suggestions were offered:

- Could live with 2 docks on a more narrow area.
- How many total feet does a person have? Focus on the total length of shoreline.
- Continuous is an incentive to group structures.
- Go by lot size – allowed X per 100 foot lot.
- Continuous doesn't matter as long as we include all structures.

Based on the sketch of the property with frontage of 70-75' on the white board we went around the room and asked for each committee member to make a suggestion for a linear width:

- Depends on property ****
- Depends on property with some dimensional limit***** (no squish)
- 30 feet or half the lot width (whichever is less)
- 50 feet or half the lot width (whichever is less)*
- 40 feet or one-third the lot width
- 50 feet or one-third the lot width** (lower limits for small lots)
- 30 feet or one-third the lot width
- Standard width per 100 feet with exception for small lots
- The narrower the more restrictive DNR should be

(* indicates additional members agreed with that suggestion)

General Permit (GP) Issue

Julie explained that Rules describe three types of activities: 1) Prohibited, 2) No permit required, and 3) Permit required. For activities that require a permit, there are two types: 1) Individual and 2) General.

Reasons a GP might be issued:

- 1) To allow minimal impact types of projects. These are project types that had been regularly reviewed by other DNR divisions, state agencies, and LGUs under single permit applications over the course of many years. Experience with these types of projects shows that individual permits were consistently approved; DNR believes it is a good government service to use this knowledge to save time and effort by allowing these projects to go forward without needless delay and unnecessary paperwork.
- 2) To eliminate duplication of effort where an LGU is regulating, using same or more restrictive standards. These types of GP specify that if standards of LGU are met, no

separate DNR permit is required. Again, DNR maintains that this provides good government service and can remove unnecessary delays.

- 3) Where rules are inadequate or problematic a GP might be issued to address an activity until rules can be revised (GP 2008-0401, the platform GP).

GP Highlights:

- About 160 GPs are currently active and cover a variety of projects.
- Most common type is issued to counties for replacement of bridges and culverts.
- Others issued for emergency flood damage repair, shoreline restoration, water appropriation, dry hydrants.
- Some WSDs with expert staff have GPs for dredging, marinas, erosion protection, culverts, and bridges.

GP 2008-0401 (the platform GP):

- Issued to deal with rule inconsistency and inequity until rule revisions can take place:
 - Inconsistency: Current rules state that any structure wider than 8', such as a small platform that covers 120 square feet, requires a permit, but an extensive, 8' wide or narrower, dock with several slips that could cover several hundred square feet does not need a permit. This is problematic and revised rules need to address the amount of public water surface area covered by private structures.
 - Inequity: To ticket the non-permitted platforms while not being able to act on the extensive dock systems that don't need a permit but that might cover far more public area did not seem to be in the public interest.

Julie also mentioned that the draft provided today does not include a separate section on general permits (GPs). DNR prefers removing the previously proposed section because GPs are subject to the rules and statutes as are individual permits; there is no need to re-state this separately. Any procedures that are particular to GPs are better addressed in a separate administrative document rather than in rule.

Questions and comments on this:

- Grandfathering of currently legal structures was mentioned as a concern and this is an issue we need to address at the next meeting.
- A question was asked if DNR could have a GP for grandfathering. It was mentioned that grandfathering should be addressed in rule instead of with a GP (permits expire). Tom will check with the Attorney General regarding the issue of grandfathering.
- A chronology of dock rules is needed (Tom will provide).

Erika developed the following lists for guiding the discussions surrounding suggested revisions and for items that will need to be discussed on another date:

Guiding Values

1. Is it clear and easy to understand?
2. Is it enforceable?
3. Is it consistent with the shoreland rules?

Parking Lot

- Compensation for "Taking" (would there be a cost to State of MN?)
- Ramps/stairs between SIZ and AIZ (need to ensure rule consistency)
- Impacts on real estate values (Sam-will provide documents to address this)

Next meeting:

The next meeting is March 12, 2009, 9:30am-2:00pm at the MN Department of Transportation office in Baxter (7694 Industrial Park Road). Please park in the employee parking lot south of the building. The April meeting is scheduled for April 9, 2009, 9:30am-2:00pm at the Brainerd Fire Department.

At the conclusion of the meeting those in the audience were provided an opportunity to comment to the committee. Mark VanEssen from D.H. Docks and Robert Birkeland from Larson Group Real Estate came forward and provided comments and were encouraged to submit their comments in writing so they could become part of the official public comments.

Submitted by: Felicia Barnes, Planner