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The Status of Lake & Natural Shoreline Friendly Ordinances in Michigan

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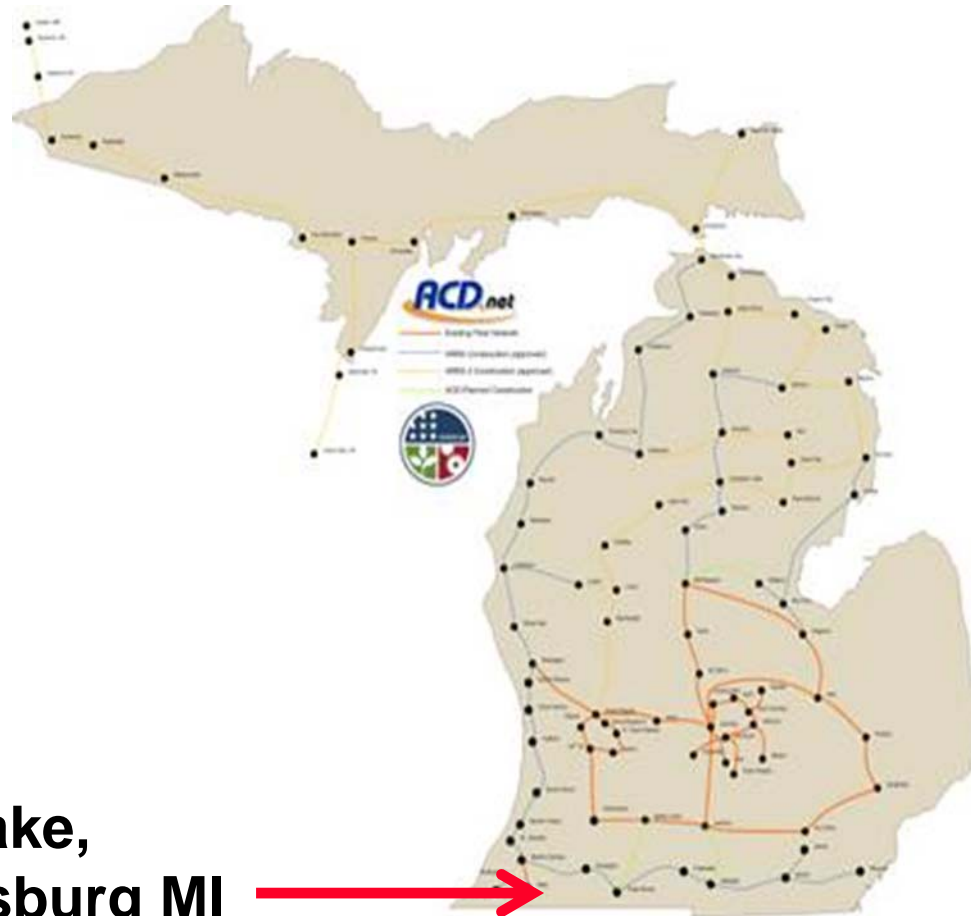
www.miltontwp.org

MNSP Home Owner Workshop Instructor

2nd Annual Shoreline & Shallows Conference



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**Eagle Lake,
Edwardsburg MI** →

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Shoreline and Shallows Conference – March 2012



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OUR APPROACH:

- Review of What Michigan Does NOT Have
- Overview of Planning and Zoning in Michigan
- Review of Lake Friendly Zoning Ordinances & “Tools”
- A “Happy Ending” to this Story/Quest (Any Story Actually)
- Q & A Time

DESIRED RESULT: Ability to impact, review and act on local Zoning Ordinances and Master Plans.



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WHAT MICHIGAN DOES NOT HAVE...

WISCONSIN –

- **Wisc Admin Code NR115 / S59.692. Essentially “Shoreland Zoning” State-wide, minus some cities**
- **Initial 40 yrs. Ago, Revised 2009.**
- **Have Until 2014 to meet new requirements - e.g. 75 Set back, if expand must “Off-set Impacts” Caps on Impervious % (30%), 10,000/20,000 sq ft min Lot Size**



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WHAT MICHIGAN DOES NOT HAVE...

MINNESOTA –

- **Shoreland Management Program (Minnesota Rules 6120.2500 – 3900)**
- **State-wide Standards Local Governments MUST adopt for the Protection and Orderly Development of Shorelands (Lake, River, Stream) (Natural Env, General Waters) (80,000/20,000 sqft,, 200ft lot width)**
- **Considering Possible Property Tax Incentives for Undeveloped and Restored Shoreland (1000 ft of HWM)**



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WHAT MICHIGAN DOES NOT HAVE...

WASHINGTON STATE-

- **Shoreline Management Act, passed by WA Legislature 1971, adopted by Voters 1972.**
 - **Requires Cities and Counties to adopt Shoreline Management Plans (SMP) in accord with State Reqs.**
 - **Department of Ecology “Approval”**
 - **Designates Shorelines of “State-wide Significance”**
 - **WA “Shoreline Management Handbook” (Big, WOW!)**
-



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WHAT MICHIGAN DOES NOT HAVE...

NEW HAMPSHIRE-

- **Shoreland Water Quality Protection Act 1991**
- **250,150, 50 Ft “Areas of Control” from Reference Line**
- **Provides for Tree Coverage, Undisturbed “stumps”, no cutting lower than 3 ft in many areas, foot path to water no wider than 6ft.**
- **Easy to Use, 1 page “Summary of Standards”**



RSA 483-B
Shoreland Water Quality Protection Act (SWQPA)
A Summary of the Standards

A STATE SHORELAND PERMIT is required for most new construction, excavation and filling activities within the Protected Shoreland. (See definitions below) Forest management not associated with shoreland development or land conversion and conducted in compliance with RSA 227:19 and agricultural activities and operations defined in RSA 21:24-a and governed by RSA 430 are exempt from the provisions of the SWQPA. Projects that receive a permit under RSA 483-A, e.g., beaches and retaining walls do not require a shoreland permit. A complete list of activities that *do not* require a shoreland permit can be found on the [Shoreland Program Page](#) by visiting www.des.nh.gov.

250 feet from Reference Line — THE PROTECTED SHORELAND:

Impervious Surface Area Limitation. If a homeowner or developer wishes to exceed 30% impervious surface coverage of the area of the lot within the protected shoreland, a stormwater management system designed and certified by a professional engineer that will not concentrate stormwater runoff or contribute to erosion must be implemented and if any grid segment within the waterfront buffer does not meet the minimum required 50 point tree, sapling, shrub and groundcover score, each deficient grid segment must be planted with additional vegetation to at least achieve the minimum required score. If a homeowner or developer wishes to exceed 20% impervious area, a [stormwater management plan](#) must be implemented to infiltrate increased stormwater from development.

Other Restrictions/ Notes:

- No establishment/expansion of salt storage yards, auto junk yards, solid waste and hazardous waste facilities.
- Setback requirements for all new septic systems are determined by soil characteristics.
 - 75 feet for rivers and areas where there is no restrictive layer within 18 inches and where the soil down gradient is not porous sand and gravel (perc < 2 min.).
 - 100 feet for soils with a restrictive layer within 18 inches of the natural soil surface.
 - 125 feet where the soil down gradient of the leachfield is porous sand and gravel (perc rate equal to or faster than 2min/in.).
- In accordance with RSA 485-A, when selling developed waterfront property, a *Site Assessment Study* is required for all properties with on-site septic that are contiguous to or within 200 feet of waterbodies jurisdiction under the SWQPA. For more information relative to site assessments, contact the NH [Subsurface Systems Bureau](#) at (603) 271-3711.
- In accordance with RSA 485-A:17, an Alteration of Terrain Permit is required for any project that proposes to disturb more than 50,000 sq ft of contiguous terrain if any portion of the project is within the protected shoreland or disturbs an area having a grade of 25% or greater within 50 feet of any surface water.

150 feet from Reference Line — NATURAL WOODLAND BUFFER LIMITATIONS:

- At least 25 percent of the area between 50 feet and 150 feet from the reference line must be maintained in an unaltered state.

50 feet from Reference Line — WATERFRONT BUFFER and PRIMARY BUILDING SETBACK:

- All primary structures must be set back at least 50 feet from the reference line. Towns may maintain or enact greater setbacks.
- Within 50 feet from the reference line, a waterfront buffer must be maintained. Within the waterfront buffer, tree coverage is managed with a 50 x 50 foot grid and point system. Trees and saplings may be removed provided the sum score of the remaining trees, saplings, shrubs and groundcover within the affected grid segment is at least 50 points. (see [Vegetation Maintenance within the Protected Shoreland FACT SHEET](#))
- No natural ground cover shall be removed except for a footpath to the water that does not exceed 6 feet in width and does not concentrate stormwater or contribute to erosion.
- Natural ground cover must remain intact. No cutting or removal of vegetation below 3 feet in height (excluding previously existing lawns and landscaped areas). Stumps, roots, and rocks must remain intact in and on the ground unless specifically approved by the department.
- Pesticide and herbicide applications can be applied by a licensed applicator only.
- Only low phosphorus, slow release nitrogen fertilizer can be used beyond 25 feet of the reference line. Only limestone may be used within 25 feet of the reference line.

"REFERENCE LINE". The reference line is the point from which setbacks are determined. For *coastal waters* it is the highest observable tide line; for *rivers* it is the ordinary high water mark and for *lakes and ponds* it is the surface elevation listed on the [Consolidated List of Waterbodies subject to the SWQPA](#).

"CONSTRUCTION". Erecting, reconstructing or altering any structure(s) that result in an increase in impervious area.

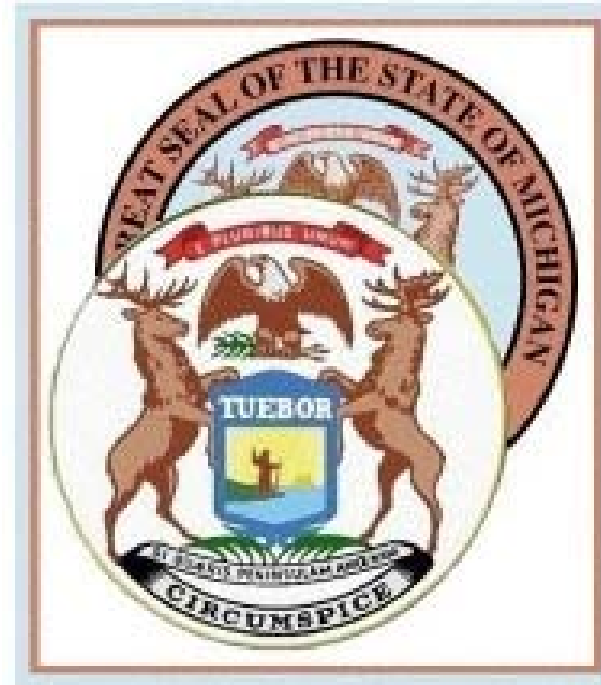
"EXCAVATION" - To dig, remove, or form a cavity or hole within the ground with mechanized equipment.

"FILL" - To place or deposit materials such as rocks, soil, gravel, sand or other such materials.

"UNALTERED STATE" - vegetation allowed to grow without cutting, limbing, trimming, pruning, mowing, or other similar activities except as needed for plant health, normal maintenance and renewal.



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WHAT MICHIGAN DOES HAVE...

When passed in New York in 1787, the Northwest Ordinance showed the influence of Jefferson. It called for dividing the territory into gridded townships, so that once the lands were surveyed, they could be sold to individuals and speculative land companies.

The State has delegated considerable Authority/Powers to Townships, but to Counties ONLY IF the Townships do not Exercise their RIGHT of Authority.



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WHAT MICHIGAN DOES HAVE...

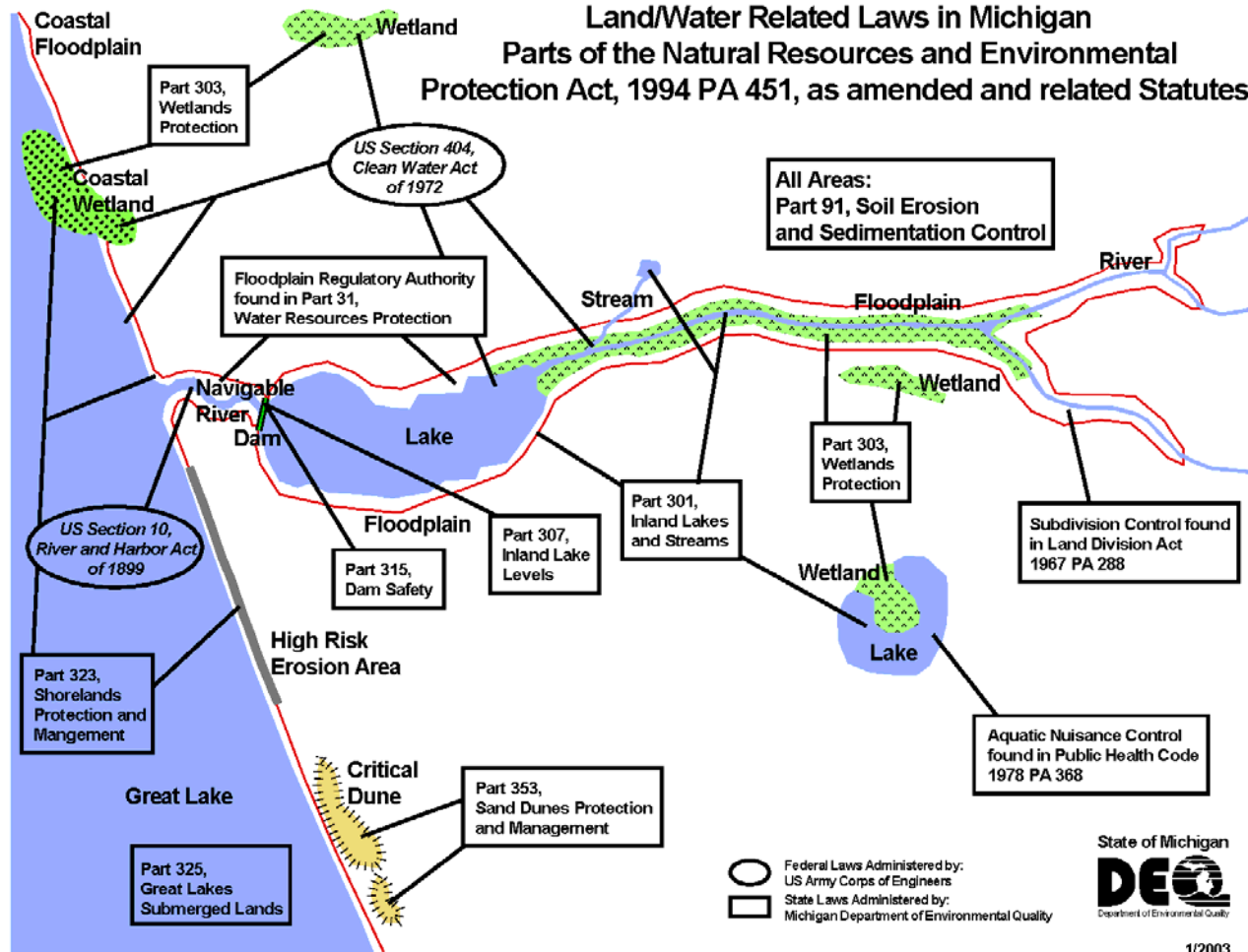
As a Result:

83..... Counties

533.....Cities/Villages

1,242... Townships

**1,858 Units of Government
for Local Planning & Zoning**





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What this shows About Michigan ??

“... MAYBE A Strong Aversion to “One-Size-Fits-All” Solutions from/by the State Level.....

Notable Exceptions (only after a Plethora of Local Rules):

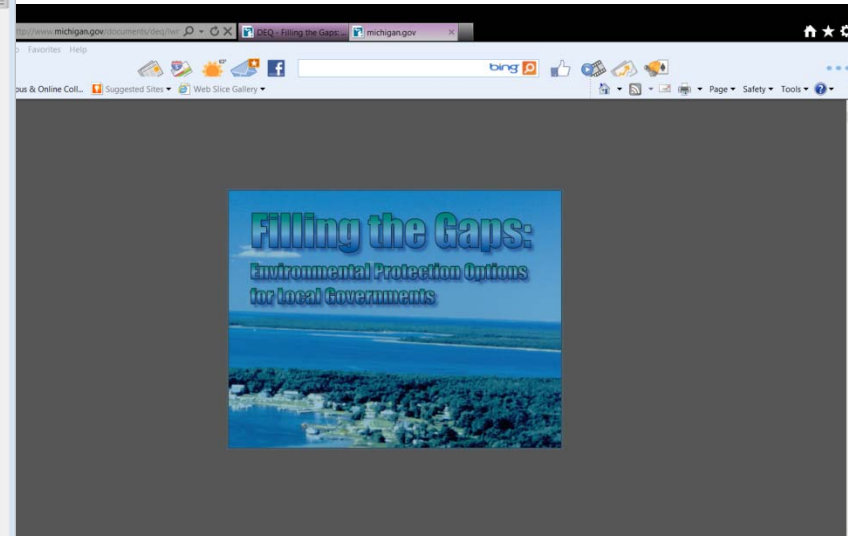
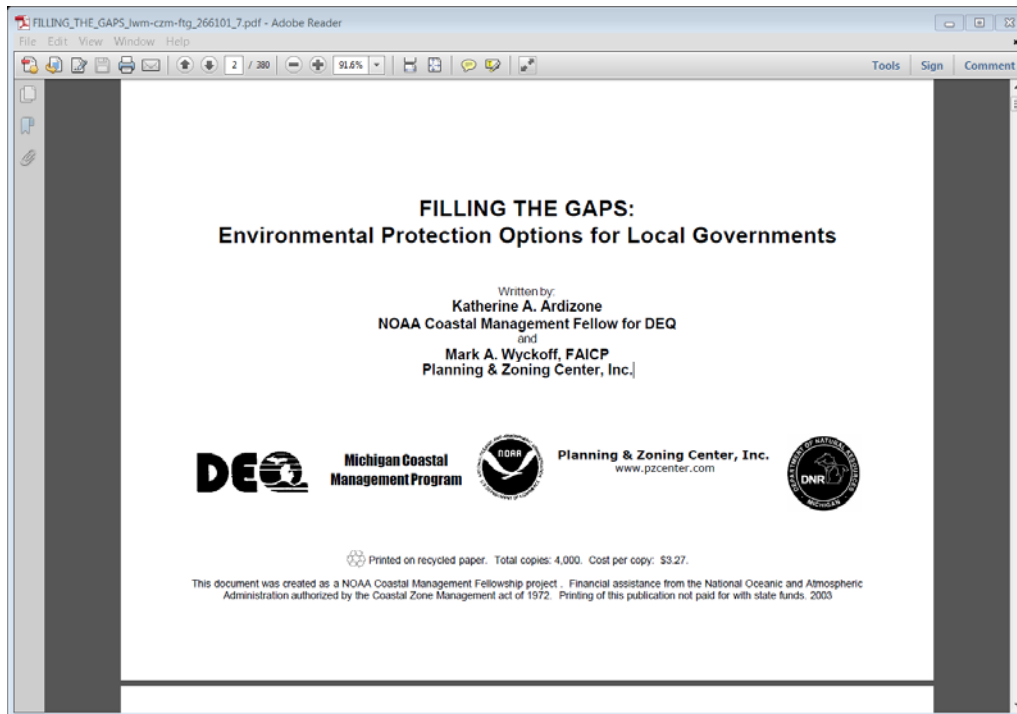
- **Phosphorus Fertilizer Regulation**
- **Activities at Lake Private Road Ends
(Possible Gov. Signing Soon)**
- **PART 414 AQUATIC INVASIVE SPECIES
Advisory Council**



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FILLING THE GAPS, 2003 Edition

http://www.michigan.gov/deq/0,4561,7-135-3313_3677_3696-73358--,00.html on COASTAL PAGE



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WISDOM from the PAST.....

- **“...The single BEST TOOL available to PROTECT inland lakes, streams, rivers, and watersheds IN Michigan, IMHO, is LOCAL MUNICIPAL ZONING...”**

- **“...ZONING has huge implications for lakes and watersheds, and RIPARIANS who ignore becoming involved in local zoning decisions do so at their own risk....”**

--- Cliff Bloom, RIPARIAN MAGAZINE, Aug. 2002



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Planning Commission

ZBA (Zoning Appeals)

MASTER PLAN
Protect Your Lake

Zoning/Civil Ord.(Elected Officials)

Ordinance Enforcement



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THE MASTER/FUTURE LAND USE PLAN...

- **Master Plan, Review/Update Every 5 years**
- **All Zoning Ordinances and Special Uses “FLOW From”**
- **Controls Zoning Districts/ Overlays**
- **Controls Structure Dimensions, Setbacks & Uses**
- **For “Oversight” of Land & Water, it should be in the Plan**



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THE PLANNING COMMISSION...

- **Composed of “Representative Interests”**
- **Appointed by Supervisor/Village Chair, Confirm Vote**
- **Master Plan, Every 5 years**
- **Initiates All Zoning Ordinances and Reviews Special Uses**
- **Should Act Independently, 3 yr Term unless Malfeasance, Misfeasance, Non-feasance**



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THE ZONING & MUNICIPAL ORDINANCES...

- **Based on Master Plan, “NUISANCE LAW”**
- **Control Permitted Uses, Special Uses, Misc**
- **Controls Zoning Districts/ Overlays**
- **Civil/Municipal Ords. Generally Regulate “Behavior”, not a Function of Planning Commission (Police Power)**
- **Zoning Ordinances Regulate Structures/Land Uses**
- **Key Principle for any Ordinance: “*Health, Safety & General Welfare*”**



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THE “ENFORCEMENT PROCESS” ...

- **Ordinance Enforcement Officer Upholds ordinance integrity**
- **Criminal or Civil Infractions? Different Approach**
- **Many Times “Costly” and Issues of “Will/Skill”**



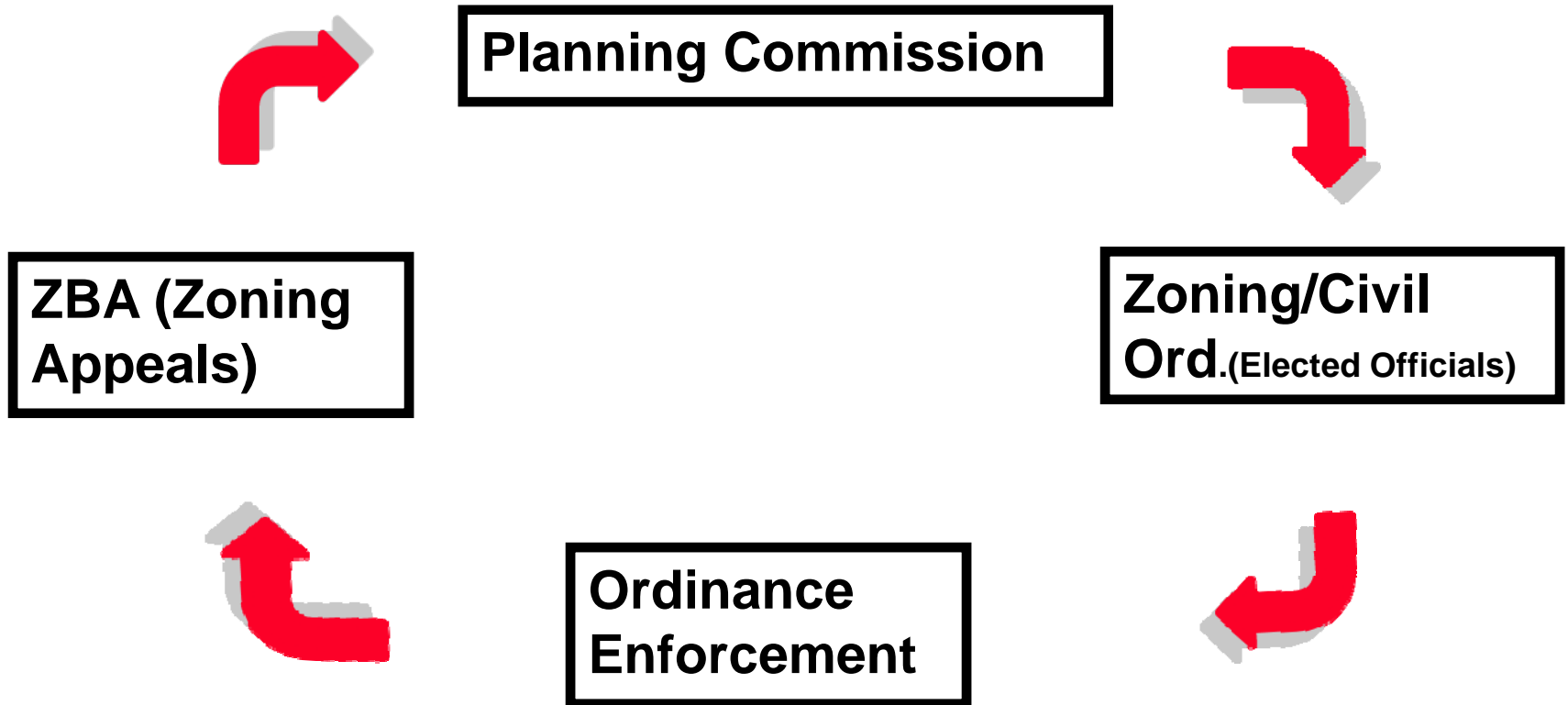
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THE “ZBA” ...

- **Upholds ordinances – Quasi Judicial at Local Area**
- **Variations Granted under strict Exceptional Criteria**
- **Dimensional Variance ONLY ???**
- **Limited Municipalities have USE Variance**
- **Should 90% of Variance Be Denied?**
- **Grant Variance or Modify the Zoning Ordinance?**



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HOW DOES YOUR ZONING ORDINANCE DEAL WITH...?

- “View” Preservation Setbacks & Structure Height
- Storm Water Run-off
- Buffer Area, Impervious Surfaces, Natural Shorelines
- Wetland Preservation
- Geothermal Issues
- Pier length / location /number
- “Weeds” Special Assessment Districts
- Anti-Funneling / Anti-Key Holing



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HOW DOES YOUR ZONING ORDINANCE DEAL WITH (more)...?

- Motor Boat Operations speeds / issues?
- Docks at Public Access Points
- Leaves / Burning
- Which others?



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SOME POSSIBLE “TOOLS” FOR LOCAL OFFICIALS and PROPERTY OWNERS..... The Starting Point

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MINNESOTA “SCORE-YOUR-SHORE” (Ver 2, 2012)

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SCORE YOUR SHORE
CITIZEN SHORELINE DESCRIPTION SURVEY
VERSION 2, JANUARY 2012



State of Minnesota
Department of Natural Resources
Division of Ecological and Water Resources

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Tools Sign Comment

Upland = Shrub Cover

Percent of lot	Description	Points
75-100	Shrubs present along at least ¾'s of lot front, hiding at least part of house from view.	20
50-74	Shrubs cover at least ½ of lot; at least ¼ of lot has no shrub layer.	15
25-49	Shrubs cover at least ¼ but less than ½ of lot; middle canopy layer mostly open.	10
1-24	Shrubs cover less than ¼ of lot; only a few scattered shrubs present.	5
0	No shrubs present.	0

Upland Ground Cover

Percent of lot	Description	Points
75-100	Unmowed plants cover at least ¾ of lot, minimal lawn &/or impervious surface.	20
50-74	Unmowed plants cover at least ½ of lot; lawn &/or impervious surface covers up to ¼ lot.	15
25-49	Unmowed plants cover at least ¼ but less than ½	10



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Grenetta Thomassey, PhD , Program Director (at TIP of the MITT)
E-mail: grenetta@watershedcouncil.org

Category	Possible Score	Total Score	Comments
I. Master Plan 30 - 21 = Strong 20 - 11 = Adequate 10 - 0 = Weak	30	20	Adequate
II. Basic Zoning Elements 54 - 37 = Strong 36 - 19 = Adequate 18 - 0 = Weak	54	42	Strong
III. Shorelines 60 - 41 = Strong 40 - 21 = Adequate 20 - 0 = Weak	60	13	Weak
IV. Impervious Surface Reduction 33 - 23 = Strong 22 - 12 = Adequate 11 - 0 = Weak	33	13	Adequate
V. Stormwater Management 27 - 19 = Strong 18 - 10 = Adequate 9 - 0 = Weak	27	10	Adequate
VI. Soil Erosion and Sediment Control 18 - 13 = Strong 12 - 7 = Adequate 6 - 0 = Weak	18	9	Adequate
VII. Sewer/Septic 24 - 17 = Strong 16 - 9 = Adequate 8 - 0 = Weak	24	6	Weak
VIII. Wetlands 21 - 15 = Strong 14 - 8 = Adequate 7 - 0 = Weak	21	5	Weak
IX. Ground Water and Wellhead Protection 18 - 13 = Strong 12 - 7 = Adequate 6 - 0 = Weak	18	7	Adequate
X. Other Relevant Elements 48 - 33 = Strong 32 - 17 = Adequate 16 - 0 = Weak	48	29	Adequate

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Julia Kirkwood, MDEQ, Paw Paw River Watershed Project

Document Review for Water Resource Protection

<i>Alemna Township</i>		<i>March 2008</i>
Criteria	Yes/ No	Comments
List page number in Master Plan and list the section of the Zoning Ordinance		
Watershed Issues		
I. Watershed Activities		
A. Plans and Policies:		
1. Does the Master Plan identify the watershed(s) in which the community is located?	no	
2. Does the Master Plan call for protection of watershed resources in order to protect the health, safety and welfare of residents?	yes	water and waste water disposal; Chapter 4 - water features and wetlands systems and summary; goal 2
Stream Corridors and Flood Plains		
I. Stream Corridors		
A. Plans and Policies:		
1. Does the Master Plan indicate the importance of any of the following: riparian buffers to assist in flood control, protect the streambank from erosion, remove pollutants from storm water runoff, provide food and habitat for wildlife, prevent sediment from settling in the water course, provides tree canopy to shade streams, and promote desirable aquatic organisms, scenic value and recreational opportunities?	yes	goal 1 and 2
2. Does the Master Plan state that protection of stream corridors is important in promoting the health, safety and welfare of residents through flood control, and water quality and riparian corridor preservation?	yes	setbacks from natural features - Goal 1 and 2
B. Development / Redevelopment Regulations:		
1. Are regulations coordinated with regulations protecting County drains?	yes	
2. Does the community require naturally-vegetated buffers along drainage way corridors?	yes	requires natural vegetation buffer
a. What is the width of the corridor?		200 feet from all waterbodies
3. Does the community restrict development adjacent to stream corridors to those which do any of the following: offer no danger of topographical disturbance to the corridor, degradation to water quality, increased runoff, sedimentation, stream channel alterations, or degradation of dependent, non-hydrologic resources (i.e. flora and fauna)?	yes	200 feet setback from all waterbodies and wetlands
4. Are waterbody setbacks in place of at least 30-50 feet?	yes	



Ordinances Received via State-wide Canvassing thru ML&SA –

- **9 Responses (Less than Expected)**
- **Most from “Up North”**
- **Overall “Effectiveness” = Great!**
- **“On-line” Search is slow, with limited success**



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**HOW DOES THIS STORY,
as well as any STORY Have a
HAPPY ENDING.... ???**




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**HOW DOES THIS STORY,
as well as any STORY Have a
HAPPY ENDING.... ???**

**Well... A “HAPPY ENDING”
DEPENDS ON “WHEN”
YOU END THE STORY !!!
(Orson Wells)**



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- Work to be done (For a HAPPY ENDING, “BE HAPPY”):**
- **Present at ML&SA Annual Conference, April 2012**
 - **Determine Best ASSESSMENT TOOLS**
 - **Attempt FOCUS GROUP use of TOOLS at ML&SA Conf.**
 - **www.LakeFriendlyOrdinances.info Continue Building and then Migrate to MyML&SA Website**
 - **Keep all Sessions to <30 mins. (PC Member Span!)**
 - **Link with** 

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Questions / Comments ?



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POSSIBLE Future Actions:

- Procure copy and read the Local Zoning Ordinance
- Attend Planning Commission and Zoning Board of Appeals Meetings
- Have Local Officials “ID” which board members “pay attention to” specific citizen concerns
- Fully “active” citizen participation in all “5 year” and “other” Master Plan” actions
- Review Zoning Ordinance for Riparian Issues and seek Moratoriums and ZO changes (Tboard and PlanComm)
- Form Citizen “Visioning” Groups and Coalitions
- Identify & VOTE-in people with RIPARIAN Awareness

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POSSIBLE Future Actions:

- Enhancements to www.MYMLSA.org and THE RIPARIAN to boost resources and awareness
- Take and Pass the MSU “Citizen Master Planner” course
- Share YOUR Story.....

**A HAPPY ENDING DEPENDS ON “WHEN” YOU END
THE STORY !!! (Orson Wells)**



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IT CAN HAPPEN TO YOU....

- **Cottage Torn-down/moved, 5,000+++ sq ft McMansion built in its place, impervious surface area increased**
 - **New/remodeled homes placed closer to lake (view & loss of buffer area, vegetation)**
 - **Run off drained directly into lake**
 - **Geothermal units pumping ground water and discharging directly into lake**
 - **Developer buys land and quickly seeks rezoning for Condo's, promising increased tax base**
 - **Proliferation of Sea Walls, Loss of Natural Shoreline**
 - **Developer "Files Suit" against Township to force development**
-

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IT CAN HAPPEN TO YOU (more)....

- **Multiple Piers erected at edge of both property lines**
- **Piers extend longer into lake than customary**
- **Home built on Wetlands, DEQ has no \$\$\$ to enforce aggressively, township powerless**
- **Lake Association spending 5 digit \$\$\$ for Legal Fees**
- **ZBA granting variances in conflict with ZO**
- **Property Owner spending 5 digit \$\$\$ for Legal Fees**
- **And *WHAT IS NEXT*, and *will it happen to YOU* ?**
- **Are You in the ZONE?**

