

FREQUENTLY ASKED AND ANTICIPATED QUESTIONS: WISCONSIN PIER LAWS

Note: documents referenced in this FAQ can be located at <http://dnr.wi.gov> KEYWORD: PIERS

Question 1: What or Who is a Riparian?

Answer 1: A Riparian is someone who owns land abutting a natural stream or lake

Question 2: What is a riparian right?

Answer 2: The courts have established that riparian rights consist of many rights which include access to the water for recreation and the ability place piers and similar structures in the water.

Question 3: Are there any restrictions to my riparian rights?

Answer 3: Yes, **the rights that a riparian enjoys must be undertaken in a reasonable way.** This means that even though it may be a riparian right to place a pier in the water, that pier cannot impact other riparians or the public. In addition, **riparian rights do not trump public rights** under Wisconsin's Public Trust Doctrine. This allows the State to condition the use of riparian rights by require a riparian to receive permits before placing a pier or similar structures in public waters.

Question 4: Can I give away my riparian rights?

Answer 4: No. Wisconsin law states that no owner of riparian land may give any riparian right to another. However, riparian owners can, by way of easement, grant the right to a non-riparian **to cross their land to access public water.**

Question 5: What is the exclusive riparian zone or the riparian zone of interest?

Answer 5: The exclusive riparian zone (sometimes referred to as the riparian zone of interest) is the area in front of a riparian property that extends from the shoreline to the line of navigation. The line of navigation is defined in law as *“the 3 foot depth contour or a greater depth contour if required for boats in use or appropriate for use on the waterway, based on the normal summertime low levels on the waterway or summer minimum levels where established by department order”*. The exclusive riparian zone is the area where a riparian may place a pier or structure if legal standards are met. It is important to keep in mind that a riparian may exclude any other person from placing structures in his exclusive riparian zone, but may not exclude the public from navigating and exercising incidents of navigation in his exclusive riparian zone.

Question 6: How do I determine where my exclusive riparian zone is? What are the methods for determining my riparian zone?

Answer 6: There is no hard and fast rule in the law that dictates the method used to determine the exclusive riparian zone. However the law does dictate that any method undertaken must result in equal distribution of shoreline. The law does outline several methods that have been established to appropriate equal access to the water and out to the line of navigation. The most common methods that have been established to **appropriate equal access to the water out to the line of navigation** is the “extended lot line method” (sometimes referred to as the “straight line method”) and the “coterminous method”. These methods are outlined in Wis. Admin. Code s. NR 326.07 and also explained in the Department’s Pier Planner. The “extended lot line method” is typically used for relatively straight shorelines and straight lot lines and the “coterminous method” is typically used for curved, irregular or angled shorelines or lot lines. **Remember, the law does not dictate what method to use in what situation. The law only requires that any method used for allocating riparian zones must result in each riparian**

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having an access to the navigable depth of water (line of navigation) that is proportionate to the length of shore the riparian owns.

The general concept enunciated by the Wisconsin Supreme Court was that each riparian landowner must have his "due proportion." Wis. Admin. Code s. NR 326.07 [copied below] explains that concept and the various methods of apportionment, and lays out a method of backing piers away from the line separating the exclusive riparian zones if needed to provide both owners sufficient room to moor their boats and safely enter and leave their pier.

NR 326.07 Riparian rights determinations. (1) In order to determine whether a pier or boat shelter interferes with the rights of an adjacent riparian, the department shall use the method outlined in this subsection which it determines most fully meets the Wisconsin supreme court ruling in Rondesvedt v. Running, 19 Wis. 2d 614 (1962), that ". . . each must have his due proportion of the line bounding navigability and a course of access to it from the shore exclusive of every other owner, and that all rules for apportionment or division are subject to such modification as may be necessary to accomplish substantially this result."

(2) The alternative methods of apportionment include: (a) Apportionment of the line of navigation. The general procedure for the apportionment of the line of navigation is to measure the whole shoreline of the cove or bay and the line of navigation in front of the shoreline and to apportion the line of navigation among the riparians in proportion to the length of their respective holdings on the shoreline. The area of water within which each riparian may place a pier to reach the line of navigation is determined by drawing straight lines between the corresponding points of division on the shoreline and the line of navigation.

(b) Coterminous riparian rights lines. Chords are drawn to connect points established at the intersection of each lot line with the ordinary highwater mark. The lines which bisect the angle formed by adjacent chords are the coterminous riparian rights lines. The extension of the coterminous riparian rights lines to the line of navigation describes the portion of the water within which each riparian may place a pier to gain access to the line of navigation. If the coterminous riparian rights lines intersect before the line of navigation is reached, another method of apportionment will be used.

(c) Extended lot lines. Under the extended lot line method the area of water within which each riparian may place a pier to reach the line of navigation is determined by extending the lot lines along the same alignment from the upland to the line of navigation.

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(d) Other method. Any other method for determining the rights of riparians to gain access to the line of navigation that is compatible with the general rule adopted in sub. (1).

(3) To provide each riparian with sufficient room to place a pier and moor a boat along the common line between adjacent riparians the following technique will be used:

(a) Each riparian shall back their respective pier away from the common line or point of intersection of that line with the line of navigation in proportion to the riparian's share of the 2 adjacent shoreline lengths until sufficient room is provided to moor each riparian's boat at their respective pier and to provide safe maneuvering room for each boat to approach or leave the respective pier.

(b) If a riparian cannot move sufficiently from one side without violating the rule on the other side, then the riparian shall position the pier in that location which best satisfies the rule on both sides and each riparian shall then move far enough to the side regardless of shoreline proportions to afford the necessary clearance.

(emphasis added) History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; reprinted to correct error, Register, May, 1981, No. 305; am. (1), Register, August, 1991, No. 428, eff. 9-1-91.

Question7: What do I do if my neighbor's pier is located in my exclusive riparian zone? What do I do if my neighbor claims my pier is in their exclusive riparian zone?

Answer 7: With regards to piers not placed wholly within the landowner's exclusive riparian zone (or riparian's zone of interest) please follow these steps to assist in resolving the conflict.

- a) Use the Department's Pier Planner, and Wisconsin Administrative Code s. NR 326.07, to mark on an aerial map the boundaries of what you think is your exclusive riparian zone. Most counties now offer map services that show parcel boundaries.
- b) Once you establish your exclusive riparian zone, you may wish to check with your local unit of government. Sometimes local municipalities -

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counties, cities, etc. - have zoning ordinances that requires that piers be set back from the boundary between neighbors' exclusive riparian zones. If this is the case, your first and final stop is to your zoning administrator to assist in enforcement of the ordinance, if necessary.

- c) If there is no local zoning ordinance governing pier placement, and the local zoning administrator cannot help, and if you and your neighbors do not agree on the boundaries of your respective exclusive riparian zones and where piers should be placed, you can enlist the help of local law enforcement or the town officers that deal with property disputes/trespass, etc. to issue a citation to the offending party and possibly order removal of a pier that intrudes on a neighboring riparian's exclusive riparian zone.
- d) With any property dispute both parties have the right to disagree. If your neighbor is issued a citation or ordered to remove or relocate his pier and contests that result, then the next stop is in front of a judge in a county circuit court. In court you would want to have the pier planner or reference Wis. Admin. Code s. NR 326 to mark on a map what you think are the boundaries of your exclusive riparian zone and how you allege your neighbor's pier is intruding onto your exclusive zone. At this point the judge can agree to uphold the sheriff's citation, throw it out, or issue a new order.
- e) An alternative to complaints to the sheriff or local town officers is for one or both riparians to seek a declaration of their respective exclusive riparian zones in county circuit court, since a riparian interest is included as an "interest in real property" under s. 840.01(1), Stats.

Question 8: What is the Department's role in assisting landowners in dealing with piers that are not completely in the appropriate exclusive riparian zone?

Answer 8: We get many queries regarding neighbor disputes about their respective riparian rights and zones, and the Department retains enforcement

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discretion on how we assess and respond to violations specifically related to riparian rights. **Unless public rights or interests are adversely affected by the placement of the structures, the Department will not get involved in riparian disputes since the parties can resolve their private dispute by negotiation or litigation if negotiation fails. So unless the structure crossing into another riparian zone has an impact on the public's use and interest in the navigable water, we will defer to the local courts to resolve riparian disputes regarding their respective property interests.**

Question 9: What is the Departments role regarding oversized piers?

Answer 9: Piers that exceed the size requirements necessary to meet the pier planner, or be grandfathered, and that are not authorized in any other way, are considered to potentially be in violation of the law. Information regarding pier violations are complaint driven. State law requires the Department to investigate complaints regarding if any existing structure in public waters violates the pier laws.

The Department is *not* required to take enforcement action for every complaint it receives. As such, because we have limited staff resources in Wardens and Water Management Specialists, the Departments long standing practice has been to focus and reserve those resources for situations where the pier is so egregiously oversized or is utilizing the shoreline in such a way that is potentially detrimental to *public* interests or *public* rights in the navigable waters where it is placed.

Question 10: What is the Departments role regarding grandfathered piers that have been enlarged since 2012?

Answer 10: Piers that are currently grandfathered and that are not authorized in any other way remain grandfathered under state law unless they are enlarged. Making a grandfathered pier bigger requires a permit from the Department. Grandfathered piers that were enlarged from their April 2012 size without a permit are considered to potentially be in violation of the law. Information regarding pier violations are complaint driven. State law requires the Department to investigate complaints regarding if any existing structure in public waters violates the pier laws.

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Question 11: What are the requirements for a pier placed on my property by a non-riparian under a valid easement?

Answer 11: Wis. Stats. s. 30.131 [copied below] outlines the criteria that must be met for non-riparian owners to place a pier. The bottom line is that if ALL criteria are not met, the pier placed by the non-riparian owner may not be considered lawful and should not continue to be placed. Please be aware that criteria #1 requires the structure to meet 30.12(1) and 30.13 which requires piers to “not interfere with the rights of riparian owners”, meaning the piers must be wholly placed in the riparian zone.

30.131 Wharves and piers placed and maintained by persons other than riparian owners.

(1) Notwithstanding s. 30.133, a wharf or pier of the type which does not require a permit under ss. 30.12 (1) and 30.13 that abuts riparian land and that is placed in a navigable water by a person other than the owner of the riparian land may not be considered to be an unlawful structure on the grounds that it is not placed and maintained by the owner if all of the following requirements are met:

(a) The owner of the riparian land or the owner's predecessor in interest entered into a written easement that was recorded before December 31, 1986, and that authorizes access to the shore to a person who is not an owner of the riparian land.

(b) The person to whom the easement was granted or that person's successor in interest is the person who places and maintains the wharf or pier.

(c) The placement and maintenance of the wharf or pier is not prohibited by and is not inconsistent with the terms of the written easement.

(d) The wharf or pier has been placed seasonally in the same location at least once every 4 years since the written easement described in par. (a) was recorded.

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(e) The wharf or pier is substantially the same size and configuration as it was on April 28, 1990, or during its last placement before April 28, 1990, whichever is later. (emphasis added)

(f) The placement of the wharf or pier complies with the provisions of this chapter, with any rules promulgated under this chapter and with any applicable municipal regulations or ordinances.

(2) Notwithstanding s. 30.133, an easement under sub. (1) may be conveyed if it is conveyed at the same time, and to the same person, that the land to which the easement is appurtenant is conveyed.

History: 1989 a. 217; 1993 a. 167.

The application of s. 30.131 is discussed. Godfrey Co. v. Lopardo, 164 Wis. 2d 352, 474 N.W.2d 786 (Ct. App. 1991).

This section does not grant rights to a nonriparian owner vis a vis a riparian owner. The statute speaks only to the lawfulness of a pier maintained under a nonriparian access easement. The terms and purpose of the easement may include the right to use and maintain the pier. Wendt v. Blazek, 2001 WI App 91, 242 Wis. 2d 722, 626 N.W.2d 78, 00-2448.