

Lakeshore Property Ends At the Water's Edge, Not At the Dock's End

The COLA Call

by Ed Mutsch

Earlier columns in this series have invoked the critical need for an updating of Minnesota shoreland regulations given the demonstrably alarming deterioration in the quality of state surface waters during the nearly 20 years of aggressive lakeshore development that have taken place since the last update of such regulations in 1989. Governor Pawlenty's 2003 Clean Water Initiative, one element of which involved a five county (Hubbard included) pilot project to develop a new set of scientifically-based shoreland regulations to be made available to all Minnesota counties for adoption wholly or in part, offered the prospect that further deterioration of Minnesota's lakes and rivers might be dramatically slowed. However, the December 2005 publication of "Minnesota's Alternative Shoreland Management Standards", the product of nearly 2 years of hard work by a committee of 34 individuals representing a broad range of constituencies with stakes in preserving and protecting state water quality, was greeted with little more than a collective yawn from county commissioner boards. A few counties adopted a few elements of the proposed standards, but very few. A number of environmental groups pressed the DNR to mandate the proposed standards statewide, but to no avail. However, a growing chorus of demand for stricter shoreland regulation finally prompted the state legislature in 2007 to direct the DNR to initiate a rulemaking process for updating statewide standards. [This process, presently underway,

was described in detail in COLA Call columns in the May 31st and June 21st issues of the Enterprise. See www.mnwaters.org/hubbardcola..] This process will result in the promulgation of a new set of statewide shoreland standards likely sometime in 2010. However, one important aspect of shoreland regulation, namely rules to govern the size of docks, will not be addressed in the new rules.

Minnesota docks were first subject to regulation in 1978. The initial regulation was based on the premise that the sole purpose of a dock is to provide access to navigable water and that it should carry as small a "footprint" as possible. Accordingly, docks were to be 4 feet wide and either 50 feet long or as long as needed to reach 4 feet of water depth, whichever was less. Allowable dock width was subsequently increased to 6 feet, then in 2002 further increased to 8 feet. Any lakeshore owner wishing a larger than allowable dock was---and is---required to obtain a permit from the Minnesota DNR.

Regardless of how the dock regulation read at any particular point in time, the rule has long been widely ignored. As Minnesota lakeshore has become ever more developed, docks have dramatically proliferated, not only in number but also in shape and size. Ever larger numbers of lakeshore property owners have ignored dock regulations, habitat destruction, the growing chorus of complaints from other property owners, and the legal fact that lakes are public, not private, property. Docks have grown ever larger, frequently rivaling in square footage that of the property owners' lakeside homes, while becoming functional extensions of those homes, entertainment venues replete with gas grills, picnic tables, lawn chairs, even hot tubs. While this pattern has become starkly evident on Twin Cities area lakes and in the Brainerd lakes region but as yet less so on Hubbard County lakes, it is foolish not to expect the pattern to repeat itself here as regional population increases and lakeshore development pressures mount.

While many owners of super-sized docks argue that their particular dock carries negligible environmental consequence, the cumulative impact of the large and growing number of such docks is far from negligible. Adverse effects include the destruction of natural shoreline, aquatic vegetation, and fish habitat; frequent creation of safety issues for recreational boaters; prevention of public fishing near shorelines; and what many consider to be visual clutter of the natural environment. They have also created two groups of fierce partisans whose heated debates make the most egregious example of road rage appear to be a love-in.

The situation described is regrettable in so many ways. It is regrettable that the DNR has failed to continuously enforce its own dock regulations, and regrettable that the DNR has not been provided the necessary resources to enable enforcement of those regulations. Regrettable that, as a result, the agency is faced with a problem of its own unavoidable making, a fait accompli whereby the number of existing illegal dock structures is so large that forcing compliance with existing regulations is a practical impossibility. Thus, if docks cannot be changed to conform to the regulations, regulations must be changed to conform to the docks. A new regulation issued in January 2008

grandfathers in most of the presently non-conforming docks, in essence creating a moratorium on enforcement pending new dock rules. The regulation is to remain in effect for five years during which the agency will develop and promulgate new dock regulations. This five year "gestation" period will undoubtedly prove to have been ill advised, as one can expect a very large number of new docks of a size that would have been illegal under pre-January 2008 rules. Result? A victory for dock devotees; a defeat for Hubbard County lakes.

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