

30.13 NAVIGABLE WATERS, HARBORS AND NAVIGATION

with respect to the wharf or pier unless its condition is substantially changed. The court may assess costs. The remedy provided under this paragraph is exclusive and no person affected by an order issued under par. (a) may recover damages for the removal of a wharf or pier under this section.

(6) **DOCK LINE NOT INVALIDATED.** A dock line lawfully established before January 1, 1960, is a lawfully established pierhead line.

History: 1981 c. 252; 1987 a. 374; 1999 a. 130 ss. 3, 120, 123, 125, 127, 129, 131, 133; 2003 a. 118.

Cross Reference: See also ch. NR 326, Wis. adm. code.

When a DNR decision prohibited a structure under s. 30.13 and the riparian owner did not seek review under s. 227.20 [now 227.57], the trial court had no jurisdiction to hear an action by the owner seeking a declaration that the structure was a "pier" permitted under s. 30.13. *Kosmatka v. DNR*, 77 Wis. 2d 558, 253 N.W.2d 887 (1977).

In considering whether a proposed structure is detrimental to the public interest, the DNR is authorized to weigh relevant policy factors including the preservation of the natural beauty of the state's waters, the public's fullest use of the waters, and the convenience of riparian owners. *Sterlingworth Condominium Association v. DNR*, 205 Wis. 2d 710, 556 N.W.2d 791 (Ct. App. 1996), 95–3526.

The permitting criteria under DNR rules are supplemental to the criteria under sub. (1). To escape the requirement of obtaining a permit, the requirements of both the statute and rules must be met. *Sea View Estates Beach Club, Inc. v. DNR*, 223 Wis. 2d 138, 588 N.W.2d 667 (Ct. App. 1998), 97–3418.

Riparian rights are qualified by reasonable use and are subordinate to public rights. The common law requires reasonable use by riparian owners to be determined by the extent and capacity of the lake, the uses to which it has been put, and the rights that other riparian owners on the same lake also have. The inquiry is highly fact-specific, and determinations are made on a case-by-case basis. *Hilton v. Department of Natural Resources*, 2006 WI 84, 293 Wis. 2d 1, 717 N.W.2d 166, 03–3353.

Historical use, however it is determined, is one of the factors that an administrative law judge may weigh in balancing the private rights and public interests at stake in riparian rights/public trust doctrine cases. The cases do not establish any set definition of historical use or any hard and fast methodology for determining it. That historic use must be based on something like passage of an ordinance or DNR contact is not required by public policy considerations. An ALJ may review local ordinances in making a permit determination but is not required to do so. *Hilton v. Department of Natural Resources*, 2006 WI 84, 293 Wis. 2d 1, 717 N.W.2d 166, 03–3353.

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.

(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.

(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.

30.133 Prohibition against conveyance of riparian rights. (1) (a) Beginning on April 9, 1994, and except as provided in s. 30.1355 [s. 30.1335], no owner of riparian land that abuts a navigable water may grant by an easement or by a similar conveyance any riparian right in the land to another person, except for the right to cross the land in order to have access to the navigable water. This right to cross the land may not include the right to place any structure or material, including a boat docking facility, as defined in s. 30.1335 (1) (a), in the navigable water.

NOTE: The correct cross-reference is shown in brackets. Corrective legislation is pending.

(2) This section does not apply to riparian land located within the boundary of any hydroelectric project licensed or exempted by the federal government, if the conveyance is authorized under any license, rule or order issued by the federal agency having jurisdiction over the project.

History: 1993 a. 167; 2007 a. 20.

Small lock boxes were not "intended for any type of independent use" within the meaning of a condominium "unit" under s. 703.02 (15) and were not valid condominium units. Without a valid condominium unit, the transfer of riparian rights purportedly attached to the condominium lock boxes was in violation of this section. *ABKA Limited Partnership v. DNR*, 2002 WI 106, 255 Wis. 2d 486, 648 N.W.2d 854, 99–2306.

30.1335 Marina condominiums. (1) **DEFINITIONS.** In this section:

(a) "Boat docking facility" means a pier, wharf, boat slip, or multi-boat-slip facility.

(b) "Common element" has the meaning given in s. 703.02 (2).

(c) "Condominium" has the meaning given in s. 703.02 (4).

(d) "Condominium unit" has the meaning given for "unit" in s. 703.02 (15).

(e) "Declarant" has the meaning given in s. 703.02 (7).

(f) "Declaration" has the meaning given in s. 703.02 (8).

(h) "Dwelling" means a structure or part of a structure that is used or intended to be used as a home or residence by one or more persons to the exclusion of all others.

(i) "Limited common element" has the meaning given in s. 703.02 (10).

(j) "Marina condominium" means a condominium in which the common elements, limited common elements, or condominium units consist of or include boat docking facilities and to which either or both of the following apply:

1. One or more of the boat docking facilities is not appurtenant to a dwelling.

2. None of the condominium units are dwellings.

(2) **PROHIBITION.** No owner of riparian land may create a marina condominium on the riparian land on or after June 1, 2007. Any declaration for a marina condominium that is recorded on or after June 1, 2007, is invalid and establishes ownership of the riparian land as a tenancy in common that is held by the owners of the marina condominium units.

(3) **EXISTING MARINA CONDOMINIUMS.** (a) Notwithstanding sub. (2), a declaration that creates or purports to create a marina condominium and that is recorded before June 1, 2007, shall be effective in creating the marina condominium regardless of subsequent activity affecting the declaration.

(b) If a marina condominium as described [in] par. (a) contains more than 300 boat slips, the declarant shall make at least 40 percent of the total number of boat slips in the marina condominium available for rent or for transient use by the public. When the declarant conveys title to, or another interest in, a condominium unit that is affected by this restriction on use, the declarant shall include a statement of the restriction in the instrument of conveyance.

NOTE: A missing word is shown in brackets. Corrective legislation pending.

(4) **VALIDITY OF PERMITS.** (a) For a marina that is converted into a marina condominium, if the owner of the marina is issued a permit or other authorization under this subchapter to place, maintain, or use a boat docking facility before the date that a decla-

approval issued under this subsection if issued in reliance upon a statement made or subscribed under oath or affirmation under tribal laws or ordinances enacted under par. (b) that is false.

SECTION 712. 29.2295 (2) (hm) of the statutes is created to read:

29.2295 (2) (hm) Two-day inland lake trout fishing licenses.

SECTION 712m. 29.426 of the statutes is created to read:

29.426 Catch and release bass fishing. No person may use any hook, bait, or lure, other than an artificial lure that has a barbless hook, while fishing during a catch and release bass fishing season established by the department.

Vetoed In Part

SECTION 712r. 29.428 of the statutes is created to read:

29.428 Catch and release muskellunge fishing. (1) The department shall establish a fishing season that authorizes catch and release muskellunge fishing on inland waters north of USH 10 other than the boundary waters between this state and the state of Michigan. The catch and release muskellunge fishing season established under this section shall begin on the first day of the general fishing season established by the department and shall end on the day before the first day of the regular muskellunge fishing season established by the department.

Vetoed In Part

(2) No person may use any hook, bait, or lure, other than an artificial lure that has a barbless hook, while fishing during the catch and release muskellunge fishing season established by the department under sub. (1).

SECTION 713. 29.535 of the statutes is created to read:

29.535 Shovelnose sturgeon permit. (1) The department shall issue, subject to s. 29.024, an annual shovelnose sturgeon permit to any resident who applies for the permit and who holds at least one of the following licenses:

- (a) A net license issued under s. 29.523.
- (b) A trammel net license issued under s. 29.529.
- (c) A set or bank pole license issued under s. 29.531.
- (d) A setline license issued under s. 29.533.

(2) No person may take shovelnose sturgeon or shovelnose sturgeon eggs unless the person holds a permit from the department under this section.

(3) A person who is required to hold an annual shovelnose sturgeon permit shall report to the department, on forms available from the department, on or before the 10th day of each month, the number of pounds of shovelnose sturgeon eggs harvested during the preceding calendar month.

(4) The department shall deposit receipts from the sale of permits under this section in the conservation fund.

SECTION 713d. 29.541 (1) (a) (intro.) of the statutes is amended to read:

29.541 (1) (a) (intro.) Except as authorized under s. 29.934 (2) or 254.715, no innkeeper, manager or steward of any restaurant, club, hotel, boarding house, tavern, logging camp or mining camp may sell, barter, serve or give, or cause to be sold, bartered, served or given, to its guests or boarders any of the following:

SECTION 716. 29.563 (7) (c) 5g. of the statutes is created to read:

29.563 (7) (c) 5g. Shovelnose sturgeon permit. \$50.

SECTION 717g. 30.133 (1) of the statutes is amended to read:

30.133 (1) (a) Beginning on April 9, 1994, and except as provided in s. 30.1355, no owner of riparian land that abuts a navigable water may convey, by grant by an easement or by a similar conveyance, any riparian right in the land to another person, except for the right to cross the land in order to have access to the navigable water. This right to cross the land may not include the right to place any structure or material, including a boat docking facility, as defined in s. 30.1335 (1) (a), in the navigable water.

SECTION 717r. 30.1335 of the statutes is created to read:

30.1335 Marina condominiums. (1) DEFINITIONS. In this section:

- (a) "Boat docking facility" means a pier, wharf, boat slip, or multi-boat-slip facility.
- (b) "Common element" has the meaning given in s. 703.02 (2).
- (c) "Condominium" has the meaning given in s. 703.02 (4).
- (d) "Condominium unit" has the meaning given for "unit" in s. 703.02 (15).
- (e) "Declarant" has the meaning given in s. 703.02 (7).
- (f) "Declaration" has the meaning given in s. 703.02 (8).
- (h) "Dwelling" means a structure or part of a structure that is used or intended to be used as a home or residence by one or more persons to the exclusion of all others.
- (i) "Limited common element" has the meaning given in s. 703.02 (10).
- (j) "Marina condominium" means a condominium in which the common elements, limited common elements, or condominium units consist of or include boat docking facilities and to which either or both of the following apply:

1. One or more of the boat docking facilities is not appurtenant to a dwelling.
2. None of the condominium units are dwellings.

(2) PROHIBITION. No owner of riparian land may create a marina condominium on the riparian land on or after June 1, 2007. Any declaration for a marina condominium that is recorded on or after June 1, 2007, is invalid and establishes ownership of the riparian land as

