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Improving Water Quality of Lakes and Streams with Local Zoning Ordinances

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MNSP Home Owner Workshop Instructor

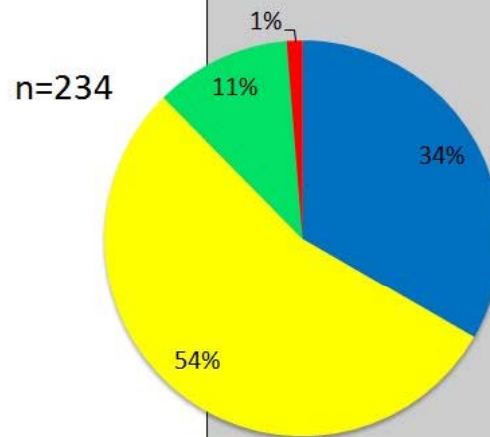
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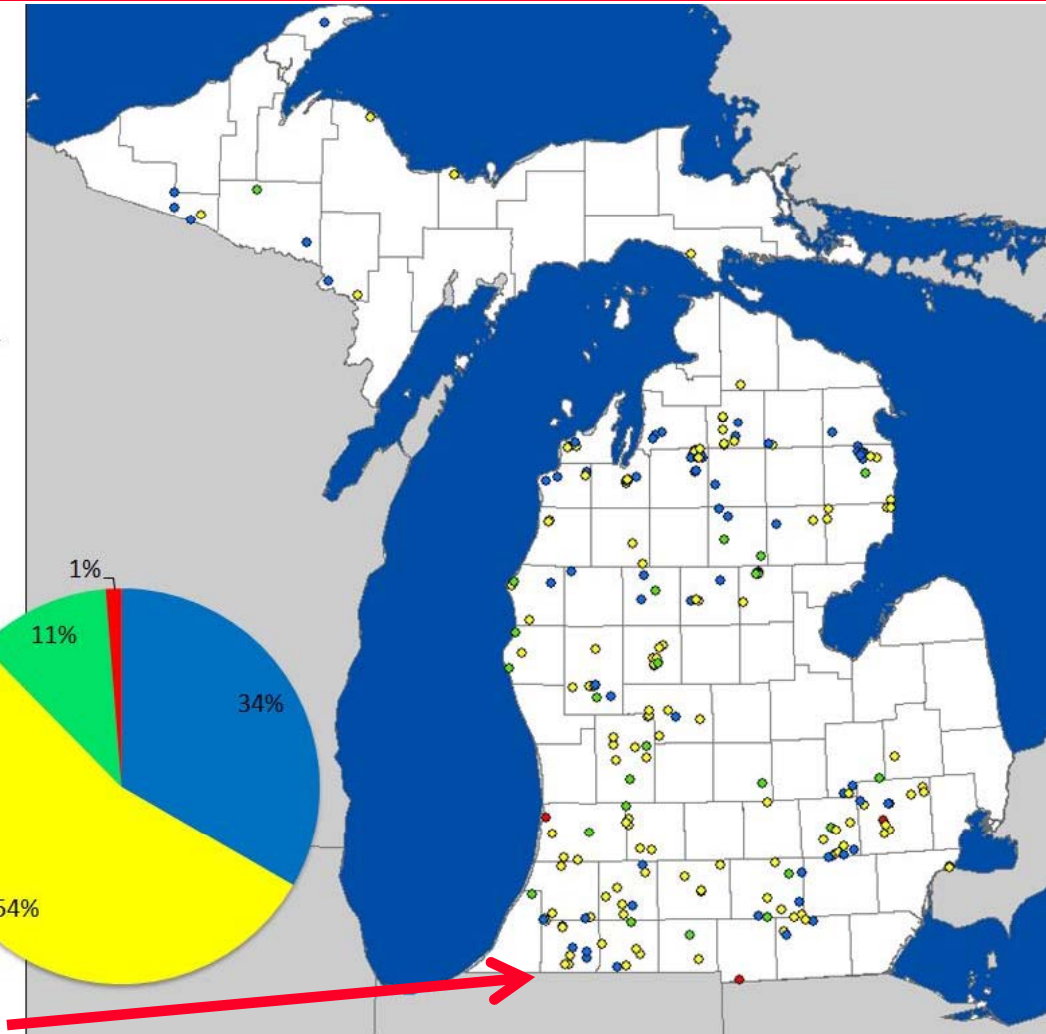
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2010

- Oligotrophic
- Mesotrophic
- Eutrophic
- Hypereutrophic



**Eagle Lake,
Edwardsburg MI**



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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”
- Q & A Time

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



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WHAT MICHIGAN DOES NOT HAVE...

WISCONSIN –

- **Wisc Admin Code NR115 / S59.692. Essentially “Shore-land 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 –

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

- **Shore land 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”**



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NH_SWQPA_summary_standards.pdf - Adobe Reader
File Edit View Window Help



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 21:34-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.

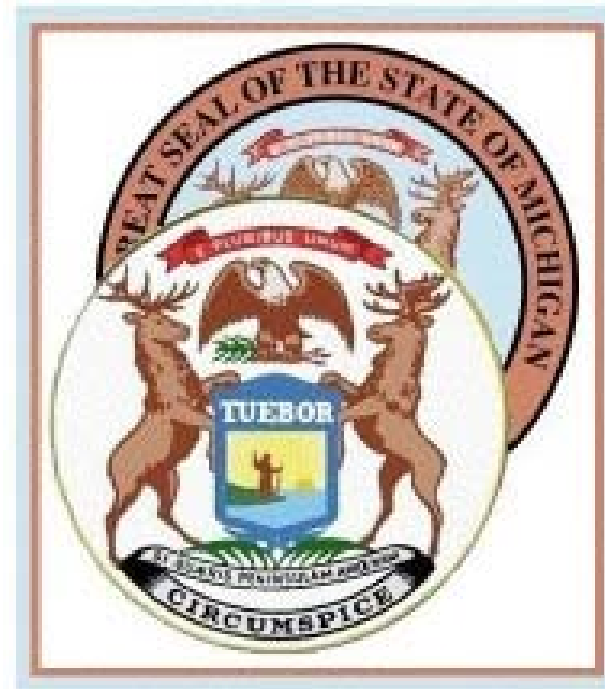
"FILL": To place or deposit materials such as rocks, soil, gravel, sand or other such materials.

"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 1787, the Northwest Ordinance showed the influence of T. 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” (but not all) Authority/Powers first 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

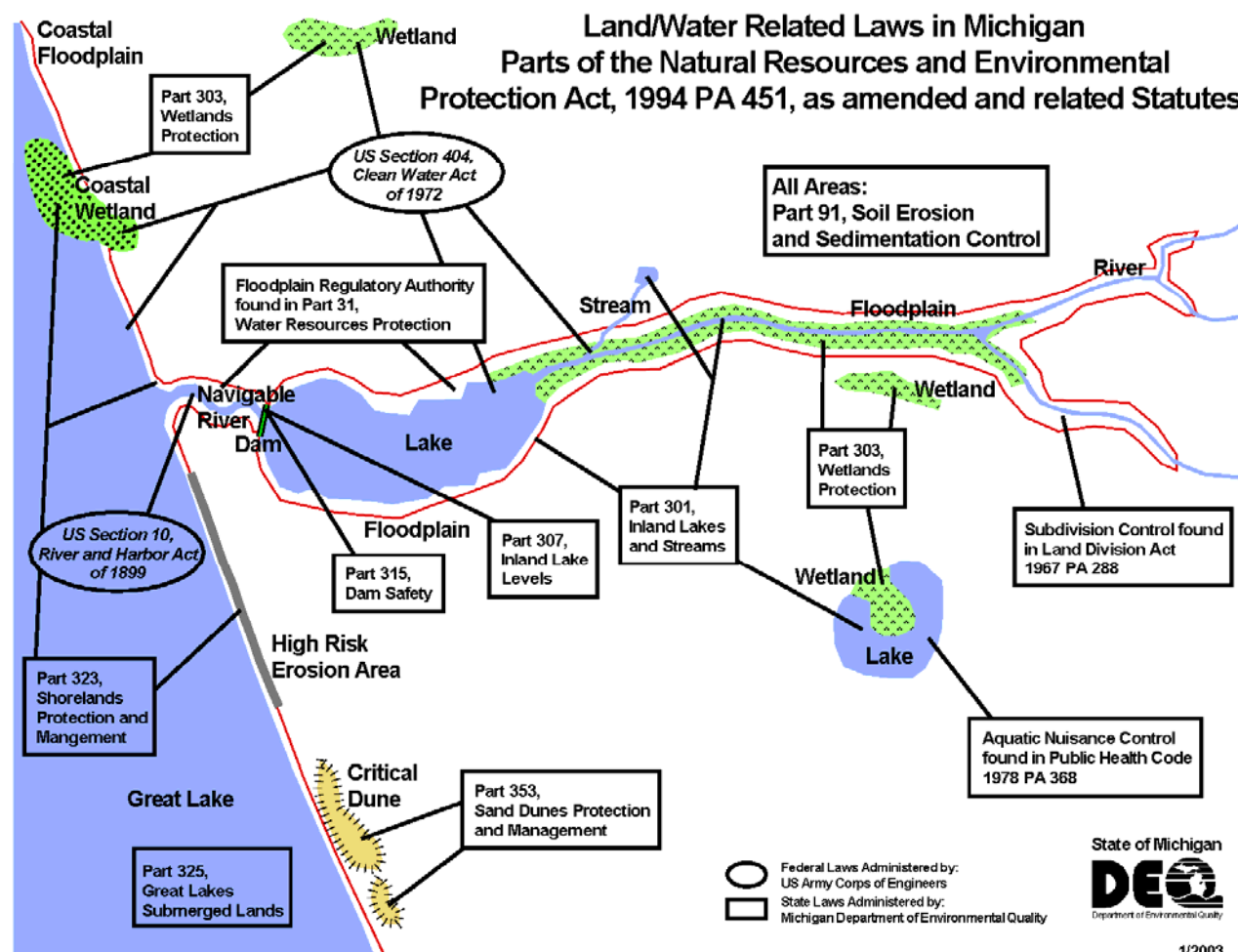
533.....Cities/Villages

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):

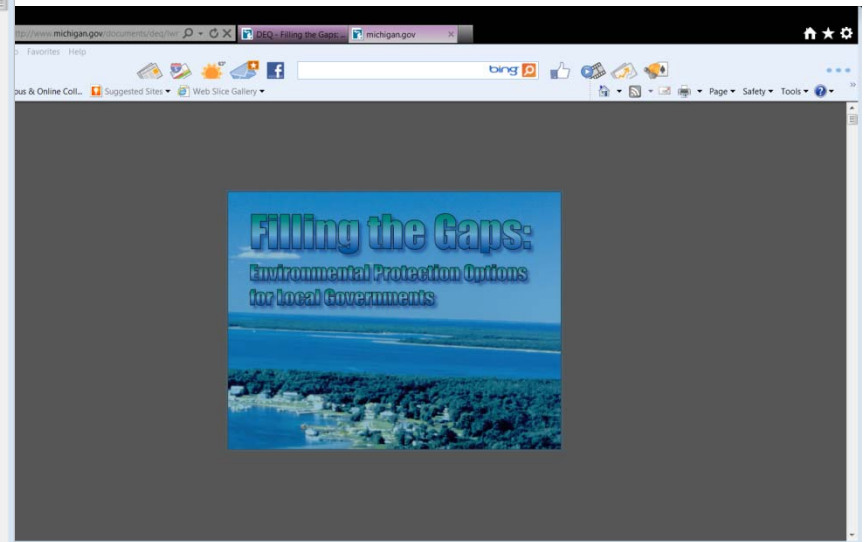
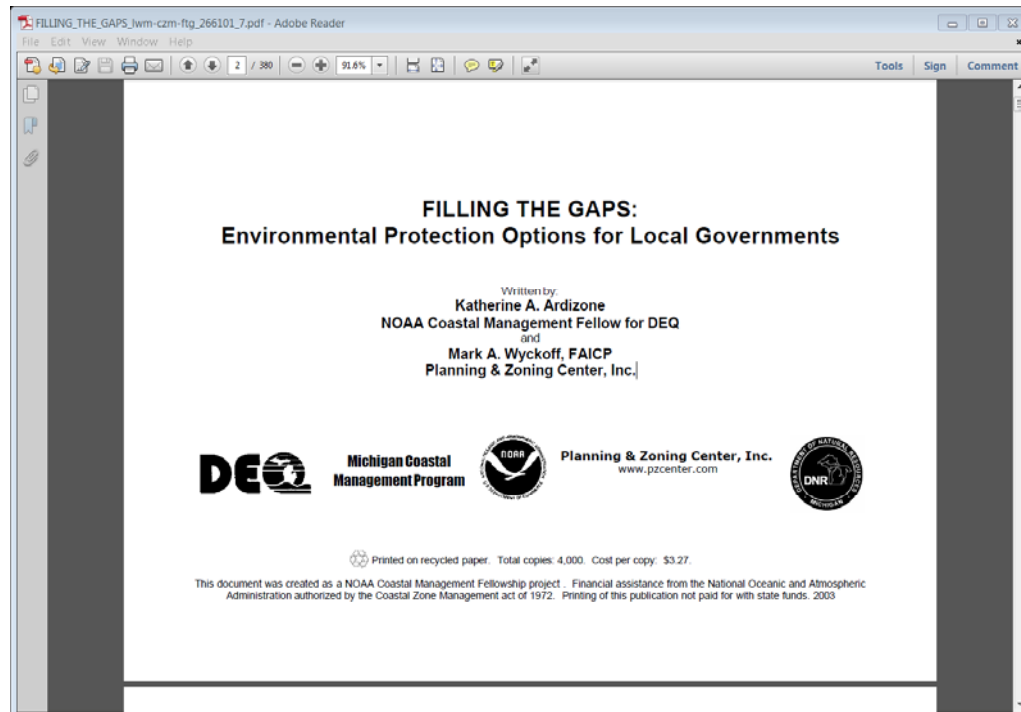
- **Phosphorus Fertilizer Regulation (2011)**
- **Activities at Inland Lake Private Road Ends (Gov. Signed 2012)**
- **PART 414 AQUATIC INVASIVE SPECIES Advisory Council(2011)**



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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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WISDOM from the PAST.....

Sir Isaac Newton....before his death, Isaac Newton (1642-1727) is supposed to have remarked,

“...I don't know what I may seem to the world, but as to myself, I seem to have been only like a boy playing on the sea-shore and diverting myself in now and then finding a smoother pebble or a prettier shell than ordinary, whilst the great ocean of truth lay all undiscovered before me.”



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Planning Commission

ZBA (Zoning Appeals)



**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, Permitted & Special Uses**
- **Covers the “WHAT” of Development: Uses & Structures**
- **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, Recommends “Capital” Improvements**
- **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”
 - Are the “HOW” of a Master Plan
 - Control Permitted Uses, Special Uses, Misc
 - Controls Zoning Districts/ Overlays
 - Zoning Ordinances Regulate Structures/Land Uses
 - *Civil/Municipal Ords.* Generally Regulate “Behavior”
not a Function of Planning Com. (Police Power)
 - Key Principle for justification of 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”**
- **Failure to ENFORCE is a Major Concern**



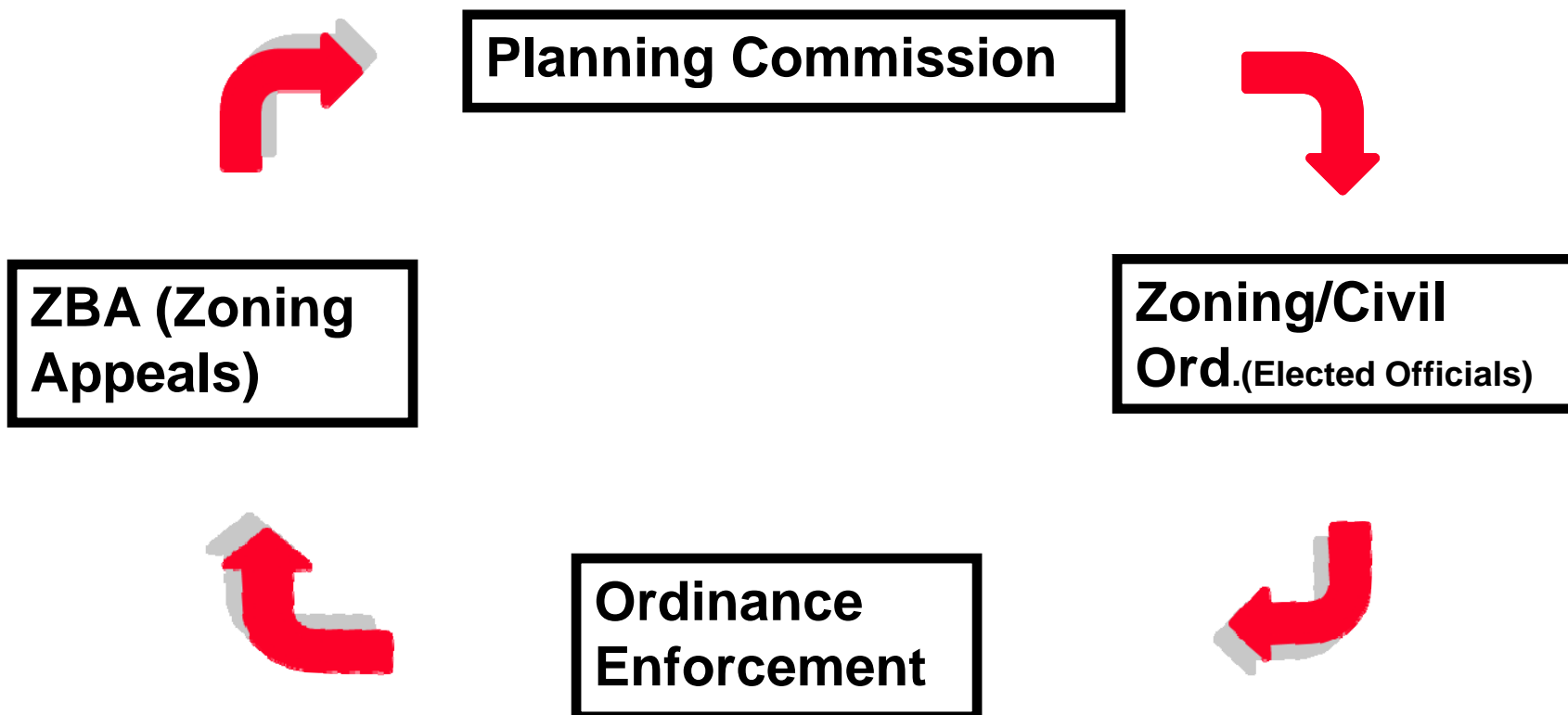
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THE “ZBA” ...

- **Upholds/Interprets ordinances – Quasi Judicial at Local Area**
- **Variances Granted under strict Exceptional Criteria**
- **Dimensional Variance ONLY ???**
- **Limited Municipalities have USE Variance Authority**
- **Should 90% of Variance Be Denied?**
- **Grant Variance or Modify the Zoning Ordinance?**
- **Decisions can be APPEALED to Circuit Court**



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HOW DOES YOUR ZONING ORDINANCE DEAL WITH...?

- “View” Preservation, Setbacks & Structure Height
- Storm Water & Development/Structure Run-off
- Buffer Area, Impervious Surfaces (Coverage%), Natural Shorelines
- Wetland Preservation
- Geothermal Issues
- Pier length / location /number
- “Weeds” (Nuisance) vs. Native Plants, and Height
- Anti-Funneling / Anti-Key Holing

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

- Motor Boat Operations speeds / hours/ issues?
- Docks at Public Access Points
- Public Road Ends/Walkways
- Leaves / Burning near Water Resourcea
- Low Impact Design (LID/LEED) Feature Requirements
- NON-CONFORMING Uses and/or Structures
- 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)

ScoreYourShoresys-manual.pdf - Adobe Reader

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1 / 48 75%

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

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

2012 Copyright, Minnesota Department of Natural Resources

sys_quickguide.pdf - Adobe Reader

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2 / 4 125%

Upland = Shrub Cover

Percent of lot	Description	Points
75-100	Shrubs present along at least 1/2 of lot front, hiding at least part of house from view.	20
50-74	Shrubs cover at least 1/2 of lot; at least 1/4 of lot has no shrub layer.	15
25-49	Shrubs cover at least 1/4 but less than 1/2 of lot; middle canopy layer mostly open.	10
1-24	Shrubs cover less than 1/4 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 1/2 of lot, minimal lawn &/or impervious surface.	20
50-74	Unmowed plants cover at least 1/2 of lot; lawn &/or impervious surface covers up to 1/4 lot.	15
25-49	Unmowed plants cover at least 1/4 but less than 1/2	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	

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Lake Friendly Ordinance Project - *Update*



WE ARE NOT ALONE....
In this cycle of Watershed Improvement

Innovators (Tip-of-the-Mitt and Glen Lake Area)

Early Adopters (Almena, Brooks, Waterford Twps)

Mid-Cycle Adopters (ONTWA !!!)

Laggers Not us!



Lake Friendly Ordinance Project - *Update*



Four Township Water Resources Council

<http://www.ftwrc.org/>



MNSP Policy Committee Meeting - May 15, 2012



Lake Friendly Ordinance Project - *Update*



STRENGTH / IMPACT of: MASTER PLAN

LOCATION	Low	Medium	High
Ontwa TWP 2011	xx	XX ***	
Richland TWP 2008		xx	
Prairieville TWP 2007			xx
Almena TWP 2009			xx

MNSP Policy Committee Meeting - May 15, 2012



Lake Friendly Ordinance Project - *Update*



STRENGTH / IMPACT of: IMPERVIOUS SURFACE & %COVERAGE

LOCATION	Low	Medium	High
	XX		
Almena TWP		XX	
Brooks TWP		XX	
Waterford TWP (Oakland Co)			XX



Lake Friendly Ordinance Project - *Update*



STRENGTH / IMPACT of: NATURAL FEATURE PRESERVATION

LOCATION	Low	Medium	High
	XX		
Prairieville TWP		XX	
Zeeland TWP			XX



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STRENGTH / IMPACT of: Anti-Funneling Anti-Keyholing

LOCATION	Low	Medium	High
Porter TWP VBCounty	xx		
Ontwa TWP		xx	
Rutland Charter TWP (Barry Co)			xx



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STRENGTH / IMPACT of: SETBACK & VIEW PRESERVATION

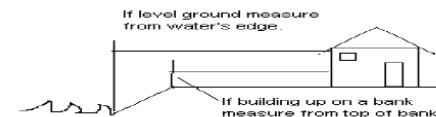
LOCATION	Low	Medium	High
Almena TWP		xx	
Park TWP (Lake Macatawa)			xx



BROOKS TOWNSHIP DISTRICT REGULATIONS									
Zone	Zoning District	Minimum Lot Area ^{i, x}	Minimum Lot Width	Lot Depth to Lot Width Ratio	Setbacks ^{ii, ix}			Maximum Building Height	Maximum Lot Cover
					Principal Structures ⁱⁱⁱ				
					Front	Side (both/least)	Rear		
A-G	Agricultural	40 acres	450 ft.	4:1	75 ft	100/50 ft	50 ft.	35 ft	25%
R-1	Low Density Residential	5 acres	330 ft	4:1	25 ft	60/30 ft	30 ft	35 ft	30%
R-2	Medium Density Residential	2 acres	200 ft	4:1	25 ft	40/15 ft	25 ft	35 ft	30%
R-3	High Density Residential	1 acre	150 ft	4:1	25 ft	30/15 ft	25 ft	35 ft	35%
MHP	Mobile Home Park	10 acres	300 ft	[State law requirements]					
LO	Lakefront Overlay	15,000 sq.ft. (w/sewer) ^{iv}	100 ft on the water and for street frontage (amended 3/18/08)	4:1	50 ft (water) ^{vi}	40/15 ft	25 ft (street) ^{vii}	35 ft	35%
	Waterfront	18,000 sq.ft. (w/o sewer) ^v							
	Non-waterfront	15,000 sq.ft. (w/sewer) 18,000 sq.ft. (w/o sewer)							
RTO	River and Tributary Overlay	5 acres (amended 6/21/04)	250 ft on the water and for street frontage (amended 3/18/08)	4:1	100 ft (water) 30ft top of bank (amended 6/18/01)	60/30 ft	25 ft (street)	35 ft	35%
	Waterfront								
	Non-waterfront	5 acres (amended 6/21/04)	250 ft	4:1	25 ft	60/30 ft	25 ft	35 ft	35%
C-1	Commercial Business	1 acre	100 ft/ 500 ft depth (Amended 6-1-98)	4:1	75 ft	40/15 ft (amended 3/18/08)	30 ft 50 ft (res.) ^{viii} (amended 3/18/08)	35 ft	50%
I-1	Industrial	1 acre	100 ft	4:1	75 ft	60/30 ft 100 ft (res.)	50 ft 75 ft (res.)	35 ft	50%

NOTES:

- Unless otherwise provided, each dwelling unit must have the minimum lot area requirements of this table
- For lots abutting a water body, set back shall be measured from the water's edge.
- Fence Structures shall be regulated by Section 18.01 (amended 1/21/02). Accessory structures shall be regulated by Section 3.03b
- w/sewer: Those parcels with sanitary sewer
- w/o sewer: Those parcels without sanitary sewer
- water: For Waterfront lots the yard abutting the water's edge is always the front yard.
- street: For Waterfront lots the yard abutting a public or private road, street, or right of-way is always the rear yard.
- res: The yard abutting a residential use
- Set Backs for properties located on corners that abut Michigan Department of Transportation Roads such as M-37 and M-82 shall be measured from the normal Road Right of Way not the increased State 'Clear Vision' right of way. However, all clear vision regulations set forth in Section 3.04c must be complied with. (Amended 12/8/03)
- Review the district regulations for rules addressing the possible requirement of combination of nonconforming lots.



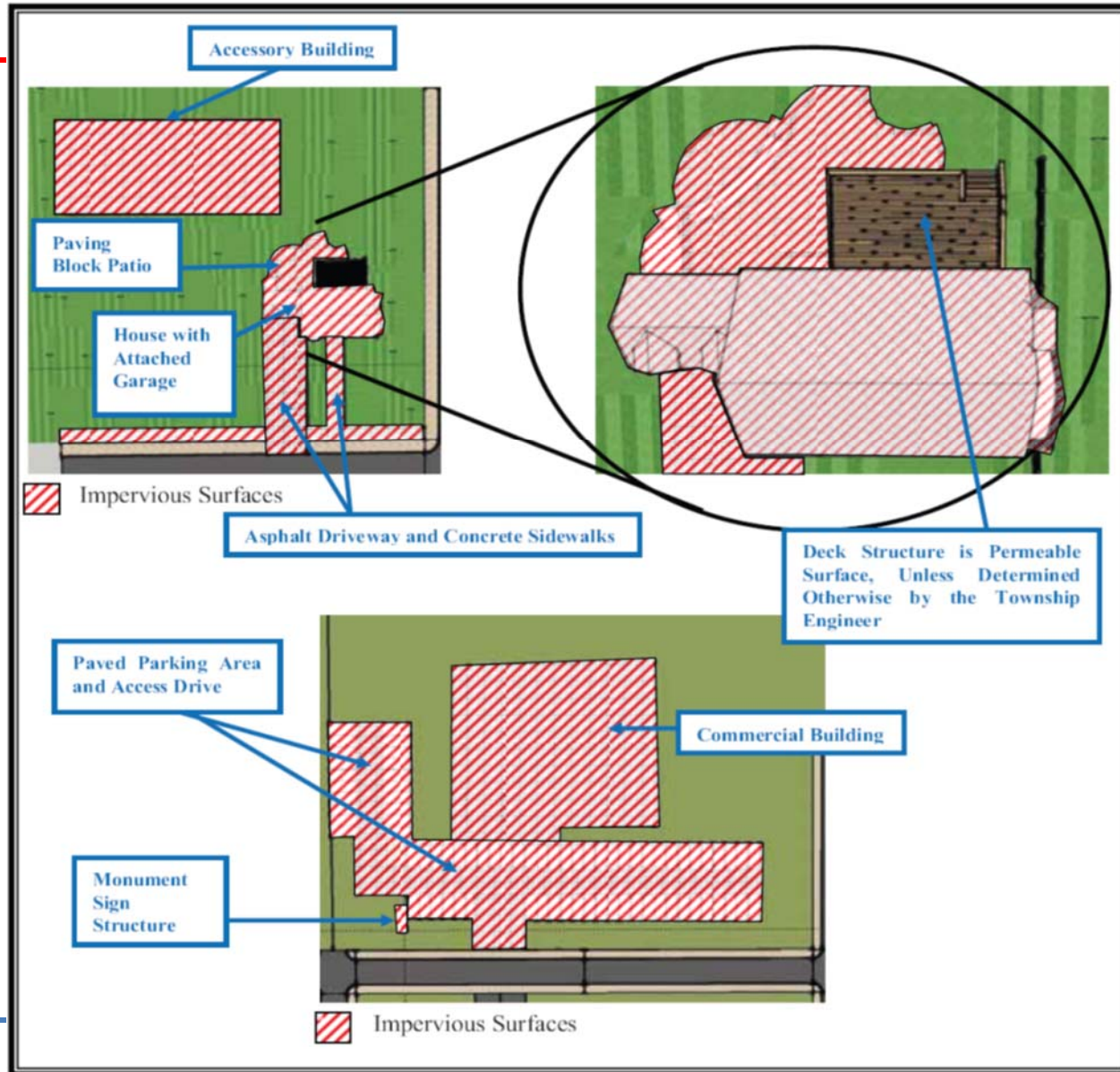


Figure VII-13 – Impervious Surfaces



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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 (BOT and PlanComm)
 - Form Citizen “Visioning” Groups and Coalitions
 - Identify & VOTE-in people with RIPARIAN Awareness (MLSA eNEWSLETTER Articles 10/2011 – 9/2012)
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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.....



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Questions / Comments ?



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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?

