



December • 2008

# Clearing Up Erroneous Claims About Proposed Shoreland Zoning Changes

By  
Charles Dykman & Sal Troia

YLA members may be concerned about what a possible Dane County shoreland zoning ordinance amendment could mean for future construction on their riparian lot. Such concerns are valid, as there are at least three ongoing government land use initiatives which could affect riparians, if enacted. These initiatives include proposed Dane County ordinance amendment OA 2, the Dane County Water Body Classification Project and Capitol Area Regional Planning Commission (CARPC) planning efforts. This article examines the first of these, proposed Dane County ordinance amendment OA 2.

The other initiatives are not near finalization and will be left for future articles. An important note, if you live in Madison, Monona or any city or village, you may want to stop reading now, as OA 2 does not affect land in municipalities. If you live in a township, you could be affected by proposed OA 2 if you have a substandard lot as defined below.

First, some history. Most of us remember when a real estate developer wanted to build several houses on some lots near the UW Arboretum and Lake Wingra. Neighborhood residents disagreed with his plans. Their dispute eventually involved a hearing before the Dane County Zoning Board of Appeals (BOA). The underlying dispute was about whether Zoning Department staff or the BOA would decide the conditions under which houses would be built

on substandard lots. A lot in the shoreland zoning area is a lot within 1,000 feet from a lake or within 300 feet from a river. A substandard lot is defined under State law as: (a) an unsewered lot less than 20,000 square feet in area or less than 100 feet in width; (b) a sewerred lot less than 10,000 square feet in area or less than 65 feet in width.

Prior to the Arboretum case, Zoning Department staff issued zoning permits for some, though not all, substandard shoreland lots. But the neighborhood residents in the Arboretum case asserted that a combination of county ordinances and a state law required that the BOA must consider all applications for substandard shoreland lots before granting them. Therefore, the dispute was about who would issue the permits, and what conditions would be required for the permit.

The neighbors won, and the BOA must now consider all Dane County zoning applications for construction on substandard lots in the shoreland area. However, the Dane County Zoning Administrator has issued an "Interpretation" which modifies this ruling somewhat, stating that the Zoning Department will issue zoning permits for additions and structural alterations which do not exceed 50% of a pre-existing structure.

*(Continued On Next Page)*

## Thanks to our corporate members for their support

*Air-Lec Industries*

*Anchor Bank*

*Aztec Builders*

*D. L. Anderson Co.*

*Benedictine Life Foundation*

*Bishops Bay Country Club*

*Blackhawk Country Club*

*The Boathouse of Madison*

*Capitol Travel Service, Inc.*

*Captain Bill's*

*Center for Limnology*

*Dane County Parks*

*Joe Daniels Construction Co., Inc.*

*The Edgewater*

*Endres Mfg.*

*Four Lakes Yacht Club*

*Friends of Pheasant Branch*

*Green Lantern Restaurant*

*Homburg Construction, Inc.*

*Interlake Boat Yard*

*Madison Gas & Electric Company*

*Manke Enterprises*

*Mariner's Inn*

*Mendota Lakeshore Apartments*

*National Guardian Life Ins.Co.*

*Nau-Ti-Gal*

*Pinckney Place Condominium Assoc.*

*Springers of Lake Kegonsa*

*Waconia Park Owners Association*

*Water Crest, LLC*

*Water's Edge Owners Association*

*Wickcraft Company, Inc.*

## Shoreland Zoning Issues Continued from page 1

The proposed OA 2 was intended to reverse the BOA decision and return some of the authority to the staff level. As required by State law, OA 2 was submitted for review to the Department of Natural Resources. The DNR wrote a letter to Dane County explaining that OA 2 violated a State law, NR 115. This is significant, for if Dane County passes a shoreland zoning ordinance that violates State law, the DNR can rewrite Dane County's Shoreland Zoning Ordinance.

Recently, in response to the DNR's findings, one of OA 2's sponsors began formulating an amendment to OA 2. Time will tell whether the DNR will approve the amendment, whether the amendment to OA 2 will pass, or whether it will be further modified. But in the meantime, supporters of OA 2 have made alarmist claims to justify it. We have listed these claims below with our responses:

***"The BOA decision decreases the value of your property."*** First of all, OA 2 and Shoreland Zoning only apply to unincorporated areas. Again, residents of Madison, Monona, and all cities and villages can rest assured and may want to stop reading here. *The Dane County Shoreland Zoning ordinance, and any proposed amendments do not and will not apply to you.* For those in unincorporated areas, there is no evidence that your property values have dropped. It's easy to claim that property values have fallen but the proof shows that the opposite is true. The vast majority of riparian properties in an unincorporated area have sold for more than assessed value. The recent downturn in real estate sales is tied to a national trend and is certainly not the result of the BOA decision. Lake property has increased, not decreased in value.

***"The BOA decision requires needless complications."*** This is inaccurate. Before the BOA decision, the first you would know about a next door neighbor's decision to build a huge house on his or her tiny lot would be when the excavator started digging. Now, you will get notice and be able to attend a BOA meeting and explain the things you know and give your opinion. The "complications" by and large don't exist. BOA approval is required by State law pertaining to substandard shoreland lots. Members of the BOA have not required irrational conditions for a variance. Assertions of "ridiculous requirements" turn out to be baseless once one discovers the facts. If preventing your neighbor from degrading your lake quality by requiring minimal changes in a plan is a "needless complication," then this would seem to be a complication worth pursuing. And the types of changes required are backed by a large body of scientific evidence as having a positive impact on lake quality.

***"The BOA's decision made small lots unbuildable."*** This is false. First, requiring BOA approval for many small lots has been the rule since long before the Arboretum case. The Arboretum case is applicable to only a subset of substandard lots.

You or your next door neighbor can build a structure on a substandard lot by obtaining a variance from the BOA. Nor is the “unbuildable lots” assertion true in practice. The BOA has granted zoning permits for all substandard shoreland lot applications except one, and that one hasn’t yet been granted because of a lot line dispute. At last report, 39 of 40 shoreland applications have been granted permits.

**“Small lots will be forced to disappear.”** This prediction seems to be based on the previous assertion that small lots are unbuildable. No one has had their lot “taken” by Dane County or has been forced to sell for next to nothing. The BOA decision has been in effect for nearly two years now, and there is nothing in its decisions since then to support a conclusion that somehow those owning small lots will be forced to give them up.

In reality, fears generated by overblown statements about OA 2 are not justified in the ongoing debate about it. These statements serve only to raise a tempest in a teapot. Rather, the OA2 debate boils down to the simple question of whether some substandard lot zoning decisions should be made by County employees in the Dane County Zoning Department or by the BOA, as required by State law. Everyone knows that we must follow State laws or suffer the consequences. If a change is needed, those wanting the change should work to change the State law.

It is not possible to tell the whole history of OA 2, explain all of its nuances and give the views of the many people who have been involved in OA 2’s evolution in a page or two. For those who desire more, we urge you to seek further information and hear the facts for yourselves. Don’t rely on opinions without getting the facts. There will be at least one more meeting of a Dane County Board subcommittee of the Environment, Agriculture and Natural Resources committee. Please watch the Dane County website for scheduling of this meeting.

\*\*\*\*\*

*Submitted by;*  
*Chuck Dykman, Yahara Lakes Association Board Member,*  
*Former WI Association of Lakes Board Member & Member of its Legislative committee*

*Sal Troia, Yahara Lakes Association Board Member, WI Association of Lakes Board Member & Member of its Legislative committee*

## **YLA Offers Recommendations On Lake Level Management**

*The following letter was sent from the Yahara Lakes Association Board of Directors in late October to the Dane County Executive and the Dane County Lakes and Watershed Commission.*

October 23, 2008

Ms. Kathleen M. Falk, Dane County Executive  
City-County Building, Room 421  
210 Martin Luther King Jr. Blvd.  
Madison, Wisconsin 53703-3345

Dane County Lakes and Watershed Commission  
One Fen Oak Court  
Madison, Wisconsin 53718

Subject: Recommendations to Improve Lake Level Management

Dear Ms. Falk and Commission Members:

As a membership organization that represents the Yahara Lakes riparians we would like to communicate our concerns and offer our recommendations related to the ongoing management of the water levels in the Yahara lakes watershed. The previous and current year’s storm events have been especially challenging and have drawn attention to the need for a more focused water level management policy for the years ahead. Our comments are not intended to criticize current approaches but rather to highlight the need for more intensive water level management efforts in the face of changes to the watershed and weather environment. We have outlined the reasoning for our suggestions below.

### **ACHIEVE AND HOLD WINTER TARGET LEVELS**

Late summer of 2007 the watershed experienced a significant rain event that elevated the levels of the Yahara lakes. The management efforts immediately following that event appeared to be on track. By the end of December Lake Mendota was within 7 inches of its winter target levels which placed it 10 inches below the summer operating minimum range. The dam at Babcock Park remained wide open as it had been since August. During the remainder of the winter Lake Monona remained at least 30 inches above

*(Continued On Next Page)*

## **YLA Letter to County Exec Continued from page 3**

its winter target. Lake Kegonsa reached its low at the end of November and by the end of December was in the middle of its summer operating range and 18 inches above its winter target. We do not understand why Monona and Kegonsa remained well above their target levels. If the operations of dams down stream caused this failure to reach targets that should have been addressed in January.

Early 2008 the Dane County area had accumulated record snow falls but yet the lake levels were significantly above target. The United States Geological Survey (USGS) records show that from December 1, 2008 to December 20<sup>th</sup> the outflow from Lake Mendota was around 240 cubic feet per second. From December 21 until March 20<sup>th</sup> the outflow from Lake Mendota was reduced to 165 cubic feet per second for a flow reduction of 75 cubic feet per second. During this time, Lake Mendota came up 13 inches.

By the end of March all of the Yahara Lakes were above the summer maximum level leaving no additional capacity going into the traditional rainy season. With record snowfall we do not understand why there was no attempt to provide storage in Lake Mendota and all of the Yahara lakes

Had lower winter levels been achieved and maintained into April the record rains in early June might not have had the long lasting high water level impact.

### Recommendation

We recommend that the County continually monitor lake level data year round and take more aggressive action to achieve targets in the off season. The extent of this action should also vary based on snow levels, as we know snow will become water in the spring. We also suggest that better and more responsive coordination with down stream dams that are not under the County's direct control would result in more effective water level management.

### **MAINTAIN MAXIMUM FLOW RATES IN THE LOWER YAHARA**

Once the lakes are well above their maximum capacity the only way to drain the system is through 5 mile stretch of the Yahara between Lake Waubesa and Lake Kegonsa. The normal elevation drop between these two lakes is only 18 inches. Flow rates are greatly impacted by weed growth. We observed that even during this summer's extended period of high water, weeds were allowed to grow and significantly reduce the flow rate in this 5 mile corridor.

Stream flow rate measurements are made bi-weekly during the summer and monthly during the rest of the year below the Babcock Park by the USGS and made available to those who inquire. These measurements indicate a shift in the rating curve and are the best indication of weed growth in the river. If the shift in the rating curve is greater than 1 foot, then the flow may be reduced by half. In that instance, the river may only be discharging 300 cubic feet per second instead of 600 cubic feet per second.

A stream flow measurement was made on June 26<sup>th</sup> and the shift in the rating curve was 1.33 feet. When the shift in the rating curve is greater than 0.8 feet, weed cutters should be put in the river. The weed cutters started cutting weeds in the river on July 14<sup>th</sup>, eighteen days after the high shift in the rating curve was observed. By that time the shift in the rating curve had reached 1.67 feet. This means that the stream flow rates were less than half of their pre-weed growth capacity. We question why this was allowed to happen when all of the Yahara lakes were under a slow no wake order, shore land property was being damaged and little emergency storage capacity remained before a catastrophic event could occur.

The weed cutters were in the river from July 14<sup>th</sup> until August 28. In these 46 days the weed cutters only operated on 21 days. Most of the time only two cutters were in operation. In the last week of cutting four or five machines were cutting. During this week of intensive cutting a significant change in the flow rate was observed.

We feel that this deployment of 4-5 cutters should have been made the first week in July or earlier and not the last week in August. When the weed cutters stopped cutting in August, the shift in the rating curve was still 1.63 feet. We believe that they should have stayed in the river until the shift was below 0.8 feet. This occurred through natural die off around October 6<sup>th</sup> at which time Lake Monona was still four inches above summer maximum. On October 6<sup>th</sup> the discharge out of Waubesa was only 305 cubic feet per second. With no weed restriction in the river the discharge would be 507 cubic feet per second.

In the summer of 2007 we experienced drought conditions for most of the summer. When we received the heavy rains in August of 2007, the lower Yahara was choked with weeds significantly slowing the flow rates. It took several weeks of cutting to get on top of the problem. This channel needs to be kept weed free regardless of conditions because heavy rains can occur at any time and there are considerable valuable properties and environmental resources at risk.

We also have observations regarding weed disposal while cutting in the river. The current practice is to take the weeds to some distant point and off load the weeds to a truck to be hauled away. We understand that, in an emergency, the DNR will allow the weeds to be off loaded into the surrounding wetlands. We do not understand why this was not done during periods of high water in 2007 and 2008. We believe that the number of weeds harvested could be increased by a factor of four or five times the current rate if the weeds were off loaded into the surrounding wetlands. The flooding of our lakes clearly constitutes an emergency. Approximately 50 miles of shoreline were being exposed to erosion and property damage. Destruction of this shoreline is an environmental concern. Off loading the weeds into the wetlands causes no significant environmental damage. Increasing the cutting rate by a factor of four, means that the lake levels will return to normal in one fourth the time and the erosion of our shorelines would be reduced.

#### Recommendation

Any observed reduction in flow rates needs to be addressed immediately, not days or weeks after the reduction in flow rates first appears. The county should provide a weed cutting effort to keep the rating shift curve at or below 1 foot at all times. We would further recommend that the County permanently task weed cutters to this channel to keep the weeds under control at all times, including periods of low water levels. The weed cutting machines should cover the entire length of the river.

We recommend that a clear line of communication be established with the USGS. When the stream flow measurements show a shift in the rating curve greater than 0.8 feet, weed cutting must commence. Visual inspection cannot quantify the reduction in stream flow.

We recommend that the County be allowed to offload the weeds in the surrounding wet lands during periods of high waters. This would minimize the total environmental damage to the Yahara chain of lakes.

We recommend that the County authorize overtime or use two cutting shifts to provide the operating hours required to meet the flow objectives previously outlined.

Ice damaged staff gauges should be reinstalled along the river between Lake Waubesa and Lake Kegonsa to determine if there is a specific location along the river that the

weeds are impeding the flow. These gauges may also help identify areas in need of more extensive weed cutting.

Using chemicals to control the weeds in Lower Mud Lake should also be considered. We understand that the DNR does not recommend chemicals to control weeds in the River proper, but they may approve the use of chemicals in the area of Lower Mud Lake.

### **ELIMINATING CONSTRICTIONS IN THE LOWER YAHARA**

It is our understanding that there are several points in the lower Yahara between Lake Waubesa and Lake Kegonsa where constrictions exist that impede the water flow. Natural constrictions become worse as the flow rate slows and additional sediment is dropped.

#### Recommendation

We recommend that these constrictions be removed with minimal dredging activity to improve the flow rates. This will be an ongoing process, as once existing blockages are removed others will become more obvious. This modest dredging activity will enhance water flow during periods of high water.

### **WATERSHED MODEL**

It is our understanding that the county has paid for a flood and water flow model that would provide information to help plan for the impact of future development and changes of rainfall in the watershed. The model may also provide information on how to best manage the high water events. We understand that the model is not currently being run.

#### Recommendation

We believe the model could provide important insights into what will be needed in the future to handle a significant storm event and prevent flooding and property damage. We suggest that staff be identified and trained to utilize this tool to properly prepare for these events. The model should also be used to examine different or alternative strategies. Various summer lake levels, development plans for the upper watershed, and many other “what if” scenarios should be examined.

*(Continued On Page 6)*

## **YLA Letter to County Exec Continued from page 5**

### **CLOSING THOUGHTS**

The management of the Yahara Lakes is a complex and critical task. This management task is best suited for government to accomplish. The roles of government include the protection of its citizens, their property, our natural resources and the environment.

When this property is being threatened it is the expectation of the citizens that government will do everything reasonable in its power to protect the property and reduce future threats of damage. We believe much more can be done in the lake management area.

The lakes define Madison and Dane County and, as such, they are a very valuable asset. The incidence of flooding has increased over the last decade as a result of increased development and climate change. Flooding has caused significant economic and environmental damage. We should do everything that we can to reduce this flooding. The lake level management effort needs to be a major priority not just one of many priorities.

We need to take incremental steps to constantly improve the management of the lakes to minimize future property and environmental damage. We must develop and implement specific lake management strategies to prevent or minimize the next flooding event. We would be pleased to meet with the Commission or the County's lake management personnel to discuss these issues.

Sincerely,

Yahara Lakes Association

**Be Sure to Visit the YLA Website**

**[www.yaharalakes.org](http://www.yaharalakes.org)**

## **Did You Know . . . .**

### **What is an Ice Boat?**



An ice boat is a hull attached to a perpendicular cross piece called a runner plank. Three skates, or funners, are attached to the boat, one on each end of the plank and at the fore end of the hull. Ice Boats are strictly wind powered and need relatively snow-free ice to sail

*- source: [www.iceboats.org](http://www.iceboats.org)*

## **Calendar of Events**

**Lakes & Watershed Commission Meetings  
5:15 p.m. ~ 2nd Thursday of the Month**

**Madison Boat & Water Show  
January 23-25, 2009 at Alliant Energy Center**

**Madison Winter Festival  
February 13-15, 2009 on Capitol Square**

**Kites on Ice  
Date to be Determined**

# Yahara Lakes Association, Ltd.

Post Office Box 44578, Madison WI 53744

608.848.1450

## Board of Directors Ballot

Nominees to Serve a 3-Year Term as Director

The following is the list of nominees for a three-year term on the Board of Directors. You may check off or write in a total of seven (7) nominees for the seven open positions on the Board.

- Louisa Enz, 2944 Waubesa Avenue, Lake Waubesa
- Chuck Gates, 5042 Lake Mendota Drive, Lake Mendota
- Carol Gillen, 1808 Waunona Way, Lake Monona
- Mark Pernitz, 4240 Morris Park Road, Lake Waubesa
- Ray Potempa, 3411 Stony Crest Drive, Lake Kegonsa
- Tim Stanton, 1128 Pocahontas Drive, Lake Monona
- Sal Troia, 2968 Woods Edge Way, Lake Mendota

Write-Ins: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Please complete this ballot and return it to the Yahara Lakes Association, Ltd. (address above)  
***Must be RECEIVED by no later than January 16, 2009***

## Know Your Lakeshore . . .

# Be Careful Out There

By Don Sanford

The ice that covers our lakes holds adventure for skaters, fisherpersons and folks like me who iceboat. Folks who play on the ice know that it can be fun but we never consider it 100% safe. Lake Mendota can and does take a life from time to time during the winter as well as the summer. Here's a story about four notable tragedies.

On January 16, 1928 newspaper headlines announced that Madison attorney Maurice E. Field and Mary Madeline Roberts drowned in Lake Mendota when Mr. Field's car broke through the ice about 150 yards off Fox Bluff. Witnesses saw Field's Dodge coupe slide into the crack, but there was little they could do as the car slid beneath the surface. In those days, it was quite common for motorists to drive across Lake Mendota either as a shortcut or just for fun. Two other cars had slid into the lake in that same area in the 10 days prior to this accident. Occupants of the other vehicles, including one with UW students taking a shortcut to campus after a late-night party, all managed to escape. A hardhat diver from Milwaukee recovered the bodies and Field's car. Local officials called for restrictions to prevent motorists from driving on the lake, but they were unsuccessful.

A new push to stop driving on Madison Lakes came in January 1933 after prominent car dealer Clarence Hult and his son Robert went through a crack just off Maple Bluff on the afternoon of January 9<sup>th</sup>. The Hults were going home for lunch, taking a break from ice fishing, when they perished. They drove onto ice at N. Blair St., passing other vehicles on the ice enroute to a fishing spot near the current Governor's Mansion in Maple Bluff.

Witnesses reported that the ice was about 12 inches thick on most of the lake, but just 6 inches near the crack that ran from Maple Bluff toward Governors Island. They watched helplessly as the car balanced on the edge of hole for a few moments before it slipped through the ice. Again, the diver from Milwaukee came to recover the bodies and the vehicle.

Eight years later, Frances Denson and Felix Muskat drowned off Middleton Beach during an ice harvest. Denson, one-time Republican candidate for Sheriff, was the owner of Middleton Ice Co. He and Muskat were dragging a channel to keep it free of ice during the night when the car went in on the morning of February 22, 1941. They were found the following afternoon.

On January 8, 1968, Madisonians picked up the *Capital Times* and read about the Lake Mendota Iceman. A group of kids playing hockey near the Mazanet Marina came upon the body of a man frozen in the smooth, black ice. A neighbor arrived home that afternoon to find her driveway filled with Dane County Sheriff's vehicles. Initially, it was thought they were after someone who had fallen through the ice. Only when they arrived did they discover that they had a different kind of recovery. The officers, equipped with chain saws, ice picks and pry bars, worked into the evening in a near-zero wind chill, then came back the next day to lift a one-ton block of ice containing the body from the shallow marshy bay. The Iceman was taken to the County morgue, where he was later identified as a resident of the State Hospital who had been missing for many months.

Lake Mendota's icy surface is a destination for outdoor enthusiasts of all kinds. However, the occasional ATV, ice fisher, skater or ice boater has been known to get wet from time to time. Accidents like these headline-makers are thankfully rare today but serve as a warning to us all to "Be careful out there."

**Don Sanford** is a Captain on the Betty Lou Cruise Line. He is currently researching "*On Fourth Lake; A Social History Tour of Lake Mendota.*" He welcomes your comments, recollections and anecdotes at: [dpsanford@charter.net](mailto:dpsanford@charter.net) or at 255-1508.





## NEWSLETTER

Yahara Lakes Association, Ltd.  
Post Office Box 44578  
Madison, WI 53744-4578  
(608) 848-1450

Pre-Sorted  
Standard  
U.S. Postage  
P A I D  
Permit #1  
Madison, WI

**Yahara Lakes Association, Ltd. is a non-profit organization of over 700 members dedicated to representing Lake property owners and advocating for the vitality of the Yahara chain of lakes so that all citizens may enjoy them.**

### **2008 YAHARA LAKES ASSOCIATION, LTD. BOARD OF DIRECTORS**

PRESIDENT - Doug Bach, 270-5386; doug.muriel@charter.net  
PRESIDENT-ELECT - Bob Miller, 222-1922; bobmiller@tds.net  
SECRETARY - Nancy Mistele, 245-1788; nmistele@yahoo.com  
TREASURER - Michael Gerner, 286-6903; michael.gerner@gt.com  
PAST PRESIDENT - Michael Gerner, 286-6903; michael.gerner@gt.com

Charles Dykman, 222-4724; cpdykman@gmail.com  
Dan Schultz, 249-2111; dschultz@amfam.com  
Mark Pernitz, 838-7751; mpernitz@gmail.com  
Joe Tisserand, 231-1072; jtiss@sbcglobal.net  
Sal Troia, 242-9439; bicycleracer@tds.net  
William von Rutenberg, 246-3136; vonr@execpc.com  
Ken Kosciak, 222-9513; kkosciak@tds.net  
Tammy Liddicoat, 222-3660; tliddicoat@charter.net  
Bill Fitzpatrick, 233-3584; fitzengr@aol.com  
Ray Potempa, 838-9329; rjp3411@aol.com  
Dick Adler, 222-0879; dgadler2@yahoo.com  
Tom Franke, 877-0871; twfranke@msn.com  
Louisa Enz, 663-5291; lenz@starkhomes.com  
Eileen Bruskevitz, 249-9188; eileen@chartermi.net

Administrative - Le & Bob Jordan, 848-1450; yla@mailbag.com

### **COMMITTEES**

Communications Committee  
Lake Quality Committee  
Legislation and Legal Committee  
Membership Committee  
Water Safety Committee

*Call 848-1450 if you would like to become involved in any of the above-listed committees, or if you have concerns you would like a committee to address.*