

Notice of Public Hearing

LSA Document #06-605

Notice of Public Hearing

Under [IC 4-22-2-24](#), notice is hereby given that on May 7, 2007, at 10:30 a.m., in Indiana Conservation Officers District 2 Headquarters, 1353 South Governor's Drive, Columbia City, Indiana, the Natural Resources Commission will hold a public hearing on proposed amendments to [312 IAC 11-5-2](#), which governs lawful nonconforming uses for structures subject to licensure under [IC 14-26-2](#) (commonly known as the "Lakes Preservation Act"). The amendments provide greater specificity to the processes used to evaluate lawful nonconforming uses, clarify that the person claiming a lawful nonconforming use has the burden for establishing conformity, clarify that the Department of Natural Resources has the burden for establishing that a lawful nonconforming use should be terminated if the Department contends it poses a nuisance or has been abandoned, and clarify that a temporary structure can qualify as a lawful nonconforming use. Amendments are also made to acknowledge that the seasonal removal of a structure does not constitute abandonment, to provide that a person who wishes to assert the benefits of a lawful nonconforming use for a pier that exceeds 150 feet long (or that exceeds 300 feet long on Bass Lake in Starke County) must submit documentation by January 1, 2010, and to specify that an abandoned structure is disqualified from treatment as a lawful nonconforming use. The amendments clarify that the Department must issue a complaint or seek emergency relief based upon a contention a lawful nonconforming use must be removed, but the Department may serve a notice of violation if an unlawful nonconforming use is placed or maintained or if a lawful nonconforming use is modified or repaired without authorization.

Under the amendments, the only circumstance in which a responsibility is placed on a person to demonstrate the existence of a lawful nonconforming use, within a particular time frame, is for piers that exceed 150 feet from the shoreline (or, for Bass Lake in Starke County, that exceed 300 feet from the shoreline). These long piers constitute a small fraction of the number of piers located on Indiana's public freshwater lakes. Based upon discussions with local conservation officers and upon a review of aerial photographs, the estimate is that of the thousands of piers in Indiana, there are probably fewer than 30 long piers. Long piers can present a serious hazard to public safety since they extend into waters reserved by the Indiana General Assembly for high-speed boating. In addition, having long piers within the waters reserved for high-speed boating interferes with the public trust established by the Lakes Preservation Act ([IC 14-26-2](#)), including for skiing and other recreational purposes for which high-speed boating is an element. The need is to more clearly identify and monitor these long piers, to emphasize to the owner the potential hazards, to mitigate those hazards, to support the recreational values of Indiana's public freshwater lakes, and to help assure long piers do not become even longer over the years through modifications by the owner.

A period until January 1, 2010, is provided to regulated entities (owners of long piers) to submit a request to determine the pier is a lawful nonconforming use. The costs to regulated entities to request a determination of a lawful nonconforming use for a long pier would vary greatly depending upon how they wished to document the request. As illustrated by the listing of potential sources for documentation, the design of the rule amendments is to provide the regulated entities with a wide range of options. Based upon the Department's experience regarding the documenting of long piers, the estimate for these costs per pier for documentation is as follows:

6 hours @ \$10 an hour	\$60
Mileage: 100 miles @ \$0.40	40
Copies, postage, and film	20
Record keeping	00
Annual reporting	00
Total:	\$120

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indiana and are open for public inspection.

Bryan W. Poynter
Chairman
Natural Resources Commission

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