

Riparian Buffer Protection

"A Municipal Ordinance Perspective"



Forms of Riparian Buffer Ordinances

- Overlay Zoning Ordinances

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- Freestanding Ordinances

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- Floodplain Protection Ordinances

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- Utilizes pre-established procedures, staff and proceedings/protocols

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- Procedures would need to be developed to ensure that ordinance is applied.

Floodplain Ordinances

- Floodplain Ordinances, while addressing similar areas (riparian corridors), lack details on environmental issues. They tend to focus on protection of property and public safety issues.
- Revisions to existing Ordinances will likely require review by PA DCED (as agent for FEMA).

Key Components to Riparian Protection Ordinances

Findings of Fact

- Outline why the Ordinance is necessary
- Summarize function and benefit of Riparian Systems
- Summarize what needs to be done to protect riparian resources
- Better understanding leads to smoother implementation / administration and increases chances of public acceptance!!!

Key Components to Riparian Protection Ordinances

Definitions

- An effective ordinance must clearly define the terms that are used.
- The scope of the definitions will ultimately determine how successful the program can be implemented (more definitions = less "gray areas" for subjective interpretation).

Key Components to Riparian Protection Ordinances

Applicability to Lands

- The Ordinance MUST establish what portion or portions of lands the Ordinance will apply to.
- Options for defining lands include specific areas (set distance) or variable areas (base on slope of banks, multiple pre-established zones, etc.).

Key Components to Riparian Protection Ordinances

Regulation Activities

- Ordinance must establish what activities are permitted (by right) and which will require further review and/or permitting
- Means must be outlined to provide for uses not specifically listed (who determines, who enforces).

Key Components to Riparian Protection Ordinances

- An increasing number of Ordinances that protect riparian (and wetland) areas contain “sequencing” standards (similar to Federal Permitting);
 1. Avoid Impact
 2. Minimize Impact (if it cannot be avoided)
 3. Provide for Compensatory Mitigation if residual impacts remain (after avoidance and minimization)

Key Components to Riparian Protection Ordinances

Non-Conforming Activities

- There are inevitably activities and uses which may not conform to newly adopted regulations.
- Procedures must be provided for continued existence and limited expansion of these activities / uses.

Key Components to Riparian Protection Ordinances

Enforcement

- A procedure must be established for fines and penalties (if Ordinance is violated).

Points to Ponder

- Issue of “takings” often comes up when land use management ordinances are enacted.
- While it has been generally accepted that protection of water quality or environment are justified in interest of public health, safety and welfare, the municipal Solicitor MUST be involved to make sure Ordinance provisions are appropriate and enforceable

Points to Ponder

- Keep Ordinances simple, direct and understandable.
- Complicated Ordinances lead to lack of enforcement (due to ignorance) and general disregard / disdain by public entities.

Points to Ponder

- Don't be afraid to tailor Ordinances to local problems and needs (aim to address identified areas of local concern).

Points to Ponder

- Provide provisions in Ordinance text that will draw upon other sources of expertise (in evaluating applications) beyond municipal staff;

Examples include, Conservation Districts, PA DEP or PA DCNR, Corp. of Engineers, Fish and Wildlife Services, NRCS, etc.

Final Point to Ponder

- Don't hesitate to draw upon other Ordinances and Programs that have already been implemented.
- Most existing Ordinances are available by way of the internet.
- They represent if nothing else, a good starting point.

QUESTIONS ???



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