



# TREIG E. PRONSCHINSKE

STATE REPRESENTATIVE • 92<sup>nd</sup> ASSEMBLY DISTRICT

## **Testimony on Assembly Bill 721: Regulation of Nonconforming Buildings in a Floodplain**

Thank you members of the Assembly Committee on Housing and Real Estate for allowing me to speak on this important bill today and to address the unique needs of people living in the floodplains around our state.

There has been an amendment introduced on the Senate's companion bill that we intend to mirror. This amendment would clarify the bill and requires two feet of elevation before this legislation would kick in.

A 50% rule is a regulation that prohibits those residing in the floodplains from spending money over 50% of the buildings assessed value for projects on that particular building if it is considered to be a nonconforming structure. Due to these circumstances, many homeowners are trapped from spending money to improve their homes. This money would go into further flood proofing as well as remodeling while supporting our local economies.

Rural areas like my district are often the ones that suffer as a result of this rule, especially along the Mississippi River.

This bill does not seek any public funds nor does it have a negative impact on the environment. It preserves all regulatory authority of the DNR while allowing local governments to be more restrictive if they choose, the bill simply allows for homeowners to work on their homes regardless of cost.

Again, I appreciate your time and consideration of this important legislation. Together we can improve the lives of people in our state.



## Assembly Committee on Housing and Real Estate

### *2019 Assembly Bill 721*

#### *Regulation of Nonconforming Buildings in a Floodplain*

*February 6, 2020*

Good morning Chairman Jagler and members of the Committee. My name is Dave Siebert, and I am the Administrator for the Wisconsin Department of Natural Resources External Services Division. Joining me is Rob Davis, DNR Dam Safety and Floodplain Zoning Section Chief, and Casey Krueger, DNR Chief Conservation Warden. Thank you for the opportunity to provide testimony and respectfully express the Department's opposition to Assembly Bill 721 (AB 721).

Flooding is Wisconsin's most common natural hazard. Floodplain zoning protects human life, health, and property, and is particularly important since the frequency and severity of flood events has increased over the past decade. There was an estimated \$209 million of flood-related damage in Wisconsin in 2018.

The floodplain includes those areas referred to as the flood fringe, where standing water can occur during flood conditions, and the floodway, where more dangerous flowing currents occur that may erode embankments, carry debris, collapse structures and pose additional risks. Currently, there are approximately 60,000 structures in the regulatory 100-year floodplain across the state. An estimated 7,700 of these structures are in floodways.

The Department of Natural Resources strives to partner, problem solve, and provide support to property owners and communities while also fulfilling the Department's public safety and floodplain management roles. AB 721 will only slightly impact the Department's regulation of flood fringe areas because conforming structures can exist in the flood fringe under either the state or federal standards. However, that cannot be said for floodway areas, because floodway structures designed for human habitation are always nonconforming under state standards.

Wisconsin's model floodplain ordinance balances state public safety requirements and federal National Flood Insurance Program property protection. Under current law, new conforming development is allowed in the flood fringe and existing structures can be modified to achieve conforming status. The ordinance prohibits new development in the floodway where dangerous currents can be present. The model ordinance also seeks to prevent legacy structures in the floodway from being converted into new or larger buildings, which would contribute to the longevity or permanence of human life, health, and property risks. It also decreases mitigation costs and encourages the gradual elimination of structures from the floodway.

The federal floodplain code, Section 44 Code of Federal Regulations (CFR) 60.1(d), was designed as a property insurance program. States are responsible for the public safety aspects of floodplain management. The federal code states, "...community officials may have access to information or knowledge of conditions that require, particularly for human safety, higher standards than the minimum criteria set forth in subpart A of this part. Therefore, any floodplain management regulations adopted by a state or community which are more restrictive than the criteria set forth in this part are encouraged and shall take precedence."

Elevating a structure in the floodway may marginally reduce the chance of water damage, but elevation does not eliminate the risks to human life, health, and property. This is particularly important when the state is experiencing increased intensity and frequency of precipitation and weather events that contribute to ice dams, wind driven waves, and other unexpected flooding.

Wisconsin's floodplain management program has a longstanding public safety goal of eventually clearing all structures from the floodway and achieving conforming status for those structures located within the flood fringe. Since 1990, 633 residential and commercial structures have been removed from flood-prone areas, 32 structures have been elevated, and 42 structures have been floodproofed, which has lowered risks to human life and property.

The state's current floodplain management program goes beyond the minimums required by federal law and creates lower risks which are reflected in lower National Flood Insurance Program rates and premiums for Wisconsin property owners.

This bill would eliminate state safety requirements and rely on federal National Flood Insurance Program standards in Wisconsin. The bill would significantly change the state's policy of limiting and eliminating nonconforming structures in floodway areas.

This bill would result in:

1. Increased risks to human life, health, and property protection for an estimated 60,000 structures in the floodplain statewide, but especially for those 7,700 structures that are in the floodway;
2. Overall increased human safety risks, because it is never safe to be in the floodway during a flood event;
3. Increased expansions of floodway structures, resulting in higher home values and greater occupancies of residences located in the most dangerous and vulnerable areas within the floodplain;
4. A lowering of the state's base flood elevation at a time when we are experiencing frequent flooding events that are even damaging structures built to the current state requirement of two feet above the federal base elevation; and
5. Higher long-term flood mitigation costs and higher flood insurance premiums.

On behalf of the Department of Natural Resources, I would like to thank you for your time today. We would be happy to answer any questions you may have.

February 6, 2020

To: Honorable Members of Wisconsin's Assembly Committee Housing and Real Estate

From: Mr. David C. Fowler, CFM and Legislative chairperson of the Wisconsin Association for Floodplain, Stormwater and Coastal Management (WAFSCM).

Relating to: Assembly Bill 721, Regulation of Nonconforming Buildings in a Floodplain

Good morning Chairman Jagler and members of the Committee. Thank you for the opportunity to provide written testimony on Assembly Bill 721, my name is David Fowler. I have over 30 years of experience with flooding issues both professionally and personally. I have been a Certified Floodplain Manager in the State of Wisconsin since 2002, and I am currently the legislative chairperson of the Wisconsin Association for Floodplain, Stormwater and Coastal Management (WAFSCM). It is in that capacity that I am expressing opposition to this bill.

The Wisconsin Association for Floodplain, Stormwater, and Coastal Management (WAFSCM) is the state chapter for the National Association of State Floodplain Managers (ASFPM). The Wisconsin Chapter promotes sound approaches for managing Wisconsin's floodplain, stormwater, and coastal systems. The organization was formed in 2000 and currently has over 200 members from around the state representing both private and public organizations.

Wisconsin has had numerous severe weather events over the last decade that have resulted in severe flooding both in our urban centers but also in the rural and farming areas of the state. In fact, flooding is our most common natural disaster. In 2018 alone, Wisconsin saw record flooding in almost the entire state. Over 1,000 residents received financial assistance from FEMA. Next year and in following years flooding impacts are only going to increase as our state faces the challenge of changing rainfall patterns that will bring larger storms with heavy downpours. The catastrophic floods that will continue to occur in the Midwest should be a cautionary tale for this State. We need to be prepared and this bill we feel is a step in the wrong direction.

My opposition stems from the fact that this bill will allow at-risk structures to remain in harm's way when floods occur, putting the resident and emergency personnel at risk. Wisconsin's current floodplain management program is a good one and has prioritized the public safety goal of removing or elevating structures located within the floodplain and removing structures from the floodway that are not in compliance with floodplain regulations. This is a sound flood management policy that eliminates the risk by keeping structures and people out of harm's way.

The floodplain is divided on the maps into two distinct regions: the floodway where water is moving and the flood fringe where water accumulates. The floodway is the area where there is a fast moving current during a flood and is the most dangerous area of the floodplain

Current, Wisconsin floodplain regulations do not allow development or structures with the floodway. Development and structures are allowed in the flood fringe as long as structures are safely elevated to the state's flood protection elevation, which is two feet above the 1%-annual-chance flood level. Structures that were built before floodplain regulations existed and do not meet the state floodplain regulations they are non-conforming structures. When those structures sustain damage in the amount of 50% or more of their equalized assessed value, they must come into compliance with the state's floodplain regulations. In the floodway, that means removal of the structure by demolition or relocation. Structures in the flood fringe can remain there as long as they are properly elevated.

This bill would allow floodplain structures to remain and even expand in the floodway of the river as long as they met the federal requirement of elevating to the 1%-annual-chance flood level. This will not even meet the state flood regulations for the less dangerous flood fringe which requires an elevation to two feet higher the 1%-annual-chance flood level, which would also be eliminated by this bill. These changes will increase the cost of flood damages and emergency operations which are heavily subsidized or completely paid by state and federal taxpayer dollars. More troubling is that this bill allows people to continue living in the most dangerous part of the floodplain, putting their lives and the lives of first responders at risk.

I have firsthand experience in responding to flood events through my work as a local floodplain manager in SE Wisconsin. I have also been deployed to several national disasters mostly along the gulf coast in response to Hurricanes which provided me with a first hand, on the ground experience with the horrific impacts of flooding. It from both my professional and my personal experience that I oppose this bill.

Thank you for your consideration of this matter.

Sincerely  
David C. Fowler CFM  
7549 Riverview Road  
Franklin, WI 53132

## Favoring Assembly Bill 721

History of "Peace Harbor" 1925 Trempealeau cottage on Mississippi River

Owned by One Family for almost a Century.

By Barbara Becker Hammes, -1972 UW-M School of Nursing

-Parent of 3 UW graduates (2 daughter graduates of UW Medical School)

-Currently Retired Minnesota resident

In 1925 Herman Halderson built a 1000 sq. foot summer cottage along the Mississippi River banks south of Trempealeau village. The owner was Judge Robert S. Cowie, UW Law School 1894, former Trempealeau County Judge, newly elected Circuit Court Judge. Soon an adjacent cottage was built, which Halderson sold to the Circuit Court Stenographer, Clarence Weber at the urging of Judge Cowie. There was no air conditioning and courtrooms were extremely hot. One day two heavy iron benches were "relocated" from the Trempealeau courthouse lawn to the Cowie cottage lawn near the riverbank. The benches, still there today, seated opposing parties for non jury hearings during the summer months. Judge, stenographer, attorneys and clients enjoyed a bit of the cool river breezes.

The Upper Mississippi River National Wildlife and Fish Refuge had been designated the previous year, one of the earliest Federal Refuges. Locks and Dams weren't added for 10 years. Judge Cowie soon co-founded the Trempealeau Isaac Walton Conservation League. This group worked tirelessly with the Federal government to help President FDR purchase the Delta Fish and Fur property, which in 1936 became the Trempealeau National Wildlife Refuge. Cowie's grandson, my father donated land adjacent to Trempealeau Second Lake to the Mississippi Valley Conservancy. My husband and I serve on boards and volunteer for both of these Federal Refuges and the Conservancy. We, like many of the property owners value the conservation of the Mississippi River.

Cowie, still circuit court judge at his death in 1951, left the cottage to his sole daughter, Janice Becker. She was a kindergarten teacher who enjoyed summers off at the cottage and fortunately for us, shared its magic with her 8 grandchildren. In 1989 my husband and I bought it from Grandma Jan, as our four children had discovered all the wilderness secrets of this special place which their parents, grandparents and great grandparents had. We had hoped to make the structure a year round livable home for us upon retirement, but by the turn of the 2000, it was clear to us and other cottage owners this would not be allowed. Like those who sold their Wisconsin Mississippi River cottages in frustration and moved just 15 minutes south to the Mississippi River banks in Minnesota, we were able to build beautiful FEMA regulation floodproof retirement homes, contributing to Minnesota's property tax base. Unfortunately this required each of us to leave lifetime Wisconsin residency behind.

Now our grandchildren are the sixth generation to treasure this special property. We are ensuring that they will walk in our footsteps to be good stewards. We hope with this change in state regulation, Assembly Bill 721, that finally they will be able to make the necessary improvements to enable the cottage to be their year round home, safe for all. We hope they will be able to remain Wisconsin residents. Thank You!

February 6<sup>th</sup>, 2020

Wisconsin Assembly Public Hearing  
Committee on Housing and Real Estate

I want to thank Representative Jagler and the members of this Committee for the opportunity to provide testimony on Assembly Bill 721.

My wife, Barbara, and I have been owners of a summer cottage on Lake Road in the Village of Trempealeau since 1989. Our property is located on the banks of the main channel of the Mississippi River. The original owner of this cottage was Barbara's great-grandfather, Judge Cowie, who was one of the first Circuit Court Judges in western Wisconsin. This property and cottage have been owned by the same family since 1925. We have had a long history and knowledge of property ownership and flooding on the Mississippi.

When we became the owners of this cottage in 1989, we applied for a permit to elevate the cottage to raise the structure 3 feet above the 500-year flood level. Since elevating, we have had no damage to our cottage from flooding. According NOAA data, over the last 30 years, our property has experienced 2 major floods; 9 moderate floods; and 5 minor floods. The only "problems" we had during all this flooding is the lack of access to our property by car and the need to clean sand and mud from our lawn, driveway, and other ground level hard surfaces. We are not aware of any harm or danger these floods created for either property owners or emergency services. (Note: It is important to understand that on the Mississippi we DO NOT have flash floods. We typically know weeks in advance of expected flood conditions and crest projections.)

Even though our cottage is flood proof by elevation, under current DNR enforcement, we cannot make improvements to our living space beyond the 50% of its present equalized assessed value. Since our elevation and some other improvements counted toward that 50% when the permit was granted in 1989, we may not be allowed to make any more significant improvements.

This seems unfair and unreasonable. Why?

1. It seems inconsistent with federal standards that put restriction for improvements only on structures that are not flood proofed. We have effectively flood proofed the structure as the last 30 years have demonstrated.
2. The DNR enforcement is inconsistent. I don't have time to list all the inconsistencies we have witnessed over the last 30 years, so I will only speak to more recent history. After the WI regulations were modified back in 1996 and elevation was defined as maintenance, several owners took existing cottages and received a permit to not only elevate them, but also to completely rebuild them. One structure elevated the whole structure and then removed all but one part of one external wall. They essentially build a new structure from the floor up. Another owner elevated their structure, gutted the structure and then build an additional floor above the original cottage. Permitting these projects made sense to us as they were now flood proofed by elevation. Now, such significant improvement projects are not allowed!

Just to be clear. I am not overly critical of the DNR staff for this inconsistent administration of the regulations. The current regulations allow for different interpretations. Thus, the need for this new language! Passing Bill 721 will help clarify what the DNR can and should permit.

There are other policy benefits that you should consider that support this bill:

- 1) Allowing improvements to flood proofed structures helps support and expand local property taxes. The cottage and homeowners, if they are better able to maintain and improve their properties once flood proofed, will increase tax support for local governments and schools by increasing their property values.
- 2) Allowing improvements will motivate flood proofing by elevation and this will improve environmental protection and safety.

Finally, it is important to note that the DNR, in 1988, permitted the creation of a public sewer system for the Lake Road area now in the Village of Trempealeau. All this area is in the floodway. This was a great move on the DNR's part as it prevents water pollution from private septic systems. But it also means that the DNR recognized that these cottages and homes were there to stay.

For all these reasons, we ask that you support this Assembly Bill 721 so that the DNR can administrate the regulations in a way that is fair, consistent, improves safety, is environmentally sound, does not unnecessarily burden properties owners, and helps provide a better tax base for local governments and schools.

Thank you,

**Bernard "Bud" and Barbara Hammes**  
**W23621 Lake Road**  
**Trempealeau, WI**  
**608-386-0318**

**Addition comment:** Our permanent resident is on the main channel of Mississippi River in La Crescent, MN. Like Wisconsin, Minnesota has flood plain regulations. Like Wisconsin, Minnesota must also comply with federal regulations. Unlike Wisconsin, in Minnesota we can elevate habitable structures and have no restrictions on the amount of improvements we make on those structures.



To: Assembly Committee on Housing and Real Estate

From: Village of Trempealeau Board of Trustees

Date: February 3, 2020

RE: Support for 2019 Assembly Bill 721

On behalf of the Village of Trempealeau Board I would like to share our support for 2019 Assembly Bill 721; an Act to create 87.30 (1d) (d) of the statutes; relating to: the regulation of nonconforming buildings in a floodplain. (FE)

Passage of this bill will help protect our Village property values and reduce the need for some of the cumbersome tracking and enforcement of the current rules.

We encourage Mount Trempealeau Corporation's efforts to pursue the enactment of this Bill and support enabling Floodplain residents to maintain, repair, reconstruct and elevate their nonconforming properties without burden of such modifications being restricted by cost; currently determined by equalized assessed value of property and limited to 50 percent.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Kurt Wood", is written over a horizontal line.

Kurt Wood

Village of Trempealeau President



**STATE OF WISCONSIN**  
**DEPARTMENT OF MILITARY AFFAIRS**  
**DIVISION OF EMERGENCY MANAGEMENT**

Darrell L. Williams, Ph.D.  
Administrator

Tony Evers  
Governor

**Assembly Committee on Housing and Real Estate Public Hearing**  
*2019 Assembly Bill 721*  
*Regulation of Nonconforming Buildings in a Floodplain*  
February 6, 2020

Good morning Chairman Jagler and members of the Committee. My name is Katie Sommers and I am the Supervisor for the Hazard Mitigation Section of Wisconsin Emergency Management and a Certified Floodplain Manager. Thank you for the opportunity to comment in opposition of Assembly Bill 721.

Wisconsin Emergency Management concurs with the DNR's comments and would like to add our perspective.

The floodplain as mapped on FEMA's regulatory Flood Insurance Rate Maps is the area of land where floodwaters are most likely to be located during a 1%-annual-chance flood event. For reference, there is a 26% chance that a FEMA floodplain will experience flooding over the life of a 30-year mortgage. The floodplain is determined by a sophisticated analysis of how water from precipitation events will interact with the topography of the landscape.

The floodplain is divided on the maps into two distinct regions: the floodway and the flood fringe. The floodway is the area at the center of the floodplain where the water has a fast current during a flood event. It is the most dangerous area of the floodplain. The flood fringe is the remainder of the floodplain where the water will accumulate during a flood, but it's not as dangerous as the floodplain.

Currently, Wisconsin does not allow development in the floodway. Development is allowed in the flood fringe as long as structures are safely elevated to the state's flood protection elevation, which is two feet above the 1%-annual-chance flood level. Structures that were built before floodplain regulations existed and that were not built to current standards are considered legal, non-conforming structures. When those structures sustain damage in the amount of 50% or more of their equalized assessed value, they are required to come into compliance with the state's floodplain regulations. In the floodway, that means removal of the structure by demolition or relocation. Structures in the flood fringe can remain there as long as they are properly elevated.

This bill would allow floodplain structures to remain and even expand in the floodway of the river as long as they met the federal requirement of elevating to the 1%-annual-chance flood level. Even in the flood fringe, Wisconsin requires elevation to two feet higher the 1%-annual-chance flood level, which would also be eliminated by this bill.

After the 2008 flooding, several damaged structures in the flood fringe in Gays Mills were legally elevated to two feet above the 1%-annual-chance flood level. In the 2018 floods, these structures flooded again. So even elevating structures in the floodplain does not guarantee safety. Eliminating the requirements for removal of floodway structures and for two additional feet of elevation for flood fringe structures would allow even worse damages to continue impacting many of the small communities in our state that are already struggling.

In 2018, Wisconsin saw record flooding in the west-central, southwest, and south-central parts of the state. The State Emergency Operations Center was open for four weeks coordinating state and federal assets for the response. Over 1,300 residents of the state received direct financial assistance from FEMA for damages they suffered during this flood event. This is all paid with taxpayer dollars. The totals I presented do not include flood insurance payments, which are also heavily subsidized by taxpayer dollars.

It's more worrisome, however, that this bill allows people to continue living in the most dangerous part of the floodplain, putting their lives and the lives of first responders at risk.

There may be sufficient warning time on the Mississippi River for residents to safely evacuate, but this bill impacts all rivers in the state, many of which are susceptible to flash flooding.

In the 2018 flooding, there were over 60 calls for service for water rescues. That doesn't include the many, many additional structures in the floodplain that were checked by swiftwater rescue teams to ensure nobody was left behind. In Black Earth and Mazomanie alone 30 swiftwater rescue team members and over 100 firefighters assisted in the response. In Crawford and Vernon counties, 54 swiftwater rescue team members responded over the course of four days. Working in the dark with the water rising around them, this was a terrible situation for them, many say the most frightening conditions they've ever faced. Why would we weaken the state's floodplain regulations when it would increase the risk to our state's brave first responders?

On behalf of Wisconsin Emergency Management, I would like to thank you for your time today. My colleague, Paul Cooke, Director of the Bureau of Response and Recovery, and I would be happy to answer any questions you have.