

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 2, 2001

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-2484

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

BENJAMIN C. ROEMER,

PETITIONER-APPELLANT,

v.

DEPARTMENT OF NATURAL RESOURCES,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Vilas County:
MARK A. MANGERSON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Benjamin Roemer appeals a judgment affirming a decision of an administrative law judge that a structure he constructed is an unlawful “fixed boathouse.” Roemer claims the structure is a boat. He argues that the structure does not fit the definition of a fixed boathouse contained in WIS.

STAT. § 30.01(1r)¹ and that the DNR should be estopped from claiming the structure is a houseboat. We reject these arguments and affirm the judgment.

¶2 Roemer constructed the cube-shaped structure to replace a similar structure that had deteriorated. The structure floats on pontoons and has no independent motor or steering capacity. The area between the pontoons contains two slips suitable for mooring boats. To navigate the structure, boats are tied to the slips and operate their motors in effect towing the structure from its interior. Roemer steered the structure with the assistance of a five-person relay team telling the boat operators when to adjust their speed to turn the structure.

¶3 The structure is a fixed houseboat. WIS. STAT. § 30.01(1r) defines a fixed houseboat as “a structure not actually used for navigation which extends beyond the ordinary high-water mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.” Roemer concedes that his structure fits all of the elements of a fixed houseboat except that he claims it was actually used for navigation as was shown by a videotape of the structure moving on the water. The term “not actually used for navigation” is further defined in WIS. ADMIN. CODE § NR 325.03(8) to mean that “while possibly floatable and maneuverable, the primary purpose is not navigation.” The photos and videotape belie any suggestion that the primary purpose of this structure is navigation.

¶4 The DNR is not estopped from claiming that the structure is a fixed houseboat for two reasons. First, estoppel against the State cannot be applied

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

when application of the doctrine interferes with the police powers. *See DOR v. Moebius Printing Co.*, 89 Wis. 2d 610, 639, 279 N.W.2d 213 (1979). The police powers extend to the full regulation of the State's navigable waterways. *See Just v. Marinette County*, 56 Wis. 2d 7, 18, 201 N.W.2d 761 (1972). To invoke the police powers, the DNR does not have to prove specific harm to the public interest for each regulatory action it takes to protect navigable waters. *See Hixon v. Public Serv. Com'n*, 32 Wis. 2d 608, 626, 631-32, 146 N.W.2d 577 (1966).

¶5 Second, Roemer has not established an adequate factual basis for estoppel against the DNR. He notes that DNR officers saw his original structure. That structure had been constructed before the effective date of the statute. Therefore, the original structure was legal, and the failure of the DNR officers to comment on it is inconsequential. Before Roemer modified the structure, he asked a DNR warden whether that was permissible. At that time, he did not have a clear renovation plan. Under WIS. ADMIN. CODE § NR 325.03(6), he could have performed less ambitious repairs to the structure without violating the statute. The record contains no proof that any DNR officer approved Roemer's project knowing that he would, in effect, create a new, unlawful structure.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

