



COUNTY OF BECKER

Planning and Zoning

915 Lake Ave, Detroit Lakes, MN 56501

Phone: 218-846-7314 ~ Fax: 218-846-7266

Zoning Ordinance Advisory Committee Meeting

August 13th, 2015

9:00 a.m.

3rd Floor Meeting Room, Becker County Courthouse, Detroit Lakes, MN

Agenda

- I. Approval of the Agenda
- II. Approval of the July 9, 2015 minutes
- III. Update on proposed ordinance Changes
 - non-conforming deck additions
 - Chapter 8 housekeeping changes
 - Limitation on number of tracts to be done with certificate of survey
 - Changing requirements of non-riparian lots
- IV. Unfinished business
 - Lot frontage requirements for natural environment lakes
 - Shoreline setback requirements
- VI. New business
 - Staff recommendation for changes to the Becker County Zoning Ordinance to bring it into conformity with Minnesota Statutes related to non-conforming structures in shoreland areas.
 - Staff recommendation to amend the Becker County Zoning Ordinance to be consistent with the approved fees for mas gatherings (Chapter 8, Section 22).
 - Staff recommendation to Chapter 7, section 6B relating to the exception of a CUP for gravel mining projects.
- VIII. Discussion of "Interim Use Permits."
- IX. Adjourn



COUNTY OF BECKER

Planning and Zoning

915 Lake Ave, Detroit Lakes, MN 56501

Phone: 218-846-7314 ~ Fax: 218-846-7266

TO: Zoning Ordinance Advisory Committee
FROM: Eric Evenson-Marden, Zoning Supervisor
RE: Interim Use Permits

DATE: August 4, 2015

If a county wishes to place time constraints on particular uses, then the appropriate zoning tool is an interim use permit, rather than a conditional use permit. A state law passed in 2008 authorizes interim use permits for a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it. (Attachment 1). (Cities have had this authority since 1989.)

Counties may wish to employ interim use permits for uses that are not consistent with the county's long term plan and vision for the particular area, or where the use itself has a limited lifecycle. Interim use permits should be provided for in the county's zoning ordinance. A public hearing is required prior to issuance, and the land owner generally enters into an agreement with the city.

IUP's are commonly used for temporary commercial operations, mining operations, asphalt plants, or in areas where land use is expected to change in the future,

Attachment 1

394.303 INTERIM USES.

Subdivision 1. Definition.

An "interim use" is a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it.

Subd. 2. Authority.

Zoning regulations may permit the governing body to allow interim uses. The regulations may set conditions on interim uses. The governing body may grant permission for an interim use of property if:

- (1) the use conforms to the zoning regulations;
- (2) the date or event that will terminate the use can be identified with certainty;
- (3) permission of the use will not impose additional costs on the public if it is necessary for the public to take the property in the future; and
- (4) the user agrees to any conditions that the governing body deems appropriate for permission of the use.

Any interim use may be terminated by a change in zoning regulations.

Subd. 3. Public hearings.

Public hearings on the granting of interim use permits shall be held in the manner provided in section 394.26.

History:

2008 c 331 s 5

Becker County Zoning Ordinance Review Committee
July 9, 2015

Present: Roy Smith, Larry Knutson, Dave Knopf, Scott Walz, Ray Vlasak, Peter Mead, Rodger Hemphill, Harry Johnston, John Postovit, Terra Guetter, Ed Clem, Willis Mattson, Eric Evenson-Marden and Debi Moltzan.

Chairman Johnston called the meeting to order at 9:00 am. The agenda was considered, with no changes made to the agenda.

Knopf made a motion to approve the minutes from the May 12, 2015. Vlasak second. All in favor. Motion carried.

Non-conforming Deck Additions

Discussion at the last meeting was to put nonconforming deck additions back into the Ordinance. Proposed language was drafted by the Zoning Office with what was in the model Ordinance and suggestions from the last meeting. This language included:

Chapter 5, Section 2

L. Nonconforming Deck Additions.

A deck addition not meeting the required setback from the ordinary high water level may be allowed without a variance if all of the following criteria and standards are met:

- A. There is no reasonable location for a deck to meet the required setback;
- B. The deck encroachment toward the ordinary high water level does not exceed twelve (12) feet of the current structure setback or required setback for new construction.
- C. The deck addition cannot extend into the shore impact zone;
- D. The deck is constructed in pervious manner, and is not roofed, enclosed or screened; and
- E. The ground underneath the deck must remain pervious (in the case of an upper story deck, the ground underneath the deck must remain pervious unless there is evidence of a pre-existing impervious material in this location).

Current Paragraphs L – Q would be renumbered.

Discussion was held regarding the proposed draft. Discussion included removing item A; clarifying preexisting concrete cannot be expanded and if the deck was enlarged the concrete would have to be removed.

Vlasak stated that he was not in favor of this because he felt it was a move to deteriorate the lakes. Most decks now days are not constructed as pervious and what about the people that have already complied with the regulations. Postovit felt that this was a loop hole. People could not build the house at the setback and come back and add a deck 12 ft closer rather than moving 12 ft

further back to begin with. Walz felt that people would not be as devious on their plans if they knew they were getting a 12 ft deck. Johnston questioned if the PRWD had definitions for pervious deck. Guetter said they did have some definitions but felt that there should be a concrete or brick containment to contain the water run-off from the deck.

Postovit questioned why the Board of Adjustment recently denied a request for a nonconforming deck addition. Johnston stated that a hardship must be proven in order to grant a variance.

Further discussion was held as to how to keep the area under the deck pervious without causing erosion. Some suggestions were fabric and rock, French drains, and retention areas. Postovit felt that this section should not be made more complicated when there is a definition of a pervious deck.

Further discussion was held regarding upper story decks begin added to an existing structure. The proposed language allowed patios to remain if the patio was already in existence. Consensus was that the concrete could remain but not be expanded. However, after much discussion, it was decided that if a second story deck would be added, the concrete must be removed and replaced with a pervious deck.

Knopf made a motion to recommend the nonconforming deck addition proposed language to the Planning Commission, written as follows:

Chapter 5, Section 2

L. Nonconforming Deck Additions.

A deck addition not meeting the required setback from the ordinary high water level may be allowed without a variance if all of the following criteria and standards are met:

- A. The deck encroachment toward the ordinary high water level does not exceed twelve (12) feet of the current structure setback or required setback for new construction;
- B. The deck addition cannot extend into the shore impact zone;
- C. The deck is constructed in pervious manner, and is not roofed, enclosed or screened;
- D. The ground underneath the deck must be pervious.

Current Paragraphs L – Q would be renumbered.

Clarification of Chapter 8, Section 5 Subdivision of Land.

While drafting language to put a timeline on the number of lots created by a certificate of survey, it was found that language was changed in the Ordinance in March 2012. This language was changed in Chapter 8, Section 4, but did not get changed in Section 5. The following needs to be changed to reflect the language approved in March 2012:

Section 5 Subdivision of Land

2. Lots.

- e. Minimum road frontage. Every lot must have at least sixty-six feet (66') of frontage on a public dedicated road or street other than an alley except that a

lot created by a Surveyor's Sketch is not required to have frontage on a public road if access is provided:

- (1) ~~with a fourteen foot (14') wide driving surface;~~ The easement from the property to a public road must be at least thirty-three (33) feet wide when servicing one (1) or two (2) tracts of land;
- (2) ~~on an easement or on property owned by the developer; and~~ The easement from the property to the public road must be at least sixty-six (66) feet wide when servicing three (3) or more tracts of land; except that this provision does not apply to property that is accessed by a forest management road; and
- (3) ~~that access is to no more than two (2) lots. The easement from the property to the public road has a graded and serviceable driving surface.~~

Walz made a motion to accept the above language to make the section consistent with the changes made in 2012. Vlasak second. All in favor. Motion carried.

Limitation on number of tracts to be done with a certificate of survey.

After the last discussion, language was put together to allow certificates of survey, but when multiple surveys are done from a parent tract, there is some type of control to aid in orderly development. The proposed language is:

J. Subdivision of a tract of land into three or fewer tracts. Applications involving tracts of land that are proposed to be subdivided into three (3) or fewer tracts, but are not exempt from subdivision review under Chapter 8, Section 5, subsection A.2, may be reviewed according to the procedures in this subsection. The design of such subdivisions shall conform to the requirements of this subsection. Within a five (5) year period, a total of three (3) tracts of land may be subdivided from a parent tract by a certificate of survey. Additional tracts may be done by platting.

Smith explained how property can be divided, certificate of survey and platting and the difference between them. In the end, you have the same number of tracts of land; it is just the process of how you get there. There are times that platting is the better way of completing the process and there are times that a certificate of survey is the better way, each project is different.

Further discussion was held as to whether or not there should be one regulation for property located on an existing public road and one regulation for property that needs to create a new public road and what timeline should be placed on the number of lots created.

Motion: Knopf made a motion to approve language to limit the number of tracts to be created with a certificate of survey to read as follows:

J. Subdivision of a tract of land into three or fewer tracts. Applications involving tracts of land that are proposed to be subdivided into three (3) or fewer tracts, but are not exempt from subdivision review under Chapter 8, Section 5, subsection A.2, may be reviewed according to the procedures in this subsection.

The design of such subdivisions shall conform to the requirements of this subsection. Within a three (3) year period, a total of three (3) tracts of land may be subdivided from a parent tract by a certificate of survey. Additional tracts created may be created through the public hearing process.

Clarification of Chapter 8, Section 5, J 2

While drafting language to put a timeline on the number of lots created by a certificate of survey, it was found that language was changed in the Ordinance in March 2012. This language was changed in Chapter 8, Section 4, but did not get changed in Section 5. The following needs to be changed to reflect the language approved in March 2012:

2. Review procedure.

a. Within a shoreland area.

(1) Administrative review. The surveyor's sketch shall be submitted to the Zoning Administrator for approval. The Zoning Administrator shall approve the surveyor's sketch only if it meets or exceeds 2.5 acres. The Zoning Administrator reserves the right to refer to the Planning Commission and County Board for consideration any subdivision proposal presenting extraordinary circumstances. Approval or disapproval of the proposed subdivision shall be conveyed to the subdivider in writing fifteen (15) days after the submission. If the proposed subdivision is disapproved, the subdivider shall be notified in writing of the reasons for the disapproval. The approval of the proposed subdivision together with a copy of the surveyor's sketch shall be filed with the County Recorder before any conveyances of the subdivided lots shall be valid.

(2) Review by the Planning Commission. The surveyor's sketch shall be submitted to the Zoning Administrator in the Becker County Planning and Zoning Office. The County Planning Commission shall hold a public hearing on said proposed subdivision. The public hearing shall conform to the provisions of Chapter 8, Section 2, of this Ordinance. The Planning Commission shall approve the subdivision with findings that contain conditions for approval or shall state reasons for denial. A denial of a subdivision by the Planning Commission shall be reviewed by the County Board for final action. In case the proposed subdivision is disapproved, the subdivider shall be notified of the reason for such action and what requirements will be necessary to meet the approval of the Planning Commission.

(3) Review by the County Board. After the public hearing and review of the proposed subdivision by the Planning Commission, such proposed subdivision, together with the recommendations of the Planning Commission, shall be submitted to the County Board for consideration. Approval or disapproval of the proposed subdivision shall be conveyed to the subdivider in writing ten (10) days after the meeting of the County Board at which such proposed subdivision was considered. In case the proposed subdivision is disapproved, the subdivider shall be notified in writing of the reasons for the

disapproval. The approval of a proposed subdivision together with a copy of the surveyor's sketch shall be filed with the County Recorder before any conveyances of the subdivided lots shall be valid.

(This addition is consistent with Section 5, A.2.a.(1), exemption by Tech Panel)

Motion: Walz made a motion to accept the above language to make the section consistent with the changes made in 2012. Vlasak second. All in favor. Motion carried.

Change Requirements of Non-riparian Lots

In 2012, changes were made to allow for non-riparian back lots to be joined permanently to lake lots to allow for storage sheds and septic systems. The lot must be located within 200 feet of the lake lot and must contain a minimum of 5000 sq ft of lot area, being defined as useable, buildable area, not steep slopes, bluffs or wetlands. The language that was approved was as follows:

M. Non-riparian lots. Non-riparian lots not meeting the required size of the zoning district may be allowed if the following criteria are met;

1. Non-riparian lots described by metes and bounds conveyance must be described by legal description the riparian lot to which it is being attached to and the combined tract cannot be conveyed separately nor separated without county approval;
2. Non-riparian lots created by platting must include in the plat dedication the legal description of the riparian lot to which it is being attached and that neither can be conveyed separately nor separated without county approval;
3. The non-riparian lot and riparian lot must be located within two hundred (200) feet of each other;
4. The non-riparian lot must be greater than five thousand (5000) square feet in area;
5. The minimum road frontage of the non-riparian lot is fifty (50) feet;
6. All setbacks for the applicable zoning district shall apply to the non-riparian lots;
7. The lot area of the non-riparian lot cannot be used in the calculations of impervious coverage for the riparian lot;
8. The maximum lot coverage of the non-riparian lot cannot exceed twenty-five (25) percent of the area of the non-riparian lot.

Since this regulation went into effect, there have been times that people have wanted to buy areas of land that do not contain the 5000 sq ft of lot area, but are 5000 sq. ft. in size. They want land as buffers from surrounding neighbors not necessarily to build.

Discussion was held regarding what the difference was if the back lot was buildable or non-buildable, as long as it was permanently attached to the lake lot and cannot be separated.

Motion: Knopf made a motion to change the language to allow 5000 sq. ft. lots, no matter if the property is buildable or useable, according to the following language. Walz second. All in favor. Motion carried.

- M. Non-riparian lots. Non-riparian lots not meeting the required size of the zoning district may be allowed if the following criteria are met;
1. Non-riparian lots described by metes and bounds conveyance must be described by legal description the riparian lot to which it is being attached to and the combined tract cannot be conveyed separately nor separated without county approval;
 2. Non-riparian lots created by platting must include in the plat dedication the legal description of the riparian lot to which it is being attached and that neither can be conveyed separately nor separated without county approval;
 3. The non-riparian lot and riparian lot must be located within two hundred (200) feet of each other;
 4. The non-riparian lot must be at least ~~be greater than~~ five thousand (5000) square feet ~~in area~~;
 5. The minimum road frontage of the non-riparian lot is fifty (50) feet;
 6. All setbacks for the applicable zoning district shall apply to the non-riparian lots;
 7. The lot area of the non-riparian lot cannot be used in the calculations of impervious coverage for the riparian lot;
 8. The maximum lot coverage of the non-riparian lot cannot exceed twenty-five (25) percent of the area of the non-riparian lot.

Natural Environment Lakes

Smith questioned how this was brought up again when it was not that long ago that the County increased the lot sizes on NE lakes. Walz explained the issues he had with the lot sizes when dealing with landowners, primarily the ones that just want to break off a piece of land for their children.

Smith felt that this committee should have a directive from the County Board as to what needs to be looked at in this committee, one of which being NE lot sizes. Postovit gave a timeline as to how long the committee had worked on changing the NE lot sizes in the past; this process was a two (2) year process. Postovit gave further background history on what information was used to make the decisions that were made. Mattson stated that he had worked with the DNR with lake caring capacity, which is very scientific and that the standards set by the County are a rule of thumb, one size fits most.

Johnston and Walz stated that the Conservation Subdivisions are not working and something needs to be changed. Both agree that more restrictive is ok, but there is a difference between more restrictive and extreme. Hemphill stated that the DNR model ordinance is just a guide; the counties can be more restrictive. Knutson felt that the former change did a great job of restricting property rights by not allowing people to sell their land.

Smith presented a chart rating NE lakes from 1 to 5 based on 8 different areas (size, shape, depth, watershed, % of potential development, etc.) and that most of this information could be obtained from the GIS information and lakes could be reclassified and lot sizes reduced.

Mead and Guetter asked that the group hold off on working on this because of the SWCD having to update their water plan. The work on the water plan could help this group in decisions. Knopf felt that the group is not working for the people at full capacity and speed if things are not getting accomplished correctly. Postovit complimented Smith for this work on a simplified rating system, but felt more science is needed.

Smith felt that the group should wait on any further discussion or decisions on NE lakes. Consensus of the group was to wait with more discussion on NE lakes until a later date.

Next Meeting

The next meeting is scheduled for Thursday, August 13, 2015 at 9:00 am. The agenda will be set by the Zoning Office.

Walz made a motion to adjourn the meeting. Knopf second. All in favor. Motion carried. Meeting adjourned.

Respectfully submitted,

Debi Moltzan

Recommended Changes to the Becker County Zoning Ordinance,

I. Chapter 3, Section 1 and Section 5

Section 1, Non-Conforming Structures and Uses Allowed to Continue

Non-conforming uses and non-conforming structures are uses and structures lawfully in existence prior to the adoption of this Ordinance that do not meet the requirements of this Ordinance for the zoning district in which they are located. Non-conforming uses and structures shall be allowed to continue if they comply with the provisions in this Chapter.

- A. **Exemption.** Structures found to be non-conforming only because of height, yard or area requirements shall be exempt from the provisions of this Chapter.
- B. **Conformity encouraged.** All non-conforming uses and non-conforming structures are encouraged to convert to conformity whenever possible.
- C. **Change of title no effect.** Change of title or change of right to possession shall not affect the allowed continuation of a non-conforming use.

Section 1.1 Nonconformities; certain classes of property.

This subdivision applies to homestead and nonhomestead residential real estate and seasonal residential real estate occupied for recreational purposes. Except as otherwise provided by law, a nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an official control under this ordinance, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion.

If the nonconformity or occupancy is discontinued for a period of more than one year, or any nonconforming building or structure is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged, any subsequent use or occupancy of the land or premises must be a conforming use or occupancy.

If a nonconforming building or structure is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, the board may impose reasonable conditions upon a zoning or building permit in order to mitigate any newly created impact on adjacent property or water body.

When a nonconforming structure in the shoreland district with less than 50 percent of the required setback from the water is destroyed by fire or other peril to greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

Section 1.2, Existing nonconforming lots in shoreland areas.

- A. This subdivision applies to shoreland lots of record in the office of the county recorder on the date of adoption of local shoreland controls that do not meet the requirements for lot size or lot width. A county shall regulate the use of nonconforming lots of record and the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in shoreland areas according to this subdivision.
- B. A nonconforming single lot of record located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:
1. all structure and septic system setback distance requirements can be met;
 2. a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed or the lot is connected to a public sewer; and
 3. the impervious surface coverage does not exceed 25 percent of the lot.
- C. In a group of two or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:
1. the lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification;
 2. the lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, and local government controls;
 3. impervious surface coverage must not exceed 25 percent of each lot; and
 4. development of the lot must be consistent with an adopted comprehensive plan.
- D. A lot subject to paragraph (c) not meeting the requirements of paragraph (c) must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.
- E. Notwithstanding paragraph (c), contiguous nonconforming lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.
- F. In evaluating all variances, zoning and building permit applications, or conditional use requests, the zoning authority shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.
- G. A portion of a conforming lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size and sewage system requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

Section 8 C. In shoreland areas. In shoreland areas, the lot shall be in separate ownership from contiguous lands and all sanitary and dimensional requirements of the Ordinance are complied with insofar as practical.

- 1. Same ownership requires combination of lots.** If, in a group of two or more contiguous lots under the same ownership, any individual lot that is not a buildable lot shall not be considered as a separate parcel of land for the purposes of sale or development, the lot

shall be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements for building. When adjacent substandard parcels are in the same ownership, they shall be joined into one parcel and shall no longer be allowed as individual building sites.

Section 5 Restoration. Unless exempted by Section 1.1, nNo building that has been damaged by fire, explosion, act of God or the public enemy to the extent of more than fifty percent (50%) of its market value shall be restored except in conformity with this Ordinance.

Chapter 10, Definations. Habitable Residential Dwelling. A structure having floorspace equipped with cooking/kitchen facilities, water supply and/or sanitary disposal facilities, sleeping accomidations with any other amenities capable of providing independent human habitation.

II. Chapter 8, Section 22 C Mass Gathering – Fees

C. Fees. The application shall be accompanied by a license fee in the amount of \$500.00 and, together with a bond in penal sum of \$25,000.00 in an amount set by the County Board of Commissioners with sureties to be approved by the County of Becker conditioned that the licenses (a) carries out all of the plans and keeps and performs all of the conditions of the application and license, (b) maintain order on the premises, (c) leave the premises in neat and respectable condition, (d) pay, when due, to the person or persons entitled thereto, all debts and obligations incurred in promoting, advertising, and conducting and operating the assembly, and (e) indemnify and hold harmless the County of Becker, its officers, agents, and employees, from any liability or causes of action arising in any way from the conduct of the assembly. The bond shall run for a period of one (1) year. If the applicant has made application for a like assembly at the same location for four (4) consecutive years immediately preceding the application under consideration, the Becker County Board of Commissioners may, in its sole discretion, waive the license fee and/or the bond referred to above.

III. Chapter 7, Section 6 B Extraction of Material and Minerals – Exception for Public Roadway Projects

Existing Language:

Section 6 Extraction of Materials and Minerals

The following regulations shall apply to the extraction of materials and minerals in any land use district.

A. Conditional use permit required. *No person shall extract any sand, gravel, stone, coal, clay, peat, subsoil, topsoil or mineral from the land for sale without first obtaining a conditional use permit.*

B. Exemption for public roadway projects. *Extraction sites to be used for public roadway projects are exempt from provisions of this section.*

1. **Land alteration permit required.** Any operator who has a public roadway construction contract shall be granted a land alteration permit provided the following conditions are met:
 - a. The operator shall provide evidence that the operator has been awarded a contract for public roadway construction. The contract shall state that the operator shall reclaim the nonmetallic mining site according to the most recent edition of the Minnesota Department of Transportation Standards Specifications for Construction, with the additional requirements of any applicable sections of this Ordinance.
 - b. The operator shall provide a copy of the contracting agency's Completion Certificate upon completion of the project.
 - c. All other provisions of the Becker County Zoning Ordinance shall apply.

Concern:

With the exception of gravel mining operations used for public roads, all other gravel mines require a conditional use permit (CUP). CUPs are required because gravel mining operations have the potential to adversely impact public roads, quality of life, surface and ground water quality, property values, plant, and wildlife. Gravel mining operations 40 acres or larger also require an Environmental Assessment Worksheet (EAW) and may require an Environmental Impact Statement.

Gravel mining operations used for public roads are generally small and operate for a short time. However, as the number of road projects increase, the demand for local sources of gravel also increases. What once were small gravel pits are now operating similar to larger, commercial operations and may include asphalt plants, crushers, and other types of auxiliary operations.

Gravel mines operating under the "public road exception" are not allowed to sell gravel for any other purposes. Enforcement of this provision is difficult and, it is believed to be routinely violated.

Challenge:

The challenge is to develop ordinance language that would allow for the exception for public road projects yet provide the protections offered by a CUP when the operation takes on the characteristics of a commercial operation.

Options:

- A. No action
 - Negatives – potential conflicts with adjoining property owners, damage to water quality and natural resources, operators skirting public review/input (CUP), possible damage to roads and public infrastructure
 - Positives – Supported by small gravel pit operators, easier to secure gravel for road projects and related cost savings, makes it easier for small operators to profit from resources on their land.
- B. Limit the cumulative size of the area or which may be disturbed (e.g. 2.5 acres), the number of "back-to-back" permits issues, or the amount of gravel that may be harvested (e.g. 10,000 cy) without triggering a CUP.

462.3597 INTERIM USES.

Subdivision 1. **Definition.** An "interim use" is a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it.

Subd. 2. **Authority.** Zoning regulations may permit the governing body to allow interim uses. The regulations may set conditions on interim uses. The governing body may grant permission for an interim use of property if:

- (1) the use conforms to the zoning regulations;
- (2) the date or event that will terminate the use can be identified with certainty;
- (3) permission of the use will not impose additional costs on the public if it is necessary for the public to take the property in the future; and
- (4) the user agrees to any conditions that the governing body deems appropriate for permission of the use.

Any interim use may be terminated by a change in zoning regulations.

Subd. 3. **Public hearings.** Public hearings on the granting of interim use permits shall be held in the manner provided in section 462.357, subdivision 3.

History: 1989 c 200 s 2

Common Interim Uses:

- mining
- asphalt plants
- second home on a farm
- vacation home rental

- Negatives – mine owners may object to additional controls, limits the amount of gravel that can be mined before a CUP is needed, may limit access to gravel for road projects, CUP process could deny the use of land as a mine.
 - Positives – allows for continued use of gravel mine while protects community interests and natural resources after CUP is approved; makes it difficult for operator to skirt CUP process, is within the “spirit” of the law.
- C. Limit the length of time (cumulative) a site can receive “public road exceptions” without a CUP (e.g. 2 years). See MS Chapter 462.3597 (attachment 1).
- Negatives – mine owners may object to additional controls, some road projects may take longer than two years, does not limit the amount of damage that can be done in a short period of time
 - Positives – Easily enforced, mine can continue after the CUP is approved, establishes expectations of surrounding property owners, individual road projects are generally completed in a year.
- D. Require a CUP if the site will contain any auxiliary uses (e.g. crusher, asphalt plant, etc.)
- Negatives – asphalt plants and crushers are commonly used in gravel pits, mine owners may object to additional controls
 - Positives – can be done in combination with any of the above options, may address noise, odor, and dust issues of surrounding property owners, provides for natural resource protection