



# COUNTY OF BECKER

## Planning and Zoning

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### Zoning Ordinance Advisory Committee Meeting

September 17, 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 August 13, 2015 minutes
- IV. Unfinished business
  - Proposed amendment to Chapter 8, Section 5, Paragraph M related to the 5000 minimum requirement related to Non-riparian lots (backlots). Returned to the ZOAC for clarification and possible amendment.
  - Rating system to determine lot frontages natural environment lakes.
  - 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.
    - o Definition of "expansion" and "improvement"
  - Setback requirements from shoreland (string line +20)
  - Staff recommendation to amend the Becker County Zoning Ordinance to be consistent with the approved fees for mass 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

**Becker County Zoning Ordinance Review Committee**  
**August 13, 2015**

**Present:** Harry Johnston, John Postovit, Scott Walz, Roy Smith, Julene Hodgson, Eric Evenson-Marden, Debi Moltzan and Peter Mead.

Chairman Johnston called the meeting to order at 9:00 am. The agenda was considered and considering a definition of expansion was added to the end of the agenda.

**Minutes:** The minutes from the July 9<sup>th</sup> meeting were discussed. Smith felt that the motion made by Knopf for M4, should be included in the proposal sent to the County Board. Knopf made this a motion and Walz second. All in favor. Motion carried.

Knopf stated that in the section with the limitation for certificates of survey, there was no second to the Motion. After review of the notes from the last meeting, it was found that Walz had made the second and it was inadvertently left out of the minutes.

Knopf made a motion to approve the amended minutes. Walz second. All in favor. Motion carried.

Evenson-Marden explained that the ordinance changes presented to the Planning Commission were approved with some minor changes. The recommendations would be presented to the County Board on the 18<sup>th</sup>.

**Unfinished Business**

**Lot frontage on natural environment lakes.**

Smith explained his concept on categorizing natural environment lakes. Smith took seven (7) areas of concern – size, depth, shape (lakeshore to size ratio), watershed area, ag-forest, river-stream, % of potential development and soil type. Each area is then given a range of numbers from 1 – 5 (1 being least important and 5 being most important). Each lake would be rated with this system. Once each lake is rated, then the final ratings would be given a range and these ranges would determine the amount of lakeshore frontage for a lot on that lake.

Discussion included: this may be a good way to re-evaluate the lakes; there are more tools available today to help accomplish this; possibly lakes under 10 acres in size and those in the Refuge would not have to be rated; if the County Board should be asked if they want to change NE lake frontages before the committee spends too much time on it; buffers along the lakeshore; and if a simple exercise should be done to ‘test’ this concept.

Knopf made a motion to have Smith create a simple exercise in which four (4) lakes could be rated by the group to 'test' the concept. Walz second. All in favor. Motion carried.

### **Setback Average plus 20 feet**

Discussion was held as to whether or not there should be more discussion on changing this. Knopf stated that he liked the graduating scale, which didn't pass, but maybe if the plus 20 ft would have been changed to plus 10 ft, it would have passed. Johnston stated that the options seem to be either the plus 20 ft is left alone, it gets changed to plus 10 ft or go back to the old string line. Smith questioned if the group wants the setback changed or if the County Board wants it changed and felt that the group should have directive from the Board.

Further discussion included the history of the setback average plus 20 ft; if the setback was in conflict with state statutes; and whether or not the committee should still work on the issue.

Consensus was to get directive from the County Board and bring it back to the next meeting.

The discussion then turned to the State statute that allows structures to be replaced in the same location, the same size, with no expansion and whether there needs to be a definition of what expansion is or could expansion be allowed. This issue will be researched more.

The discussion then turned to whether or not the committee should be coming up with issues that need to be changed in the Ordinance or if the committee should be taking directive from the County Board and letting the County Board tell the committee what to work on. By the committee working on issues, anyone could come in with a proposal to change a regulation that would be a personal goal and not a county-wide issue. Smith stated that if we are looking at changing something that is already regulation, the direction should come from the Board. Knopf agreed and stated that the committee is there to help the Zoning Office, but Evenson-Marden should go to the County Board with issues and come back to the committee if the Board wants things changed.

Knopf made a motion that Evenson-Marden should go to the County Board with issues and come back to the committee if the Board wants things changed so changes cannot be personal agendas. Walz second. All in favor. Motion carried.

Evenson-Marden explained the need to amend the gravel mining section of the ordinance and explained interim use permits and when interim use permits should be used instead of conditional use permits. Both items will be placed on the agenda for the next meeting.

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At this time, Walz made a motion to adjourn the meeting. Knopf second. All in favor. Motion carried.

Respectfully submitted,

Debi Moltzan

**Proposed amendment to Chapter 8, Section 5, Paragraph M related to the 5000 minimum requirement related to Non-riparian lots (backlots)**

At their August 18<sup>th</sup> meeting, the County Board tabled the request amend Chapter 8, Section 5, Paragraph M until they received clarification why a 5000 square foot lot-size limit is required.

**TABLED LANGUAGE:**

**5) Amend Chapter 8, Section 5, Paragraph M**

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.

	LAKE (A)	LAKE (B)	LAKE (C)	Sheet A
SIZE (1-5)	2	3	5	
Depth (1-6)	2	4	6	
Shape (Lakeshore to size ratio) (1-5)	3	2	3	
Watershed Area (1-5)	2	3	3	
Ag - Forest (1-5)	1	3	5	
River - Stream (1-5)	4	2	5	
% of Potential (1-5) Development	4	3	5	
Soil Type (1-5) Clay - Sand	1	4	5	
	(19)	(24)	(37)	
Shore Line	(100)	(250)	(450)	
From Sheet B				

## 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.

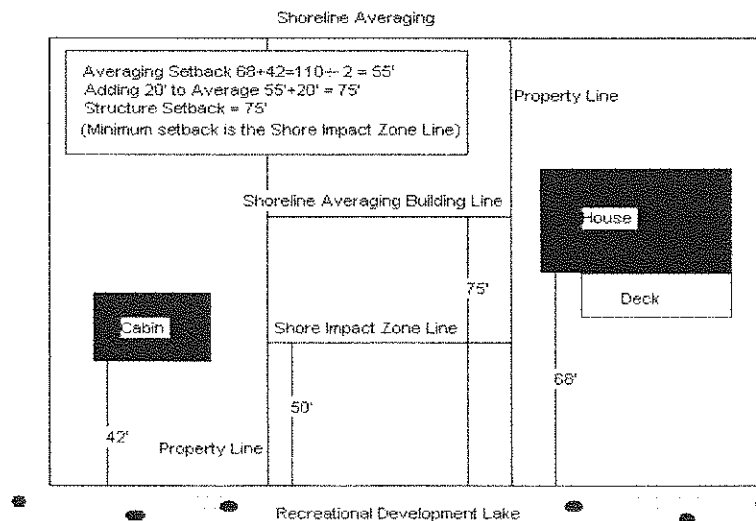
**Chapter 10, Definations. Habitable Residential Dwelling.** A structure having floorspace equipped with cooking/kitchen facilities, water supply and/or sanitary disposal facilities, sleeping accomidations with any other amenities capable of providing independent human habitation.

## Setback requirements from shoreland (string line +20)

### Current Ordinance Language:

#### Section 2 Height, Yard, Setback, Area and Lot Width and Depth Requirements

- A. **Setback averaging.** Setback averaging is the horizontal distance of a proposed structure obtained by adding the horizontal distance, as measured from the ordinary high water mark of the lake, of the like structures on the adjacent lots and dividing that sum by two (2).
1. If structures exist on the adjoining lots on both sides of a proposed building site, the required setbacks shall be that of the average horizontal distance of the like structures plus twenty (20) feet, not to exceed the required lake setback (Example: deck to deck, house to house).
  2. If a building on one side of a lot does not comply with the setback requirements of this ordinance and if the lot on the other side is vacant, or if the structure on the lot exceeds the required setback, the setback for the lot shall be equal to one half (1/2) the sum of the horizontal distance as measured from the ordinary high water mark of the lake to the like structure and the setback required by this ordinance plus twenty (20) feet, not to exceed the required lake setback.
  3. Notwithstanding the above, a building site shall not be located in whole or in part within a shore impact zone or a bluff impact zone.
  4. Whenever the setback averaging method is allowed to establish a lakeside structure setback and the property is a substandard size property, as provided for in subsections C.1 and C.2, above, the deficiency area between the setback determined by the setback averaging and the setback required by this Ordinance must be mitigated by the installation of a shoreline vegetative buffer. The criteria and provisions for the shoreline vegetative buffer contained in Chapter 3, Section 11, Mitigation Requirements for Nonconformities in Shoreland Areas, are applicable.
  5. If a dwelling unit is used for the lakeshore averaging, the dwelling must be of average livable condition.
  6. Adjacent like structures used for the setback averaging must be located within the width and area of a standard size lot.



## Recommended Changes to the Becker County Zoning Ordinance, Mass Gathering

### 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 licensee (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.

## Recommended Changes to the Becker County Zoning Ordinance, Gravel Pits

### 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.

- 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

### **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