



## PLANNING COMMISSION AGENDA

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**January 9, 2017**  
**7:00 pm**

**1. CALL TO ORDER -**

**2. PLEDGE OF ALLEGIANCE --**

**3. ROLL CALL -**

- Barbara Ronningen (Chair)
- Sally Doherty
- Kris Kopitzke
- Mark Nelson
- Judy Seeberger
- Lucia Wroblewski
- Scott Patten
- Jim Langan
- Roger Bowman

**4. APPROVAL OF AGENDA --**

**5. APPROVAL OF MINUTES -**

- A. December 5, 2016 Meeting Minutes -

**6. REPORTS AND PRESENTATIONS -- None**

**7. PUBLIC HEARINGS --**

- A. Marcus and McLaurin Variance Application at 4270 River Road  
B. Ordinance Amendment Eliminating "Outside Storage as a Principal Use" from the List of Allowed uses in the I1A and I1B Zoning Districts  
C. Ordinance Amendment Regarding Sec. 12-132. B.3. Contiguous Parcels Under Common Ownership

**8. NEW BUSINESS --**

- A. Ordinance Integrating Minimum Impact Design Standards into the Zoning Code

**9. OLD BUSINESS -**

- A. Review and Update of Allowed Uses in the Industrial Zones  
1. Chris Eng, Washington County Economic Development Director
- B. Comprehensive Plan Update Process  
1. Identification of Issues for Review in Each Section of the Plan
- C. Update on City Council Actions -

**10. ADJOURN --**

-- This agenda is not exclusive. Other business may be discussed as deemed necessary. --

**A quorum of the City Council or Other Commissions may be present to receive information.**

CITY OF AFTON  
DRAFT PLANNING COMMISSION MINUTES  
December 5, 2016

1  
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3  
4  
5 1. **CALL TO ORDER** – Chair Barbara Ronningen called the meeting to order at 7:00 p.m.

6  
7 2. **PLEDGE OF ALLEGIANCE** – was recited.

8  
9 3. **ROLL CALL** – Present: Langan, Wroblewski, Kopitzke, Seeberger, Bowman, Patten, Nelson and Chair  
10 Ronningen. **Quorum present.** Excused Absence: Doherty.

11  
12 **ALSO IN ATTENDANCE** – City Council Liaison Stan Ross, City Administrator Ron Moore and City Clerk  
13 Kim Swanson Linner.

14  
15 4. **APPROVAL OF AGENDA** –

16 **Motion/Second: Wroblewski/Bowman. To approve the December 5, 2016 Planning Commission agenda as**  
17 **presented. Motion carried 8-0-0.**

18  
19 5. **APPROVAL OF MINUTES** –

20 A. November 7, 2016 Planning Commission Meeting Minutes – Line 27, change September to October;  
21 Line 164, change “then the slope is” to “within a 100 foot distance would be;” and correcting several minor typos.

22  
23 **Motion/Second: Nelson/Wroblewski. To approve the November 7, 2016 Planning Commission Meeting**  
24 **minutes as amended. Motion carried 7-0-1 (Abstain: Patten, due to absence from the September meeting).**

25  
26 6. **REPORTS AND PRESENTATIONS** – none.

27  
28 7. **PUBLIC HEARINGS** – none.

29  
30 8. **NEW BUSINESS** –

31 A. Reconsider an Ordinance Amendment for Sec. 12-132.B.3. Contiguous Parcels Under Common  
32 Ownership – Administrator Moore explained that the Zoning Code includes regulations requiring that when two  
33 or more contiguous parcels are under common ownership and any individual parcel does not meet the full lot  
34 width and area requirements the parcel needs to be combined with the adjacent parcels to create a lot that meets  
35 the lot width and area requirements. He reviewed that, at its February 2, 2015 meeting, the Planning Commission  
36 reviewed this ordinance section and recommended the language in Subsection (B) (3) be deleted, due to  
37 buildability requirements being in place in other sections of the zoning code, and to enable parcels under common  
38 ownership to be treated similarly to parcels not under common ownership. The Council discussed this language  
39 and the Planning Commission’s recommendation on several occasions, but did not arrive at a decision regarding  
40 the language. In a recent work session, the Council discussed the language and agreed on a revision to the  
41 language. They discussed that the purpose of the language in subsection (B) (3) is to prevent parcels that do not  
42 meet the minimal requirements for lot width and area from being individually buildable or saleable when they are  
43 under common ownership with contiguous lot(s). While the language in subsection (B) (3) is somewhat similar to  
44 the language in subsection (B) (2), it could be interpreted that, while lots not under common ownership are  
45 buildable if they have 2.5 acres of buildable area and have at least 60% of the required frontage on an improved  
46 public street, contiguous lots under common ownership need to have 5 acres of buildable area and 300 feet of  
47 frontage in order to be buildable. The Council agreed that the area and frontage requirements for contiguous lots  
48 under common ownership should be the same as for all other lots, which are set out in Subsection (B) (2). In  
49 addition, the Council agreed that contiguous lots under common ownership that do not meet these requirements  
50 should be required to be combined. To accomplish the Council’s direction, the language of Subsection (B) (3) was  
51 proposed to be amended as follows:

52  
53 *3. If in a group of two or more contiguous lots or parcels of land owned or controlled by the same*  
54 *person, any individual lot or parcel does not meet the full width or area requirements of this*  
55 *Article Subsection (B) (2) above, such individual lot or parcel cannot be considered as a separate*  
56 *parcel of land for purposes of sale or development, but must be combined with adjacent lots or*  
57 *parcels under the same ownership so that the combination of lots or parcels will equal one or*

58 *more parcels of land each meeting the full lot width and area requirements of this Article*  
59 *Subsection (B) (2) above.*

60  
61 Commission Discussion

62 Kopitzke commented that this ordinance may be easy to avoid compliance, as residents have joint ownership  
63 of a property. He also felt it would be unfair if there was a property next to his that he wanted to buy and he  
64 would have to combine it with his parcel and not be able to sell a parcel of record, but the next resident over could  
65 purchase the property two doors away and would not be required to combine it with their property.

66 Bowman asked if the city could add to the title of a property if it isn't buildable.

67 Moore stated the ordinance is attempting to avoid an unbuildable lot from being sold or having an  
68 expectation to be able to build on it.

69 Kopitzke felt the ordinance doesn't treat all buyers equally. For example, if there was a property next to his  
70 that he wanted to buy and he would have to combine it with his parcel and not be able to sell it as a parcel of  
71 record, but the next resident over from him could purchase the property two doors away and would not be  
72 required to combine it with their property.

73 Ronningen agreed, stating that the adjacent landowner can buy the property, but can't sell it; whereas, any  
74 other buyer can buy and sell the sub-standard parcel.

75 Bowman concurred that the ordinance treats people differently.

76 Nelson referenced a U.S. Supreme Court case in Hudson of a cabin which was inherited by the children from  
77 parents and the heirs who inherited the lot had to combine the lots.

78 Ronningen confirmed she knew of the case and the county's position was upheld in that the lots were required  
79 to be combined. But, she noted, it was different in that it had to do with shoreland requirements.

80 Wroblewski asked if a parcel was sub-standard; how can it be built on.

81 Ronningen stated, if it already has a house on it, it is a sub-standard lot of record.

82 Mayor Bend was in the audience and was asked if he could shed light on the rationale for the ordinance. He  
83 stated that this ordinance had been on the books for some time, but not enforced. The city is considering  
84 reconciling a disparity in the ordinances. A non-conforming lot with an existing home hadn't been specifically  
85 discussed. A significant problem has been where property owners who have bought an adjoining lot which is non-  
86 conforming have been then told they were not able to develop it or sell it. He felt that potential buyers may  
87 believe they have particular value in a lot, when in fact, the lot may be non-compliant, but that may be due to  
88 ignorance about the city's ordinances. He stated, however, that pre-existing, non-conforming uses would be  
89 allowed to continue.

90 Ronningen felt it would be a problem with the example of two non-conforming lots with houses on them and  
91 having the lots combined, then there is a violation of having two dwelling units on one lot.

92 Bend recognized that to be the case and stated Afton has had that issue. He felt the city wants to close the gap  
93 with residents not being aware of the ordinances.

94 Moore added that the issue of buildability has already been settled if there is a house on the lot. Two adjacent  
95 parcels would not be required to join if they have houses on them.

96  
97 **Motion/Second: Patten/Kopitzke. To send the proposed ordinance amendment for Sec. 12-132. Subsection**  
98 **(B) (3) back to the City Council for greater guidance on what they are trying to accomplish, as they felt**  
99 **they needed more rationale on why the change is necessary. With a friendly amendment to give guidance**  
100 **on how the city would avoid financial penalties for current and potential owners. Motion carried 8-0-0.**

101  
102 **B. Review and Update of Allowed Uses in the Industrial Zones** – Administrator Moore explained that  
103 Afton's Industrial zoned land could provide the opportunity to create quality jobs, generate tax base and provide  
104 attractive facilities along I-94, and while the list of allowed uses in the Industrial zones includes uses such as  
105 research and offices, it also includes outside storage as a principal use, which does not create quality jobs, does  
106 not add to the tax base, and is not attractive. He noted, in the past two years, two trailer parking lots have been  
107 added to the Industrial zone, bringing the total to three trailer parking lots. He reported that the Council, at its  
108 November 15, 2016 meeting, asked the Planning Commission to review the allowed uses in the Industrial zones  
109 to eliminate outside storage as an allowed principal use in the Industrial zones, to identify additional uses for the

110 Industrial zones that would provide the opportunity to create quality jobs, generate tax base and provide attractive  
111 facilities, and to review the standards regarding architecture and landscaping to determine if changes are needed  
112 to ensure attractive facilities that match the desired character of Afton.

113  
114 Commission Discussion

115 Kopitzke asked whether the value of land for outdoor storage is more than vacant land.

116 Langan stated it is, but just slightly. He felt the trailer parking lots look terrible, the trees are the wrong  
117 species to give screening and that use does not create any jobs, also, the trucks are unsightly and there is oil or  
118 gasoline on the surface of the gravel.

119 Ronningen stated that the Planning Commission recommended screening per city ordinance along the east  
120 side of Sav-A-Tree and the Council chose to ignore that and allowed them to not have screening to the adjacent  
121 lot.

122 Patten thought Sav-A-Tree looked good, the business creates jobs and had an identity along Hudson Road.

123 Langan suggested a theory of why Afton does not get much of its Industrial land purchased for business; it's  
124 because businesses usually need sewer and water; it is too costly to install well and septic systems for a single  
125 business. It seems to be okay for businesses such as Chandler, which is a minimal warehouse and distribution or  
126 for Century Trucking, which may have minimal people on site.

127 Moore commented that "low user," low staff businesses such as high-tech, internet and server businesses  
128 might work well.

129 Langan commented that "ISP" (Internet Service Provider) businesses are popular in Utah, with its cheap land  
130 and good education.

131

132 **Motion/Second: Kopitzke/Patten. To direct staff to draft an ordinance amendment to eliminate outside  
133 storage as a principal use in the Industrial zones, but keep it as an accessory use and to schedule a public  
134 hearing for the January 9, 2017 Planning Commission meeting. Motion carried 8-0-0.**

135

136 [Patten asked if perhaps the Washington County Economic Development Director could be scheduled to give a  
137 presentation to the Planning Commission on the types of uses that might be more acceptable, profitable for tax  
138 base or better for economic development for Afton's Industrial Zones.]

139

140 **9. OLD BUSINESS -**

141 **A. Comprehensive Plan Update Process – Chair Ronningen called on commissioners to review their  
142 Comprehensive Plan sections:**

143

144 Environmental

145 Langan spoke about putting specifics and/or baseline measures for the Environmental Section.

146 Ronningen stated that the section has policies and goals, but no strategies, and suggested that perhaps the  
147 strategies could be written with more measures.

148 Patten suggested that the city develop an "Environmental Report Card" so that strategies going forward would  
149 have a baseline to compare to.

150 Langan and Ronningen had personal experience with their well water being significantly depleted. Ronningen  
151 had to have a new well drilled.

152 Patten asked about the well water monitoring program.

153 Mayor Bend informed that the Natural Resources and Groundwater Committee has received the results of the  
154 2016 well monitoring participant study. They could be contacted for information on wells.

155 Ronningen mentioned that the state also has detailed well records and statistics.

156

157 Housing

158 Seeberger was asked if she wanted to discuss the Housing section; she declined.

159

160 **B. Draft City Council Minutes – Council Liaison Ross updated that Council:**

- 161 1) Authorized staff to work with the Middle St Croix Water Management Organization to identify
- 162 conflicts with the Minimum Impact Design Standards and to come back to the Planning Commission and City
- 163 Council with a plan to integrate them into the Afton City Code.
- 164 2) Approved a Development Agreement and Final Plat for the Nelson Estates subdivision at 1093 Indian
- 165 Trail Path.
- 166 3) **Approved** vacating City Cartway #7 which has connected a property off of Paradox End and 42<sup>nd</sup>
- 167 Street up a steep slope to Afton Boulevard South.

168  
169 **10. ADJOURN –**

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171 **Motion/Second: Bowman/Patten. To adjourn the meeting at 8:30 p.m. Motion carried 8-0-0.**

172  
173 Respectfully submitted by:

174  
175 \_\_\_\_\_  
176  
177 Kim Swanson Linner, City Clerk

178  
179 **To be approved on January 9, 2016 as (check one): Presented: \_\_\_\_\_ or Amended: \_\_\_\_\_**

City of Afton  
3033 St. Croix Trl, P.O. Box 219  
Afton, MN 55001

# Planning Commission Memo

## Meeting: January 9, 2017

To: Chair Ronningen and members of the Planning Commission  
From: Ron Moorse, City Administrator  
Date: January 3, 2017  
Re: Marcus and McClaurin Variance Application at 4270 River Road – **Public Hearing**

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### Attachments

Variance application  
Variance questionnaire  
Property survey  
Site plan  
House plans  
List of properties within 500 feet  
Property location map

### Background

The Marcus property currently has a two-story house that is substandard in terms of its setback from River Road and its setback from the Ordinary High Water Line of the St. Croix River. The house backs up to a long steep slope. The house meets the setback from the St. Croix River bluffline. The applicants are proposing to remodel and construct an addition to the existing house. The addition is proposed to be constructed on the south side of the existing house, in the location of an existing deck above the existing garage. The proposal does not require grading and does not change the setbacks of the house. The house is connected to the “201” community septic system, so that a septic drainfield is not required.

### Grading, Drainage and Erosion Control

The proposal does not include any grading, with the exception of the possible replacement of the existing retaining wall at the rear of the house. The applicant is planning to repair the retaining wall, if possible. If all or portions of the retaining wall cannot be repaired but need to be replaced, the applicant would need to provide plans for the retaining wall replacement for review and approval by the City.

### Zoning Requirements Met

1. Meets the side yard and rear yard setback requirements.
2. Meets the bluffline setback requirement
3. The proposed house addition would be screened from view from the river during leaf-on conditions.
4. With the proposed addition and remodel, the house will not be increased in height, which is below the 35 foot maximum allowed height.

### Zoning requirements Not Met

1. The existing house and the proposed addition both have a 63 foot setback from the centerline of River Road vs. the required 105 foot setback.
2. The existing house and proposed addition have a 138 foot setback to the Ordinary High Water Line of the St. Croix River vs. the required 200 foot setback.

### Two Parcels Required to be Combined

The property is made up of two separate parcels. These two parcels need to be combined to resolve the current situation of the existing house being located on two separate parcels.

### Variances Requested

The proposal includes two variances:

1. A variance to allow a 63 foot front yard setback vs. the required 105 foot setback
2. A variance to allow a 138 foot setback from the Ordinary High Water Line of the St. Croix River vs. the required 200 foot setback

### Variance Factors

In addition to the three factors used to determine practical difficulty, the St. Croix Bluffland and Shoreland ordinance requires that when considering a proposal or zoning amendment within the St. Croix River District, the Council shall address the following items in making its decisions:

- A. Preserving the scenic and recreational resources of the St. Croix Riverway, especially in regard to the view from and use of the river.
- B. The maintenance of safe and healthful conditions.
- C. The prevention and control of water pollution, including sedimentation.
- D. The location of the site with respect to floodways, floodplains, slopes, and blufflines.
- E. The erosion potential of the site based on degree and direction of slope, soil type, and vegetative cover.
- F. Potential impact on game and fish habitat.
- G. Location of the site with respect to existing or future access roads.
- H. The amount of wastes to be generated and the adequacy of the proposed disposal systems.
- I. The anticipated demand for police, fire, medical, and school services and facilities.
- J. The compatibility of the proposed development with uses on adjacent land.

### Findings

The Planning Commission will need to provide findings to support its recommendation. The findings should address the relevant variance factors from the St. Croix Bluffland and Shoreland Ordinance.

### Conditions

If the Planning Commission recommends approval of the application, the recommendation may include conditions. The following conditions are recommended.

1. House color shall be earth tone
2. City review and approve retaining wall design if replacement is needed
3. The house shall be constructed according to the plans dated December 8, 2016, subject to revisions as required or approved by the City.
4. Existing vegetative screening shall be maintained, with the exception of the removal of one arborvitae immediately adjacent to the garage.
5. The two separate parcels that make up the property at 4270 River Road shall be combined.

### DNR Review

DNR staff has reviewed the proposal and is supportive of the proposal.

### **PLANNING COMMISSION RECOMMENDATION REQUESTED:**

**Motion regarding the Marcus and McLaurin Variance Application at 4270 River Road, with findings, and conditions if needed.**

RECEIVED

DEC 09 2016

File-36

CITY OF AFTON

CITY OF AFTON  
VARIANCE APPLICATION

(Reference Sections: 12-55, 12-77, 12-328 12-835, 12-1020, 12-1266, 12-1955, 12-2228)

Owner	Address	City	State	Zip	Phone
Julie Marcus & Mary McLaurin	PO Box 276	Afton	MIN	55001	651-436-8548
Applicant (if different than owner)	Address	City	State	Zip	Phone

Project Address	AFTON	MIN	55001
4270 River Road South			

Zoning Classification	Existing Use of Property	PID# or Legal Description
RR	Single Family Home	2602820220013 and 2602820220006

Please list the section(s) of the code from which the variance(s) are requested.

12-637

Description of Request *construct an addition to*  
 To remodel the existing home which is a substandard structure per 12-580  
 1. Reduce required setback from CL of River Road S from 105' to 63' which is 60% of required 105'  
 2. Reduce required setback from the OWH from 200' to 138'

By signing this application, the applicant agrees to pay all expenses incurred by the City of Afton. In connection with this request, your signature constitutes permission for a representative of the City of Afton to enter your property, during business hours, to evaluate this request. This may involve minor excavating or soil borings. If you would like to be present during this evaluation, please contact the City.

*Julie Marcus Mary McLaurin* \_\_\_\_\_ December 8, 2016  
 Signature of Owner/Applicant Date

Make checks payable to: **City of Afton**

If multiple variances are necessary from the applicant only **one** fee is required. However, the deposit fee must be multiplied by the number of variances sought.

<b>FEES:</b>	<b>ESCROWS:</b>		
Variance	\$250	\$600	TOTAL: \$850
Renewal/Extension	\$250	\$350	DATE PAID: 12-9-16
			CHECK #: 563144694
			#800 = #500
			RECVD BY: JM

Applicant(s): Julie Marcus & Mary McLaurin  
Phone: 651-436-8548  
Mailing Address: PO Box 276, Afton MN 55001  
Property Address for variance: 4270 River Road South, Afton MN 55001

Variance request description:

We request a Variance to remodel the existing home at 4270 River Road South. The existing house is a substandard house based on the definition given in section 12-580 of the Afton City Code. Variances requested are for setbacks from the center of River Road S., and from the Ordinary High Water of the St. Croix River. The remodel would be completely within the existing footprint of the existing house. The entire foundation and first level would remain, while the top two levels would be remodeled and added on to. The addition of the top 2 levels would extend to the south only 12' over the existing garage and deck (which is currently over the entire garage) - and parallel to the river. There will be 2 small deck additions, but they would remain within the boundary established by the existing house and decks. The existing retaining wall along the west side of the house (away from the river) will be repaired or replaced. One arborvitae which is immediately adjacent to the garage would need to be removed but no other trees would need to be removed. This area of the house is separated from the river by dense foliage and the removal of the tree would not be visible from the river. We will continue to use the existing well and 201 septic system.

City Ordinance Section number(s), that variance is requested for: 12-637

Answer the following questions to the best of your ability - based on the criteria found in section 12-77 of Afton's Code (Land Use, Appeals and Variances). Completing this questionnaire will help the Planning Commission and the City of Afton evaluate your application in light of the requirements of Afton's Variance Ordinance. It does not guarantee that your variance request will be approved. If needed use a separate page.

Background: This questionnaire is designed to help you and the City of Afton determine whether a variance should be granted. Please consult with the City Administrator who can help you with your variance application and explain the Variance Ordinance to you. The City Administrator will work with you to ensure that the variance you request is the minimum variance required to provide the same rights commonly enjoyed by other properties in the same zoning district. Because of special provisions for certain types of construction, the City Administrator will also determine whether the property is in the Flood Plain District. There are also special provisions for earth-sheltered construction.

**Criteria #1** *The requested use, must be a reasonable use in order to receive a variance.* **Applicant** - Please explain why the proposed use which requires a variance is a reasonable use for this property?

The house already exists as a nonconforming use. There are no better alternatives on the piece of land to make the house more conforming by moving the house as the bluff becomes steeper behind. Our desire is to update the house and to repair existing problems with the structure. It seems best to do this in the location the house currently exists.

**Criteria #2** *Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size, shape, topography, or other circumstances over which the property owner, since enactment of this Ordinance, have had no control.* **Applicant** - What exceptional or extraordinary circumstances related to the property do not apply generally to other properties in the same zone or vicinity? Extraordinary circumstances would include lot size, irregular lot shape or topography. Are there other circumstances over which you, as the property owner, have no control?

Explain?

Each lot on River Road is unique owing to the way the bluff irregularly makes its way down to the river. Our property includes land on both sides of the road. The land on the river side is too close to the road and the river to build and the land behind the current house is too steep. Therefore we are limited in terms of options for rebuilding or remodeling. We would like to have the least impact possible so are wanting to just remodel/rebuild the house on its current site.

**Criteria #3** *That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.*

**Applicant** - How does the literal interpretation of the provisions of the Afton ordinance (from which you are requesting a variance) deprive you of rights commonly enjoyed by other properties in the same zoning district? Explain:

Many other properties on River Road which share the same issues of substandard structures have been allowed to either rebuild or remodel.

**Criteria #4** *The special conditions or circumstances do not result from actions of the applicant.*

**Applicant** - How did these exceptional circumstances related to the property come about? Did actions by you create these circumstances? Explain:

We moved into the current house 20 years ago. The house was initially built about 1929 as a cabin and we believe, after talking to many Afton residents, it was simply expanded and rebuilt with each new owner until we purchased it. We have not made any significant changes to the structure since we bought it. The driveway and trees and layout of the landscaping were all present back in 1997. The topography of the land is the same as it was then.

**Criteria #5** *That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to owners of other lands, structures, or buildings in the same district.*

**Applicant** - Will the granting of the requested variance confer on you, the applicant, any special privilege that is denied by this ordinance to owners of other lands, structures, or buildings in the same zoning district? Explain:

No. As mentioned before, many of our neighbors have undergone either significant remodeling or rebuilding.

**Criteria #6** *The variance requested is the minimum variance which would alleviate the hardship.*

**Applicant** - Is the variance you are requesting the minimum variance which would alleviate the practical difficulty or hardship for your property? Explain:

Yes. We are making very little change to the exterior of the property in terms of size, with the exception of the 12 foot addition south over the garage. The goal of the addition is to bring more light into the house which is very dark owing to the heavy tree cover plus high bluff to the south which blocks the afternoon sun. The goal of updating the rest of the house is to repair some rotten wooden framing, modernize the inside structures, and make the whole house a tighter and better built house for energy conservation, in addition to making it handicap accessible so we can continue to live there as we age.

**Criteria #7** *The variance would not be materially detrimental to the purposes of this Ordinance, or to property in the same zone.* **Applicant (Optional)** - Will the variance be materially detrimental to the purposes of this Ordinance, or to property in the same zone? How would the use of the property, if allowed by the variance, affect other properties in the vicinity? Explain:

I do not believe it would have any detrimental affect at all on our neighbors. We would continue to live there in the same manner we currently do.

**Criteria #8** *Economic conditions or circumstances alone shall not be considered in the granting of a variance request if a reasonable use of the property exists under the terms of the ordinance.* **Applicant** - Is the requested variance for economic reasons?

Explain:

This variance is not being requested for economic reasons.

**Criteria #9** *In the Flood Plain District, no variance shall be granted which permits a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permits standards lower than those required by state law.* **Applicant (optional), PC** - Is the property in a Flood Plain District?  Yes  No

We live in flood plain rated - C. When we first moved here we spoke to the city engineer who said that our house was the highest house on River Road and that there was never documentation of the river ever even reaching the road below our house during river flooding. Despite this we do carry flood insurance.

**Criteria #10** *Variations shall be granted for earth-sheltered construction by state statutes when in harmony with this Ordinance.* **Applicant** - Is the variance for earth-sheltered construction?

X No

**ADDITIONAL CRITERIA THAT MAY BE CONSIDERED BY THE PLANNING COMMISSION (PC) AND/OR CITY COUNCIL(CC)- Applicant responses to criteria #11 and criteria #12 are optional.**

**Criteria #11** *Variations shall only be permitted when they are in harmony with the general purposes and intent of the ordinance.* **Applicant (Optional), PC** - Is the requested variance in harmony with the Afton ordinances and code? How will this variance if granted (and the proposed use of the property allowed) affect the essential character of the area? Explain:

Yes. We don't think it will substantially alter anything about the area. We have very heavy tree cover so that we are not well seen from the river and during summer are not well seen even by the road. The proposed alteration to the house is in harmony with and will contribute to the general purposes and intent of the Afton Code.

**Criteria #12** *Variations shall only be permitted when they are in harmony with the general purposes and intent of the Afton Comprehensive Plan.* **Applicant (Optional), PC** - Is the requested variance in harmony with the Afton comprehensive plan? Explain:

Yes. The proposed alteration will be in harmony with the general purposes and intent of the Afton Comprehensive Plan. It seems the goal is to protect the water and the rural sense of the area, maintaining a lot of green space. We live in Afton because those things are important to us, also. We are on the city 201 septic system, have a private well, have a high number of trees and plants on the property that both shelter us from the river but also shelter the river from us.

**CITY OF AFTON  
PLANNING COMMISSION  
NOTICE OF PUBLIC HEARING**

TO WHOM IT MAY CONCERN: Notice is hereby given that the City of Afton Planning Commission will convene on Monday, January 9, 2017 at 7:00 PM at Afton City Hall, 3033 St. Croix Trail S., to conduct the following public hearing:

To consider a variance application by Julie Marcus and Mary McLaurin to enable a remodel and an addition to the existing house at 4270 River Road.

**All interested persons are encouraged to attend the public hearing.** Public hearings are held for the purpose of receiving comments and concerns by residents and the public on issues.

Materials will be available for viewing at Afton City Hall, 3033 St. Croix Trail, Afton MN and will be posted on the City website, at [www.ci.afton.mn.us](http://www.ci.afton.mn.us), on the Thursday prior to the meeting. Click on "City Commissions and Committees" and go into "Planning Commission Packets."

A quorum of the City Council or another Commission may also be present to receive information at the meeting.

Ron Moorse  
City Administrator  
City of Afton

REARDON ROBERT F & JULIANNE  
or Current Resident  
4117 PENFIELD CT S  
AFTON MN 55001

DAHL MARK T & KATHRYN M  
or Current Resident  
16100 45TH ST S  
AFTON MN 55001

LEONARD A EVANOFF JR TRS  
or Current Resident  
219 3RD AVE S  
SOUTH SAINT PAUL MN 55075

HEFFRON DANIEL A  
or Current Resident  
4350 RIVER RD S  
AFTON MN 55001

GASSER THOMAS M & KATHRYN  
or Current Resident  
3801 OVERLOOK DR  
BLOOMINGTON MN 55431

TILTON LOUIS R & LINDA K  
or Current Resident  
5620 COVINGTON RD  
SHOREWOOD MN 55331

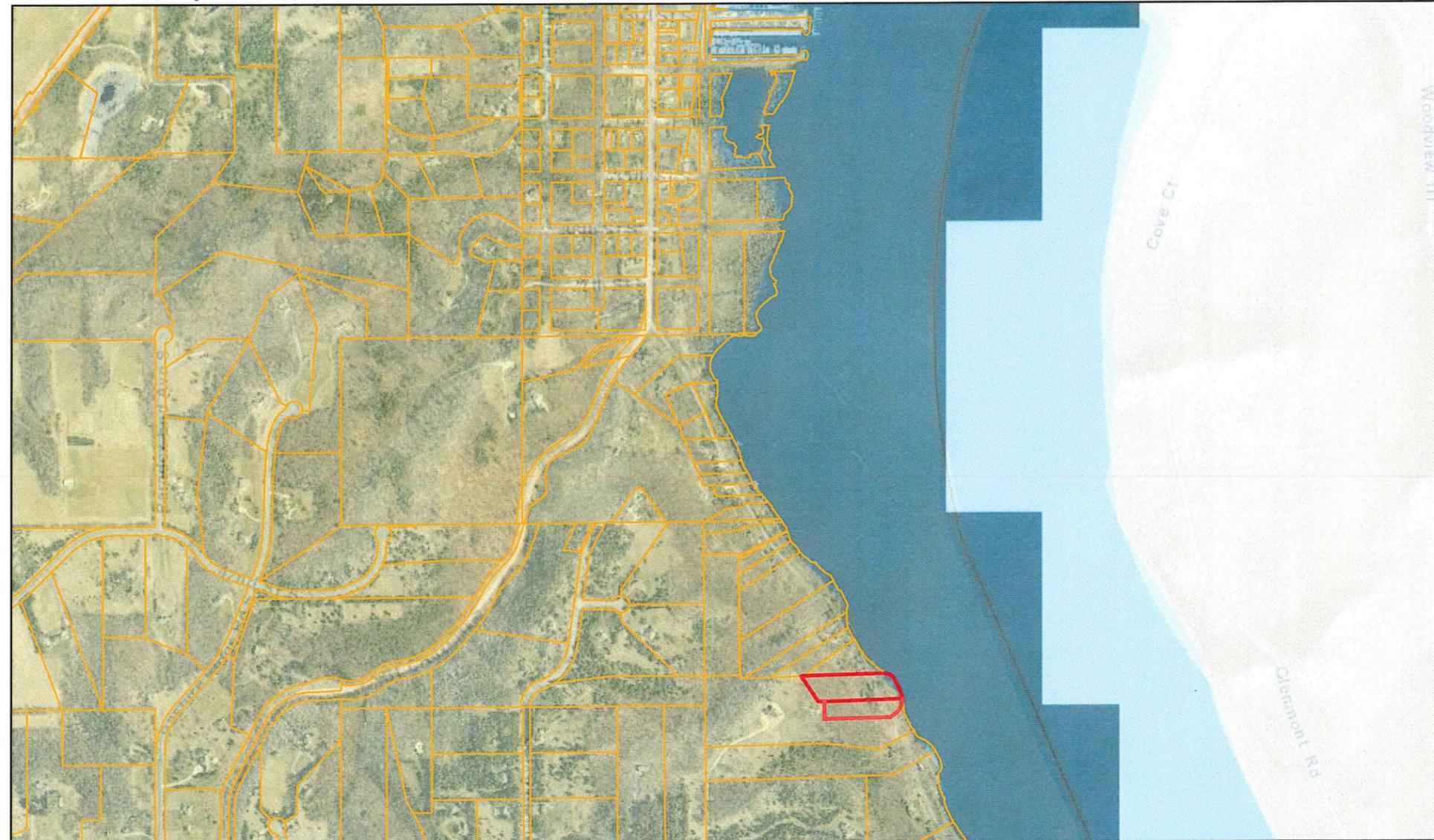
HOLZ BRAD L & MICHELLE M  
or Current Resident  
4206 RIVER RD S  
AFTON MN 55001

LEROY J ROSSOW TRS & GENEVIEVE M ROSSOW TRS  
or Current Resident  
4416 RIVER RD S  
AFTON MN 55001

DEMING DAVID D & TERESA B  
or Current Resident  
16200 45TH ST S  
AFTON MN 55001

MCLAURIN MARY D & JULIE D MARCUS  
or Current Resident  
PO BOX 276  
AFTON MN 55001

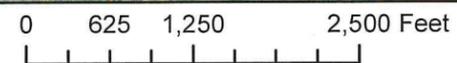
WOODFILL JANEL L  
or Current Resident  
PO BOX 333  
AFTON MN 55001-0333



Parcel ID: 2602820220013

Parcel Address:  
4270 RIVER RD S, CITY OF AFTON

Created on 11/30/2016



MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT

This drawing is the result of the compilation and reproduction of land records as they appear in various Washington County offices. The drawing should be used for reference purposes only. Washington County is not responsible for any inaccuracies.



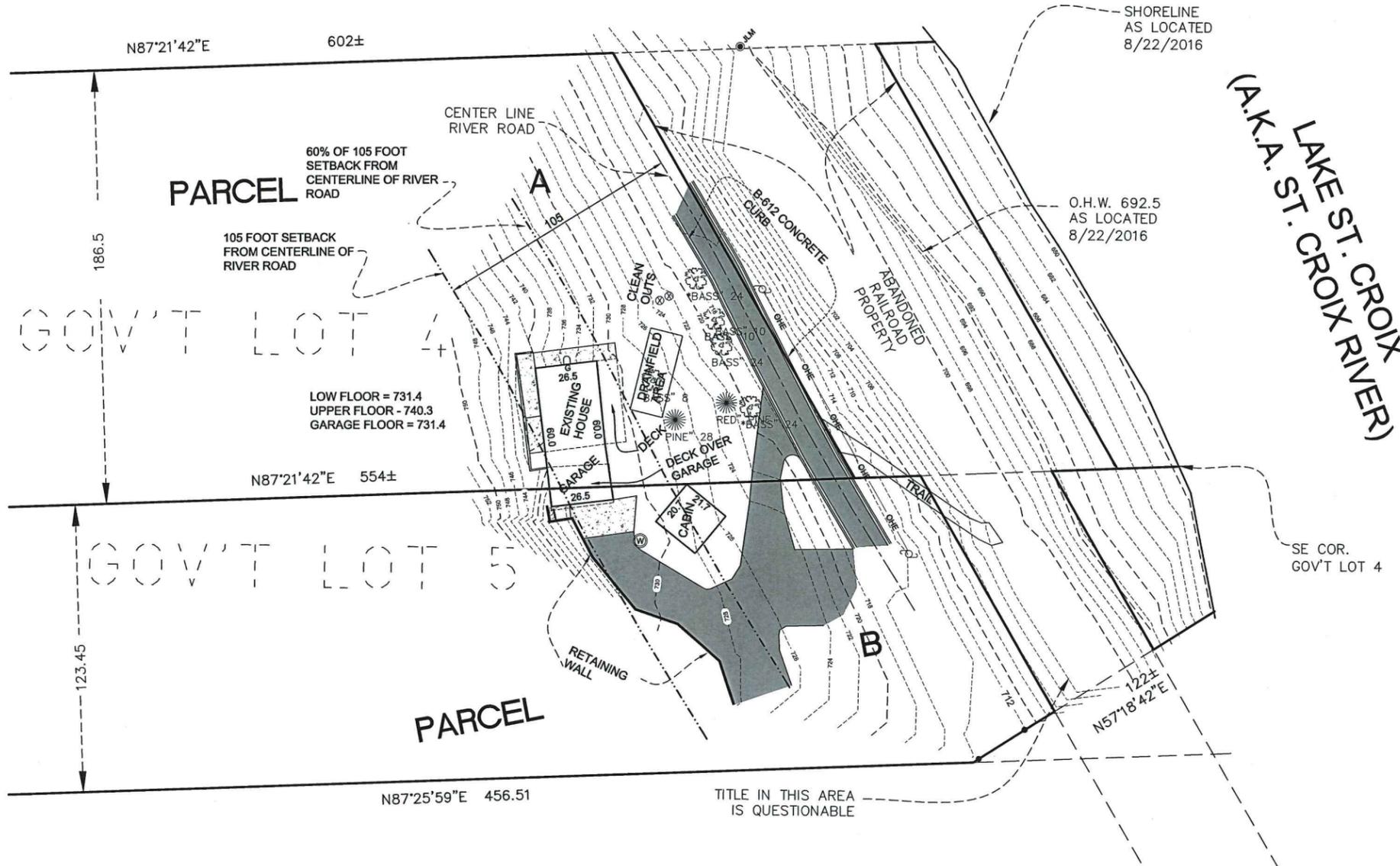
# SITE EXHIBIT

MARCUS MCLAURIN HOME RENOVATION

4270 River Road, Afton, MN 55001

2 of 10

Prepared - December 8, 2016



**Description of: Parcel A**

That part of the south 186.50 feet of Government Lot 4, Section 26, Township 28 North, Range 20 West, Washington County, Minnesota, lying easterly of the following described line:

Commencing at the southwest corner of said Government lot 4; thence North 87 degrees 21 minutes 42 seconds East, assumed bearing along the south line of said Government Lot 4, a distance of 815.27 feet to a judicial landmark set at the point of beginning; thence North 35 degrees 08 minutes 18 seconds West, a distance of 96.61 feet to a judicial landmark set; thence continuing North 35 degrees 08 minutes 18 seconds West, a distance of 124.52 feet to a judicial landmark set on the north line of the south 186.50 feet of said Government Lot 4 and said line there terminating.

Except a strip of land One Hundred (100) feet wide across the easterly part of said land, which strip was condemned and taken by Stillwater and Hastings Railway Company in the year 1884 as a right of way for railway purposes.

Subject to an easement for a garage encroachment over that part of the south 186.50 feet of Government Lot 4, Section 26, Township 28 North, Range 20 West, Washington County, Minnesota, described as follows:

Commencing at the southwest corner of said Government lot 4; thence North 87 degrees 21 minutes 42 seconds East, assumed bearing along the south line of said Government Lot 4, a distance of 815.27 feet; thence North 35 degrees 08 minutes 18 seconds West to the north line of the south 186.50 feet of said Government Lot 4; thence North 87 degrees 21 minutes 42 seconds East along said north line a distance of 392.35 feet to the point of beginning; thence continuing North 87 degrees 21 minutes 42 seconds East along said north line a distance of 30.57 feet; thence South 11 degrees 21 minutes 01 second West a distance of 7.39 feet; thence North 78 degrees 38 minutes 59 seconds West a distance of 29.66 feet to the point of beginning.

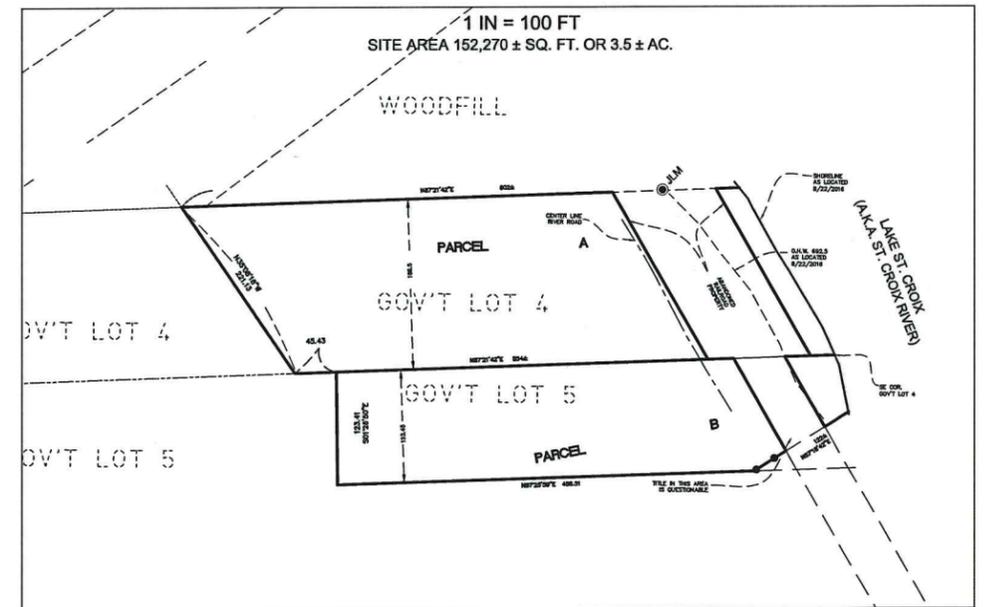
**Description of: Parcel B**

That part of Government Lot 5 of said Section 26, Township 28 North, Range 20 West, Washington County, Minnesota described as follows:

Commencing at the northwest corner of said Government Lot 5; thence North 87 degrees 21 minutes 42 seconds East, assumed bearing along the north line of said Government Lot 5, a distance of 860.70 feet to a judicial landmark set at the point of beginning; thence South 01 degree 26 minutes 50 seconds East, parallel with the west line of said Government Lot 5, a distance of 65.00 feet to a set judicial landmark; thence continuing South 01 degree 26 minutes 50 seconds East, parallel with the west line of said Government Lot 5, a distance of 58.41 feet to a set judicial landmark; thence North 87 degrees 25 minutes 59 seconds East, a distance of 456.51 feet; thence North 57 degrees 18 minutes 42 seconds East to the shore line of Lake Saint Croix; thence northerly along said shore line to the north line of said Government Lot 5; thence westerly along said north line to the point of beginning.

Excepting however the right of way of the Chicago, Milwaukee and Saint Paul Railway Company.

## SITE DETAIL



**LEGEND**

- FOUND JLM
- FOUND PIPE
- ⊙ WATER WELL
- ⊖ ELEC METER
- ⊕ GAS METER
- ⊙ ELEC POLE
- ⊙ SANITARY CLEANOUT
- OHE — OVERHEAD ELECTRIC
- BITUMINOUS SURFACE
- CONCRETE SURFACE



0 30 60  
SCALE (IN FEET)

SITE SURVEY  
1" = 60'



1229 Tyler Street NE #202  
MPLS MN 55413

P 612 - 870 - 4081  
F 612 - 870 - 4084

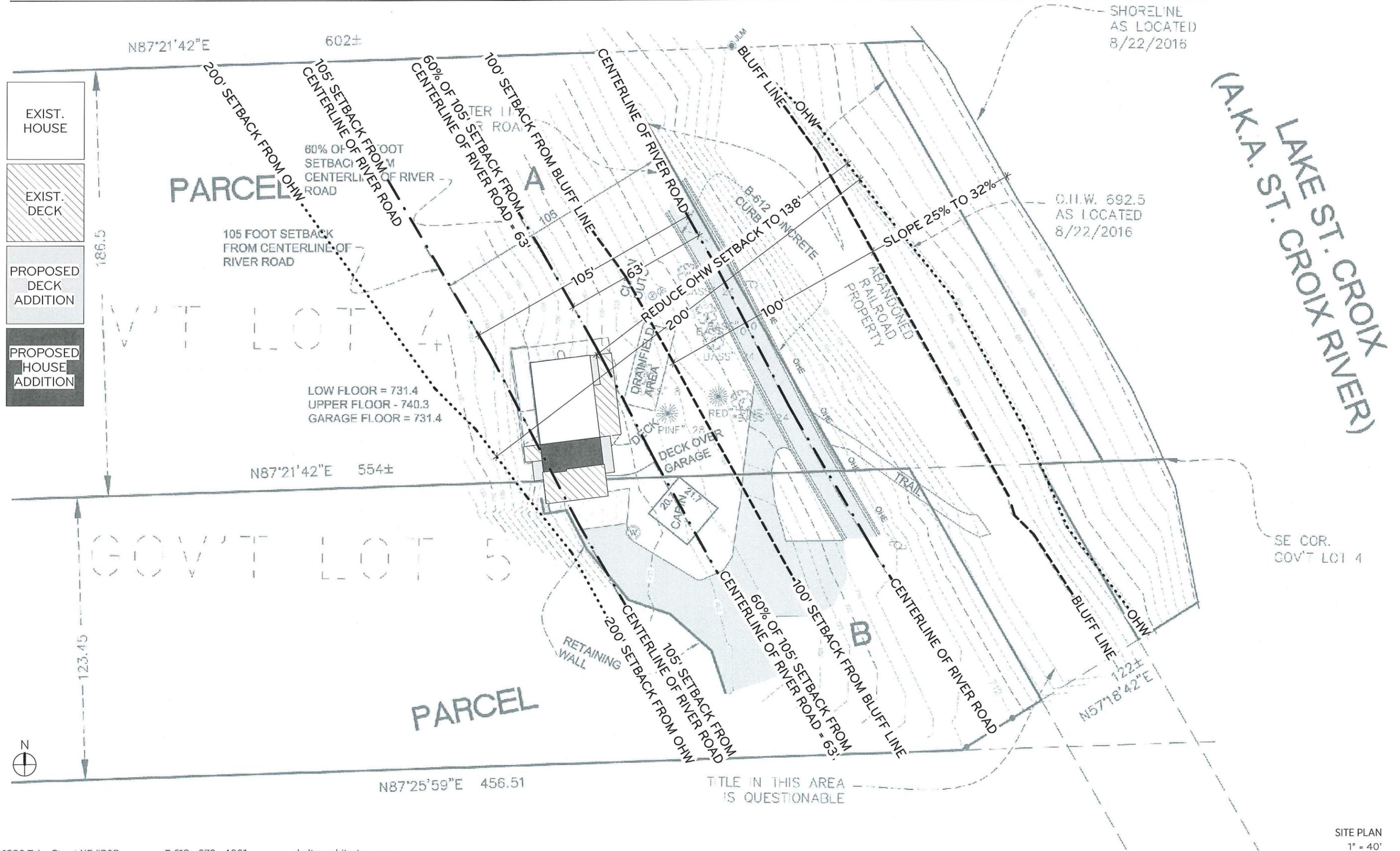
shelterarchitecture.com  
info@shelterarchitecture.com

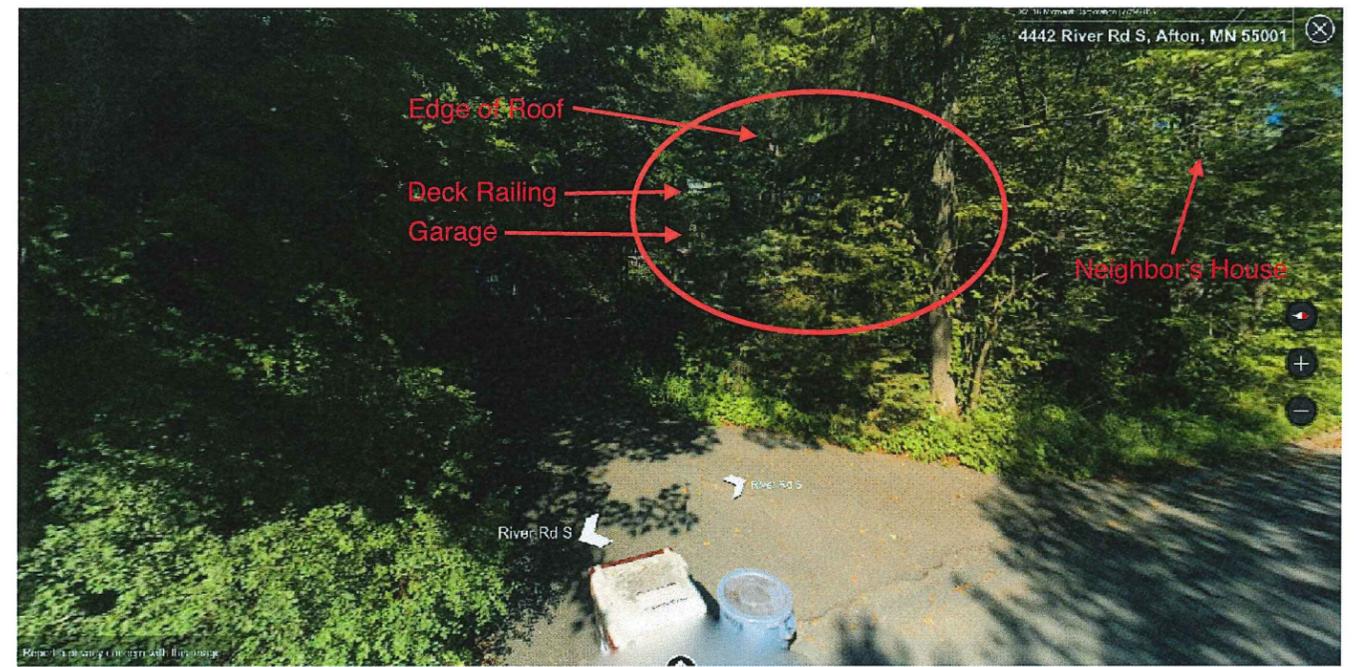
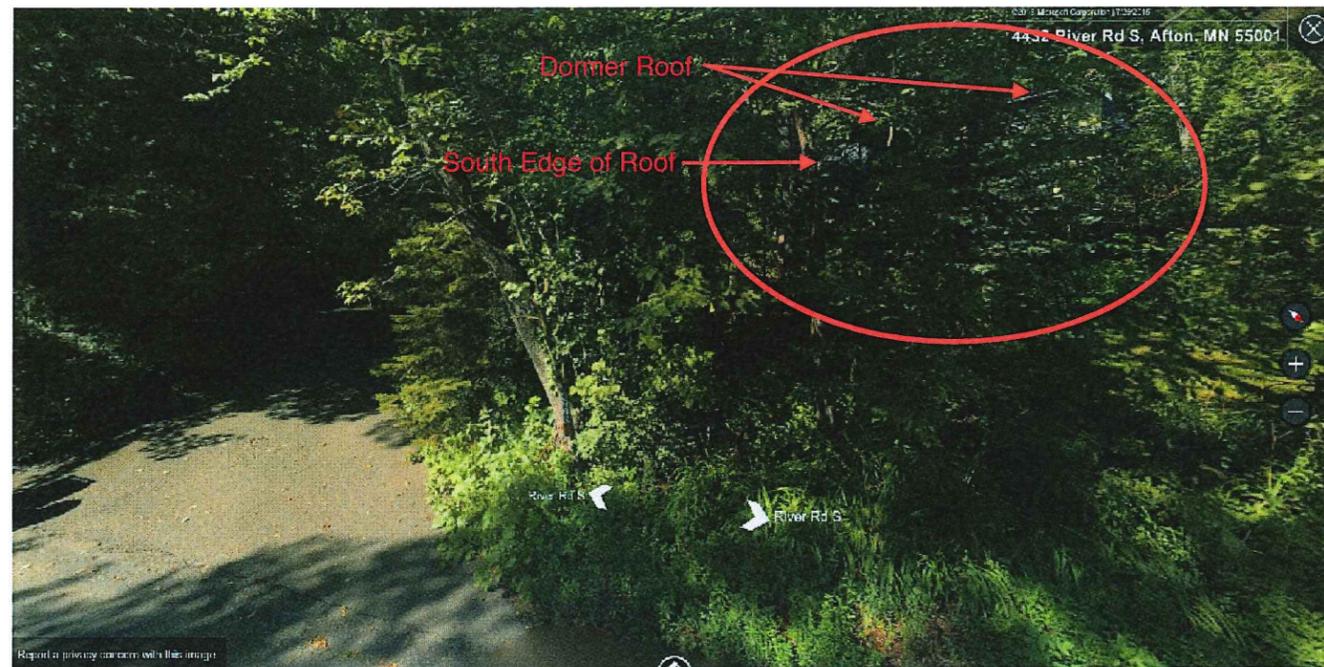
DATE: September 9, 2016	DATE:	AMENDMENTS:	BY:	PREPARED FOR: MARCUS/MCLAURIN
SCALE: AS SHOWN				I HEREBY CERTIFY THAT THIS SURVEY, PLAN, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA
DRAWN BY: SLD				<i>Dale F. Hebeisen</i>
CHECKED BY: DFH				Dale F. Hebeisen
FILE NUMBER: 1290F0080.000				DATE: 9/23/2016 LIC. NO. 13590



**WIDSETH SMITH NOLTING**

Engineering | Architecture | Surveying | Environmental



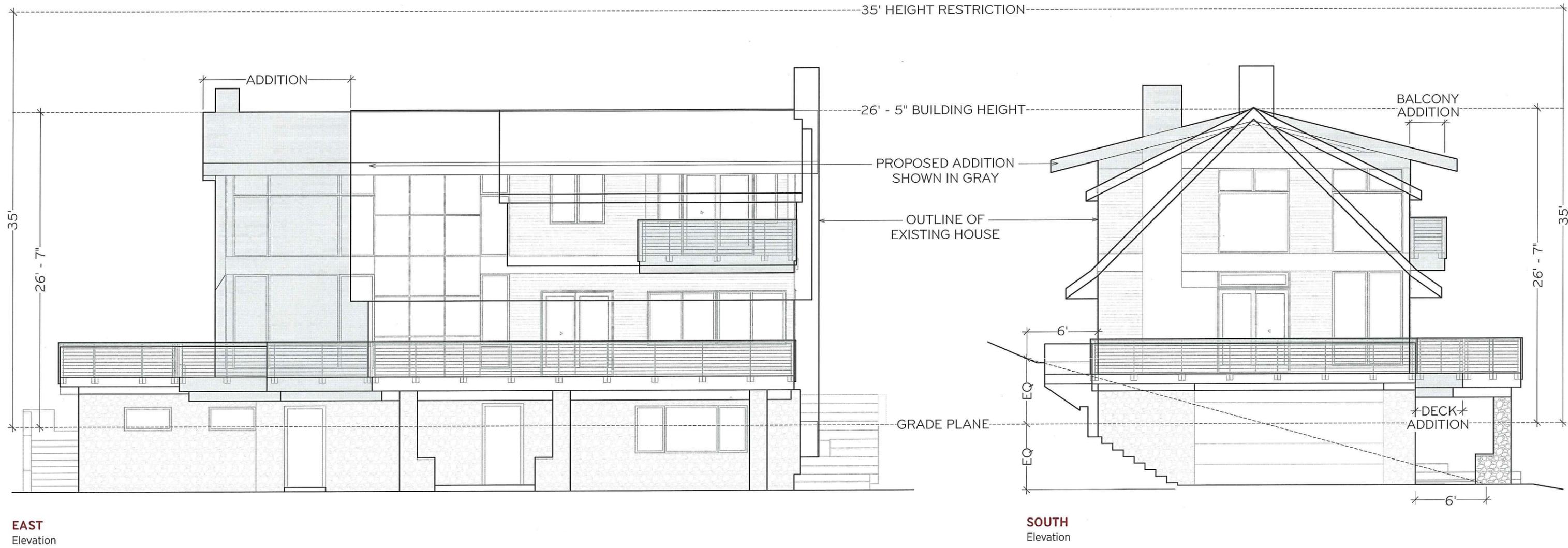




**EXISTING**  
View from northeast yard



**PROPOSED**  
View from northeast yard



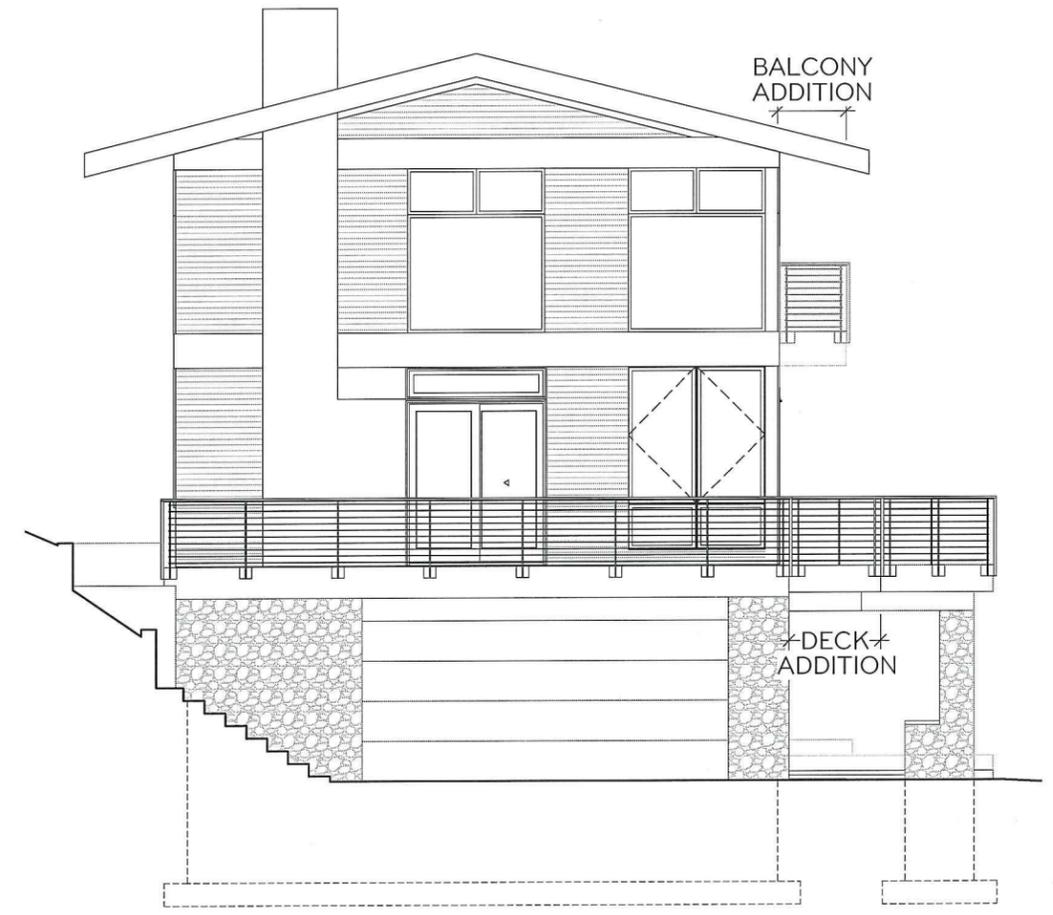
**EAST**  
Elevation

**SOUTH**  
Elevation



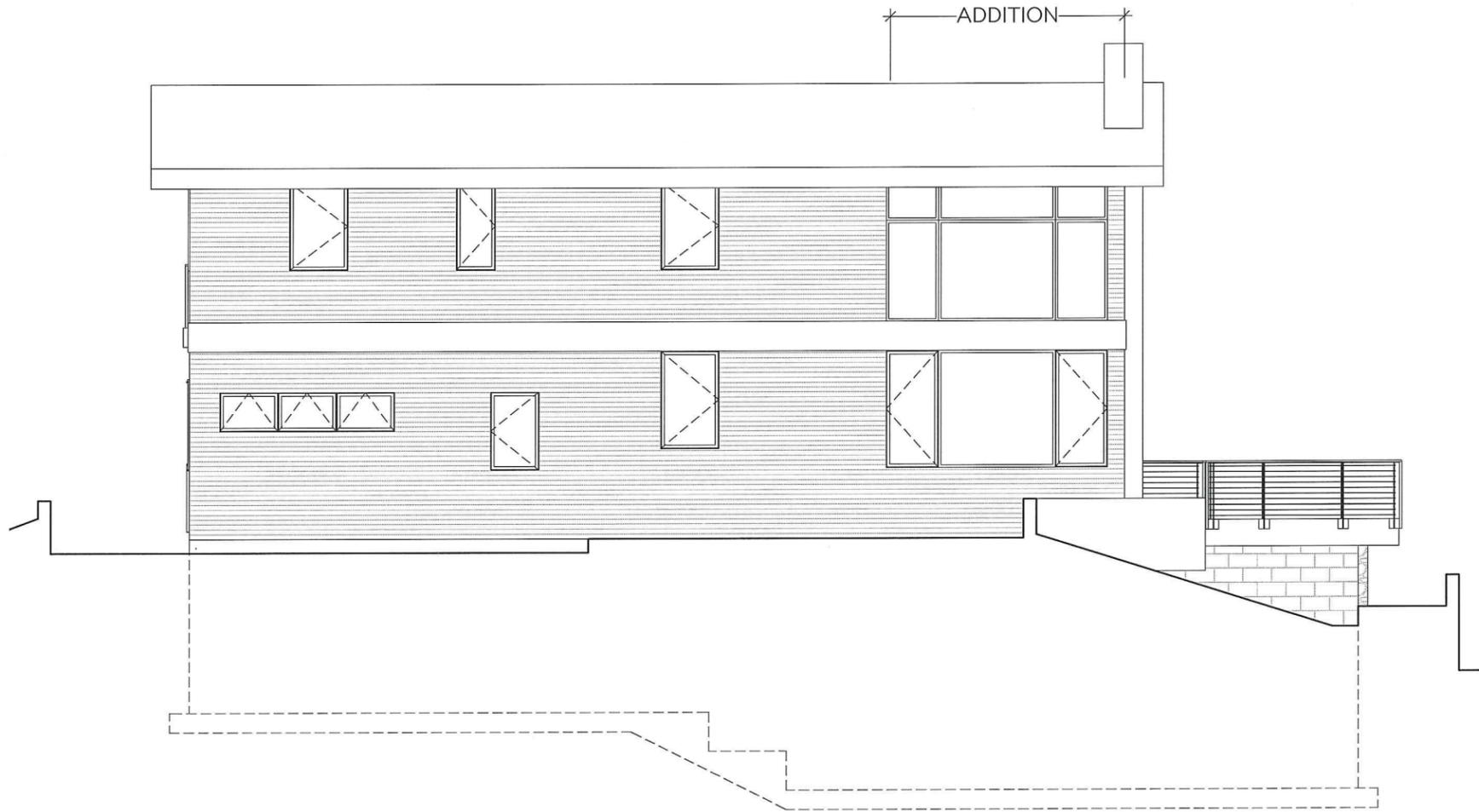


**EAST**  
Elevation

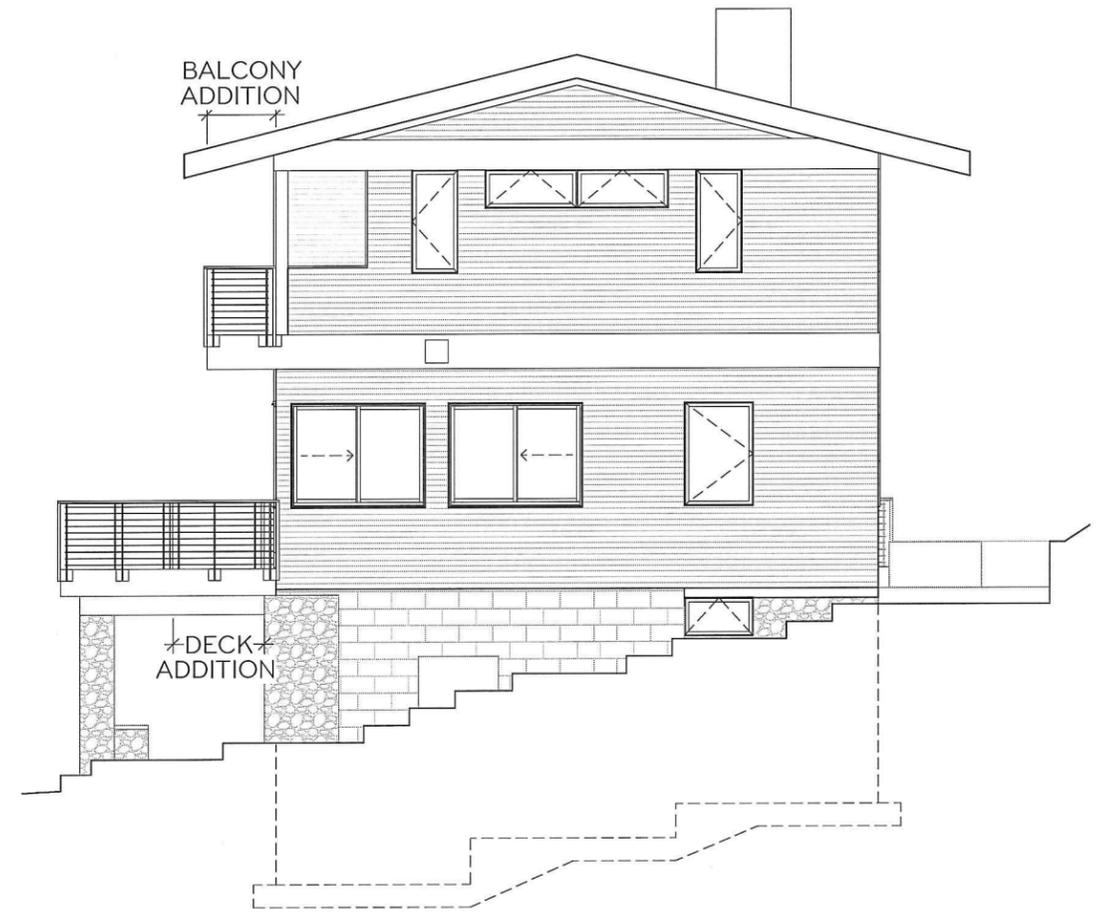


**SOUTH**  
Elevation



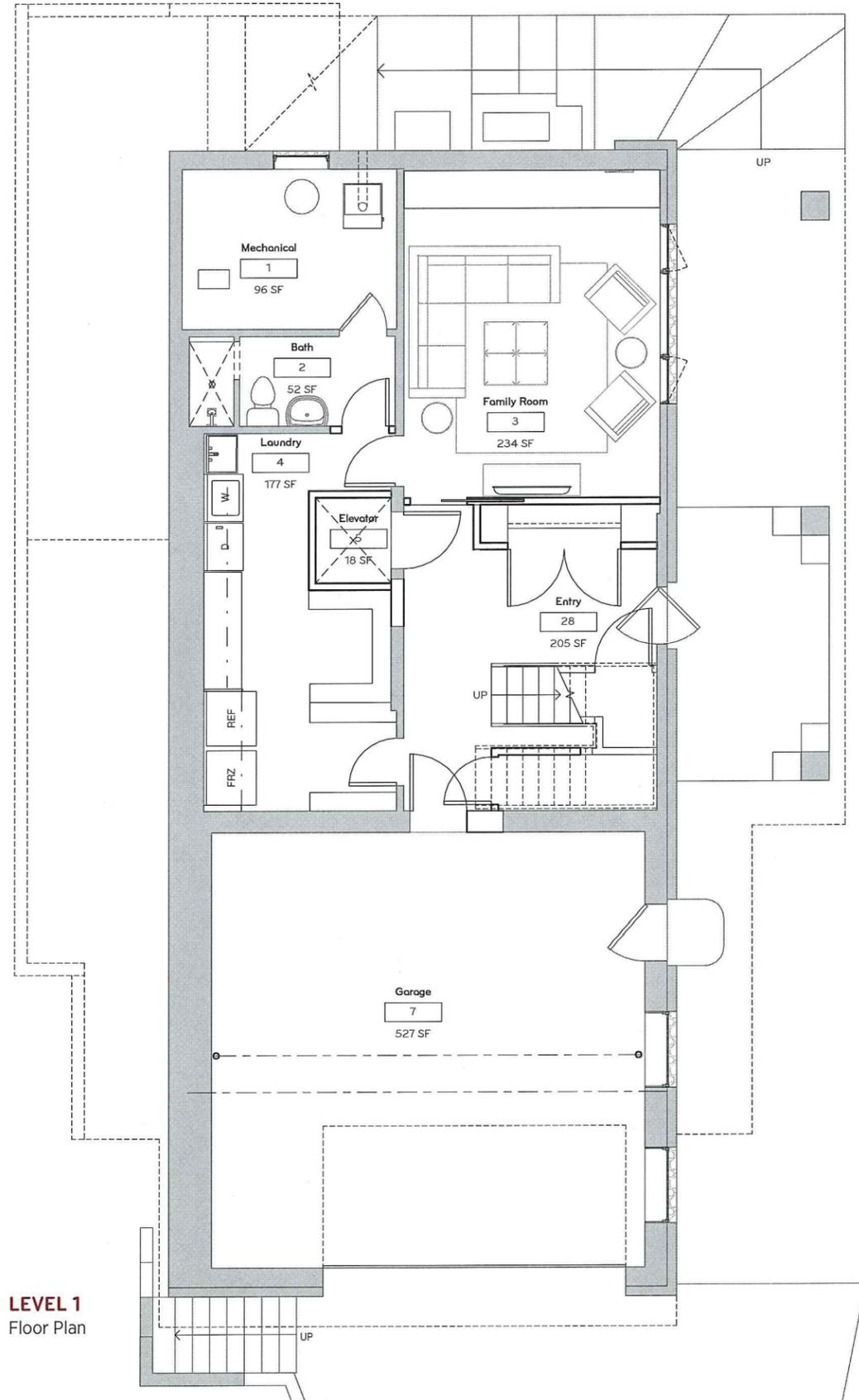


**WEST**  
Elevation

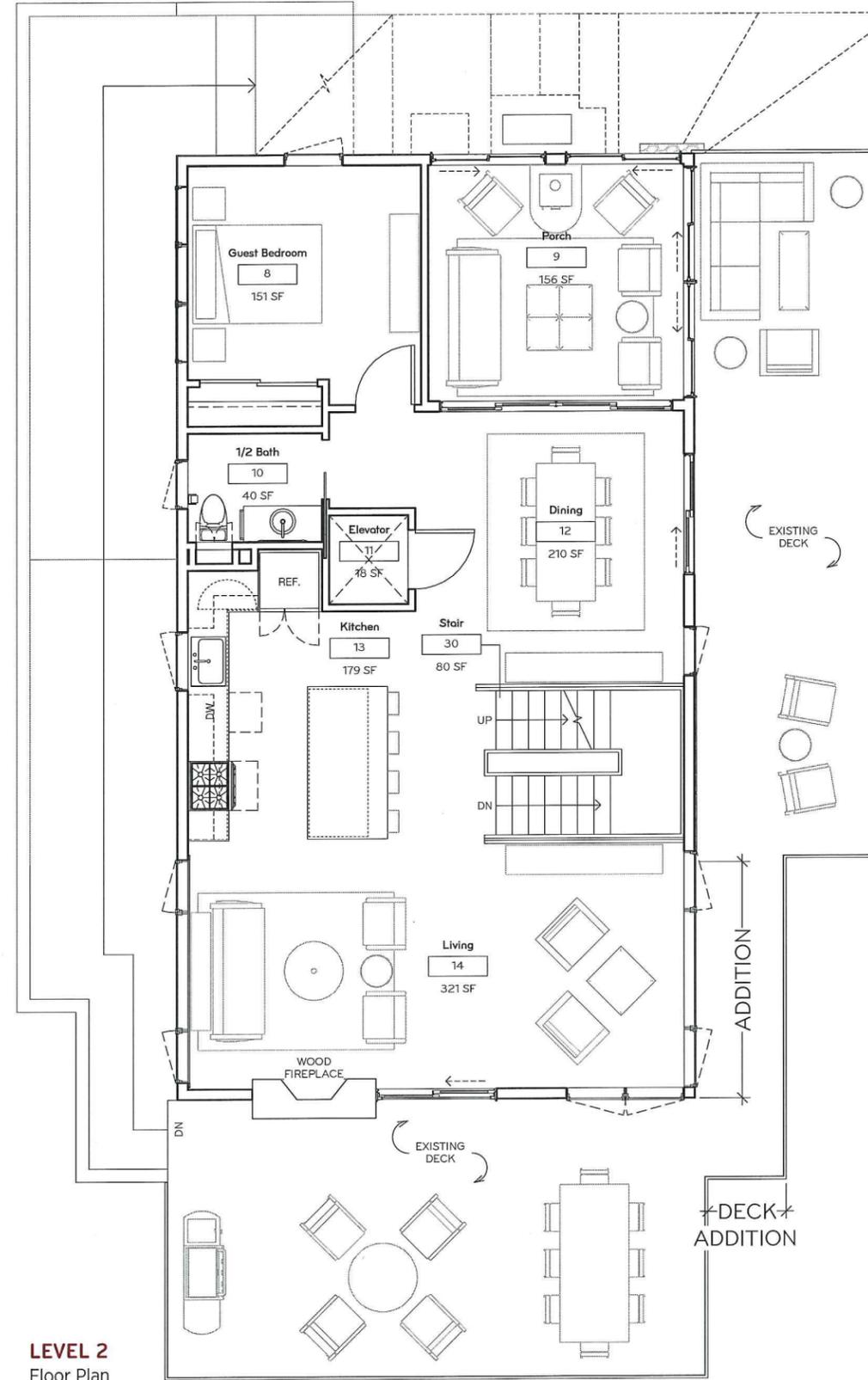


**NORTH**  
Elevation



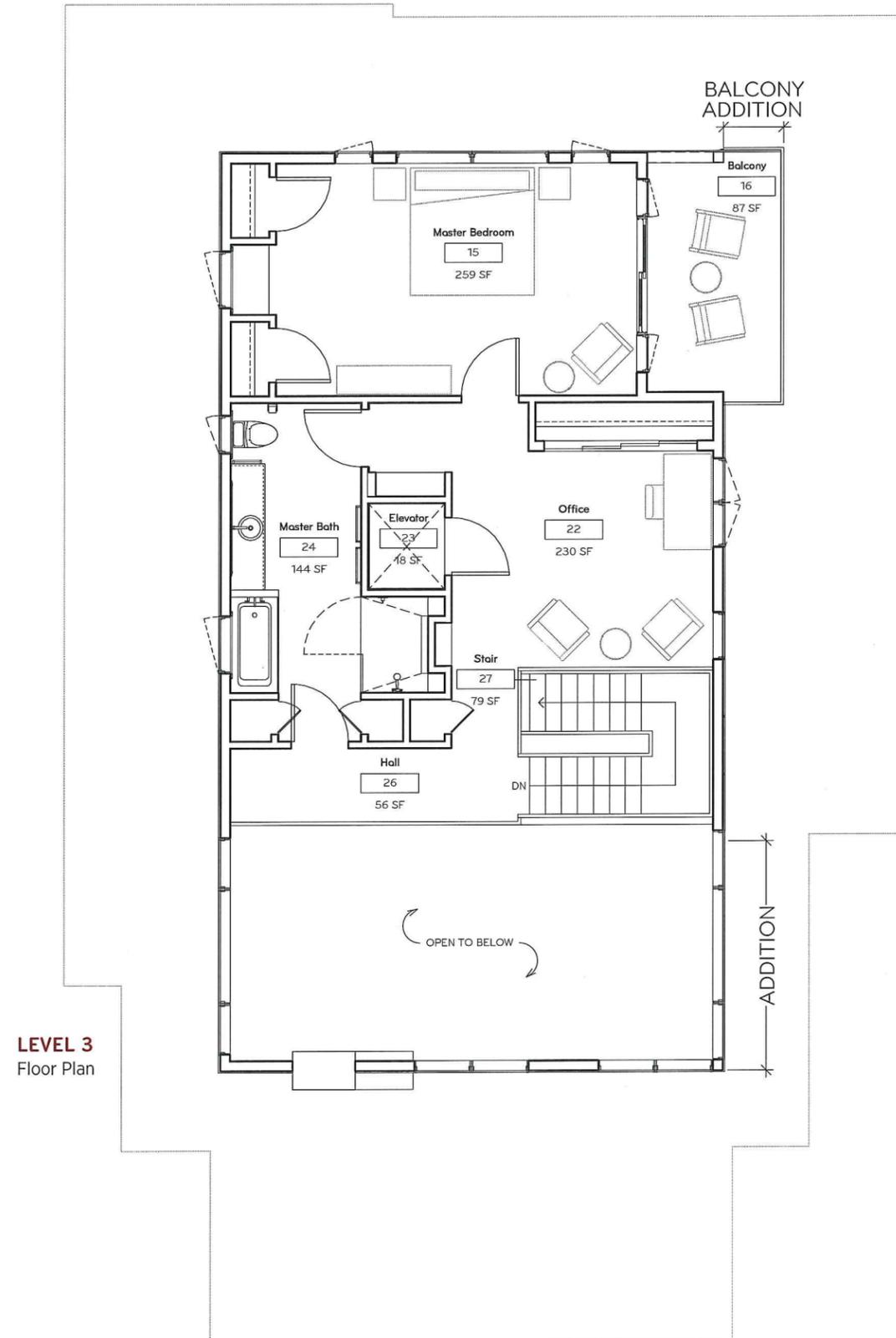


LEVEL 1  
Floor Plan



LEVEL 2  
Floor Plan





City of Afton  
3033 St. Croix Trl, P.O. Box 219  
Afton, MN 55001

## Planning Commission Memo

### Meeting: January 9, 2017

To: Chair Ronningen and members of the Planning Commission

From: Ron Moore, City Administrator

Date: January 4, 2017

Re: Ordinance Amendment Eliminating “Storage Enclosed or Screened Principal Use” from the List of Allowed uses in the I1A and I1B Zoning Districts

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The Council, at its November 15, 2016 meeting, referred to the Planning Commission the review of the allowed uses in the Industrial zones, including the elimination of Storage Enclosed or Screened Principal Use as an allowed use in the Industrial zones. An ordinance amendment reflecting the elimination of this use is attached. A notice of a public hearing regarding this ordinance amendment has been published in the City’s official newspaper.

**Planning Commission Direction Requested:**

**Motion regarding the ordinance amendment eliminating “Storage Enclosed or Screened Principal Use” from the list of allowed uses in the I1A and I1B Zoning Districts.**

**ORDINANCE 02-2017**

**CITY OF AFTON, MINNESOTA  
WASHINGTON COUNTY, MINNESOTA**

**AN ORDINANCE AMENDING CHAPTER 12, LAND USE, TO DELETE "STORAGE, ENCLOSED OR SCREENED PRINCIPAL USE" FROM THE LIST OF ALLOWED USES IN THE I1A and I1B ZONING DISTRICTS IN SECTION 12-134. USES**

**THE CITY COUNCIL OF THE CITY OF AFTON, MINNESOTA HEREBY ORDAINS:**

**The following section of the Afton Code of Ordinances shall be amended by adding the underlined language and deleting the strike-through language.**

Sec. 12-134. Uses.

Uses in the various districts shall be as follows:

P = Permitted use

A = Permitted accessory use

A/C = Permitted accessory, conditional use permit required

C = Conditionally Permitted Use

I = Interim Use Permit

ADMIN = Administrative Permit Required

N = Not allowed \* = Except as otherwise noted

	<u>Agricultural</u>	<u>Rural Residential</u>	<u>VHS Residential</u>	<u>VHS Commercial</u>	<u>Light Industrial</u>	<u>Light Industrial</u>	<u>Light Industrial</u>	<u>Marine Service</u>
	(A)	(R)	(VHS-R)	(VHS-C)	(I1-A)	(I1-B)	(I1-C)	(MS)
<b>Storage enclosed or screened principal use</b>	N	N	N	N	<del>N</del>	<del>N</del>	N	A

This ordinance shall take effect upon publication of this ordinance.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF AFTON THIS 17<sup>TH</sup> DAY OF JANUARY, 2017.**

**SIGNED:**

\_\_\_\_\_  
Richard Bend, Mayor

**ATTEST:**

\_\_\_\_\_  
Ronald J. Moorse, City Administrator

Motion by:

Second by:

Palmquist:

Richter:

Ross:

Nelson:

Bend:

**City of Afton**  
**3033 St. Croix Trl, P.O. Box 219**  
**Afton, MN 55001**

# Planning Commission Memo

## Meeting: January 9, 2017

To: Chair Ronningen and members of the Planning Commission

From: Ron Moore, City Administrator

Date: January 4, 2017

Re: Ordinance Amendment Regarding Sec. 12-132. B.3. Contiguous Parcels Under Common Ownership

The Zoning Code includes regulations requiring that when two or more contiguous parcels are under common ownership and any individual parcel does not meet the full lot width and area requirements the parcel needs to be combined with the adjacent parcels to create a lot that meets the lot width and area requirements. The purpose of the language in Subsection (B) (3) is to prevent parcels that do not meet the minimal requirements for lot width and area from being individually buildable or saleable when they are under common ownership with contiguous lot(s).

At its November 15, 2016 regular meeting, the Council agreed that the area and frontage requirements for contiguous lots under common ownership should be the same as for all other lots, which are set out in Subsection (B) (2). In addition, the Council agreed that contiguous lots under common ownership that do not meet these requirements should be required to be combined.

To accomplish the Council's direction, the following ordinance amendment language was referred to the Planning Commission for a public hearing.

3. If in a group of two or more contiguous lots or parcels of land owned or controlled by the same person, any individual lot or parcel does not meet the full-width or area requirements of ~~this Article~~ Subsection (B) (2) above, such individual lot or parcel cannot be considered as a separate parcel of land for purposes of sale or development, but must be combined with adjacent lots or parcels under the same ownership so that the combination of lots or parcels will equal one or more parcels of land each meeting the full lot width and area requirements of ~~this Article~~ Subsection (B) (2) above.

### Planning Commission Questions

When the Planning Commission reviewed the ordinance amendment language at its December 5, 2016 meeting, the Commission had a number of concerns and questions, and requested these be brought to the Council for clarification.

The concerns and questions are as follows:

1. The Planning Commission requested more direction or clarification from the Council regarding the purpose and rationale for existing subparagraph 3 and the amended language of subparagraph 3.

The purpose of the language in Subsection (B) (3) is to prevent parcels that do not meet the minimal requirements for lot width and area from being individually buildable or saleable when they are under common ownership with contiguous lot(s). Ideally, there would not be substandard parcels sprinkled among other parcels creating the potential for the property owner to argue that the City is taking value away by not allowing the parcel to be buildable. While it is not feasible to require a substandard lot to be combined with an adjacent

lot under different ownership, it is feasible to require a substandard lot to be combined with an adjacent lot under the same ownership.

2. The Planning Commission was concerned that both the current and proposed language treat parcels differently depending on if they are under the same ownership or not. For example, if a property owner purchases an adjacent nonconforming lot, then decides to sell it, the property owner is not allowed to sell it, but rather is required to combine it with the existing lot. However, if any other person purchases the lot, it remains a separate lot and can be sold.

While the property owner who purchased the nonconforming lot cannot sell the lot as a separate lot, it is possible to sell the lot to an adjacent property owner through a minor subdivision and lot line rearrangement that adds the lot to the adjacent property owner's lot. Because a nonconforming and non-buildable lot does not have value except as an addition to an existing lot, the lot line rearrangement allows the property owner to sell the lot to the person to whom it has the most value.

3. How does subparagraph 3 apply to a lot that has a house on it?

If a nonconforming lot has a house on it that is being occupied and continues to be occupied, and it is owned by the owner of a contiguous lot that also has an occupied house on it, the City cannot require the two lots to be combined, as they both are considered buildable lots. The Council has added language to the ordinance amendment as shown below in bold to clarify this.

3. If in a group of two or more contiguous lots or parcels of land owned or controlled by the same person, any individual lot or parcel does not meet the full width or area requirements of ~~this Article Subsection (B) (2) of this Section~~, such individual lot or parcel cannot be considered as a separate parcel of land for purposes of sale or development, but must be combined with adjacent lots or parcels under the same ownership so that the combination of lots or parcels will equal one or more parcels of land each meeting the full lot width and area requirements of ~~this Article Subsection (B) (2) of this Section~~, **with the exception of a pre-existing legally non-conforming lot containing an existing residence, as long as the residence continues to qualify as an existing legally non-conforming structure.**

**Planning Commission Direction Requested:**

**Motion regarding the ordinance amendment concerning Sec. 12-132. B.3. Contiguous Parcels Under Common Ownership.**

**ORDINANCE 01-2017**

**CITY OF AFTON, MINNESOTA  
WASHINGTON COUNTY, MINNESOTA**

**AN ORDINANCE AMENDING CHAPTER 12, LAND USE, TO CLARIFY SECTION 12-132. B  
REGARDING THE MINIMUM BUILDABILITY REQUIREMENTS OF CONTIGUOUS LOTS  
UNDER COMMON OWNERSHIP**

**THE CITY COUNCIL OF THE CITY OF AFTON, MINNESOTA HEREBY ORDAINS:**

**The following section of the Afton Code of Ordinances shall be amended by adding the underlined language and deleting the strike-through language.**

Sec. 12-132 Minimum requirements

B. Exceptions to minimum area, height, and other requirements:

1. For the purpose of this article, the term "existing lot" means a lot or parcel of land which was of record as a separate lot or parcel in the office of the county recorder, on or before the adoption date of the ordinance from which this article was derived, except as provided for in Subsection (B)(2).

2. Except in the VHS-R and VHS-C zoning districts, any such lot or parcel created in accordance with the City subdivision ordinance, article VI of this chapter, which contains at least 2 1/2 acres of buildable or net developable area as defined by this article and has at least 60 percent of the required frontage on an improved public street for the zoning district in which it is located shall be considered buildable provided the lot or parcel can comply with all other requirements of this article, including Subsection (B)(3) of this section.

3. If in a group of two or more contiguous lots or parcels of land owned or controlled by the same person, any individual lot or parcel does not meet the full width or area requirements of ~~this Article~~ Subsection (B) (2) of this Section, such individual lot or parcel cannot be considered as a separate parcel of land for purposes of sale or development, but must be combined with adjacent lots or parcels under the same ownership so that the combination of lots or parcels will equal one or more parcels of land each meeting the ~~full lot width and area requirements of this Article-Subsection (B) (2) of this Section~~, with the exception of a pre-existing legally non-conforming lot containing an existing residence, as long as the residence continues to qualify as an existing legally non-conforming structure.

This ordinance shall take effect upon publication of this ordinance.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF AFTON THIS 17<sup>TH</sup> DAY OF JANUARY, 2017.**

**SIGNED:**

\_\_\_\_\_  
Richard Bend, Mayor

**ATTEST:**

\_\_\_\_\_  
Ronald J. Moorse, City Administrator

Motion by:  
Second by:  
Palmquist:  
Richter:  
Ross:  
Nelson:  
Bend:

**City of Afton**  
**3033 St. Croix Trl, P.O. Box 219**  
**Afton, MN 55001**

# Planning Commission Memo

## Meeting: January 9, 2017

To: Chair Ronningen and members of the Planning Commission

From: Ron Moorse, City Administrator

Date: January 4, 2017

Re: Proposed Ordinance to Add Minimum Impact Design Standards (MIDS) to the Zoning Code

---

### Background

In response to the City Council approving the City's participation in a grant program through which Minimum Impact Design Standards (MIDS) would be integrated into the City's zoning ordinances, Mike Isensee, Executive Director of the Middle St. Croix Watershed District (MSCWMO) has worked with Jay Michaels and other staff from Emmons and Olivier Resources, an environmental and water resources consulting firm, to perform a detailed review of the City's zoning code, particularly related to performance standards concerning grading and drainage and the management of storm water and protection of water quality, and provide recommendations regarding integrating the MIDS standards into the zoning code. A proposed ordinance was provided to the Planning Commission at its September 12, 2016 meeting, at which the Commission identified a number of concerns and recommended against the adoption of the proposed ordinance.

In response to the Planning Commission's concerns and recommendation, the Council authorized staff to work with the MSCWMO to identify conflicts between MIDS and Afton's city code and to consider how Minimal Impact Design Standards might best be integrated into the City's Ordinances, and to bring the information back to the Planning Commission and to the Council.

The Planning Commission's concerns have been shared with Mike Isensee and Jay Michaels. The following is an outline of the concerns and an outline of responses to the concerns. The attached memo from Jay Michaels and Spencer Peck to Mike Isensee, dated September 26, 2016, provides a more extensive explanation of the items outlined in the response to the Planning Commission's concerns below. Mike Isensee, who has closely reviewed the City's ordinances, will attend the Planning Commission meeting to further clarify the MIDS requirements in relation to the Planning Commission's concerns.

Also attached is a mark-up of the current zoning code showing the changes proposed to the code as part of integrating a new Stormwater Management and Erosion Control section into the code. Mike Isensee will be able to respond to questions regarding the review of the current code to identify any conflicts or inconsistencies between the current code and the new Stormwater Management section of the code.

### Planning Commission Concerns Regarding Proposed MIDS Ordinance

1. The proposed ordinance is less restrictive than the City's current ordinance, a particular example was language in the definition of a "new development" that referenced impervious coverage of 15% vs. the City's 10% impervious coverage cap.

2. MIDS includes options that allow a developer to get around the rural environment protections that Afton currently has in place
3. Afton's ordinances are sufficient to protect water quality
4. There could be conflicts and inconsistencies between the proposed ordinance and Afton's current ordinance language, and it would be a substantial effort for staff to review the ordinance to identify the conflicts and inconsistencies.

#### Response to Planning Commission Concerns

##### 1. MIDS less restrictive and Afton's Ordinances sufficient

- The consultant's detailed review of the zoning code found that the City does not have clear and specific performance standards regarding the management of stormwater. The City relies on the City Engineer and, where applicable, the Watershed Districts, to apply a set of performance standards that are not reflected in the City's zoning code. This means that when a property owner, contractor or developer need direction regarding stormwater management, they cannot obtain much help by reviewing the City's zoning code. They would need to contact the City Engineer or a Watershed District.
- The following are the current stormwater management performance standards in Sec. 12-409 of the zoning code..
  - A. General standards:
    1. Existing natural drainageways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.
    2. Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.
    3. When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds must be used.
  - B. Specific standards:
    1. Impervious surface coverage of lots must not exceed ten percent of the lot area or one-half acre, whichever is greater.
    2. When constructed facilities are used for stormwater management, documentation must be provided by a qualified individual that they are designed and installed consistent with the field office technical guide of the local soil and water conservation districts and all plans must be approved by that agency.
    3. New constructed stormwater outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.
- The following are performance standards in the MIDS ordinance

#### Stormwater Volume Reduction Performance Standards

Any applicant for a Stormwater Management Permit as defined in Section 2 of this ordinance must meet all of the following performance standards:

- **New development volume control.** For new, nonlinear developments on sites without restrictions, stormwater runoff volumes will be controlled and the post-construction runoff

volume shall be retained on site for 1.1 inches of runoff from all impervious surfaces on the site.

- **Redevelopment volume control.** Nonlinear redevelopment projects on sites without restrictions that create or fully reconstruct impervious surfaces shall capture and retain on site 1.1 inches of runoff from the new and/or fully reconstructed impervious surfaces.
- **Linear development volume control.** Linear projects on sites without restrictions that create new and/or fully reconstructed impervious surfaces, shall capture and retain the larger of the following:
  - 0.55 inches of runoff from the new and fully reconstructed impervious surfaces on the site
  - 1.1 inches of runoff from the net increase in impervious area on the site.
- The City Engineer has reviewed the MIDS ordinance and compared the stormwater management performance standards in the MIDS ordinance with the performance standards generally used by the City Engineer in reviewing drainage and stormwater management plans. The MIDS performance standards are very similar to the performance standards used by the City Engineer. The City engineer has indicated the MIDS standards are commonly used and are the most stringent standards.
- The MIDS ordinance includes a set of three Flexible Treatment Alternatives that are only used when the applicant documents, and the City agrees, that restrictions specific to the site do not allow the full MIDS performance goals to be met. This is similar to the process used by the City Engineer with a restricted site. The City Engineer requires the developer to meet the highest standard possible given the limitations of the site. This is also the purpose of the MIDS Flexible Treatment Alternatives.
- The initial draft MIDS ordinance did include a definition of “New Development” that referenced 15% impervious coverage. This definition will be revised to reflect Afton’s 10% impervious coverage standard.

## 2. Conflicts and inconsistencies with current zoning code

- The initial plan for MIDS, through the grant to integrate MIDS into the city’s zoning code, was to add MIDS requirements in relevant areas throughout the zoning code. However, while going through this effort, it was determined that the stormwater-related language was so scattered throughout the zoning code that it would be very difficult for an applicant to work through the requirements. Through this process, the consultant became very familiar with the zoning code and with all of the conflicts and inconsistencies in relation to the integration of MIDS. This provided two results. The first was a recognition that, rather than trying to add MIDS requirements to the existing stormwater language scattered throughout the zoning code, it would be much easier to follow if all of the stormwater management requirements were placed into a separate chapter or section. The second was a mark-up of the current zoning code that identified all of the changes. The consultant has recently completed a second review of the MIDS ordinance vs. the zoning code to ensure conflicts and inconsistencies have been identified and resolved in a revised ordinance. The ordinance has also been revised to be a new Article (XIII) in the zoning code rather than a new chapter in the City Code.
- To further address the Planning Commission’s concern regarding MIDS being less strict than the City’s current ordinance requirements, it is recommended that language be added to the MIDS ordinance language indicating that if there is an ordinance requirement that is more

strict than the MIDS requirements, the more strict ordinance requirement will supercede the MIDS requirement.

**Planning Commission Direction Requested:**

Motion providing direction to guide staff in finalizing an ordinance incorporating MIDS into the zoning code.

# Memo



**Project Name** | MIDS Community Assistance Package

**Date** | September 26,  
2016

**To** | City of Afton Planning Commission  
Mike Isensee, MSCWMO

**From** | Jay Michels, EOR  
Spencer Peck, EOR

**Regarding** | Integrating MIDS into City of Afton Municipal Code

## **Introduction**

This memorandum presents a narrative description of why the City of Afton should update its existing stormwater management ordinances. At the direction of Afton City Council (please see resolution 2015-19 passed by the City of Afton City Council on February 17, 2015), staff at Emmons & Olivier Resources (EOR) thoroughly reviewed the existing City Code looking for opportunities to incorporate standards and policies from the Minimal Impact Design Standards Model Stormwater Ordinance (MIDS or Model Ordinance). The goal of the review and recommendations is to improve the effectiveness, consistency, and transparency of the City's ordinances and to continue protecting the community's water resources. The Middle St. Croix Watershed Management Organization (MSCWMO), EOR and City Staff considered the findings of the initial review at joint working session on April 22, 2015. Based on City Staff feedback the draft ordinance was completed and is now presented to the Planning Commission.

## **Minimal Impact Design Standards (MIDS) History**

This section briefly reviews the state-wide importance of water resources, the evolution of stormwater management generally, and how the Minimal Impact Design Standards (MIDS) Model Stormwater Ordinance were designed to protect these valuable, fragile resources.

Water is one of the most important natural resources in Minnesota. It is important to local economies, crucial for wildlife, and a critical component of Minnesotans' lifestyles and recreational pursuits. Clean, abundant water is a key issue all across the state: from the beautiful north shore of Lake Superior, to the game fishing and water recreation on the numerous in-land lakes, to the agricultural heartland of the south and west. The pervasive importance of water is the fundamental rationale for protecting and restoring the State's highly valued water resources. One crucial component in protecting and restoring Minnesota's water resources is effective stormwater management.

Stormwater management has evolved substantially during the past 20 years. Historically, stormwater management solutions concentrated on directing stormwater off-site quickly and reducing flooding concerns. The main tool to achieve these goals was collecting runoff in stormwater ponds and other detention facilities. The shortcomings of these approaches can be seen in the extensive water pollution in Minnesota, including huge number of impaired waters. Unfortunately, water resources in and around the City of Afton have not avoided damage or degradation from the failures of outdated stormwater management. A more modern and effective method of protecting waterbodies is to retain the raindrop where it falls through the use of

retention methods. This minimizes runoff, reduces pollution, and increases infiltration and groundwater recharge. Stormwater retention, as opposed to detention, is the overarching concern of the Minimal Impact Design Standards (MIDS).

The MIDS performance standards and Model Ordinance was developed over the course of four years (October 2009 – June 2013) with the help of the Minnesota Pollution Control Agency (MPCA) and a diverse group of stakeholders and experts. The foundation of MIDS is Low Impact Development (LID) standards, which use technologies and best management practices (BMP) to mimic a site's natural hydrology as the landscape is developed. The standards and procedures in MIDS are a set of effective, flexible, and adaptable tools designed to retain stormwater where it falls. In fact, these tools go beyond just managing stormwater, but also provide solutions for numerous issues associated with utility and infrastructure projects such as requiring financial securities, codifying fair and effective enforcement procedures, and ensuring facility inspection and maintenance.

### **Basic Principles of MIDS**

The Minimal Impact Design Standards represent the next generation of stormwater management in Minnesota. Using Low Impact Development (LID) principles, MIDS emphasizes keeping the raindrop where it falls in order to minimize stormwater runoff and pollution. Low Impact Development is an internationally recognized approach to stormwater management that mimics a site's natural hydrology as the landscape is developed. The LID approach preserves and protects environmentally-sensitive sites and natural features, including riparian buffers, wetlands, steep slopes, valuable trees, floodplains, woodlands, and highly permeable soils. MIDS incorporates these concepts to achieve more effective stormwater management with four main components:

1. Strong, consistent performance standards for the full range of construction projects.
2. Flexible Treatment Alternatives designed to achieve high water quality standards despite site constraints such as high water tables, karst geology, or soil issues.
3. A MIDS Design Sequence Flow Chart to assist all stakeholders, from the most experienced developer to a first-time home builder, navigate, understand, and effectively apply the performance standards to specific projects.
4. A new calculator and credit calculations that standardize the use of a range of innovative structural stormwater practices and facilities.

### **Performance Standards**

Stormwater performance standards do not exist in Afton's current code. The current version of section 12-409 "Stormwater Management" lists both general and specific standards. These standards amount to only six sentences. The only objective standard imposed by these sections is a maximum amount of impervious surface coverage (10 percent). Although a "qualified

individual” must “document” that stormwater facilities are properly designed and installed, this standard fails to specify the required qualifications. The other standards provide only vague and unquantifiable standards. For instance, development must “minimize the extent of disturbed area” and be stabilized “as soon as possible.” Finally, the practices suggested as methods of stormwater management do not include modern technology, but instead focus on simply diverting runoff away from the site, or using stormwater ponds. Adopting MIDS offers the City of Afton the opportunity to implement performance standards to protect the community’s valuable water and land resources.

The MIDS Model Ordinance ensures consistent and effective management of a range of stormwater issues, including reducing the velocity at which stormwater leaves a particular property (rate), reducing the amount of water generated by the impervious surfaces on that property (volume), and removing sediment, nutrients, and other pollutants contained in the stormwater (water quality). These factors have important impacts on the body of water receiving stormwater—if not properly managed, each can damage, or even destroy a body of water. Performance standards differ depending on the severity of the storm (e.g. the 1-year, 2-year, 10-year, and 100-year, 24-hour storm events). Generally under MIDS, new development and redevelopment projects must capture, and retain on-site, up to 1.1 inches of runoff from all impervious surfaces on the site.<sup>1</sup> Linear development (e.g. road construction).

These strong performance standards provide enhanced protection for Minnesota’s water resources without placing unreasonable or unnecessary burdens on developers or landowners. When adopted, MIDS can help communities achieve both water quality and regulatory goals. For instance, MIDS can be used to meet anti-degradation requirements; achieve rate and volume controls, actively reduce several pollutant loads; and achieve waste load reductions as specified in a Total Maximum Daily Load (TMDL) standards. The clear, concise, and quantifiable standards provided by MIDS also prevent anyone in the community from avoiding, exploiting, or neglecting the requirements of the ordinance. Simply put, the standards cannot be flouted or abused. Finally, MIDS is an approved approach for satisfying the requirements for new development and redevelopment outlined in Minimum Control Measure (MCM) 5 of the General Permit for small Municipal Separate Storm Sewers (MS4 Permits).

### **Flexible Treatment Alternatives**

Many developers and land owners fear updates to development policies. They believe new regulations may result in impracticable requirements for a previously undeveloped site. These beliefs are often especially strong in communities where development policies are less stringent or are applied infrequently. The MIDS development group foresaw these obstacles, and purposely integrated measures of flexibility in the Model Ordinance and its performance

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<sup>1</sup> Long-Form MIDS Stormwater Ordinance, § 6(d)

standards. If an applicant is unable to achieve the full MIDS performance goals due to site restrictions as documented by the applicant and attested by the local authority, the development project may instead follow one of three Flexible Treatment Alternatives.

The first alternative is to retain a smaller volume of runoff, remove a large percentage of the total phosphorous load from the discharged runoff, and attempt to address constraints by relocating project elements. If the first alternative is unfeasible, the second alternative reduces the volume standards to a “maximum extent practicable” level, further decreases the percentage of total phosphorous that must be removed, and analyses the effect of relocation of project elements. Finally, if the first two alternatives are unattainable, the third alternative allows off-site mitigation equivalent to the full volume reduction performance goal. These alternatives are intended to be used in sequence. Each step of the sequence must be documented, reviewed, and approved by the local authorities.

## **MIDS Calculator**

One of the greatest aspects of MIDS is that it standardizes the benefits of non-structural and technological stormwater practices. The MIDS Best Management Practice (BMP) calculator is a Microsoft Excel-based tool used to determine stormwater runoff volume and pollutant reduction capabilities of various low impact development (LID) BMPs. The MIDS calculator estimates the stormwater runoff volume reductions for various BMPs based on the MIDS performance goal (1.1 inches of runoff off impervious surfaces) and annual pollutant load reductions for total phosphorus (including a breakdown between particulate and dissolved phosphorus) and total suspended solids (TSS).

Standardization of stormwater Best Management Practices (BMPs) not only simplifies the development process, but also supports decision-makers in determining which design aspects will satisfy a community’s goals. All the BMPs recommended by the MIDS system have been reviewed and approved by a host of stormwater professionals, including the Minnesota Pollution Control Agency (MPCA). The MIDS Calculator also helps communities quantify load reductions in applications for grants and other funding opportunities. In short, the MIDS Calculator reduces workloads for developers and City Staff, and clarifies the stormwater management possibilities to even the most unsophisticated user.

## **Overlapping Authority and MIDS**

MIDS is especially effective in Minnesota because it is typically implemented by several overlapping authorities, including watershed districts (WDs), watershed management organizations (WMO), counties, and municipalities. In fact, nearly every level of water governance has adopted the MIDS approach. The MIDS development process and state wide application is codified in state statute (Minn. Stat. 115.03 Subd. 5c(c)). The Minnesota Department of Natural Resources, a state-level agency, incorporated the MIDS performance

goals into its Stormwater and Shoreline Best Management Practices for Public Water Accesses.<sup>1</sup> Further, the Minnesota Pollution Control Agency (MPCA), the state agency responsible for issuing permits and overseeing many pollution prevention and water quality programs, was heavily involved in the development of MIDS, and has approved MIDS as a method for achieving the regulatory requirements for several state-wide programs.

At the watershed level, a significant number of Watershed Districts, Water Management Organizations, Lake Improvement Districts, Soil and Conservation Districts, and municipalities have adopted, or are actively preparing to adopt MIDS standards, including several of Afton's immediate neighbors.<sup>2</sup> These organizations have a critical role in achieving the water quality and resource conservation goals set at the state and local level. Since MIDS was released in 2013, five watershed districts, two water management organization, and six cities have adopted MIDS. The Middle St. Croix Watershed Management Organization was awarded a Clean Water grant in 2014 to implement the MIDS Community Assistance Package. The watershed management organization will work with up to 13 communities in the St. Croix Basin to adopt ordinance and code revisions to incorporate MIDS stormwater quality and volume standards for new development and redevelopment. Among these communities, two (Lakeland Shores and Lakeland) have already adopted the MIDS approach.

## **Consistency and the MIDS Approach**

MIDS also ensures a community's stormwater management ordinance is internally consistent and easy to use. The existing code uses multiple terms (i.e. drainage, stormwater, runoff, etc) which could cause a developer or landowner significant confusion. More problematic is the current cumbersome and disorganized structure. The relevant terms and standards are scattered throughout the code with no organization or consistency. Most appear in Chapter 12, but this Chapter is over 200 pages long and has several dozen subchapters, sections and subsections. For instance, to determine the exact stormwater management requirements for a particular project, at least thirteen (13) separate provisions must be consulted. These provisions are spread from page 10 to page 211, and only one provision even contains the term "stormwater management." Creating a stormwater pollution prevention plan for a project is thus a major undertaking requiring frequent contact with City staff, long hours reviewing the City Code, and possibly even hiring professional help.

Adopting MIDS offers an easy alternative. First, the new provisions would simply be slotted into the existing code. Using the reserved Chapter 13, MIDS could be integrated into the existing code as a standalone chapter titled "Stormwater Management." No major rewrite is required, beyond deleting conflicting or supplemented sections. Second, and most importantly, are the benefits of a stand-alone chapter. A single, organized stormwater management chapter would save developers and City staff enormous amounts of time and money. Instead of searching through a 200-page document, both Staff and developers would need to look at only one chapter

of the code to determine what stormwater management standards must be met. Moreover, even first time builders, or developers new to Afton could easily integrate the performance standards, and use the simple tools in the MIDS ordinance to develop a state-of-the-art stormwater management system.

In summary, Afton will greatly benefit from adopting the MIDS performance standards as recommended by the MSCWMO and EOR review. The MIDS updates provide clear and effective performance standards, which the current code lacks. The new ordinance does not place an unreasonable burden on landowners or developers. Thanks to the Flexible Treatment Alternative, the updates may open sites to development that were previously unavailable as a result of site constraints. The recommended updates bring Afton to the state-of-the-art stormwater management and seamlessly integrate their approach with neighboring communities and other overlapping layers of authority. Finally, the updates improve the effectiveness and consistency of the code with a new stand-alone stormwater management chapter. All water resources in and around Afton will greatly benefit from the reduced runoff volumes and rates, and decrease pollution loads once MIDS is adopted and implemented.

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<sup>1</sup> Minnesota Dept. of Nat. Resources, Stormwater and Shoreline Best Management Practices for Public Water Accesses

<sup>2</sup> See "Minnesota Stormwater Manual - Communities that Adopted MIDS," at [http://stormwater.pca.state.mn.us/index.php/Community\\_Assistance\\_Package](http://stormwater.pca.state.mn.us/index.php/Community_Assistance_Package).

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<sup>1</sup> Cross references – Planning Commission, § 2-141 et seq.; natural resources and groundwater commission, § 2- 186 et seq.; utilities, Ch. 24.

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- I. Preserve the value of land and buildings throughout the community.
- J. Provide for the gradual and equitable elimination of those uses of land, buildings and structures, and of those buildings and structures which do not conform to the standards for the area in which they are located and which may adversely affect the development and the value of property in such areas.
- K. Provide for the enforcement of this article and to define and limit the powers and duties of the administrative officers and bodies responsible therefore.
- L. Protect and preserve economically viable agricultural land.
- M. Provide for the wise use and conservation of energy resources.
- N. Implement the City's Comprehensive Land Use Plan as prepared by the Planning Commission and adopted by the City Council.

**Sec. 12-54. Interpretation and construction.<sup>6</sup>**

- A. In the application of this article, the provisions thereof shall be interpreted to be the minimum requirements necessary to accomplish the general and specific purposes of this article.
- B. Nothing contained in this article shall be deemed to be a consent, license or permit to use any property or to locate, construct or maintain any building, structure or facility or to carry on any trade, industry, occupation or activity.
- C. Except as herein provided, the provisions of this article are cumulative and in addition to the provisions of other laws and ordinances, heretofore passed or which may be passed hereafter, governing the same subject matter as this article.

**Sec. 12-55. Definitions.<sup>7</sup>**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where expressly defined in another article or the context clearly indicates a different meaning:

*Accessory building or structure* means a subordinate building or structure which is located on the same lot as the main building and the purpose of which is incidental to that of the principal building.<sup>8</sup>

*Accessory use* means a use related or subordinate to the principal use of the same land.

*Administrator* means the City Zoning Administrator.

*Agricultural building* means a structure on agricultural land as defined in "agricultural, rural," of this section, designed, constructed, and used to house farm implements, livestock or agricultural produce or products used by the owner, lessee or sub-lessee of the building and members of their immediate families, their employees and persons engaged in the pickup or delivery of agricultural produce or products according to MN State Statutes 326B.103.

*Agriculture, rural* is a commercial food producing use on ten or more contiguous acres and is defined under a portion of Minnesota Agricultural Property Tax Law (Green Acres Law) M.S.A. § 273.111, subd. 6, Agricultural Property Tax: Real property shall be considered to be in agricultural use provided that annually it is devoted to the production for sale of livestock, dairy animals, dairy products, poultry and poultry products, fur bearing animals, horticultural and nursery stock, fruit of all kinds, vegetables, forage, grains, bees, apiary products and activities incidental thereto.

*Agriculture, suburban* is a noncommercial food producing use primarily intended for the use of the residents and usually on less than ten contiguous acres. Suburban agricultural uses may include production of crops such as fruit trees, shrubs, plants, flowers, vegetables and domestic pets.

*Animal impounding facility* means a not for profit organization whose primary purpose is to provide animal

<sup>6</sup> Code 1982, § 301.203

<sup>7</sup> Code 1982, § 301.301; Res. No. 1997-5, 2-11-97; Res. No. 1997-16, § 9, 6-17-97; Ord. No. 1997-19, 7-15-97; Ord. No. 02-2011, 7-19-2011. **Cross reference(s)--Definitions generally, § 1-2.**

<sup>8</sup> See Section 12-178.

impounding services and adoption of impounded animals for the City and adjacent communities. Animal impounding facilities which meet the criteria specified herein shall not be considered commercial kennels:

- A. More than 30 percent of the facility's income shall be derived from the impounding of stray animals.
- B. Less than ten percent of the facility's income may be derived from the sale of pet food, leashes, pet training, and other activities incidental to the impounding and adoption of animals.
- C. No breeding of animals for sale or any other purpose shall be done on the premises.
- D. Structure shall be completely enclosed to prevent noise from reaching adjacent properties. Structure shall be required to meet architectural standards required in this Code and City ordinances.
- E. Proper and healthful disposal of animal waste and dead animals shall be required.
- F. Lighting, fencing, screening, berming, etc., may be required by the City.
- G. Other conditions as may be deemed reasonable by the City.

*Animal unit* means a unit of measure used to compare differences in the production of animal wastes which has a standard as the amount of waste produced on a regular basis by a slaughter steer or heifer.

*Animals, domestic farm* means cattle, hogs, horses, bees, sheep, goats, chickens and other animals commonly kept for commercial food producing purposes.

*Animals, domestic pets* means dogs, cats, birds and similar animals commonly kept in a residence. Animals considered wild, exotic or non-domestic such as bears, lions, wolves, ocelots and similar animals shall not be considered domestic pets.

*Apartment* means a room or suite of rooms with cooking facilities designed to be occupied as a residency by a single family.

*Applicant* means the owner of land submitting an application under the provisions of this ordinance for a Stormwater Management Permit (SWMP) and/or Erosion and Sediment Control Plan (ESC Plan) to be issued by the community.

*Area, net developable*, means those lands within a development parcel remaining after the deletion of floodplains, wetlands, slopes greater than 13 percent and unbuildable easements or rights-of-way.

*Automobile repair* means the replacement of any part or repair of any part which does not require the removal of the engine head or pan, engine, transmission or differential; incidental body and fender work, minor painting and upholstery service when such service above stated is applied to passenger automobiles and trucks not in excess of 7,000 pounds gross vehicle weight.

*Automobile service station (gas station)* means a place where gasoline, kerosene, or any other motor fuel, lubricating oil, or grease for operating motor vehicles is offered for sale to the public and deliveries are made directly into motor vehicles. This definition includes greasing and oiling and the sale of automobile accessories on the premises. This definition also includes minor repairs, incidental body and fender work, painting or upholstery, replacement of parts and motor services to passenger automobiles and trucks not exceeding 1½ tons capacity. This definition shall not include major repair, rebuilding or reconditioning of engines, motor vehicles, or trailers; collision service, including body, frame or fender straightening or repair; overhaul, painting, or paint job; vehicle steam cleaning; or automatic car or vehicle washing devices.

*Automobile service uses* means those uses catering to the travelling public. These include auto and truck laundry, drive-in business, service station, repair garage, public garage, motel, hotel, seasonal produce sales, motor vehicle sales, trailer sales and rental, boat sales, rental services and restaurants.

*Basement* means that portion of a building that is partly or completely below grade (see "Story Above Grade").<sup>9</sup>

*Bed and breakfast* means a residence at which at most two rooms may be rented to a maximum of four persons to whom breakfast but no other meal may be served.

*Best Management Practices (BMP's)* means the most effective and practicable means of erosion prevention and sediment control, and water quality management practices that are the most effective and practicable means to control, prevent, and minimize degradation of surface water, including avoidance of impacts, construction-phasing,

<sup>9</sup> Ord 02-2011, 7/19/2011

minimizing the length of time soil areas are exposed, prohibitions, pollution prevention through good housekeeping, and other management practices published by state or designated area-wide planning agencies.

*Bluff* means a topographic feature such as a hill, cliff or embankment, except as provided in the Lower St. Croix bluffland and shoreland district, having the following characteristics:

- A. A slope of 18 percent or greater as measured over horizontal distances of 50 feet or more.
- B. The slope drains towards the water body, river or adjoining watershed channel.
- C. Part or all of the feature is located in the shoreland district.

*Bluff impact zone* means land located within 40 feet from a crest of a bluff.

*Bluffline* means a line along a crest of a slope connecting the points at which the slope, proceeding away from the waterbody, river or adjoining watershed channel becomes less than 18 percent and only includes slopes greater than 18 percent which drains toward the waterbody, river or adjoining watershed channel, except as provided in Section 12-579.

*Boardinghouse* means a building other than a motel or hotel where, for compensation and by prearrangement for definite periods, meals and/or sleeping rooms are provided for three or more unrelated persons, but not to exceed eight persons. Access to all boarding rooms shall be through the main entrance of the house; no boarding room shall have separate access.

*Buildable area* means all land having a slope of 13 percent or less having enough suitable soil for the installation of two on-site sewage treatment systems and that land having a slope between 13 and 18 percent meeting the requirements of Section 12-132(B)(1). Buildable area does not include floodplains, wetlands, ponds, lakes and other bodies of water; parks, scenic and conservation easements or other unbuildable easements; steep slopes or rights-of-way. Buildable area may include required building setbacks.<sup>10</sup>

*Building* means any structure, either temporary or permanent, having a roof, and used or built for the shelter or enclosure of any person, animal, or chattel of property of any kind. When any portion thereof is completely separated from every other part thereof by division walls from the ground up, and without openings, each portion of such building shall be deemed a separate building.

*Building code* means the Minnesota State Building Code.

*Building official* means the officer or other designated authority, certified by the state under M.S.A. § 16-861, charged with the administration and enforcement of the state building code, or his duly authorized representative. Also known as the City Building Official.

*Building setback line* means a line within a lot parallel to a public right-of-way line, a side or rear lot line, a bluffline or a high water mark or line, behind which buildings or structures must be placed.

*Business* means any occupation, employment, or enterprise wherein merchandise is exhibited or sold, or where services are offered for compensation.

*Carport* means an automobile shelter having one or more sides open.

*Certificate of occupancy.* See Section 12-87.

*Channel* means a natural or artificial watercourse with definite bed and banks to confine and conduct continuously or periodically flowing water, including but not limited to streams, rivers, creeks, ditches, drainage ways, canals, conduits, culverts, waterways, gullies, ravines or washes; and including any area adjacent thereto which is required to carry and discharge the regional flood.

*Channel flow* means that water which is flowing within the limits of the defined channel.

<sup>10</sup> Ord 1997-10, 5/19/1998

*Church* see *Places of Worship*<sup>11</sup>

*Club or lodge* means a nonprofit association of persons who are bona fide members paying annual dues, use of premises being restricted to members and their guests. The serving of food and meals on such premises is permissible providing adequate dining room space and kitchen facilities are available. Serving of alcoholic beverages to members and their guests shall be allowed, providing such serving is secondary and incidental to the operation of the dining room for the purpose of serving food and meals and providing further that such serving of alcoholic beverages is in compliance with the applicable federal, state, county and city laws.

*Commercial.* See Section 12-134 for permitted uses.

*Commercial recreation* means a bowling alley, cart track, pool hall, vehicle racing or amusement, dancehall, skiing, skating, firearms range, golf driving ranges, miniature golf or putting courses, golf training facilities and similar uses.

*Commercial school* means a nonpublic school, charging a fee for instruction, serving a maximum of 25 students per day with adequate on-site sewage treatment and off-street parking for such students.

*Common Plan of Development or Sale*, means a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.

*Comprehensive plan* means the policies, statements, goals and interrelated plans for private and public land and water use, transportation and community facilities, including recommendations for planned execution, documented in texts, ordinance and maps which constitute the guide for the future development of the community or any portion of the community.

*Conditionally Permitted Use* means the uses specifically designated in each zoning use district, which for their respective conduct, exercise or performance may require reasonable, unique or extraordinary conditions in such use district for the promotion or preservation of the general public welfare, health, convenience or safety therein and in the City, and therefore may be permitted only by a Conditional Use Permit.

*Construction Activity*, includes construction activity as defined in 40 CFR pt. 122.26(b)(14)(x) and small construction activity as defined in 40 CFR pt. 122.26(b)(15) and construction activity as defined by Minn. R. 709.0080, subp. 4. This includes a disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity may include clearing, grading, filling, and excavating. Construction activity includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one (1) acre or more. Construction activity does not include a disturbance to the land of less than five (5) acres for the purpose of routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. (NOTE – The community may wish to change this to a smaller disturbance area. A smaller area is more restrictive than the state/federal requirements, so it would be allowable for a local government.)

*Council* means the governing body of the City.

*Curb level* means the grade elevation established by the building official of the curb in front of the center of the building. Where no curb level has been established, the City shall determine a curb level or its equivalent for the purpose of this article.

*Decibel* means the unit of sound measured on the "A" weighing scale of a sound level meter, set on slow response, the weighing characteristics of which are specified in the latest revision of 'Standards on Sound Level Meters of the USA Standards Institute'.

*Disposal area, sewage* means that ground within the confines of the lot that does not contain buildings and has an elevation at least 80 inches above the highest known or calculated water table or bedrock formation and does not slope in excess of 13 percent.

<sup>11</sup> Ordinance 5-2005, 4/19/2005

*Dredging* means the process by which soils or other surface materials normally transported by surface water erosion into a body of water, are removed for the purpose of deepening the body of water.

*Drive-in* means any use where products and/or services are provided to the customer under conditions where the customer does not have to leave the car or where fast service to the automobile occupants is a service offered regardless of whether service is also provided within a building. A drive-in shall also include any restaurant, cafe, or other food and drink business which offers take home prepared food or food which can be carried outside of the building for human consumption; any and all restaurants commonly known as fast-food operations.

*Dwelling* means a building or one or more portions thereof occupied or intended to be occupied exclusively for human habitation, but not including rooms in motels, hotels, nursing homes, boardinghouses, nor trailers, tents, cabins, or trailer coaches.

*Dwelling unit* means a residential accommodation, which is arranged, designed, used or intended for use exclusively as living quarters for one family.

*Easement* means a grant by a property owner for the use of a strip of land by the public or any person for any specific purpose or purposes.

*Engineer* means the City Engineer.

*Erosion and Sediment Control Plan (ESC Plan.)* means a plan for projects disturbing less than one acre that is in compliance with the minimum requirements of the MSCWMO and VBWD. The plan identifies erosion prevention and sediment control practices, location and timelines for installation. The plan also includes responsible parties and timelines for inspection and maintenance.

*Erosion Prevention*, means measures employed to prevent erosion. Examples include but not limited to: soil stabilization practices, limited grading, mulch, temporary erosion protection or permanent cover, and construction phasing.

*Essential services (public utility uses)* means underground or overhead gas, electrical, steam or water distribution systems; collection, communication, supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, or other similar equipment, accessories and buildings in conjunction therewith.

*Exterior storage (includes open storage)* means the storage of goods, materials, equipment, manufactured products and similar items not fully enclosed by a building.

*Facilities for Institutionalized Persons* means housing for students, mentally ill, infirm, elderly, nurses, physically retarded, and similar housing of a specialized nature.

*Family* means an individual, or two or more persons each related by blood, marriage, adoption, or foster care arrangement living together as a single housekeeping unit, or a group of not more than four persons not so related, maintaining a common household, exclusive of usual servants.

*Farm.* (See also Agriculture, rural.)

*Feed lot* means the place of confined feeding of livestock or other animals for food, fur, pleasure, or resale purposes in yards, lots, pens, buildings, or other areas not normally used for pasture or crops and in which substantial amounts of manure or related other wastes may originate by reason of such feeding of animals.

*Fence* means a partition, structure, wall, or gate erected as a dividing marker, barrier, or enclosure.

*Fill* means any act by which soil, earth, sand, gravel, rock, or any similar material is deposited, placed, pushed or transported and shall include the conditions resulting therefrom.

*Final plat* means a drawing or map of an approved subdivision, meeting all requirements of the subdivision ordinance, and in such form as required by the City for purposes of recording. (See the subdivision ordinance, article VI of this chapter.)

*Flood.* See the floodplain ordinance, article V of this chapter.

*Floor area* means the gross area of the main floor of a residential building measured in square feet and not including

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an attached garage, breezeway, or the like.

*Floor area, gross* means the sum of the gross area of the various floors of a building measured in square feet. The basement floor area shall not be included, other than that area devoted to the same use as the principal use of the building.

*Floor area ratio* means the numerical value obtained by dividing the gross floor area of a building or buildings by the net area of the lot or parcel of land on which such buildings are located.

*Floor plan, general* means a graphic representation of the anticipated utilization of the floor area within a building or structure, but not necessarily as detailed as construction plans.

*Frontage* means that boundary of a lot which abuts an existing and improved public right-of-way.

*Garage, private* means a detached one-story accessory building, or portion of the principal building, including a carport, which is used primarily for the storing of passenger vehicles, trailers or farm trucks.

*Garage, repair* means a building or space for the commercial repair or maintenance of motor vehicles, but not including factory assembly of such vehicles, auto wrecking establishments, or junk yards.

*Garage sale* means an offering of goods to the public on a temporary basis by a person or organization at a sale site which is not principally used for the purpose of retail sales and where no other license or permit has been issued by the City authorizing such sales. As used in this article, the term "garage sale" encompasses yard sales, estate sales, moving sales, block sales, rummage sales, boutiques and related sales where secondhand or other goods are sold or displayed to members of the public on a temporary basis. "Garage sale" as used in this article does not include estate sales or auction sales, provided the number of sales in any calendar year does not exceed the limitations imposed by this article, and further provided that such sale is conducted by a licensed auctioneer.

*Garage, storage* means any premises, except those described as a private or public garage, used exclusively for the storage of power driven vehicles.

*Golf course.* A golf course, as permitted by this article, shall have a minimum parcel size of 40 acres for a nine-hole par three course and 100 acres for a regulation 18-hole course. Golf course does not include miniature golf or putting courses, driving ranges, golf training facilities or practice areas, except as an accessory to a golf course.

*Governing body* means the City Council.

*Grade Plane* means a reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet (1829 mm) from the building, between the building and a point 6 feet (1829 mm) from the building.<sup>12</sup>

*Height, Building* means the vertical distance from grade plane to the average height of the highest roof surface.<sup>13</sup>

*Home occupation* means an activity conducted in a dwelling unit for gain, profit or financial support by persons living in the dwelling unit.

*Hotel* means a building containing more than two guest rooms which lodging is provided with or without meals for compensation, and which is open to transient guests, and where no provision is made for cooking in any guest room, and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge during all times when any of the rooms are rented.

*Impervious Surface*, means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt, or gravel roads.

<sup>12</sup> Ord 02-2011, 7/19/2011

<sup>13</sup> Ord 02-2011, 7/19/2011

*Institutional housing see Facilities for Institutionalized Persons*

*Junkyard* means an area where discarded or salvaged materials are bought, sold, exchanged, stored, baled, cleaned, packed, disassembled, or handled, including but not limited to scrap iron and other metals, paper, rags, rubber products, bottles, and used building materials.

Storage of such material in conjunction with a permitted manufacturing process when within an enclosed area or building shall not be included. Such use shall not include organic waste or material.

*Kennel, commercial* means anyplace where four or more dogs over six months of age are boarded, bred, trained or offered for sale.

*Kennel, private* means anyplace where four or more dogs over six months of age are owned by any member or members of the household.

*Land alteration* means the excavation or grading of land involving movement of earth and materials in excess of 50 cubic yards.

*Land Disturbance* means any activity that result in a change or alteration in the existing ground cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, development, redevelopment, demolition, construction, reconstruction, clearing, grading, filling, stockpiling, excavation, and borrow pits. Routine vegetation management, and mill and overlay/resurfacing activities that do not alter the soil material beneath the pavement base, are not considered land disturbance. In addition, other maintenance activities such as catch basin and pipe repair/replacement, lighting, and pedestrian ramp improvements shall not be considered land disturbance for the purposes of determining permanent stormwater management requirements.

<sup>14</sup>*Land reclamation and land grading* means changing the grade of the land by depositing, removing, or moving material. Depositing, removing, or moving a total of 50 cubic yards or more and/or the disturbance of land area of 1,000 square feet or more of material per lot, either by hauling in and/or out or moving materials in, out, or within the lot, shall constitute land reclamation and land grading.

*Landscaping* means planting of trees, shrubs and ground covers.

<sup>15</sup>*Lean-to* means a structural element on a building that is open on three sides and has a roof that is attached to and supported by the building on one side and by posts on the other side.

*Loading space* means a space, accessible from a street, alley or way, in or outside of a building, for the use of trucks while loading and unloading merchandise or materials.

*Lodging room* means a room rented as sleeping and living quarters, but without cooking facilities. In a suite of rooms, without cooking facilities, each room which provides sleeping accommodations shall be counted as one lodging room. (See Boardinghouse.)

*Lot* means a parcel of land designated by metes and bounds, registered land survey, plat or other means, and which description is either recorded in the office of the county recorder or registrar of titles or used by the county treasurer or county assessor to separate such parcel from other lands for tax purposes.

*Lot area* means the area of a horizontal plane within the lot lines.

*Lot, buildable* means a lot which meets or exceeds all requirements of the City Land Use and Development Ordinances without the necessity of variances.

*Lot, corner* means a lot situated at the junction of, and abutting on, two or more intersecting streets; or a lot at the point of deflection in alignment of a single street, the interior angle of which does not exceed 135 degrees.

*Lot depth* means the horizontal distance between the frontage right-of-way line and rear lot line. On a corner lot, the side with the largest frontage is its depth, and the side with the lesser frontage is its width.

<sup>14</sup> Ord 8-2005, 5/17/2005

<sup>15</sup> Ord 05-2013, 3/19/2013

*Lot line* means the property line bounding a lot except when any portion of a lot extends into a public right-of-way or a proposed public right-of-way line of such public right-of-way shall be the lot line.

*Lot line, front* means that boundary of a lot which abuts an existing improved public right-of-way or an approved private road. In the case of a corner lot, it shall be the shortest dimension along a public street. If the dimensions of a corner lot are equal, the front lot line shall be designated by the owner and filed with the Zoning Administrator. In the case of a corner lot in a nonresidential area, the lot shall be deemed to have frontage on both streets.

*Lot line, rear* means that boundary of a lot which is opposite the front lot line. If the rear lot line is less than ten feet in length, or if the lot forms a point at the rear, the rear lot line shall be a line ten feet in length within the lot, parallel to, and at the maximum distance from the front lot line.

*Lot line, side* means any boundary of a lot which is not a front lot line or a rear lot line.

*Lot of record* means a platted lot or metes and bounds parcel which has been recorded in the office of the county register of deeds or registrar of titles prior to the adoption of the ordinance from which this article was derived.

*Lot, through* means any lot other than a corner lot which abuts more than one street. On a through lot, all the street lines shall be considered the front lines for applying this article.

*Lot width* means the horizontal distance between the side lot lines of a lot measured at the setback line.

*Major Subdivision* means all subdivisions not classified as minor subdivisions including, but not limited to, subdivisions of four (4) or more lots, or any size subdivision requiring any new street or extension of an existing street.

<sup>16</sup>*Manufactured home* means a structure transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein; except that the term includes any structure which meets all the requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary and complies with the standards established under M.S.A. § 327.32. *Manufactured home* excludes prefabricated homes and modular homes. No manufactured dwelling shall be moved in the City that does not meet the manufactured home building code as defined in M.S.A. § 327.32.

*Manufacturing and industrial, light*, includes the compounding, processing, packaging, treatment, or assembly of products and materials provided such use will not generate offensive odors, glare, smoke, dust, noise, vibrations, or other effects which would be damaging to the environment. Such uses include but are not limited to the following:

Lumberyards, machine shops, products assembly, sheet metal shops, non-retail food and beverages, printing, publishing, fabricated metal parts, appliances, clothing, textiles, medical or dental devices, wholesale greenhouse or nursery, truck terminals. No retail sales shall be permitted.

*Manufacturing, heavy* means all manufacturing, compounding, processing, packaging, treatment, or assembly of products and materials that may emit objectionable and offensive noise, odor or pollution beyond the lot on which the use is located. Such uses include but are not limited to the following: Sawmill, refineries, commercial feed lots, acid, cement, explosives, flour, feed and grain milling or storage, meat packing, slaughterhouses, coal or tar asphalt distillation, rendering of fat, grease, lard or tallow, alcoholic beverages, poisons, exterminating agents, glue or size, lime, gypsum, plaster of paris, tanneries, automobile parts, paper and paper products, glass, chemicals, crude oil and petroleum products including storage, electric power generation facilities, vinegar works, junkyard, auto reduction yard, foundry, forge, casting of metal products, rock, stone and cement products.

*Manure* means any solid or liquid containing animal excreta.

*Marina* means an area of concentrated small craft mooring, where ancillary facilities may be provided for some or all of such services as the sale, storage and repair of boats, fueling, sewage pumpout, boat launching, boat repair and boat storage; except that marina does not mean temporary docks associated with riparian residential development if the

<sup>16</sup> Ord 05-2013, 3/19/2013

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mooring area is of a size not to exceed the resource limitations of the site and the needs of the residents of the development.

*Mean flow level* means the average flow elevation of a stream or river computed as the midpoint between extreme low and extreme high water.

*Medical uses* means those uses concerned with the diagnosis, treatment, and care of human beings. These include, hospitals, dental services, medical services or clinic, nursing or convalescent home, orphans' home, rest home, sanitarium.

*Mezzanine* shall be considered a portion of the story below and shall not exceed one-third of the floor area of that room or space in which they are located. A mezzanine shall be open and unobstructed to the room in which such mezzanine is located except for walls not more than 42 inches (1067 mm) high, columns and posts.<sup>17</sup>

*Mining* means the extraction of sand, gravel, rock, soil, or other material from the land and the removal thereof from the site. For the purposes of this article, mining shall not include: The removal of materials associated with the construction of a building, the removal of excess materials in accordance with approved plats or utility and highway construction, minor agricultural and conservation items, and sod removal, except as further regulated herein. (See the City mining ordinance, article X of this chapter.)

*Minor Subdivision*, means any subdivision containing three (3) or less lots fronting on an existing street, not part of a common plan of development nor involving any new street or road or the extension of municipal facilities.

*Mobile home* means a single-family detached dwelling unit designed for year round occupancy, constructed at a factory or assembly plant and drawn to the site on a permanently attached undercarriage and wheels. "Mobile home" shall not include "trailer" as herein defined, nor shall it include manufactured homes which meet or exceed the requirements of the state manufactured home building code.

*Mobile home lot* means a parcel of land for the placement of a single mobile home for the exclusive use of the occupants of such mobile home.

*Mobile home park* means any site, lot, field, or tract of land under single ownership designed, maintained, or intended for the placement of two or more occupied mobile homes. "Mobile home park" shall include any building, structure, vehicle, or enclosure intended for use as part of the equipment of such mobile home park.

*Motor courts or motel* means a building or group of buildings, other than a hotel, used primarily as a temporary residence of a motorist.

*Motor freight terminal* means a building or area in which freight brought by motor truck is transferred and/or stored for movement by motor truck.

*Municipality* means the City of Afton.

*National Pollutant Discharge Elimination System (NPDES)*, means the program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the Clean Water Act (Sections 301, 318, 402, and 405) and United States Code of Federal Regulations Title 33, Sections 1317, 1328, 1342, and 1345.

*Noise* means one, or a group of loud, harsh, non-harmonious sounds or vibrations that are unpleasant and irritating to the ear.

*Noise, ambient*, means the all-encompassing noise associated with a given environment, being either a composite of sounds transmitted by any means from many sources near and far, or a single predominant source.

*Nominal Parcel* means a parcel not reduced by more than ten percent (10%) of its lot area due to right-of-way dedication or a perturbation in the rectangular survey system.

*Nonconforming use* means any lawful use of land or any lawful use of a building or structure existing on the effective date of the ordinance from which this article is derived, or any amendment thereto, which use does not conform with the regulations for the district in which it is located after the effective date of the ordinance from which this article is derived or amendment thereto.

*Noxious matter* means material which is capable of causing injury or is in any way harmful to living organisms or is

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capable of causing detrimental effect upon the health, the psychological, social or economic well being of human beings.

*Nursery, day* means a use where care is provided for three or more children under kindergarten age for periods of four hours or more per day for pay.

*Nursery, landscape* means a business growing and selling trees, flowering and decorative plants, and shrubs, and which may be conducted within a building or without, for the purpose of landscape construction.

*Nursing home* means a building with facilities for the care of children, the aged, infirm, or place of rest for those suffering bodily disorder. Such nursing home shall be licensed by the state board of health as provided for in M.S.A. § 144.50.

*Office uses* means those commercial activities that take place in office buildings, where goods are not produced, sold, or repaired. These include: banks, general offices, governmental office, insurance office, real estate office, travel agency or transportation ticket office, telephone exchange, utility office, radio broadcasting, and similar uses.

*Official control* means legislatively defined and enacted policies, standards, precise detailed maps, and other criteria, all of which control the physical development of the City, or any part thereof, or any detail thereof, and the means of translating into ordinances all or any part of the general objectives of the comprehensive plan. Such official controls may include, but are not limited to ordinances establishing zoning, subdivision controls, site plan regulations, sanitary codes, building codes, housing codes and official maps.

*Old village* means the area originally platted as the Village of Afton.

*Open sales lot* means land devoted to the display of goods for sale, rent, lease, or trade where such goods are not enclosed within a building.

*Open storage* means storage of any material outside of a building.

*Other Specially Permitted Use* means a land use or development allowed with appropriate conditions as determined by the Zoning Administrator and as specifically set forth in each article of this chapter.

*Owner* includes all persons interested in a property as fee simple owner, life estate holder, encumbrancer or otherwise.

*Owner*, means the person or party possessing the title of the land on which the construction activities will occur; or if the construction activity is for a lease, easement, or mineral rights license holder, the party or individual identified as the lease, easement or mineral rights license holder; or the contracting government agency responsible for the construction activity.

*Parking space* means a suitably surfaced and permanently maintained area on privately owned property either within or outside of a building of sufficient size.

*Performance standards* means the minimum development standards as adopted by the City Council and on file in the office of the Zoning Administrator. Such standards shall also be filed with the City Clerk.

*Permittee*, means a person or persons, firm, or governmental agency or other entity that signs the application submitted to the Town and is responsible for compliance with the terms and conditions of the permit.

*Person* means an individual, political and corporate bodies, and partnerships and other unincorporated associations.

*Places of Worship* means a building, together with its accessory buildings and uses, where persons regularly assemble for religious worship and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.<sup>17</sup>

*Planning Commission* means the duly appointed planning and zoning commission of the City.

*Predevelopment State*, means the rate and volume of stormwater is unchanged. The calculation of predevelopment is based on native soils and vegetation.

<sup>17</sup> Ord 02-2011, 7/19/2011

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*Principal structure* or use means one which determines the predominant use as contrasted to accessory use or structure.

*Private street* means a street serving as vehicular access to two or more parcels of land which is not dedicated to the public but which is owned by one or more private parties.

*Property line* means the legal boundaries of a parcel of property which may also coincide with a right-of-way line of a road, cartway, and the like.

*Protective covenant* means a contract entered into between private parties which constitutes a restriction of the use of a particular parcel of property.

*Public land* means land owned and/or operated by a governmental unit including school districts.

*Publication* means an official notice as prescribed by state statute.

*Public Waters* means all water basins and watercourses that are described in Minn. Stat. § 103G.005 subd. 15.

*Race track* means any area where two or more animals or power driven vehicles are raced for profit or pleasure.

*Recreation equipment (in residential districts)* means play apparatus such as swing sets and slides; sandboxes; poles for nets; unoccupied boats, recreational vehicles and trailers not exceeding 25 feet in length; picnic tables, lawn chairs, barbecue stands, and similar equipment or structures; but not including tree houses, swimming pools, playhouses exceeding 25 square feet of floor area, or sheds utilized for storage of equipment.

*Recreation vehicle* means any vehicle or structure designed and used for temporary, seasonal human living quarters which meets all of the following qualifications:

- A. Is not used as the permanent residence of the owner or occupant;
- B. Is used for temporary living quarters by the owner or occupant while engaged in recreation or vacation activities;
- C. Is towed or self-propelled on public streets or highways incidental to such recreation or vacation activities;
- D. Examples of such vehicles include van campers, tent camping trailers, self-contained travel trailers, pick-up campers, camping buses, and self-contained, self-propelled truck chassis mounted vehicles providing living accommodations.

*Recreation vehicle parks* means a park, court, campsite, lot, parcel, or tract of land designed, maintained, or intended for the purpose of supplying the location or accommodations for any recreation vehicles as defined herein, and upon which such recreation vehicles are parked. The term "recreation vehicle park" shall include all buildings used or intended for use as part of the equipment thereof, whether or not a charge is made for the use of the park and its facilities.

*Redevelopment*, means any development that is not considered new development.

*Reduction yard* means a lot or yard where one or more unlicensed motor vehicles, or the remains thereof, are kept for the purpose of dismantling, wrecking, crushing, repairing, rebuilding, sale of parts, sale as scrap, storage, or abandonment. (See: Junkyard.)

*Registered land survey* means a survey map of registered land designed to simplify a complicated metes and bounds description, designating the same into a tract or tracts of a Registered Land Survey Number. See M.S.A. § 508.47. A registered land survey shall not be used as a means to subdivide property.

*Research* means medical, chemical, electrical, metallurgical, or other similar research and quality control, conducted in accordance with the provisions of this article.

*Residence, attached dwelling* means a dwelling which is joined to another dwelling at one or more sides by a party wall or walls.

*Residence, detached dwelling* means a dwelling which is entirely surrounded by open space on the same lot.

*Residence, duplex* means a residential building containing two dwelling units.

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*Residence, multiple dwelling* means a residential building, or portion of a building, containing three or more dwelling units served by a common entrance.

*Residence, single-family dwelling* means a residential building containing one detached dwelling unit.

*Residence, townhouse* means a residential building containing two or more attached dwelling units, each unit so oriented as to have all exits directly to the outside.

*Residential district*. See Section 12-134 for permitted uses.

*Resort* means any structure or group of structures containing more than two dwelling units or separate living quarters designed or intended to serve as seasonal or temporary dwellings on a rental or lease basis for profit with the primary purpose of such structures being recreational in nature. Uses may include a grocery for guests only, fish cleaning house, marine service, boat landing and rental, recreational area and equipment, and similar uses normally associated with a resort operation.

*Restaurant* means any establishment having appropriate facilities for the serving of food to the general public.

*Restrictive covenant*. See Protective covenant.

*Retail business uses* means stores and shops selling personal services or goods for final consumption.

*Retain*, means manage stormwater on site using a low-impact development approach so that the rate and volume of predevelopment stormwater reaching receiving waters is unchanged.

*Riding stable* means the training and riding of horses for private or public use on lots of 20 or more acres that require indoor riding structures of appropriate size. This may also include boarding of horses, training of horses and riders, and similar uses and activities.

*Roadside sales stand* means a structure used only for the display and sale of products with no space for customers within the structure, on a seasonal basis.

*Safeguard* means a facility or device or any disposal system or combination thereof designed to prevent the escape or movement of any manure, or solution thereof, or other waste such as uneaten food, without limitation, from the place of deposit or keeping thereof under such conditions that pollution of any waters of the state otherwise might result therefrom.

*Sales, Seasonal Agricultural*. A business selling agricultural goods of a temporary or seasonal nature. Such a business is limited to agricultural goods actually raised on land owned or leased by the business operator. Such sales activities are<sup>18</sup> limited to the following period: Saturdays from 7:00 a.m. to noon, from May 15<sup>th</sup> to November 1<sup>st</sup>. Such sales activities shall be located only in the VHS-C District on private property with permission of the landowner or upon public property with the permission of the City, or both.<sup>19</sup>

*Saturated Soil*, means the highest seasonal elevation in the soil that is in a reduced chemical state because of soil voids being filled with water. Saturated soil is evidenced by the presence of redoximorphic features or other information.

*Sediment Control*, means methods employed to prevent sediment from leaving the site. Sediment control practices include: silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, bio rolls, rock logs, compost logs, storm drain inlet protection, and temporary or permanent sedimentation basins.

*Scenic easement* means an interest in land, less than fee title, that limits the use of the land for the purpose of protecting the scenic, recreational and natural characteristics. Unless otherwise expressly and specifically provided by mutual agreement of the parties, the easement shall be: Perpetually held for the benefit of the public; binding on the holder of the servient estate, his heirs, successors or assigns. Unless specifically provided by the parties, no such easement shall give the holder or any beneficiary the right to enter on the land except for enforcement of the easement.

<sup>18</sup> Ordinance 5-2005, 4/19/2005

<sup>19</sup> Amendment 02-2009, 4/21/2009

*Screening* means and includes earth mounds, berms or ground forms; fences and walls; landscaping (plant materials) or landscaped fixtures, such as timbers; used in combination or singularly, so as to block direct visual access to an object throughout the year. In article IV of this chapter, screening does not include fences and walls.

*Setback* means the minimum horizontal distance between a structure, sewage treatment system, or other facility and a street right-of-way, ordinary high water level mark, sewage treatment system, bluffline, road, highway, property line or other facility.

*Shelter, fallout or blast* means a structure or portion of a structure intended to provide protection to human life during periods of danger from nuclear fallout, blasts, air raids, storms, or other emergencies.

*Shopping center* means any grouping of two or more principal retail uses whether on a single lot or on abutting lots under multiple or single ownership.

*Sign* means a notice which directs attention to a product, place, activity, person, institution, organization, or business for public view.<sup>20</sup>

*Slope* means rise or fall in land surface, expressed as the ratio h:v in which 'h' is horizontal distance and 'v' is vertical rise or fall of the land surface. Equivalently, slope may be expressed as a percentage, calculated to be 100 times 'v' divided by 'h'.<sup>21</sup>

*Small Construction Activity* means as defined in 40 CFR part 122.26(b)(15). Small construction activities include clearing, grading and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five (5) acres.

*St. Croix Riverway* means all lands and public waters within the riverway boundary subject to the standards and criteria for the Lower Saint Croix National Scenic Riverway in Minnesota.

*Stabilized* means exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, erosion control blanket, mats or other material that prevents erosion from occurring. Grass, agricultural crop or other seeding alone is not stabilization. Mulch materials must achieve approximately 90 percent ground coverage (typically 2 ton/acre).

*Stormwater* means as defined under Minn. R. 7077.0105, subp. 41(b), and includes precipitation runoff, stormwater runoff, snowmelt runoff, and any other surface runoff and drainage.

*Stormwater Facility* means a stationary and permanent BMP that is designed, constructed and operated to prevent or reduce the discharge of pollutants in stormwater.

*Stormwater Pollution Prevention Plan (SWPPP)* means a plan for stormwater discharge that includes erosion prevention BMPs, sediment control BMPs and permanent stormwater management systems that, when implemented, will decrease soil erosion on a parcel of land and decrease off-site nonpoint pollution.

*Story* means that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. A basement shall be counted as a story. A mezzanine shall not be counted as a story.<sup>22</sup>

*Story Above Grade* means any story having its finished floor surface entirely above grade plane, except that a basement shall be considered as a story above grade plane where the finished surface of the floor above the basement is:

1. More than 6 feet (1829 mm) above grade plane.
2. More than 6 feet (1829 mm) above the finished ground level for more than 50 percent of the total building perimeter.
3. More than 12 feet (3658 mm) above the finished ground level at any point.<sup>23</sup>

<sup>20</sup> Ord 1997-12, 8/23/98

<sup>21</sup> Repealed Ord 02-2008; Ord 01-2014, 5/20/2014

<sup>22</sup> Ord 02-2011, 7/19/2011

<sup>23</sup> Ord 02-2011, 7/19/2011

*Storage site* means any tract or parcel of land, including any constructed storage platform, tank, or other artificial or natural area or containment facility where manure is stored or kept and which is so located that the escape or movement of the manure or a solution thereof from the storage site into the underlying ground might result in pollution of any waters.

*Street* means a public right-of-way which affords a primary means of access to abutting property, and shall also include avenue, highway, road, or way.

*Street, collector* means a street which serves or is designed to serve as a trafficway for a neighborhood or as a feeder to a major road.

*Street, intermediate or minor arterial* means a street which serves or is designed to serve heavy flows of traffic and which is used primarily as a route for traffic between communities and/or other heavy traffic generating areas.

*Street, local* means a street intended to serve primarily as an access to abutting properties.

*Street pavement* means the wearing of exposed surface of the roadway, used by vehicular traffic.

*Street width* means the width of the right-of-way, measured at right angles to the centerline of the street.

*Structural alteration* means any change, other than incidental repairs, which would affect the supporting members of a building, such as bearing walls, columns, beams, girders, or foundations.

*Structure* means anything constructed or erected on the ground, or attached to something having a location on the ground.

*Subdivision* means the division of a parcel of land into two or more lots or parcels, for the purpose of transfer of ownership or building development. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

*Substandard building, structure or lot* means any building, structure or lot lawfully existing on the effective date of the ordinance from which this article is derived or any amendment thereto which building, structure or lot does not conform with the regulations, including dimensional standards, for the district in which it is located after the effective date of the ordinance from which this article is derived or amendment thereto.

*Supper club* means a building with facilities for the preparation and serving of meals and where meals are regularly served at tables to the general public. The building must be of sufficient size and design to permit the serving of meals to not less than 50 guests at one time. Intoxicating liquors may be sold on-sale and live entertainment and/or dancing shall be permitted.

*Surface Water(s)* means all streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, waterways, watercourses, and irrigation systems whether natural or artificial, public or private, except that surface waters do not include treatment basins or ponds that were constructed from upland.

*Tavern or bar* means a building with facilities for the serving of 3.2 beer, wine, set-ups and short order foods.

*Temporary Erosion Protection* means methods employed to prevent erosion during construction activities. Examples of temporary erosion protection include: straw, wood fiber blanket, wood chips, vegetation, mulch and rolled erosion control products.

*Trailer* means any vehicle or structure designed and used for human living quarters which meets all of the following qualifications:

1. Is not used as the residence of the owner or occupant;
2. Is used for temporary living quarters by the owner or occupant while engaged in recreational or vacation activities;
3. Is towed or otherwise transported, by its own or by other motive power, on the public streets or highways incidental to such recreational or vacation activities.
4. *The term "trailer"* shall not include "mobile home." The term "trailer" shall include, but not be limited to campers, camper tents, house trailers, camping trailers, travel trailers, tent trailers, pick-up campers, camping buses, and any other self-propelled vehicle constructed to provide living accommodations.

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*Trailer park* means a park, court, campsite, lot, parcel, or tract of land designed, maintained, or intended for the purpose of supplying the temporary location or accommodations for any trailers, as defined herein, and upon which such trailers are parked. The term "trailer park" shall include all buildings used or intended for use as part of the equipment thereof whether or not a charge is made for the use of the park and its facilities.

*Transportation terminal* means truck, taxi, air, train, bus, and mass transit terminal and storage area, including minor freight (solid and liquid) terminal, but only if accessory to a principal use permitted in industrial zoning districts.

*Truck stop* means a motor fuel station devoted principally to the needs of tractor trailer units and trucks and which may include eating and/or sleeping facilities.

*Underground Waters (Groundwater)*, means water contained below the surface of the earth in the saturated zone including, without limitation, all waters whether under confined, unconfined, or perched conditions, in near surface unconsolidated sediment or regolith, or in rock formations deeper underground. The term groundwater shall be synonymous with underground water.

*Use* means the purpose or activity for which the land or building thereon is designated, arranged, or intended, or for which it is occupied, utilized, or maintained.

*Use, accessory* means a use subordinate to and serving the principal use or structure on the same lot and customarily incidental thereto.

*Use, nonconforming* means use of land, buildings, or structures legally existing at the time of adoption of the ordinance from which this article was derived that does not comply with all the regulations of this article or any amendments hereto governing the zoning district in which such use is located. See Section 12-57.

*Use, open* means the use of a lot without a building or including a building incidental to the open use.

*Use, permitted* means a public or private use which of itself conforms with the purposes, objectives, requirements, regulations and performance standards of a particular district.

*Use, principal* means the main use of land or buildings as distinguished from subordinate or accessory uses. A "principal use" may be either permitted, conditional, or special.

*Variance* means a modification or variation of the strict provisions of this article as applied to a specific piece of property in order to provide relief for a property owner because of practical difficulties imposed upon the property by this article. A variance shall normally be limited to height, bulk, density and yard requirements. A modification in the allowable uses within a district shall not be considered a variance. (See Section 12-77)

*Vehicle repair* means general repair, rebuilding or reconditioning of engines, motor vehicles or trailers, including body work, framework, welding, and major painting services.

*Veterinary* means those uses concerned with the diagnosis, treatment, and medical care of animals, including animal or pet hospitals.

*Warehousing* means the storage of materials or equipment within an enclosed building as a principal use, including packing and crating.

*Waterfront uses, residential* means boat docks and storage, fish house, fish cleaning, water recreation equipment, and other uses normally incidental to a lakeshore residence provided such uses are for the exclusive use of the occupants and nonpaying guests.

*Wetlands* means those lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. A wetland has one or more of the following attributes:

1. At least periodically, the land supports predominantly wetland vegetation. Wetland vegetation is listed in the National List of Plant Species that Occur in Wetlands: North Central (Region 3), Fish and Wildlife Service, May, 1988, or later revisions.
2. The substrata is predominantly undrained hydric soil. Hydric soils are those which have been exposed to water for long enough periods of time to experience oxygen depletion. Hydric soils are listed in Hydric

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Soils in the United States, Soil Conservation Service, October, 1985, or later revisions.  
3. Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.<sup>24</sup>

*Wetlands* in this City are identified in the Afton Water Resources Inventory, Washington County Soil and Water Conservation District, January 1983, or later revisions.

*Wholesaling* means the selling of goods, equipment, and materials by bulk to another business that in turn sells to the final customer.

*Yard* means the open space on an occupied lot which is not covered by any structure.

*Yard, depth of rear yard* means the horizontal distance between the rear building line and the rear lot line.

*Yard, front* means a yard extending across the front of the lot between the inner side yard lines and lying between the front line of the lot and the nearest line of the building.

*Yard, rear* means a yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of the building.

*Yard, required* means a yard area which may not be built on or covered by structures because of the dimensional setbacks for such structures within the zoning district.

*Yard, side* means a yard between the side lines of the lot and the nearest building line.

*Zoning district or district* means an area or areas within the City in which the regulations and requirements of this article are uniform.

<sup>24</sup> Ord 02-2011, 7/26/2011

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percent shall require an effective reduction of the impact of such impervious surface to the equivalent of 25 or 35 percent impervious surface site coverage through the use of Low Impact Design (LID) methods and the completion and acceptance by the City Engineer, Washington Conservation District (WCD) engineer, and Valley Branch Watershed Organization (VBWD) engineer of the Impervious Surface Worksheet, as set forth in the City of Afton Best Management Practice (BMP) and Storm water Guide.<sup>75</sup>

B. *Exceptions to minimum area, height, and other requirements:*

1. For the purpose of this article, the term "existing lot" means a lot or parcel of land which was of record as a separate lot or parcel in the office of the county recorder, on or before the adoption date of the ordinance from which this article was derived, except as provided for in Subsection (B)(2).
2. Except in the VHS-R and VHS-C zoning districts, any such lot or parcel created in accordance with the City subdivision ordinance, article VI of this chapter, which contains at least 2 1/2 acres of buildable or net developable area as defined by this article and has at least 60 percent of the required frontage on an improved public street for the zoning district in which it is located shall be considered buildable provided the lot or parcel can comply with all other requirements of this article, including Subsection (B)(3) of this section.<sup>76</sup>
3. If in a group of two or more contiguous lots or parcels of land owned or controlled by the same person, any individual lot or parcel does not meet the full width or area requirements of this article, such individual lot or parcel cannot be considered as a separate parcel of land for purposes of sale or development, but must be combined with adjacent lots or parcels under the same ownership so that the combination of lots or parcels will equal one or more parcels of land each meeting the full lot width and area requirements of this Article.
4. Subdivision of lots. Any lot or parcel of land subdivided by any means after the effective date of the ordinance from which this was derived for purposes of erecting a structure, must be approved as required in the subdivision ordinance, Article VI of this chapter.
5. Lake and stream frontage lots. All lots having frontage on a water body or lying within a shoreland management area shall be subject to the regulations of the shoreland management ordinance, Article III of this chapter.
6. Lots in floodplains. All lots in a designated floodplain shall be subject to the regulations of the floodplain ordinance, Article V of this chapter.
7. Through or double frontage lots. Such lots are those as defined in the subdivision ordinance, Article VI of this chapter and include lake and stream frontage lots having a public street as one lot line and a water body as the opposite lot line. The Zoning Administrator shall determine what shall be considered the front, side and rear yards for application of the provisions of this.
8. Reduction of required area. No lot or parcel shall be reduced in area or dimension so as to make such lot or parcel less than the minimum required by this Article; and if the existing lot or parcel is less than the minimum required, it shall not be further reduced.
9. Minimum area requirements for lots. Since no public sanitary sewer is planned to be installed in the City, all single and two family homes shall demonstrate suitable soil conditions for a minimum on-site sewage treatment area of one acre per dwelling unit. A building permit shall not be issued for a lot which does not either meet the minimum acreage of acceptable soils for on-site sewage treatment or does not have enough acceptable soils within the lot or under legal contract to construct at least two complete septic/drainfield treatment systems.
10. All on-site sewage treatment systems shall be maintained in conformity with the regulations of the sanitary sewer disposal ordinance, Article IX of this chapter. Where there is evidence of the system failing to function properly, failing to treat sewage adequately, septic tank effluent percolating from the ground or where there is evidence a failing system is posing a hazard to the public health, the system shall be corrected and conform to these standards within 30 days.<sup>77</sup>
11. Land having a slope between 13 percent and 18 percent, outside of the Lower St. Croix bluffland district, may be included in the required buildable area of a lot or parcel if the Washington County Soil and Water Conservation District has determined that:
  - a. The soils on the land will support the structures, on-site sewage treatment systems and driveways without significant risk of erosion, groundwater contamination or damage to structures thereafter constructed; and,

<sup>75</sup> Ordinance 05-2009, 6/16/2009

<sup>76</sup> Ord 1997-19, 4/20/99, MS added

<sup>77</sup> Ord 1997-10, 5/19/98

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- b. The development of this land will not damage heavily wooded areas or other significant natural features; and,
  - c. All structures, including driveways, are set back at least 40 feet from the crest of any 18 percent slope; and,
  - d. There is at least one acre of contiguous land with a slope of less than 13 percent that is suitable for the required on-site sewage treatment systems and the driveways.
12. Wherever in this article a parcel or lot area of five or more acres is required, except for the subdivision or creation of new parcels or lots, that requirement may be met by a "nominal parcel" as defined in the Article. All new parcels or subdivision of existing parcels must meet all of the requirements of this Article"
  13. The maximum impervious surface coverage in the I1-A, I1-B and I1-C<sup>79</sup> zoning districts may be increased up to 35 percent, provided that the storm water impact and runoff from the site, both as to volume and rate, is equivalent of a surface coverage of 25 percent. The method and completion of reduction shall be approved by the City Engineer, Washington County Engineer and Valley Branch Watershed District.<sup>80</sup>
- C. The following additional engineering and design guidelines are to be met for any use within the agricultural, except for agricultural activities and residences, rural residential, except for residences and agricultural activities, and industrial zoning districts:
1. The applicant shall also submit a plan for the entire site, showing what low-impact design methods are used. The applicant shall work directly with the City to develop the plan, using low-impact design methods, as defined in the Minnesota Stormwater Manual and the Middle St. Croix Water Management Organization (MSCWMO) and Valley Branch Watershed District (VBWD). The plan shall be reviewed and approved by both the City and the MSCWMO or VBWD prior to any building permits being issued.
  2. The applicant must identify<sup>81</sup> in the development agreement all areas where there is any fractured bedrock. The City may require, as part of the study, a geotechnical analysis including soil borings taken, at a minimum radius of every 150 feet. In addition, any fractured bedrock found within 150 feet of any area of construction, must be covered with a minimum of 5 feet of soil to reduce the potential for any pollutants reaching the ground water.
  3. The applicant may be asked, as a condition, to install a time dosing device to control rate of the flow of effluents from the septic system.
  4. The development agreement must address traffic concerns, and any improvements needed to accommodate additional traffic, as a result of the use.

<sup>78</sup> Repealed Ordinance 02-2008

<sup>79</sup> Ordinance 01-2009, 1/20/2009

<sup>80</sup> Ordinance 09-2008, 9/16/2008

<sup>81</sup> Amendment 02-2009, 4/21/2009

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Sanitarium, convalescent home rest home, nursing home or institution	1 space for each 6 beds, for which accommodations are offered, plus 1 space for each 2 employees on maximum shift.
Retail store	4.5 spaces for each 1000 square feet of gross floor area.
Restaurants, cafes, bars, taverns or supper clubs	1 space for each 2 1/2 seats, based on capacity design.
Medical or dental clinic	6 spaces per doctor or dentist.
Industrial, warehouse, storage, whole-sale, furniture store, handling of bulk goods	1 space for each 2 employees on maximum shift or 1 for each 2,000 square feet of gross floor area, whichever is larger.
Marinas	1 1/2 spaces per slip plus 1 space per employee and a minimum of 20 12-foot by 25-foot trailer stalls.
Uses not specifically noted	As determined by the Planning Commission.

**Sec. 12-197. Off-street loading areas.<sup>169</sup>**

- A. *Location.* All required loading berths shall be off-street and shall be located on the same lot as the building or use to be served. A loading berth shall be located at least 25 feet from the intersection of two street rights-of-way and at least 50 feet from a residential zoning district, unless within a building. Loading berths shall be located to the rear of the structure.
- B. *Size.* Unless otherwise specified in this article, a required loading berth shall be not less than 12 feet in width, 50 feet in length and 14 feet in height, exclusive of aisle and maneuvering space.
- C. *Access.* Each required loading berth shall be located with appropriate means of vehicular access to a street or public alley in a manner that will least interfere with traffic.
- D. *Surfacing.* All loading berths and accessways shall be improved with a hard surface to control the dust and drainage before occupancy of the building.
- E. *Accessory use.* Any space allocated as a loading berth or maneuvering area so as to comply with the terms of this article shall not be used for the storage of goods, inoperable vehicles or be included as a part of the space requirements to meet the off-street parking area.
- F. *Deliveries.* Any structure erected or substantially altered for a use that requires the receipt or distribution of materials or merchandise by trucks or similar vehicles, shall provide off-street loading space as required for a new structure.

**Sec. 12-198. Traffic control.<sup>170</sup>**

- A. The traffic generated by any use shall be controlled so as to prevent:
  - 1. Congestion of the public streets;
  - 2. Traffic hazards; and
  - 3. Excessive traffic through residential areas, particularly truck traffic.
- B. Internal traffic shall be so regulated as to ensure its safe and orderly flow. Traffic into and out of commercial and industrial areas shall in all cases be forward moving with no backing into streets.
- C. On any corner lot, nothing shall be placed or allowed to grow in such a manner as to impede vision between a height of 2 1/2 and ten feet above the centerline grades of the intersecting streets within 15 feet of the intersecting street right-of-way lines. This restriction shall also apply to the planting of crops and to yard grades that result in elevations that impede vision within 15 feet of any intersecting right-of-way lines.

<sup>169</sup> Code 1982, § 301.714

<sup>170</sup> Cross reference(s)--Traffic and vehicles, Ch. 22.; Code 1982, § 301.715

**Sec. 12-214. Mining.**<sup>224</sup>

All mining and related uses of land, including but not limited to the excavation, removal or storage of sand, gravel, rock, clay and other natural deposits, are subject to the adopted standards, codes, ordinances and regulations of the City related to such activities and all regulations in the mining ordinance, article X of this chapter.<sup>225</sup>

**Sec. 12-215. Land reclamation and land grading.**<sup>226</sup>

- A. Within this article, land reclamation and land grading is the depositing, removing, and/or moving of material so as to alter the topography of a lot.
1. Land reclamation and land grading shall be permitted only by a Conditional Use Permit in all zoning districts.
  2. The depositing, moving and/or removing of more than 50 cubic yards and/or the disturbance of land area of 1,000 square feet or more of material per lot, either by hauling in and/or out or regrading<sup>227</sup> of an area shall constitute land reclamation and land grading.
  3. Land reclamation and land grading in floodplains shall be in accordance with the floodplain ordinance, Article V of this chapter.
  4. The permit shall include as a condition thereof a finished grading plan that will not adversely affect the adjacent land and as conditions thereof shall regulate the type of material permitted, program for rodent control, plan for fire control, and general maintenance of the site, controls of vehicular ingress and egress, drainage and control of material disburser from wind or hauling of material to or from the site, and erosion control and stabilization plans for the deposited material or excavated area..
  5. In addition to a finished grading plan, a ~~drainage-stormwater pollution prevention plan (SWPPP)~~, and ~~an erosion and sediment control plan (ESCP)~~ may be required, if in the judgment<sup>228</sup> of the Zoning Administrator, significant soil erosion, vegetation destruction, ~~or drainage damage, or pollution from stormwater~~ may occur during ~~or after~~ the land alteration process. These plans shall achieve at least the minimum standards described in Chapter 13.
  6. The finished grading plan and ~~drainage-stormwater pollution prevention~~ and erosion control plans shall be reviewed by the City Engineer and may be reviewed, as deemed necessary by the Zoning Administrator or the City Council, by the Minnesota Department of Natural Resources ~~and the appropriate Watershed Management Organization and/or District.~~
  7. The Zoning Administrator may require the applicant to post a bond or other financial guarantee to ensure compliance with the permit.

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- B. No person, county, municipality or other political subdivision shall appropriate or use any public water, surface or underground, without first obtaining a use of public waters permit and written permission of the commissioner of the division of waters, soils and minerals of the state department of natural resources. For purposes of these regulations, public waters shall be defined in M.S.A. ch. 103G, and as follows:
1. Public waters shall include all lakes, ponds, swamps, streams, drainageways, floodplains, floodways, natural watercourses, underground water resources and similar features involving directly or indirectly the use of water within the City.
  2. No public water area shall be filled, partially filled, dredged, altered by grading, mining or otherwise utilized or disturbed in any manner without first securing a public waters use permit from the state department of natural resources and the U.S. Army Corps of Engineers, and a grading permit from the City. Such grading permits shall be reviewed and approved by the department of natural resources, the City Engineer, the watershed district, the Planning Commission and the City Council.
- C. A land reclamation and land grading permit is not required for the following activities:
1. Grading activities associated with a construction project provided a building permit is used and there is a minimal amount of land disturbance; and
  2. Subdivisions that have received preliminary plat approval; and
  3. Driveways permitted in conjunction with a driveway permit; and
  4. Cemetery graves; and
  5. Refuse disposal sites controlled by other regulations; and
  6. Excavations for wells or tunnels for utilities; and
  7. Mining, quarrying, excavating, processing or stockpiling of sand, gravel, rock, aggregate or clay where regulated by the mining ordinance, article X of this chapter; and
  8. Exploratory excavations under the direction of soil engineers or engineering geologists.
- D. Grading of Slopes
1. No slopes of 18% or greater shall be disturbed.
  2. Within the Lower St. Croix River Bluffland and Shoreland Management District, no slopes of 12% or greater shall be disturbed (See Sec. 12-702).
  3. Additional grading and filling requirements are applicable if in Shoreland Management District (See Sec. 12-407).
- E. The work for which a land reclamation and land grading permit is used shall commence within 180 days after the date of permit issuance unless an application for an extension of 90 days has been submitted to and approved by the Zoning Administrator.
- F. Permits issued by the Zoning Administrator under the provisions of this section shall expire and be null and void if the work authorized by a permit is abandoned or suspended for a period of 180 days or if work is not commenced or completed within the time limitations of Subsection (E) of this section.

### Sec. 12-216. Soil conservation plans.<sup>229</sup>

A. On any development or land reclamation project with more than one acre of soil, drainage patterns or

<sup>221</sup> Code 1982, § 301.733

<sup>222</sup> Code 1982, § 301.734

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vegetation cover that would be either destroyed or disturbed by the construction process, the Zoning Administrator may require the owner or contractor on such project to request the soil conservation district to prepare a soil conservation plan to protect the soil from erosion or sheet run-off for the duration of the construction project and/or over the long term occupancy of the site.

- B. The Zoning Administrator may require a soil conservation plan on projects that disturb less than one acre of soil, drainage patterns or vegetation cover if, in the judgment of the Zoning Administrator, significant soil erosion, vegetation destruction or drainage damage may occur during the construction process.
- C. A soil conservation plan shall consist of specific written recommendations on how to protect the soil, vegetation and drainage patterns during the construction process. The Zoning Administrator may require construction fencing along the edges of the construction area.
- D. Where construction of a structure is proposed on slopes of 13 percent to 18 percent, the Zoning Administrator shall require the applicant to provide a grading and erosion control plan and to obtain an Administrative Permit.

<sup>224</sup> Code 1982, § 301.729, Cross reference(s)--Mining, § 12-2301 et seq.

<sup>225</sup> Ord 08-2005, 5/17/2005

<sup>226</sup> Code 1982, § 301.730

<sup>227</sup> Amendment 02-2009, 4/21/2009

### Sec. 12-217. Drainage.<sup>230</sup>

- A. No land shall be developed or altered and no use shall be permitted that results in surface or storm water run-off causing or with the potential to cause unreasonable flooding, erosion or deposit of materials on adjacent properties or water bodies. Such run-off shall be properly channeled into a stormwater management facility that are ~~drain, a natural watercourse or drainageway, a ponding area or other facility. To the extent feasible consistent with the stormwater management and erosion and sediment control requirements of Chapter 13, through ponding or other means, a~~ Any increase in run-off rate or volume as a result of the developed portion of a property shall achieve at least the minimum requirements of Article 13, shall be retained on the property.
- B. The Zoning Administrator, upon inspection of any site that has created drainage problems, or could create drainage problems with proposed new development, may require the owner of such site or the contractor of such development to complete a grading plan and apply for a grading permit.
- C. The owner or contractor of any natural drainage improvement or alteration may be required by the Zoning Administrator to obtain recommendations from the state department of natural resources, the county soil conservation district, the affected watershed district and/or the City Engineer, as well as obtaining a grading permit.
- D. On any slope in excess of 13 percent where, in the opinion of the Zoning Administrator, the natural drainage pattern may be disturbed or altered, the Zoning Administrator may require the applicant to submit both a grading plan and a soil conservation plan prior to applying for a building permit.

### Sec. 12-218. Vegetative cutting.<sup>231</sup>

- A. For purposes of this article, the following definitions are made:
1. *Clear cutting* means the removal of all live vegetation in excess of six inches in diameter at breast height on any area of 20,000 square feet or more in size.
  2. *Selective cutting* means the removal of single scattered live trees or shrubs in excess of six inches in diameter at breast height.
- B. Clear cutting of any site shall require a Conditional Use Permit, except as regulated by Subsection (E) of this section. A reclamation, soil conservation or revegetation plan may be required by the Zoning Administrator as part of the Conditional Use Permit application.

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1. For purposes of these regulations, public waters shall be defined in M.S.A. § 645.44, subd. 8a, M.S.A. § 1036.005, subd. 18.
  2. Public waters shall include all lakes, ponds, swamps, streams, drainageways, floodplains, floodways, natural water courses, underground water resources and similar features involving directly or indirectly the use of water within the City.
  3. No public water area shall be filled, partially filled, dredged, altered by grading, mining or otherwise utilized or disturbed in any manner without first securing a public waters use permit from the state department of natural resources and the U.S. Army Corps of Engineers, and a grading permit from the City. Such grading permits shall be reviewed and approved by the department of natural resources, the City Engineer, the watershed district, the Planning Commission and the City Council.
- B. The following considerations and conditions must be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variances and subdivision approvals:
1. No grading or filling of any wetland is permitted;
  2. Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible;
  3. Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover must be established as soon as possible;
  4. Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used;
  5. Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the United States Soil Conservation Service;
  6. Fill or excavated material must not be placed in a manner that creates an unstable slope;
  7. Fill or excavated material shall not be placed on steep slopes;
  8. Fill or excavated material shall not be placed in bluff impact zones;
  9. Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner under M.S.A. § 1036.245.
  10. Alterations of topography shall only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties, and do not cause the potential for erosion;
  11. Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the riprap is within ten feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three feet.
  12. Scenic easements on slopes greater than 18 percent shall be required as per the City subdivision ordinance, article VI of this chapter.
- C. Excavations where the intended purpose is connection to a public water, such as boat slips, canals, lagoons, and harbors, must be controlled by local shoreland controls. Permission for excavations may be given only after the commissioner has approved the proposed connection to public waters.

**Sec. 12-408. Placement and design of roads, driveways, and parking areas.**<sup>271</sup>

- A. All driveways, parking areas and public roads must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided by a qualified individual that all roads and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation district, and plans must be approved by the soil and water conservation district.
- B. Roads, driveways, and parking areas must meet structure setbacks and must not be placed within bluff

and shore impact zones. No parking facilities other than residential parking shall be permitted.

**Sec. 12-409. Stormwater management.**<sup>272</sup>

Unless otherwise exempted by this ordinance, a Stormwater Pollution Prevention Plan (SWPPP) and an Erosion and Sediment Control Plan (ESCP) shall be required as part of any building permit or land disturbing activity that meets the criteria Chapter 13 of this ordinance. All such plans shall achieve at least the minimum standards of Article 13.

The following general and specific standards shall apply:

- 1.—Existing natural drainageways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.
- 2.—Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.
- 3.—When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds must be used.

B.—Specific standards:

- 1.—Impervious surface coverage of lots must not exceed ten percent of the lot area or one-half acre, whichever is greater.
- 2.—When constructed facilities are used for stormwater management, documentation must be provided by a qualified individual that they are designed and installed consistent with the field office technical guide of the local soil and water conservation districts and all plans must be approved by that agency.
- 3.—New constructed stormwater outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.

**Sec. 12-410. Agricultural use standards.**<sup>273</sup>

General cultivation farming, grazing, nurseries, horticulture, truck farming, and wild crop harvesting are permitted provided they do not occur on slopes greater than 12 percent and do not intrude on the bluff impact zones and provided the shore and impact zones are maintained in a permanent vegetative condition. The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and 50 feet from the ordinary high water level.

**Sec. 12-411. Special uses.**<sup>274</sup>

Special uses allowable within shoreland areas shall be subject to the review and approval procedures, and criteria and conditions for review of special uses established community-wide. The following additional evaluation criteria and conditions apply within shoreland areas:

- A. *Evaluation criteria.* A thorough evaluation of the waterbody and the topographic, vegetation, and soils conditions on the site must be made to ensure:
  1. The prevention of soil erosion or other possible pollution of public waters as well as the runoff of landscape chemicals including fertilizers, herbicides and pesticides both during and after

for the subjects of alterations and additions, repair after damage, discontinuance of use, and intensification of use; except that the standards in this division will also apply in shoreland areas.

**Sec. 12-477. Construction on nonconforming lots of record.**<sup>278</sup>

- A. Lots of record in the office of the county recorder on August 19, 1975, that do not meet the requirements of Section 12-401 may be allowed as building sites provided the use is permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time, sewage treatment and setback requirements of this article are met and the lot meets the requirements of the zoning ordinance, article II of this chapter, regarding nonconformity.
- B. A variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued for such lot. In evaluating the variance, the Board of Adjustment shall consider, along with all criteria listed in Section 12-328, sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.
- C. If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the requirements of Section 12-401 the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of Section 12-401 and the zoning ordinance, article II of this chapter.

**Sec. 12-478. Additions/expansions to nonconforming structures.**<sup>279</sup>

- A. All structures in existence prior to the adoption of the ordinance from which this article was derived which do not meet the structure setbacks and other dimensional standards of this article shall be considered substandard structures.
- B. Any extension, enlargement, or alteration of an existing substandard structure or sanitary facility shall meet the setback standards of this article.
- C. Exceptions to the setback standards for substandard structures may include the following:
  1. An extension, enlargement, or alteration of an existing substandard structure or sanitary facility may be permitted on the side of the structure or facility facing away from the shoreline or ordinary high water level.
  2. An improvement to an existing structure or facility may be allowed to extend laterally (parallel to the shoreline or ordinary high water level) when the improvement is within 60% of the required setback and in compliance with all of the dimensional standards and side yard setbacks of the zoning ordinance, article II of this chapter.
  3. Exterior decks attached to the structure which do not extend any roof or foundation, may be permitted to extend laterally (parallel to the shoreline or ordinary high water level) at the same setback as the substandard structure.
- D. If a substandard structure needs replacing due to destruction, deterioration, or obsolescence, such replacement shall comply with the dimensional standards of this article.

Secs. 12-479--12-500. Reserved.

**DIVISION 6. SUBDIVISION REQUIREMENTS**<sup>280</sup>

<sup>278</sup> Code 1982, § 303.6.1

<sup>279</sup> Ord. 97-43, 11/13/01

<sup>280</sup> Cross reference—Subdivisions, § 12-1251 et seq.

**Sec. 12-501. Land suitability.**<sup>281</sup>

Each lot created through subdivision, must be suitable in its natural state for the proposed use with minimal alteration. Suitability analysis by the local unit of government shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, near-shore aquatic conditions unsuitable for water-based recreation, important fish and wildlife habitat, presence of significant historic sites, or any other feature of the natural land likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the community.

**Sec. 12-502. Consistency with other controls.**<sup>282</sup>

- A. Subdivisions must conform to all official controls of the City. A subdivision will not be approved where a later variance from one or more standards in official controls would be needed to use the lots for their intended purpose. In areas not served by publicly-owned sewer and water systems, a subdivision will not be approved unless domestic water supply is available and a sewage treatment system consistent with sections 12-402 and 12-413 and an approved septic system can be provided for every lot.
- B. Each lot shall meet the minimum lot size and dimensional requirements of Section 12-401, including at least a minimum contiguous lawn area, that is free of limiting factors as identified in the City ordinance sufficient for the construction of two standard soil treatment systems. Lots that would require use of holding tanks shall not be approved.

**Sec. 12-503. Information requirements.**<sup>283</sup>

Sufficient information must be submitted by the applicant for the community to make a determination of land suitability as well as complying with the subdivision ordinance, article VI of this chapter. The information shall include at least the following:

- A. Topographic contours at ten-foot intervals or less from United States Geological Survey maps or more accurate sources, showing limiting site characteristics;
- B. The surface water features required in M.S.A. § 505.02, subd. 1, to be shown on plats, obtained from United States Geological Survey quadrangle topographic maps or more accurate sources;
- C. Adequate soils information to determine suitability for building and on-site sewage treatment capabilities for every lot from the most current existing sources or from field investigations such as soil borings, percolation tests, or other methods;
- D. Information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alterations; near-shore aquatic conditions, including depths, types of bottom sediments, and aquatic vegetation; ~~and~~ proposed methods for achieving the controlling stormwater runoff, ~~and~~ and erosion ~~and sediment control provisions of Article 13 of this ordinance; proposed methods for controlling~~ and runoff of landscape chemicals including fertilizers, herbicides and pesticides both during and after construction activities;
- E. Location of 100-year floodplain areas and floodway districts from existing adopted maps or data;
- F. A line or contour representing the ordinary high water level, the "toe" and the "top" of bluffs, and the minimum building setback distances from the top of the bluff and the lake or stream;
- G. All slopes of 18 percent or greater shall be identified; and
- H. All slopes of 12 percent to 18 percent shall be identified.

**Sec. 12-504. Dedications.**<sup>284</sup>

When a land or easement dedication is a condition of subdivision approval, the approval must provide easements over natural drainage, ~~or facilities ponding areas~~ for management of stormwater ~~required by Article 13 of this ordinance~~, and significant wetlands.

**Sec. 12-505. Platting.**<sup>285</sup>

All subdivisions as a plat in accordance with M.S.A. ch. 505 and this article: No permit for construction of buildings or sewage treatment systems shall be issued for lots created after these official controls were enacted unless the lot was approved as part of a formal subdivision.

**Sec. 12-506. Controlled access or recreational lots.**<sup>286</sup>

Lots intended as controlled accesses to public waters or for recreational use areas for use by nonriparian lots within a subdivision shall not be permitted.

**Secs. 12-507--12-575. Reserved.****ARTICLE IV.****LOWER ST. CROIX RIVER BLUFFLAND AND SHORELAND MANAGEMENT**<sup>287</sup>**DIVISION 1. GENERALLY****Sec. 12-576. Short title.**

This article shall be known, cited and referred to as the Lower St. Croix River Bluffland and Shoreland Management Ordinance; except as referred to herein, where it shall be known as, "This article."

**Sec. 12-577. Intent and purpose.**<sup>288</sup>

This article is adopted for the purpose of:

- A. Designating suitable land use districts along the bluffland and shoreland of the Lower St. Croix River.
- B. Regulating the area of a lot, and the length of bluffland and water frontage suitable for building sites.
- C. Regulating the setback of structures and sanitary waste treatment facilities from blufflines to protect the existing and/or natural scenic values, vegetation, soils, water, and bedrock from disruption by manmade structures or facilities.
- D. Regulating the setback of structures and sanitary waste treatment facilities from shorelines to protect the natural scenic value, floodplain, and water quality.
- E. Regulating alterations of the natural vegetation and topography.
- F. Conserving and protecting the natural scenic values and resources of the river valley and maintaining a high standard of environmental quality to comply with state department of natural resources standards and criteria for the Lower St. Croix National Scenic Riverway<sup>289</sup>

<sup>284</sup> Code 1982, § 303.7.14

<sup>285</sup> Code 1982, § 303.7.15

<sup>286</sup> Code 1982, § 303.7.16

<sup>287</sup> **Cross reference**—Subdivision requirements for the Lower St. Croix River shoreland, § 12-1496 et seq.

<sup>288</sup> Res. No. 1997-16, § 18, 6-17-97

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- D. The final plat must be approved by the county surveyor in accordance with the standard procedures for platting in the county.
- E. Upon receiving final plat approval by the City Council, the subdivider shall then record it with the county recorder within 120 days or the approved plat shall be considered void.
- F. Upon receiving approval of the final plat for a portion of the approved plat, the subdivider shall not be required to request a continuation of the recognition of the plat so as to avoid automatic expiration of preliminary approval unless final plat approval is not obtained within 24 months following preliminary approval.

Secs. 12-1333--12-1375. Reserved.

**DIVISION 3. MINIMUM DESIGN STANDARDS**

**Sec. 12-1376. Conformity with comprehensive development plan.**<sup>355</sup>

The proposed subdivision shall conform to the comprehensive development plan and policies as adopted by the City.

**Sec. 12-1377. Land requirements.**<sup>356</sup>

- A. Land shall be suited to the purpose for which it is to be subdivided. No plan shall be approved if the site is not suitable for purposes of the kind proposed by reason of potential flooding, topography, or adverse earth or rock formations.
- B. Land which poses hazards to life, health or property shall not be subdivided for residential purposes until all such hazards have been eliminated or unless adequate safeguards against such hazards are provided by the subdivision plan.
- C. Erosion and sedimentation control plans in accordance with the technical standards and specifications of the soil conservation service as provided by the county soil and water conservation district office, shall be required on slopes with grades of 12 percent or steeper.
- D. Proposed subdivision shall be coordinated with existing nearby municipalities or neighborhoods so that the community as a whole may develop harmoniously.

**Sec. 12-1378. Street plan.**<sup>357</sup>

- A. Proposed streets shall conform to the state road and county highway plans or preliminary plans as have been prepared, adopted and/or filed as prescribed by law. All streets within a subdivision shall be dedicated to the City and built to city standards.
- B. Streets shall be logically related to the topography in order to produce usable lots and reasonable grades.
- C. Access shall be given to all lots and portions of the tract in the subdivision, and to adjacent unsubdivided parcels unless the topography clearly indicates that such connection is not feasible. Access shall be defined as practical access. Reserved strips, and land-locked areas shall not be created.
- D. The arrangement of streets in new subdivisions shall make provisions for the appropriate continuation of the existing streets in adjoining areas.
- E. Where adjoining areas are not subdivided, but may be subdivided, the arrangement of streets in a new subdivision shall make provision for the proper projection of streets into adjoining areas by extending the new streets to the boundaries of the subdivision at appropriate locations. Streets must be constructed to the

<sup>355</sup> Code 1982, § 305.701

<sup>356</sup> Code 1982, § 305.702

<sup>357</sup> Code 1982, § 305.703, Cross reference(s)--Streets and sidewalks, ch. 20.

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boundary according to city specifications or it shall be documented that it is feasible to build them to the boundary. Dedication of road right-of-way shall be required to the boundary even though the street is not constructed. It shall be the responsibility of the adjoining property owner, when his land is subdivided, to build the road to city standards.

- F. Where the City does not have an adequate dedicated right-of-way for an existing road adjacent to the proposed subdivision, the developer shall dedicate the required right-of-way to the City for street and utility purposes.
- G. Minor streets shall be laid out to discourage their use by through traffic. Thoroughfares shall be reserved for through traffic by providing marginal access streets, interior streets for serving lots, or other means.
- H. Half or partial streets will not be permitted, except where essential to reasonable subdivision of a tract in conformance with the other requirements and standards of these regulations and where, in addition, satisfactory assurance for dedication of the remaining part of the street can be secured.
- I. Wherever a tract to be subdivided adjoins an existing half, or partial street, the part of the street within such tract shall be platted to provide the necessary road right-of-way.
- J. Dead-end streets shall be prohibited, except as stubs to permit future street extension into adjoining tracts, or when designed as cul-de-sac streets. A temporary turn-around or cul-de-sac shall be required by the City if a road will be a dead end until an adjoining tract is developed.
- K. Where a subdivision abuts or contains an existing or planned major thoroughfare or a railroad right-of-way, a street approximately parallel to land on each side of such thoroughfare and right-of-way may be required for adequate protection of residential properties and separation of through and local traffic. Such service streets shall be located at a distance from the major thoroughfare of railroad right-of-way suitable for the appropriate use of the intervening land, as for park purposes in residential districts, or for commercial and industrial purposes in appropriate districts. Such distances shall also be determined with due regard for the requirements of approach grades and future grade separations.
- L. The street arrangements shall not be such as to cause hardship to owners of adjoining property in platting their own land and providing convenient access to it.

**Sec. 12-1379. Cul-de-sac streets.**<sup>358</sup>

- A. The City Council may permit cul-de-sac streets, after Planning Commission review, by reason of unfavorable land forms or the irregular shape of the land from which the subdivision is being made and a normal street pattern cannot be established. The City Council may also permit cul-de-sac streets to minimize the impacts of the subdivision or proposed street on existing neighborhoods. These impacts may include increased traffic volume or speed, privacy or security of existing neighborhoods and preservation of natural resources or features.
- B. A cul-de-sac street shall not exceed 1,320 feet in length and shall serve no more than nine lots. Every lot platted on a cul-de-sac street shall have frontage and access on the cul-de-sac street and shall be included in the nine lot limit. A variance may be granted on the length limitation only when it is clearly demonstrated that the length greater than 1,320 feet is necessary for reasons of unfavorable land topography. No variance shall be granted which would allow more than nine lots to be created on a cul-de-sac street.
- C. When future development of adjacent parcels will allow for extension of a temporary cul-de-sac street or conversion thereof to a through street, the City Council may require that right-of-way shall be dedicated to the plat boundary. No outlots shall be created.

**Sec. 12-1380. Street design.**<sup>359</sup>

<sup>358</sup> Code 1982, § 305.704; Res. No. 1997-3, 1-14-97; Res. No. 1997-16, § 20, 6-17-97, Cross reference(s)--Streets and sidewalks, ch. 20.

B. *Street pavement.* The design of street pavement for all streets covered by this regulation shall be in accordance with the state highway department road design Manual No. 5-291 for flexible pavements. The designed thickness of the surfacing elements shall be in accordance with the flexible pavement design standard for road classifications as shown below. However, a minimum of six inches of class 5 aggregate base and three inches of bituminous surfacing is required. This bituminous surfacing shall consist of 1 1/2 inches of bituminous base course and 1 1/2 inches of bituminous wear course. More stringent design may be required by the City Engineer based on soil borings provided by the developer. The final bituminous wear course shall be placed no sooner than one year after the date that the bituminous base course is placed. Immediately prior to the placement of the bituminous wear course, any roadway settlements or other pavement damage shall be repaired by the developer.

C. <i>Classification</i>	<i>Pavement Design: Axle Load</i>
1. Arterials, Collector Street needs	As determined by traffic
2. Local Streets	7 ton minimum

D. *Soil tests.* To determine subgrade soil classifications, soil samples shall be collected and analyzed by an independent, certified testing laboratory. Reports of the soil analysis shall be submitted to the engineer with the pavement plans. Soil samples shall be taken along the center line of the proposed road at intervals not exceeding 300 feet.

A. *Curb and gutter.* Concrete curb and gutter can be constructed on both sides of urban design streets. Where applicable, curbless roads shall be designed to encourage stormwater infiltration. Where required, the construction of concrete curb and gutter shall be in accordance with state department of transportation 2531 and shall be either barrier or surmountable type curb as directed by the City Council. Bituminous curbs will not be allowed.

A-B. *Boulevards.* All boulevards shall have four inches of top soil (black dirt) placed on them and then be seeded or sodded.

B-C. *Sidewalks and pedestrian ways.* All required walks shall be concrete four inches thick placed on a four-inch gravel base. Grades shall be approved by the City Engineer. Sidewalks shall be placed in the public right-of-way.

C-D. *Aggregate shoulders.* The aggregate shoulders constructed on rural design roadways shall consist of a four-foot wide section consisting of two inches of class 2 aggregate.

**Sec. 12-1427. Utilities.**<sup>369</sup>

- A. All utilities shall be installed by the subdivider to each lot in the subdivision.
- B. All utilities shall be placed underground. All groundwork shall be completed prior to street surfacing.

**Sec. 12-1428. Sanitation, sewer and water rural areas.**<sup>370</sup>

Where lots cannot be connected with a public sewerage system, provision must be made for sanitary sewerage facilities, consisting of an individual disposal device for each lot in accordance with the City sanitary sewer ordinance, Article IX of this chapter. This does not mean that the installation of individual disposal devices shall be at the expense of the subdivider.

- A. Any subdivision or lot not provided with off-site sewer facilities shall be subject to soil and percolation tests to determine whether the lot size proposed will meet minimum standards of health and sanitation due to limitations of soils as shown on existing soils maps. The lot area and topography must be such that it will accommodate two adequate disposal systems to serve the residence for the estimated unsewered years, as determined by the City Council. Such test shall be made at the expense of the subdivider, and a sketch map shall be submitted to identify the specific locations where tests were made.

B. Four soil borings showing an area of 10,000 square feet suitable for an on-site septic system shall be required for each proposed lot by a certified soil tester. Additional testing may be required for each proposed lot by a certified soil tester. Additional testing may be required if serious limitations for the installation of an on-site system are found.

C. All on-site sewage disposal systems shall comply with the standards of the City sanitary sewer ordinance, Article IX of this chapter, the state department of health, and the state pollution control agency.

**Sec. 12-1429. Stormwater drainage.**<sup>371</sup>

A drainage system design shall be required, and may include a storm sewer system or a system of open ditches, culverts, pipes, catch basins and ponding areas, or both systems. Such facilities and easements shall be installed as will adequately provide for the drainage of surface waters; drainage way easements or land dedication may be required when such easements or land is needed in the public interest for purposes of floodplain management, proper drainage, prevention of erosion, pedestrian access to water bodies, or other public purposes. If there is a watershed district, that board must approve all surface water drainage. The City Engineer shall review and approve the stormwater drainage system and all runoff calculations for any street improvement project.

All drainage systems shall achieve at least the minimum requirements of Article 13 of this ordinance.

**Sec. 12-1430. Street signs.**<sup>372</sup>

All street signs shall be provided and installed by the City at the expense of the subdivider.

**Sec. 12-1431. Inspection.**<sup>373</sup>

A. All required improvements shall be inspected by the City Engineer during construction at the expense of the subdivider.

**Secs. 12-1432--12-1470. Reserved.**

**DIVISION 5. IMPROVEMENTS**

**Sec. 12-1471. Required.**<sup>374</sup>

Prior to final approval of a plat by the City Council, the subdivider shall have agreed, in the manner set forth below, to install at the subdivider's expense and in conformity with all applicable standards and ordinances, the following improvements on site:

- B. *Survey monuments.* All subdivision boundary corners, block and lot corners, road intersection corners and points of tangency and curvature shall be marked with survey monuments or triangulation stations in or adjacent to the property and shall be preserved in precise position unless a relocation is approved by the controlling agency. Delayed setting of monuments shall not be permitted.
- C. *Grading.* The full width of the right-of-way of each street and alley dedicated in the plat shall be graded for an urban design roadway. All graded rights-of-way, not including the street surface, and all graded or disturbed areas within a subdivision shall be seeded and stabilized in compliance with the recommendations of the county soil conservation district and the City Engineer within 30 days of the completion of grading or disturbance of individual areas.
- D. *Pavement.* All street and alleys shall be improved with concrete or bituminous surface.
- E. *Curb and gutter.* Along both sides of an urban design street, concrete curb and gutter shall be installed.

<sup>369</sup> Code 1982, § 305.802, **Cross reference(s)**--Utilities, ch. 24.

<sup>370</sup> Code 1982, § 305.803, **Cross reference(s)**--Sewage, § 12-1951 et seq.

<sup>371</sup> Code 1982, § 305.805

- F. *Drainage facilities.* Such facilities and easements shall be installed as will adequately provide for the drainage of surface waters; a storm sewer system may be required when such easements or land is needed in the public interest for purposes of floodplain management, proper drainage, prevention of erosion, pedestrian access to water bodies, or other public purpose. If there is a watershed district, that board must approve all surface water drainage. If SCS structures exist on the land to be subdivided or will be required, SCS must approve the plan for structures and restoration.
- G. *Miscellaneous facilities.* Tree planting, traffic control signs, oversized utility trunk lines, pedestrian ways, and other improvements may be required.
- H. *Erosion control.* Prior to the commencement of any grading or disturbance of any area within a subdivision, silt fences or other erosion control devices required and approved by the City Engineer shall be installed on site. Such devices shall include but not be limited to: staging, grading operations, side slopes, silt fences, mulching, culverts, ponding areas, netting, etc. Such erosion control devices shall remain in place and shall be maintained in working order until the disturbed areas are stabilized and roadways are approved, at which time they shall be removed at the expense of the developer.

**Sec. 12-1472. Payment for installation.**<sup>375</sup>

- A. The required improvements as listed elsewhere are to be furnished and installed at the sole expense of the subdivider.
- B. If the platting and development of the subject property shall necessitate the construction and improvement of public roads outside of the subdivided property, the City may require the owner to provide sufficient financial guarantees for the portion of the estimated cost of such construction or improvement as represents the benefit to the subdivided property using usual assessment apportionment practices.

**Sec. 12-1473. Agreement providing for the installation.**<sup>376</sup>

- A. Prior to the installation of any required improvements and prior to approval of the final plat, the subdivider shall enter into a contract in writing with the City requiring the subdivider to have such improvements constructed by the subdivider in accordance with the plans and specifications prepared by the City Engineer, which plans shall be in conformance with all applicable standards and ordinances. Such contract shall provide for the observation of construction by the City Engineer to ensure conformance to the plans and specifications, and shall require that the City be reimbursed for all costs incurred by the City for planning, engineering, and legal fees, and other expenses in connections with making such improvements; and shall contain such other provisions as may be required by the City Council.
1. The subdivider shall, concurrently with the execution of the contract, make a cash escrow deposit, or in lieu thereof, provide an irrevocable letter of credit, the amount of which shall be equal to 150 percent of the City Engineer's estimate of the total cost of the improvements to be furnished under the contract, including the costs for legal, administrative, and engineering expenses, including inspection. The City shall be entitled to reimburse itself out of such cash deposit or irrevocable letter of credit for all expenses incurred by the City for the completion of the work, and upon completion of the work, any balance remaining in said deposit shall be refunded to the subdivider. The subdivider shall also agree to reimburse the City for any costs and expenses incurred in excess of the original cash deposit or irrevocable letter of credit, and shall replenish the deposit or letter of credit as necessary and requested by the City to secure the subdivider's obligations to the City.
  2. On request of the subdivider, the contract may provide for completion of part or all of the improvements covered thereby prior to acceptance of the plat. In such event, the amount of the deposit or letter of credit may be reduced in a sum equal to one-half of the estimated cost of covered improvements completed prior to acceptance of the plat. The time for completion of the work and the several parts thereof shall be determined by the City Council upon recommendation of the City Engineer. It shall be reasonable with relation to the work to be done, the seasons of the year, and proper correlations with construction activities in the plat and subdivision.

<sup>375</sup> Code 1982, § 305.902

<sup>376</sup> Code 1982, § 305.903

- B. No subdivider shall be permitted to start work on any other subdivision without special approval of the City Council if he has previously defaulted on work or commitments.

**Sec. 12-1474. Financial guarantee.**<sup>377</sup>

The financial guarantee shall be required as part of the division agreement for the following actions and similar construction activities:

- A. *Grading and erosion and sediment control plan.* The City Council may require the applicant to post a financial guarantee to ensure the orderly completion of the grading and erosion and sediment control plans by a specific date.
- B. *Stormwater Pollution Prevention Plan.* The City Council may require the applicant to post a financial guarantee to ensure the orderly completion of the stormwater pollution prevention plan and adequate function of any stormwater management facilities by a specific date.
- B-C. *Septic system.* When an existing nonconforming septic system is required to be upgraded according to Section 12-83(C), the new on-site sewage treatment system shall be installed prior to the issuance of a building permit unless a financial guarantee equal to 125 percent of the cost of installing such a system and is valid for one year is issued to the City.
- C-D. *Driveway permit.* To assure compliance with this article and the conditions of any driveway permit, the Zoning Administrator may require a financial guarantee from each applicant. The financial guarantee may be in the form of a performance bond, irrevocable letter of credit or escrow deposit as regulated in other sections of this article. The amount of the financial guarantee shall be equal to 125 percent of the estimated cost of the construction of the driveway, or an amount determined by the Zoning Administrator. A financial guarantee shall be released to the applicant upon satisfactory completion of the driveway installation according to this article and any conditions of the driveway permit.
- D-E. *Escrow deposit.* A cash escrow deposit may be made with the City Administrator. The City shall be entitled to reimburse itself out of such deposit for any cost or expense incurred by the City for completion of the work in case of default of the breach thereof.
- E-F. *Letter of credit.* The subdivider may deposit with the City, from a bank or other reputable institution or individual subject to the approval of the City Council, an irrevocable letter of credit which shall certify that:
1. The creditor does guarantee funds in the required amount.
  2. In the case of failure on the part of the subdivider to complete the specified improvements within the required time period, the creditor shall pay to the City immediately, and without further action, such funds as are necessary to finance the completion of those improvements, up to the limit of credit stated in the letter.
  3. This letter of credit may not be withdrawn, or reduced in amount, until released by the City Council.
- F-G. *Release.* Financial securities shall not be released until all permitted and remedial work is completed.
- G-H. *Community indemnity.* This security shall save the community free and harmless from all suits or claims for damages resulting from the negligent grading, removal, placement or storage of rock, sand, gravel, soil or other like material within the community.
- H-I. *Maintaining the financial security.* If at any time during the course of the work the amount falls below 50% of the required deposit, the applicant shall make another deposit in the amount necessary to restore the cash deposit to the required amount. If the applicant does not bring the financial security back up to the required amount within seven (7) days after notification by the community that the amount has fallen below 50% of the required amount the community may:
1. Withhold inspections - Withhold the scheduling of inspections and/or the issuance of a Certificate of Occupancy.
  2. Revoke permits - Revoke any permit issued by the community to the applicant for the site in question or any other of the applicant's sites within the community's jurisdiction.
- I-L. *Action against the financial security.* The community may access financial security for remediation actions if any of the conditions listed below exist. The community shall use the security to finance remedial work undertaken by the community, or a private contractor under contract to the community, to reimburse the community for all direct costs incurred in the process of remedial work including, but not limited to, staff time and attorney's fees.
1. Abandonment - The applicant ceases land disturbing activities and/or filling and abandons the work site prior to completion of the grading plan.
  2. Failure to implement the SWPPP or ESC Plan - The applicant fails to conform to the grading plan

and/or the SWPPP as approved by the Community.

3. Failure to perform - The techniques utilized under the SWPPP fail within one year of installation.
4. Failure to reimburse community - The applicant fails to reimburse the community for corrective action taken.

J-K. *Returning the financial security.* The security deposited with the community for faithful performance of the SWPPP or the ESC Plan and any related remedial work shall be released one full year after the completion of the installation of all stormwater pollution control measures as shown on the SWPPP or ESC Plan.

K-L. *Emergency action.* If circumstances exist such that noncompliance with this ordinance poses an immediate danger to the public health, safety and welfare, as determined by the community, the community may take emergency preventative action. The community shall also take every reasonable action possible to contact and direct the applicant to take any necessary action. Any cost to the community may be recovered from the applicant's financial security.

**Sec. 12-1475. Construction plans and inspections.**<sup>378</sup>

- A. Construction plans for the required improvements conforming in all respects with the standards and ordinances of the City shall be prepared at the subdivider's expense by the City Engineer. Such plans shall become part of the required contract. Two prints of the plans shall be furnished to the City to be filed as a public record.
- B. All required improvements on the site that are to be installed under the provisions of this regulation shall be inspected during the course of construction by the City Engineer at the subdivider's expense. Any tests necessary to determine conformance to all city specifications and requirements and the plans shall be prescribed and scheduled by the City Engineer and performed at the subdivider's expense. Acceptance by the City of the improvements and release of the subdivider's security shall occur one year after the City Engineer has certified completion of the project and compliance with the contract.
- C. The subdivider shall obtain at his own expense, an "as built" plan which shall be submitted to the City upon completion of improvements and before such improvements are accepted by the City. The City Engineer shall certify to the City that the improvements were constructed as specified in the plans, and that the improvements were constructed according to all applicable standards and ordinances.

**Sec. 12-1476. Completion prior to approval of plat.**<sup>379</sup>

Improvements within a subdivision which have been completed prior to application for approval of the plat or execution of the contract for installation of the required improvements shall be accepted as equivalent improvements in compliance with the requirements only if the City Engineer shall certify that he is satisfied that the existing improvements conform to applicable standards.

**Secs. 12-1477--12-1479. Reserved.**<sup>380</sup>

**DIVISION 6. PROTECTIVE COVENANTS REQUIRED FOR ALL MAJOR SUBDIVISIONS**<sup>381</sup>

<sup>377</sup> Code 1982, § 305.904; Res. No. 1997-16, § 20, 6-17-97

<sup>378</sup> Code 1982, § 305.905

<sup>379</sup> Code 1982, § 305.906

<sup>380</sup> Ordinance 10-2005, 6/21/2005

<sup>381</sup> Ordinance 10-2005, 6/21/2005

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*Suspended solids* means solids that either float on the surface of or are in suspension in water, sewage, or other liquids and which are removable by laboratory filtering in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater.

*Toxic pollutant* means the concentration of any pollutant or combination of pollutants which upon exposure to or assimilation into any organism will cause adverse effects as defined in standards pursuant to section 307(a) of the Clean Water Act.

*Unpolluted water* means clean water uncontaminated by industrial wastes, other wastes, or any substance which renders such water unclean or noxious or impure so as to be actually or potentially harmful or detrimental, or injurious to public health, safety, or welfare; to domestic, commercial, industrial or recreational uses; or to livestock, wild animals, birds, fish, or other aquatic life.

*Wastewater facility* means the structures, equipment, or processes required to collect, carry away, and treat domestic and industrial wastes and dispose of the effluent.

### Sec. 12-1953. Applicability.

This article shall apply and be in effect for the stated purposes within the "201" study areas in the City.

### Sec. 12-1954. Enforcement.

- A. The City Clerk/Zoning Administrator shall be responsible for administration and enforcement of this article.
- B. The City Clerk/Zoning Administrator or his agent shall be qualified and certified by the MPCA as competent in the design, evaluation and inspection of individual on-site sewage treatment systems, and shall carry a current individual sewage treatment system certificate and a current class D operators certificate.

### Sec. 12-1955. Appeals and variance requests.

- A. The City Council shall hear and decide appeals and review any order, decision or determination made by the clerk/Zoning Administrator regarding the enforcement of this article.
- B. The City Council shall hear and act upon all rate adjustment and variance requests.
- C. Any appeal of an administrative decision or determination may be filed by any person, department, bureau, town, city, county, or state which is aggrieved by the decisions.

### Sec. 12-1956. Inspections.

Inspections as required to determine compliance with this article shall be performed by the City Administrator or his authorized agent under the following circumstances:

- A. Duly authorized employees of the City shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this article. Those employees shall have no authority to inquire into processes including metallurgical, chemical, oil refining, ceramic, paper, or other industries except as is necessary to determine the kind and source of the discharge to the public sewer.
- B. The owner or occupant of a property shall be responsible to provide access at reasonable times, to the City Administrator or his agent, for the purpose of performing inspections required under this article.
- C. While performing the necessary work on private property as referred to in Subsection (A) of this section, the authorized employees of the City shall observe all safety rules applicable to the premises.
- D. Fees for inspections, maintenance, or other services rendered under this article shall be as set by resolution of the City Council from time to time.
- E. The City may issue construction stop work orders until stormwater management measures meet

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specifications and the applicant repairs any damage caused by stormwater runoff. An inspection by the community must follow before the construction project work can resume.

F. The City can take any combination of the following actions in the event of a failure by the applicant to meet the terms of this ordinance:

- Withhold inspections or issuance of certificates or approvals
- Revoke any permit issued by the City to the applicant
- Conduct remedial or corrective action on the development site or adjacent site affected by the failure
- Charge the applicant for all costs associated with correcting the failure or remediating damage from the failure; if payment is not made within thirty days, payment will be made from the applicant's financial securities
- Bring other actions against the applicant to recover costs of remediation or meeting the terms of this ordinance.
- Any person failing to comply with or violating any of these regulations, shall be deemed guilty of a misdemeanor and be subject to a fine or imprisonment or both. Each day that a separate violation exists shall constitute a separate offense.

Secs. 12-2356 – 12-2370. Reserved.<sup>442</sup>**ARTICLE XII. PRESERVATION AND LAND CONSERVATION DEVELOPMENTS.<sup>443</sup>****Sec. 12-2371. Scope.**

This article applies to Preservation and Land Conservation Developments (PLCD) in the Agricultural (AG) zoning district.

**Sec. 12-2372. General provisions.**

A PLCD is a tract of land that is developed as a unit under single or unified ownership or controls. A Preservation and Land Conservation Development may be allowed in the AG zoning district to preserve prime agricultural land, woodland, wildlife habitat, vistas, groundwater recharge areas, areas with sensitive soils or geological limitations and areas identified in the Comprehensive Plan. Uses not otherwise allowed in the zoning district are prohibited within a planned development unless specifically permitted by provisions of this ordinance.

**Sec. 12-2373. Purpose.**

The purposes of this article are:

- A. To permit subdivisions in the Agricultural Zoning District which require the construction of a new public street.
- B. To encourage a more creative and efficient development of land and its improvements through the preservation of agricultural land, natural features and amenities than is possible under the more restrictive application of zoning requirements, while at the same time, meeting the standards and purposes of the comprehensive plan and preserving the health, safety, and welfare of the citizens of the City.
- C. To preserve open space, to preserve the natural resources of the site and to preserve wildlife habitat and corridors.
- D. To facilitate the economical provision of streets and public utilities.
- E. To allow the transfer of development rights (density) within a subdivision in order to preserve agricultural land, open space, natural features and amenities.

**Sec. 12-2374. Permitted uses.**

The Permitted Uses are:

- A. Those uses that are permitted in the underlying zoning district;
- B. Subdivisions that require the construction of a new public street in the AG zoning district;

**Sec. 12-2375. General standards for approval.**

- A. A Conditional Use Permit shall be required for all preservation and land conservation developments. The City may approve the preservation and land conservation development only if it finds that the development satisfies all of the following standards:
  1. The preservation and land conservation development is consistent with the comprehensive plan of the City.

<sup>442</sup> Ord. 97-55, 6/18/02, Ord 04-2009, 5/19/2009

<sup>443</sup> Ord 06-2008, 4/15/2008; Ord 02-2014, 5/20/2014

2. The preservation and land conservation development is an effective and unified treatment of the development possibilities on the project site and the development plan provides for the preservation of unique natural amenities.
  3. The preservation and land conservation development can be planned and developed to harmonize with any existing or proposed development in the areas surrounding the project site.
- B. The tract is a minimum of eighty (80) contiguous acres in size and that all of the following conditions exist:
1. The proposal better adapts itself to the physical and aesthetic setting of the site and with the surrounding land uses than could be developed using strict standards and land uses allowed within the underlying zoning district.
  2. The proposal would benefit the area surrounding the project to a greater degree than development allowed within the underlying zoning district.
  3. The proposal would provide land use and/or site design flexibility while enhancing site or building aesthetics to achieve an overall higher quality of development than would otherwise occur in the underlying zoning district.
  4. The proposal would ensure the concentration of open space into more workable or usable areas and would preserve the natural resources of the site more effectively than would otherwise occur in the underlying zoning district.
- C. At least fifty (50) percent of the total tract is preserved as an undeveloped parcel.

**Sec. 12-2376. Density, Frontage on a Public Street and Length of Cul-de-sac requirements.<sup>444</sup>**

- A. The average density over the proposed PLCD shall not exceed the maximum density permitted in the underlying zoning district.
- B. The maximum length of cul-de-sacs may be exceeded to accommodate curvilinear streets and other design elements that tend to preserve the rural character or other resources within the PLCD.

**Sec. 12-2377. Coordination with subdivision regulations.**

- A. It is the intent of this article that subdivision review under Chapter 12 be carried out simultaneously with the review of a planned development under this article.
- B. The plans required under this article must be submitted in a form that will satisfy the requirements of Chapter 12 for the preliminary and final plats.
- C. Parcels which contain their maximum permitted density or have been previously subdivided to their permitted density may not be joined to a PLCD.

**Sec. 12-2378. Pre-application meeting.**

Prior to the submission of any plan to the Planning Commission, the potential applicant is required to meet with the City Administrator and other relevant partner agencies to discuss the contemplated project relative to community development objectives for the area in question and to learn the procedural steps and exhibits required. This includes the procedural steps for an Administrative Permit and a preliminary plat. The potential applicant may submit a simple sketch plan at this stage for informal review and discussion. The potential applicant is urged to seek the advice and assistance of the City staff to facilitate the informal review of the simple sketch plan.

**Sec. 12-2379. General development plan.**

- A. An applicant shall make an application for an Administrative Permit following the procedural steps as set forth in Section 12-78.
- B. In addition to the criteria and standards set forth in Sec. 12-78 of this article for the granting of Administrative Permits, the following additional findings shall be made before the approval of the outline development plan:

<sup>444</sup> Ord 02-2014, 5/20/2014

## ARTICLE 13 – STORMWATER MANAGEMENT

## ARTICLE I. IN GENERAL

Secs. 13-1. – 13-50. Reserved.

## ARTICLE II. AUTHORIZATION, PURPOSE, SCOPE, AND INTERPRETATION

## Sec. 13-51. Statutory authorization

- A. This ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes §§ 103B, 103D, and 462; Minnesota Rules, Parts 6120.2500- 6120.3900; and Minnesota Rules Chapters 8410 and 8420.
- B. This ordinance is intended to meet the construction site erosion and sediment control and post-construction stormwater management regulatory requirements for construction activity and small construction activity (NPDES Permit) as defined in 40 CFR 122.26(b)(14)(x) and (b)(15), respectively.
- C. This ordinance is intended to meet the Minimal Impact Design Standards (MIDS) developed under Minnesota Statutes § 115.03 subd. 5c.

## Sec. 13-52. Purpose

- A. The purpose of this ordinance is to establish regulatory requirements for land development and land disturbing activities aimed at minimizing the threats to public health, safety, public and private property and natural resources within the City from construction site erosion and post-construction stormwater runoff. Specifically, the ordinance establishes regulatory requirements that:
  1. Meet MIDS performance standards;
  2. Assist in meeting NPDES/SDS Construction Stormwater General Permit requirements;
  3. Assist in meeting Total Maximum Daily Load (TMDL) plan waste load allocations for impaired waters through quantification of load reductions;
  4. Assist in meeting policies and performance standards of the Middle St. Croix Water Management Organization (MSCWMO) and Valley Branch Watershed District (VBWD);
  5. Protect life and property from dangers associated with flooding;
  6. Protect public and private property and natural resources from damage resulting from stormwater runoff and erosion;
  7. Ensure site design minimizes the generation of stormwater runoff and maximizes pervious areas for stormwater treatment within the context of the allowable use;
  8. Provide a single, consistent set of performance goals that apply to all developments;
  9. Protect water quality from pollutant loadings of sediment, suspended solids, nutrients, heavy metals, toxics, debris, bacteria, pathogens, biological impairments, thermal stress and other pollutants;

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10. Promote infiltration and groundwater recharge;
11. Provide vegetated corridors (buffers) to protect water resources from development;
12. Protect functional values of all types of natural waterbodies (e.g., rivers, streams, wetlands, lakes, seasonal ponds); and
13. Sustain or enhance biodiversity (native plant and animal habitat) and support riparian ecosystems.

## Sec. 13-53. Scope

Land shall not be developed for any use without providing stormwater management measures and erosion and sediment control measures that control or manage stormwater runoff from such developments.

## Sec. 13-54. Greater restrictions

- A. Relationship to WD/WMO Requirements - All stormwater management and erosion and sediment control activities shall comply with all applicable requirements of the relevant Middle St. Croix Watershed Management Organization or the Valley Branch Watershed District. In the case of conflict between provisions of this ordinance and other stormwater regulations, the strictest provisions shall apply to land development and/or land disturbing activities.
- B. Relationship to Existing Easements, Covenants, and Deed Restrictions – The provisions of this ordinance are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions the provisions of this ordinance shall prevail.

## Sec. 13-55. Severability

The provisions of this ordinance are severable, and if any provision of this ordinance, or application of any provision of this ordinance to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this ordinance must not be affected thereby.

Secs. 13-56. – 13-69. Reserved.

## ARTICLE III. APPLICABILITY &amp; DEFINITIONS

## Sec. 13-70. Stormwater management permit

- A. Unless otherwise exempted by Section 3, an approved Stormwater Management Permit shall be required prior to any proposed land development activity that meets any of the criteria in 1. through 5. immediately below. All stormwater management permits shall include an Erosion and Sediment Control Plan (ESC Plan) or a Stormwater Pollution Prevention Plan (SWPPP)
  1. Any project that creates or fully reconstruct 6,000 square feet or more of impervious surface.
  2. All major subdivisions or minor subdivisions that are part of a common plan of development.
  3. Projects within the St. Croix Riverway that add 500 square feet or greater of additional impervious surface.

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4. Any project requiring a variance from the current local impervious surface zoning requirements for the property.
5. Any land development activity, regardless of size, that the City determines is likely to cause an adverse impact to an environmentally sensitive area or other property.

### Sec. 13-71. Erosion and sediment control plan

- A. Unless otherwise exempted by this ordinance in Section 3, an Erosion and Sediment Control Plan shall be required as part of any Grading and Filling Permit or Building Permit which proposes any land disturbing activity that meets any of the criteria in 1. through 3. below.
1. Any project undertaking grading, filling, or other land alteration activities which involve movement of 100 cubic yards of earth or removal of vegetation on greater than 6,000 square feet of land.
  2. Any project with wetland impacts, grading within public waters, grading within buffers or within 40-feet of the bluff line.
  3. A land disturbing activity, regardless of size, that the City determines is likely to cause an adverse impact to an environmentally sensitive area or other property, or may violate any other erosion and sediment control standard set forth in this ordinance.

### Sec. 13-72. Buffers

A buffer of unmowed natural vegetation shall be required upslope of wetlands, lakes and streams prior to the approval of any proposed land development requiring a subdivision, lot split, rezoning, special use permit or variance, unless otherwise exempted in this ordinance in Section 3.

### Sec. 13-73. Exemptions

The following activities shall be exempt from all of the requirements of this ordinance:

1. Emergency work necessary to protect life, limb, or property.
2. Routine agricultural activity such as tilling, planting, harvesting, and associated activities. Other agricultural activities are not exempt including activities such as construction of structures.
3. Silvicultural/forestry activity.

### Sec. 13-74. Definitions

Words or phrases used in this ordinance shall have the meanings as defined by Appendix B of the Minnesota Construction Stormwater Permit No: MN R100001 (Construction Permit)<sup>1</sup>

If not defined in the Construction Permit, then words or phrases shall be interpreted to have the meaning they have in common usage.

Words or phrases shall be interpreted so as to give this ordinance its most reasonable application.

For the purpose of this ordinance, the words “must”, “shall”, and “will” are mandatory and not permissive.

<sup>1</sup> Available at <http://www.pca.state.mn.us/wfhy5b>

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- A. Applicant.** The owner of land submitting an application under the provisions of this ordinance for a Stormwater Management Permit (SWMP) and/or Erosion and Sediment Control Plan (ESC Plan) to be issued by the community.
- B. Best Management Practices (BMPs).** The most effective and practicable means of erosion prevention and sediment control, and water quality management practices that are the most effective and practicable means to control, prevent, and minimize degradation of surface water, including avoidance of impacts, construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, pollution prevention through good housekeeping, and other management practices published by state or designated area-wide planning agencies.
- C. Better Site Design.** The control and management of stormwater quantity and quality through the application of Better Site Design Techniques as outlined in the current version of the Minnesota Stormwater Manual. Better Site Design includes: preservation of natural areas; site reforestation; stream and shoreland buffers; open space design; disconnection of impervious cover; rooftop disconnection; grass channels; stormwater landscaping; compost and amended soils; impervious surface reduction; and trout stream protection.
- D. Common Plan of Development or Sale.** A contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.
- E. Construction Activity.** Includes construction activity as defined in 40 CFR pt. 122.26(b)(14)(x) and small construction activity as defined in 40 CFR pt. 122.26(b)(15) and construction activity as defined by Minn. R. 709.0080, subp. 4. This includes a disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity may include clearing, grading, filling, and excavating. Construction activity includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one (1) acre or more. Construction activity does not include a disturbance to the land of less than five (5) acres for the purpose of routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. (NOTE – The community may wish to change this to a smaller disturbance area. A smaller area is more restrictive than the state/federal requirements, so it would be allowable for a local government.)
- F. Development, New.** Any development that results in the conversion of land that is currently prairie, agriculture, forest, or meadow. Land that was previously developed, but now razed and vacant, will not be considered new development.
- G. Erosion and Sediment Control Plan (ESC Plan).** A plan for projects disturbing less than one acre that is in compliance with the minimum requirements of the MSCWMO and VBWD. The plan identifies erosion prevention and sediment control practices, location and timelines for installation. The plan also includes responsible parties and timelines for inspection and maintenance.
- H. Erosion Prevention.** Measures employed to prevent erosion. Examples include but not limited to: soil stabilization practices, limited grading, mulch, temporary erosion protection or permanent cover, and construction phasing.
- I. Fully Reconstructed Impervious Surface.** Areas where impervious surfaces have been removed down to the underlying soils. Activities such as structure renovation, mill and overlay projects,

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- and pavement rehabilitation projects that do not alter underlying soil material beneath the structure, pavement, or activity are not considered fully reconstructed impervious surfaces. Reusing the entire existing building foundation and re-roofing of an existing building are not considered fully reconstructed.
- J. Impervious Surface.** A constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt, or gravel roads.
- K. Land Disturbance.** Any activity that result in a change or alteration in the existing ground cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, development, redevelopment, demolition, construction, reconstruction, clearing, grading, filling, stockpiling, excavation, and borrow pits. Routine vegetation management, and mill and overlay/resurfacing activities that do not alter the soil material beneath the pavement base, are not considered land disturbance. In addition, other maintenance activities such as catch basin and pipe repair/replacement, lighting, and pedestrian ramp improvements shall not be considered land disturbance for the purposes of determining permanent stormwater management requirements.
- L. Linear Project.** Construction or reconstruction of roads, trails, sidewalks, and rail lines that are not part of a common plan of development or sale. Mill, overlay and other resurfacing projects are not considered to be reconstruction.
- M. Major Subdivision.** All subdivisions not classified as minor subdivisions including, but not limited to, subdivisions of four (4) or more lots, or any size subdivision requiring any new street or extension of an existing street.
- N. Minor Subdivision.** Any subdivision containing three (3) or less lots fronting on an existing street, not part of a common plan of development nor involving any new street or road or the extension of municipal facilities.
- O. National Pollutant Discharge Elimination System (NPDES).** The program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the Clean Water Act (Sections 301, 318, 402, and 405) and United States Code of Federal Regulations Title 33, Sections 1317, 1328, 1342, and 1345.
- P. Owner.** The person or party possessing the title of the land on which the construction activities will occur; or if the construction activity is for a lease, easement, or mineral rights license holder, the party or individual identified as the lease, easement or mineral rights license holder; or the contracting government agency responsible for the construction activity.
- Q. Permanent Cover.** Surface types that will prevent soil failure under erosive conditions. Examples include: gravel, asphalt, concrete, rip rap, roof tops, perennial cover, or other landscaped material that will permanently arrest soil erosion. A uniform perennial vegetative cover (e.g., evenly distributed, without large bare areas) with a density of 70% of the native background vegetative cover for the area must be established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures. Permanent cover does not include the practices listed under temporary erosion protection.
- R. Permittee.** A person or persons, firm, or governmental agency or other entity that signs the application submitted to the City and is responsible for compliance with the terms and conditions of the permit.

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- S. Predevelopment State.** The rate and volume of stormwater is unchanged. The calculation of predevelopment is based on native soils and vegetation.
- T. Public Waters.** All water basins and watercourses that are described in Minn. Stat. § 103G.005 subd. 15.
- U. Redevelopment.** Any development that is not considered new development.
- V. Retain.** Manage stormwater on site using a low-impact development approach so that the rate and volume of predevelopment stormwater reaching receiving waters is unchanged.
- W. St. Croix Riverway.** All lands and public waters within the riverway boundary subject to the standards and criteria for the Lower Saint Croix National Scenic Riverway in Minnesota.
- X. Saturated Soil.** The highest seasonal elevation in the soil that is in a reduced chemical state because of soil voids being filled with water. Saturated soil is evidenced by the presence of redoximorphic features or other information.
- Y. Sediment Control.** Methods employed to prevent sediment from leaving the site. Sediment control practices include: silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, bio rolls, rock logs, compost logs, storm drain inlet protection, and temporary or permanent sedimentation basins.
- Z. Stormwater Facility.** A stationary and permanent BMP that is designed, constructed and operated to prevent or reduce the discharge of pollutants in stormwater.
- AA. Small Construction Activity.** As defined in 40 CFR part 122.26(b)(15). Small construction activities include clearing, grading and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five (5) acres.
- BB. Stabilized.** Exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, erosion control blanket, mats or other material that prevents erosion from occurring. Grass, agricultural crop or other seeding alone is not stabilization. Mulch materials must achieve approximately 90 percent ground coverage (typically 2 ton/acre).
- CC. Stormwater.** As defined under Minn. R. 7077.0105, subp. 41(b), and includes precipitation runoff, stormwater runoff, snowmelt runoff, and any other surface runoff and drainage.
- DD. Stormwater Pollution Prevention Plan (SWPPP).** A plan for stormwater discharge that includes erosion prevention BMPs, sediment control BMPs and permanent stormwater management systems that, when implemented, will decrease soil erosion on a parcel of land and decrease off-site nonpoint pollution.
- EE. Surface Water(s).** All streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, waterways, watercourses, and irrigation systems whether natural or artificial, public or private, except that surface waters do not include treatment basins or ponds that were constructed from upland.
- FF. Temporary Erosion Protection.** Methods employed to prevent erosion during construction activities. Examples of temporary erosion protection include; straw, wood fiber blanket, wood chips, vegetation, mulch and rolled erosion control products.

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**GG. Underground Waters (Groundwater).** Water contained below the surface of the earth in the saturated zone including, without limitation, all waters whether under confined, unconfined, or perched conditions, in near surface unconsolidated sediment or regolith, or in rock formations deeper underground. The term groundwater shall be synonymous with underground water.

**HH. Wetland(s).** As defined in Minn. R. 7050.0130, subp. F and includes those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Constructed wetlands designed for wastewater treatment are not waters of the state. Wetlands must have the following attributes:

1. A predominance of hydric soils.
2. Inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in a saturated soil condition.
3. Under normal circumstances support a prevalence of such vegetation.

Secs. 13-75. – 13-89. Reserved.

## ARTICLE IV. PERMITTING PROCESSES, PERFORMANCE STANDARDS

### Sec. 13-90. Permit Review Process

- A. Pre-application meeting:** At the discretion of the Zoning Administrator, the City shall facilitate a pre-application meeting with the applicant, City staff (or their authorized representative), and staff of relevant partner agencies (e.g. WCD, MSCWMO, VBWD, MDNR, etc.). The purposes of the meeting are to understand the general parameters of the proposed project and to convey the requirements of meeting the provisions of the ordinance.
- B. Application completeness review:** The City shall make a determination regarding the completeness of a permit application and notify the applicant in writing if the application is not complete including the reasons the application was deemed incomplete.
- C. Application review:** The applicant shall not commence any construction activity subject to this ordinance until a permit has been authorized by the City.
- D. Permit authorization:** If the City determines that the application meets the requirements of this ordinance, the City may issue approval authorizing the project or activity. The approval shall be valid for one year.
- E. Permit denial:** If the City determines the application does not meet the requirements of this ordinance the application must be denied. If the application is denied, the applicant will be notified of the denial in writing including reasons for the denial. Once denied, a new application must be resubmitted for approval before any activity may begin.
- F. Plan information requirements:** The minimum information requirements of the application shall be consistent with the requirements in the most recent version of the NPDES/SDS Construction Stormwater General Permit and Middle St. Croix WMO or Valley Branch Watershed District performance standards. The application information must also include

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permanent treatment information showing the proposed project meets the MSCWMO or VBWD performance goals.

**G. Modification of permitted plans:** If any of the following instances occur to a site with an approved ESC Plan or SWMP, the Applicant shall apply for an amendment to the associated permit(s), submitting all updated materials, reflecting the needed changes; the review of the amended materials shall use the same process as a new submittal, as designated in this ordinance:

1. There is a change in design, construction, operation, maintenance, weather or seasonal conditions that has a significant effect on the discharge of pollutants to surface water or underground water.
2. Inspections or investigations by site operators, local, state or federal officials indicate the plans are not effective in eliminating or significantly minimizing the discharge of pollutants to surface water or underground water or that the discharges are causing water quality standard exceedances.
3. The plan is not achieving the general objectives of minimizing pollutants in stormwater discharges associated with construction activity.

**H. Permit completion:** Before work under the permit is deemed complete, the permittee must submit as-builts, a long term maintenance plan and information demonstrating that the stormwater facilities conform to design specifications.

### Sec. 13-91. Site Design and MIDS Calculator

- A. Better Site Design:** Whenever possible, development projects shall be designed using the Better Site Design Techniques of the current version of the Minnesota Stormwater Manual.<sup>2</sup>
- B. MIDS calculator:** Final site design and choice of permanent stormwater volume reduction practices shall be based on outcomes of the MIDS Calculator (or other model that shows the performance goal can be met) and shall meet the performance standards in section 7 of this ordinance.
- C. Buffer requirement:** Buffer locations and widths must comply with the State of Minnesota, Minnesota Pollution Control Agency, and Middle St. Croix Watershed Management Organization or Valley Branch Watershed District standards.

### Sec. 13-92. Stormwater Volume Reduction Performance Standards

Any applicant for a Stormwater Management Permit as defined in Section 2 of this ordinance must meet all of the following performance standards:

- A. New development volume control:** For new, nonlinear developments on sites without restrictions, stormwater runoff volumes will be controlled and the post-construction runoff volume shall be retained on site for 1.1 inches of runoff from all impervious surfaces on the site.
- B. Redevelopment volume control:** Nonlinear redevelopment projects on sites without restrictions that create or fully reconstruct impervious surfaces shall capture and retain on site 1.1 inches of runoff from the new and/or fully reconstructed impervious surfaces.

<sup>2</sup> Available at [http://stormwater.pca.state.mn.us/index.php/Better\\_site\\_design](http://stormwater.pca.state.mn.us/index.php/Better_site_design).

C. **Linear development volume control:** Linear projects on sites without restrictions that create new and/or fully reconstructed impervious surfaces, shall capture and retain the larger of the following:

1. 0.55 inches of runoff from the new and fully reconstructed impervious surfaces on the site
  2. 1.1 inches of runoff from the net increase in impervious area on the site.
- Mill and overlay and other resurfacing activities are not considered fully reconstructed.

**Sec. 13-93. Flexible treatment alternatives for sites with restrictions**

Applicant shall attempt to comply fully with the appropriate performance standards described above. Alternatives considered and presented shall examine the merits of relocating project elements to address, varying soil conditions and other constraints across the site. If full compliance is not possible due to any of the factors listed below, the applicant must document the reason. If site constraints or restrictions limit the full treatment goal, the following flexible treatment alternatives shall be used:

Applicant shall document the flexible treatment alternatives sequence starting with Alternative #1. If Alternative #1 cannot be met, then Alternative #2 shall be analyzed. Applicants must document the specific reasons why Alternative #1 cannot be met based on the factors listed below. If Alternative #2 cannot be met then Alternative #3 shall be met. Applicants must document the specific reasons why Alternative #2 cannot be met based on the factors listed below. When all of the conditions are fulfilled within an alternative, this sequence is completed.

Volume reduction techniques considered shall include infiltration, reuse & rainwater harvesting, and canopy interception & evapotranspiration and/or additional techniques included in the MIDS calculator and the Minnesota Stormwater Manual.

Higher priority shall be given to BMPs that include volume reduction. Secondary preference is to employ filtration techniques, followed by rate control BMPs.

Factors to be considered for each alternative will include:

1. Karst geology
2. Shallow bedrock
3. High groundwater
4. Hotspots or contaminated soils
5. Drinking Water Source Management Areas or within 200 feet of drinking water well
6. Zoning, setbacks or other land use requirements
7. Poor soils (infiltration rates that are too low or too high, problematic urban soils)

A. **Alternative #1:** Applicant attempts to comply with the following conditions:

1. Achieve at least 0.55" volume reduction from all impervious surfaces if the site is new development or from the new and/or fully reconstructed impervious surfaces for a redevelopment or linear development site.

2. Remove 75% of the annual TP load from all impervious surfaces if the site is new development or from the new and/or fully reconstructed impervious surfaces for a redevelopment site.
3. Options considered and presented shall examine the merits of relocating project elements to address, varying soil conditions and other constraints across the site.

B. **Alternative #2:** Applicant attempts to comply with the following conditions:

1. Achieve volume reduction to the maximum extent practicable.
2. Remove 60% of the annual TP load from all impervious surfaces if the site is new development or from the new and/or fully reconstructed impervious surfaces for a redevelopment site.
3. Options considered and presented shall examine the merits of relocating project elements to address, varying soil conditions and other constraints across the site.

C. **Alternative #3: Off-site Treatment.** Mitigation equivalent to the performance of 1.1 inches of volume reduction for new development, linear development or redevelopment as described above in this section, (including banking or cash) can be performed off-site to protect the receiving water body. Off-site treatment shall be achieved in areas selected in the following order of preference:

1. Locations that yield benefits to the same receiving water that receives runoff from the original construction activity.
2. Locations within the same Department of Natural Resource (DNR) catchment area (Hydrologic Unit 08) as the original construction activity.
3. Locations within the next adjacent DNR catchment area upstream.
4. Locations anywhere within the City's jurisdiction.

The MIDS Design Sequence Flowchart can be found in the Minnesota Stormwater Manual<sup>3</sup>

**Sec. 13-94. Stormwater Management Rate Control**

For new development, redevelopment and linear development sites the site design shall provide on-site treatment during construction and post-construction to ensure no increase from existing conditions in offsite peak discharge for the 1-year, 2-year, 10- year, and 100-year, 24-hour storm events based on the standards defined by the MSCWMO or VBWD. For single family residential building lots not part of a common plan of development site rate control requirements do not apply.

**Sec. 13-95. Other Design Standards**

- A. **Minnesota Stormwater Manual:** All volume control for water quality and quantity and site design specifications shall conform to the current version of the Minnesota Stormwater Manual.
- B. **NPDES/SDS Construction Stormwater General Permit:** All volume control and water quality and quantity Best Management Practice design specifications shall conform to the current version of the NPDES/SDS Construction Stormwater General Permit.

<sup>3</sup> Available at [http://stormwater.pca.state.mn.us/index.php/Flexible\\_treatment\\_options](http://stormwater.pca.state.mn.us/index.php/Flexible_treatment_options)

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- C. **Site erosion and sediment control requirements:** All erosion and sediment control requirements shall conform to the current requirements of NPDES/SDS Construction Stormwater General Permit.
- D. **Watershed District/WMO requirements:** All stormwater management and erosion and sediment control activities shall comply with all applicable requirements of the Watershed Districts or Watershed Management Organizations in which the project is located. In case provisions in this ordinance and requirements of watershed district or watershed management organizations overlap or conflict, the strictest provisions shall apply to the activities.
- E. Where applicable, a minimum of 20' shall be provided on all sides of all publicly owned stormwater facilities for facility maintenance.

Secs. 13-94. – 13-99. Reserved.

## ARTICLE V. INSPECTIONS, MAINTENANCE & ENFORCEMENT

### Sec. 13-100. Inspections and record keeping

- A. **Applicant responsibilities:** The applicant is responsible for inspections and record keeping during and after construction for all privately-owned stormwater treatment practices on the site.
- B. **City inspections:** The City reserves the right to conduct inspections on a regular basis to ensure that both temporary and permanent stormwater management and erosion and sediment control measures are properly installed and maintained prior to construction, during construction, and at the completion of the project.

### Sec. 13-101. Right of entry and inspection

- A. **Powers:** The issuance of a permit constitutes a right-of-entry for the City or its authorized representative to enter upon the construction site. The applicant shall allow the City and its authorized representatives, upon presentation of credentials, to:
  - 1. Enter upon the permitted site for the purpose of obtaining information, examining records, and conducting investigations or surveys;
  - 2. Bring such equipment upon the permitted development as is necessary to conduct such surveys and investigations;
  - 3. Examine and copy any books, papers, records, or memoranda pertaining to activities or records required to be kept under the terms and conditions of the permit;
  - 4. Inspect the stormwater pollution control measures;
  - 5. Sample and monitor any items or activities pertaining to stormwater pollution control measures; and
  - 6. Correct deficiencies in stormwater and erosion and sediment control measures.

### Sec. 13-102. Fees

Fees will be applied per City Fee Schedule

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## Stormwater Management

### Sec. 13-103. Enforcement tools/stop work orders

- A. The City reserves the right to issue construction stop work orders when cooperation with inspections is withheld or when a violation has been identified that needs immediate attention to protect human health and/or the environment.
  - 1. **Construction stop work order:** The City may issue construction stop work orders until stormwater management measures meet specifications and the applicant repairs any damage caused by stormwater runoff. An inspection by the City must follow before the construction project work can resume.
  - 2. **Other actions to ensure compliance:** The City can take any combination of the following actions in the event of a failure by applicant to meet the terms of this ordinance:
    - a. Withhold inspections or issuance of certificates or approvals.
    - b. Revoke any permit issued by the City to the applicant.
    - c. Conduct remedial or corrective action on the development site or adjacent site affected by the failure.
    - d. Charge applicant for all costs associated with correcting the failure or remediating damage from the failure; if payment is not made within thirty days, payment will be made from the applicant's financial securities.
    - e. Bring other actions against the applicant to recover costs of remediation or meeting the terms of this ordinance.
    - f. Any person, firm or corporation failing to comply with or violating any of these regulation, shall be deemed guilty of a misdemeanor and be subject to a fine or imprisonment or both. Each day that a separate violation exists shall constitute a separate offense.

### Sec. 13-104. Long term inspection and maintenance of stormwater facilities

#### A. Private stormwater facilities

- 1. **Maintenance Plan Required:** No private stormwater facilities may be approved unless a maintenance agreement is provided that defines who will conduct the maintenance, the type of maintenance necessary to ensure effective performance, and the maintenance intervals. All private stormwater facilities shall be inspected by the property owner and maintained in proper condition by the owner consistent with the performance goals for which they were originally designed.
- 2. **Facility Access:** The applicant shall obtain all necessary easements or other property interests to allow access to the facilities for inspection or maintenance for both the responsible party and the City or authorized representative.
- 3. **Removal of Settled Materials:** All settled materials including settled solids, shall be removed from ponds, sumps, grit chambers, and other devices as necessary and disposed of properly.
- 4. **Inspections:** All stormwater facilities within the City shall be inspected by the property owner at a frequency consistent with the maintenance plan. Inspection reports shall be provided to the City upon request.

#### B. Public stormwater facilities

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1. **Acceptance of Publicly Owned Facilities:** Before work under the permit is deemed complete; the permittee must submit as-builts and a Maintenance Plan demonstrating at the time of final stabilization that the stormwater facilities conform to design specifications. A final inspection shall be required before the City accepts ownership of the stormwater facilities.
2. **Maintenance:** The City shall perform maintenance of publicly owned stormwater facilities in accordance with their comprehensive stormwater management plan and other regulatory requirements.

### Sec. 13-105. Financial Securities

- A. **Amount:** At the discretion of the City, the City may require a Financial Security from the Applicant in an amount sufficient to cover the entirety of the estimated costs of permitted and remedial work based on the final design as established in a set financial security schedule determined by the City.
- B. **Release:** The Financial Security shall not be released until all permitted and remedial work is completed.
- C. **Use by City:** The Financial Security may be used by the City to complete work not completed by the Applicant.
- D. **Form of security:** The form of the Financial Security shall be one or a combination of the following to be determined by the City:
  1. **Cash deposit** - A Financial Security for erosion and sediment control, as determined by the City, shall be by cash deposit to the City. The cash will be held by City in a separate account.
  2. **Security deposit** - Deposit, either with the City, a responsible escrow agent, or trust company, at the option of the City, either:
    - a. An irrevocable letter of credit, negotiable bonds of the kind approved for securing deposits of public money, or other instruments of credit from one or more financial institutions, subject to regulation by the state and federal government wherein said financial institution pledges funds are on deposit and guaranteed for payment.
    - b. Cash in U.S. currency.
    - c. Other forms and securities (e.g., disbursing agreement) as approved by the City.
- E. **City indemnity:** This Financial Security shall hold the City free and harmless from all suits or claims for damages resulting from the negligent grading, removal, placement or storage of rock, sand, gravel, soil or other like material within the City.
- F. **Maintaining the financial security:** If at any time during the course of the work the balance of the Financial Security falls below 50% of the total required deposit, the Applicant shall make another deposit in the amount necessary to restore the cash deposit to the required amount. If the Applicant does not bring the financial security back up to the required amount within seven (7) days after notification by the City that the amount has fallen below 50% of the required amount the City may:
  1. **Withhold inspections.** Withhold the scheduling of inspections and/or the issuance of a Certificate of Occupancy.

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## Stormwater Management

2. **Revoke permits.** Revoke any permit issued by the City to the Applicant for the site in question or any other of the Applicant's sites within the City's jurisdiction.
- G. **Action against the financial security:** The City may access the Financial Security for remediation actions if any of the conditions listed below exist. The City shall use the Financial Security to pay for remedial work undertaken by the City, or a private contractor under contract with the City, or to reimburse the City for all costs incurred in the process of remedial work including, but not limited to, staff time and attorney's fees.
1. **Abandonment.** The Applicant ceases land disturbing activities and/or filling and abandons the work site prior to completion of the grading plan.
  2. **Failure to implement the SWPPP or ESC Plan** - The Applicant fails to conform to the grading plan and/or the SWPPP as approved by the City.
  3. **Failure to perform** - The BMPs utilized on the project fail within one year of installation.
  4. **Failure to reimburse City** - The Applicant fails to reimburse the City for corrective action taken.
- H. **Proportional reduction of the financial security:** When more than one-third of the applicant's maximum exposed soil area achieves final stabilization, the City can reduce the total required amount of the financial security by one-third. When more than two-thirds of the applicant's maximum exposed soil area achieves final stabilization, the City can reduce the total required amount of the financial security to two-thirds of the initial amount. This reduction in financial security will be determined by the City.
- I. **Returning the financial security:** The security deposited with the City for faithful performance of the SWPPP or the ESC Plan and any related remedial work shall be released one full year after the completion of the installation of all stormwater pollution control measures, including vegetation establishment, as shown on the SWPPP or ESC Plan.
- J. **Emergency action:** If circumstances exist such that noncompliance with this ordinance poses an immediate danger to the public health, safety and welfare, as determined by the City, the City may take emergency preventative action. The City shall also take every reasonable action possible to contact and direct the applicant to take any necessary action. Any cost to the City for emergency action may be recovered from the applicant's financial security.

### Sec. 13-106. Enforcement Actions

- A. **Notification of Failure of the Permit:** The City shall notify the permit holder of the failure of the permit's measures.
  1. **Initial Contact:** The initial contact will be to the party or parties listed on the application and/or the SWPPP as contacts. Except during an emergency action, forty-eight (48) hours after notification by the City or seventy-two (72) hours after the failure of erosion and sediment control measures, whichever is less, the City at its discretion, may begin corrective work. Such notification should be in writing, but if it is verbal, a written notification should follow as quickly as practical. If after making a good faith effort to notify the responsible party or parties, the City has been unable to establish contact, the City may proceed with corrective work. There are conditions when time is of the essence in controlling erosion. During such a condition the City may take immediate action, and then notify the applicant as soon as possible.
  2. **Erosion Off-site:** If erosion breaches the perimeter of the site, the applicant shall immediately develop a cleanup and restoration plan, obtain the right-of-entry from the

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adjoining property owner, and implement the cleanup and restoration plan within forty-eight (48) hours of obtaining the adjoining property owner's permission. In no case, unless written approval is received from the City, may more than seven (7) calendar days go by without corrective action being taken. If in the discretion of the City, the permit holder does not repair the damage caused by the erosion, the City may do the remedial work required. When restoration to wetlands and other resources are required, the applicant shall be required to work with the appropriate agencies to ensure that the work is done properly.

3. **Erosion into Streets, Wetlands or Water Bodies:** If eroded soils (including tracked soils from construction activities) enter or appear likely to enter streets, wetlands, or other water bodies, cleanup and repair shall be immediate. The applicant shall provide all traffic control and flagging required to protect the traveling public during the cleanup operations.
4. **Failure to do Corrective Work:** When an applicant fails to conform to any provision of this policy within the time stipulated, the City may take the following actions.
  - a. Stop Work Order - Issue a stop work order, withhold the scheduling of inspections, and/or withhold the issuance of a Certificate of Occupancy.
  - b. Permit Revocation - Revoke any permit issued by the City to the applicant for the site in question or any other of the applicant's sites within the City's jurisdiction.
  - c. Correction by City - Correct the deficiency or hire a contractor to correct the deficiency.
    - i. The applicant will be required to reimburse the City for all costs incurred in correcting stormwater pollution control deficiencies. If payment is not made within thirty (30) days after costs are incurred by the City, payment will be made from the applicant's financial securities as described in Section 8 above.
    - ii. If there is an insufficient financial amount in the applicant's financial securities as described in Section 8 above, the City may assess the remaining amount against the property. As a condition of the permit, the owner shall waive notice of any assessment hearing to be conducted by the City, concur that the benefit to the property exceeds the amount of the proposed assessment, and waive all rights by virtue of Minnesota Statute 429.081 to challenge the amount or validity of assessment.

B. **Misdemeanor:** Any person, firm or corporation failing to comply with, or violating any of these regulations, shall be deemed guilty of a misdemeanor and be subject to a fine or imprisonment or both.

1. All land use and building permits may be suspended until the applicant has corrected the violation.
2. Each day that a separate violation exists shall constitute a separate offense.

**City of Afton**  
**3033 St. Croix Trl, P.O. Box 219**  
**Afton, MN 55001**

# **Planning Commission Memo**

## **Meeting: January 9, 2017**

To: Chair Ronningen and members of the Planning Commission

From: Ron Moorse, City Administrator

Date: January 4, 2017

Re: Review and Update of Allowed Uses in the Industrial Zones – Chris Eng, Washington County Economic Development Director

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The Council, at its November 15, 2016 meeting, referred to the Planning Commission the review of the allowed uses in the Industrial zones. Staff has had discussions with Chris Eng, Washington County Economic Development Director, regarding potential uses in the Industrial zones. The Planning Commission requested that Chris be invited to share his thoughts and insights regarding the types of uses that would be a good fit for Afton's industrial area.

**Planning Commission Direction Requested:**

No Action Required

### **December 20, 2016 Council Meeting Highlights**

The Council thanked Deputy Sullivan for his dedicated and outstanding service to the city during his time assigned to the Afton area and congratulated him on his promotion to the Investigator position with the Sheriff's Department.

The Council held the hearing for the 2017 budget and tax levy, which reflects a major effort to increase resources for meeting street improvement needs, and adopted the proposed 2017 budget and tax levy.

The Council approved payment of the invoice for the 2016 Crack Fill and Seal Coat Project in the amount of \$32,804.

The Council approved a cost estimate of \$5,000 to \$7,500 for a hydraulic analysis for a permit to reduce the cost of a culvert replacement on 30<sup>th</sup> Street by approximately \$20,000

The Council approved the expenditure of up to \$2,882.80 for required barricades and safety signage at the closed Putnam Boulevard bridge.

The Council approved the use of bonding as a funding mechanism for an accelerated plan of street improvements.

The Council authorized the street improvements to be financed with street reconstruction bonds and directed staff to set in motion the process required to issue the bonds. The Council also directed staff to move forward on a dual track with abatement bonds.

The Council approved moving forward with the process of planning street improvements for construction in 2017 based on the priorities identified by the Public Works Committee.

The Council scheduled a special Council meeting on January 12, 2017 at 1:00 p.m. to consider options for refinancing temporary bonds being used to provide temporary financing for the Downtown Village Improvements Project.

The Council authorized the purchase of an electronic drop box through Dropbox Business to store and access accounting records at a cost of \$99 per year.

The Council appointed Michael Pofahl to provide annual audit services for fiscal year 2016 at a cost not to exceed \$5,650

The Council approved Amendment No. 4 to the DNR Flood Hazard Mitigation Grant Agreement to add \$15,000 of funding.

The Council approved the replacement of seventeen dais and conference table chairs in the City Council Chambers at a cost of \$3,549