

## SHORELAND DISTRICT

### § 150.250 PURPOSE.

(A) The shorelands within the city are designated as shoreland district. Regulations set forth in §§ 150.250 *et seq.* shall govern land use and other activities within this district. The classification of the lakes shall govern the use, alteration, and development of land within the shoreland district.

(B) The uncontrolled use of shorelands adversely affects the public health, safety, and general welfare by contributing to pollution of public waters and by impairing the local tax base. In furtherance of the policies declared in M.S. Ch. 103G, 103F, 115, 116, 394, and 462, as they may be amended from time to time, the Commissioner provides the following minimum standards and criteria for the subdivision, use, and development of the shore lands of public waters. The standards and criteria are intended to preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of water and related land resources of the state.

(1997 Code, § 325.01)

### § 150.251 INTENT.

It is the intent of the city to:

(A) Regulate placement of sanitary and waste treatment facilities on shorelands of public waters to prevent pollution of public waters and public health hazards resulting from the facilities;

(B) Regulate alteration of shorelands of public waters to prevent excessive sediment pollution, increased water runoff, excessive nutrient runoff pollution;

(C) To preserve and enhance the unique aesthetic appearance and ecological value of the shoreland; and

(D) Regulate the construction of buildings and changes of land use in shorelands to minimize property damage during periods of high water.

(1997 Code, § 325.02)

### § 150.252 DEFINITIONS.

Unless specifically defined below, words or phrases used in §§ 150.250 *et seq.* shall be interpreted so as to give them the same meaning as they have in § 11.01 with common usage in this and all other sections of the

code. For the purpose of this §§ 150.250 *et seq.*, the words "must" and "shall" are mandatory and not permissive. All distances, unless otherwise specified, shall be measured horizontally.

(1997 Code, § 325.03)

### **§ 150.253 ADMINISTRATION.**

(A) The city will provide for the administration and enforcement of their shoreland management controls by establishing permanent procedures for building construction, installation of sewage treatment systems, and grading and filling.

(B) (1) *Permits required.* A permit is required for the construction of buildings or building additions (including the related activities as construction of decks and signs), installation and/or alteration of sewage treatment systems, and those grading and filling activities not exempted by § 150.255(E). Application for a permit shall be made to the city on the forms provided. The application shall include the necessary information so that the city can determine the site's suitability for the intended use and that a compliant sewage treatment system will be provided.

(2) *Variance.*

(a) Variance requests will be considered pursuant to the procedures set forth in the zoning code.

(b) For existing developments, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, must require reconstruction of a non-conforming sewage treatment system.

(3) *Notifications to the Department of Natural Resources.*

(a) Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under local shoreland management controls must be sent to the Commissioner or the Commissioner's designated representative and postmarked at least 10 days before the hearings. Notices of hearings to consider proposed subdivision or plats must include copies of the subdivision or plat.

(b) When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance required in division (B)(3) of this section shall also include the Board of Adjustment's summary of the public record and testimony and the findings of facts and conclusions which supported the issuance of the variance.

(c) A copy of approved amendments and subdivisions or plats and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the Commissioner or the Commissioner's designated representative and postmarked within 10 days of final action.

(1997 Code, § 325.04) Penalty, see § 10.99

### **§ 150.254 SHORELAND CLASSIFICATION.**

(A) The public waters of the city have been classified below, consistent with the criteria found in Minnesota Rules, Chapter 6120.3000, as it may be amended from time to time, and the Protected Waters Inventory Map for Washington County, Minnesota. The shoreland area for the water bodies listed below shall be defined in § 150.252 and as shown on the city's shoreland management area map.

(B) The classes of public waters for the city are natural environment lakes, recreational development lakes, and tributary streams.

(1) *Natural environment lakes.* Natural environment lakes are generally small, often shallow lakes with limited capacities for assimilating the impacts of development and recreational use. They often have adjacent lands with substantial constraints for development, such as high water tables, exposed bedrock and unsuitable soils. These lakes, particularly in rural areas, usually do not have much existing development or recreational use.

<b><i>D.N.R. I.D.#</i></b>	<b>Lake Name</b>	<b>Location</b>	<b>OHW</b>	<b>100-Year Elevation</b>
82007400	Horseshoe	Sec. 25	876.8	
82009900	Clear	Sec. 2, 11		
82010000	Unnamed	Sec. 4		
82010500	Berschen's Pond	Sec. 10		
82010700	Sunfish	Sec. 14	896.4	899
82010800	Friedrich Pond	Sec. 15, 22		913.0
82011000	Downs	Sec. 24	889.1	893
82011100	H.J. Brown pond	Sec. 26		
82011200	Rose (Sunfish)	Sec. 25, 36		
82011300	Goose	Sec. 27, 34, 35	924.4	
<b><i>D.N.R. I.D.#</i></b>	<b>Lake Name</b>	<b>Location</b>	<b>OHW</b>	<b>100-Year Elevation</b>
82011601	Armstrong (north of 10th Street)	Sec. 28	1020.3	
82011602	Armstrong (south of 10th Street)	Sec. 33	1019.1	

(2) *Recreational development lakes.* Recreational development lakes are generally medium- sized



Commercial Ag	P	P					P				P
Duplex Multi-Family											CUP
Farming	P	P		P	P	P	P	P			P
Greenhouses	CUP										CUP
Kennels	CUP				CUP		CUP				
Manufactured Homes; with sewer						P					
Manufacturing					CUP						
Office Uses				P	P				P	P	
Restaurants				P					CUP	CUP	
Retail Uses				P	P				P	CUP	
Single-Family Residential	P	P				P	P	P			P
Stables	CUP										CUP

NOTES TO TABLE:

(1) P=Permitted Use

(2) CUP=Conditional Use Permit

(3) The Land Use Matrix outlines general allowed uses, subject to restrictions and provisions of the zoning code. Reference the Chapter 154 of the city code for specific allowable uses in each district.

(Am. Ord. 97-16, passed 9-16-1997; Am. Ord. 08-005, passed 2-4-2008)

(1997 Code, § 325.05)

**§ 150.255 SHORELAND STANDARDS.**

(A) *General provisions.* The following standards shall apply to all shorelands of the protected waters. Where the requirements of the underlying zoning district as shown on the official zoning map are more restrictive

than those set forth in §§ 150.250 *et seq.*, the more restrictive standards shall apply. Only land above the ordinary high water level of public waters can be used to meet lot area standards, and lot width standards must be met at both the ordinary high water level and at the building line.

(B) *Lot area; no sewer.*

<b>Zoning District</b>	<b>Natural Environment Lakes</b>		<b>Recreation Development Lakes</b>	
	<i>Riparian</i>	Non-Riparian	Riparian	Non-Riparian
RE (No Sewer)	2.5 acres	2.5 acres	2.5 acres	2.5 acres
R1 (No Sewer)	80,000 square feet	80,000 square feet	1.5 acres	1.5 acres
RR (No Sewer)	10 acres	10 acres	10 acres	10 acres
AG (No Sewer)	40 acres	40 acres	40 acres	40 acres
OP (No Sewer)	0.5 acres	0.5 acres		
R3 (No Sewer)	40,000 square feet	20,000 square feet	20,000 square feet	15,000 square feet
GB (No Sewer)	3.5 acres	3.5 acres	3.5 acres	3.5 acres
BP (No Sewer)	3 acres	3 acres	3 acres	3 acres

(Am. Ord. 97-16, passed 9-16-1997)

(C) *Lot width.*

<b>Classification</b>	<b>Riparian Lot (No Sewer)</b>	<b>Riparian Lot (With Sewer)</b>	<b>Non-Riparian Lot (Without Sewer)</b>	<b>Non-Riparian Lot (With Sewer)</b>
Natural Environment	200 feet	200 feet	200 feet	NA
Recreational Development	150 feet	150 feet	150 feet	NA
Tributary Streams	100 feet	100 feet	NA	NA

(Am. Ord. 97-16, passed 9-16-1997)

(D) *Placement, design, and height of structures.*

(1) *Placement.* When more than 1 setback applies to a site, structures and facilities must be located to

meet all setbacks. Where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site is not located in a shore impact zone or in a bluff impact zone. Structures shall be located as follows.

(a) *Structure and on-site sewage system setbacks.* Structure and on-site sewage system setbacks (in feet) from ordinary high water level.

<b><i>Setbacks From OHW</i></b>		
<b><i>Classification</i></b>	<b><i>Structures</i></b>	<b><i>Sewage Treatment System</i></b>
Natural Environment	150 feet	150 feet
Recreational Development	100 feet	75 feet
Tributary	100 feet	75 feet

(b) *Additional structure setbacks.* The following additional structure setbacks apply, regardless of the classification of the water body.

<b><i>Setback From</i></b>	<b><i>Setback (In Feet)</i></b>
Top of bluff	30
Unplatted cemetery	50
Right-of-way line of federal, state, or county highways	Per underlying zoning district regulations and exceptions
Right-of-way line of town road, public street, or other roads or streets not classified	Per underlying zoning district regulations and exceptions

(c) *Bluff impact zone.* Structures and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.

(d) *Significant historic sites.* No structure may be placed on a significant historic site in a manner that affects the values of the site unless adequate information about the site has been removed and documented in a public repository.

(e) *Steep slopes.* The city shall evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions must be attached to issued permits to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other facilities as viewed from the surface of public water, assuming summer, leaf-on vegetation.

(f) *Proximity to roads and highways.* Per underlying zoning district regulations and exceptions.

(g) *Use without water-oriented needs.* Use without water-oriented needs must be located on lots or parcels without public waters frontage, or, if located on lots or parcels with public water frontage, must either be set back double the normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

(2) *Design criteria for structures.*

(a) *High water elevations.* Structures must be placed in accordance with any flood plain regulations applicable to the site. All principal structures shall have their lowest floor at a level at least 3 feet above the highest known water level or the ordinary high water level, whichever is higher.

(b) *Water-oriented accessory structures.* Each lot may have 1 water-oriented accessory structure not meeting the normal structure setback in § 150.255(D) if this water-oriented accessory structure complies with the following provisions.

1. The structure or facility must not exceed 13 feet in height, exclusive of safety rails, and cannot occupy an area greater than 250 square feet. Detached decks must not exceed 8 feet above grade at any point.

2. The setback of the structure or facility landward from the ordinary high water level must be at least 20 feet on a recreational development lake and 50 feet on a natural environment lake.

3. The structure or facility must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks, or color, assuming summer, leaf-on conditions.

4. The roof may be used as a deck with safety rails, but must not be enclosed or used as a storage area.

5. The structure or facility must not be designed or used for human habitation and must not contain water supply or sewage treatment facilities.

6. As an alternative for general development and recreational development waterbodies, water-oriented accessory structures used solely for watercraft storage, and including storage of related boating and water-oriented sporting equipment, may occupy an area up to 400 square feet provided the maximum width of the structure is 20 feet as measured parallel to the configuration of the shoreline.

(c) *Stairways, lifts, and landings.* Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements.

1. Stairways and lifts must not exceed 4 feet in width. Wider stairways may be used for public open space recreational properties.

2. Landings for stairways and lifts must not exceed 32 square feet in area. Landings larger than 32 square feet may be used for public open space recreational properties.

3. Canopies or roofs are not allowed on stairways, lifts, or landings.

4. Stairways, lifts, and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion.

5. Stairways, lifts, and landings must be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical.

6. Facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, provided that the dimensional and performance standards of divisions (D)(2)(c)1. to (D)(2)(c)5. above are satisfied.

(3) *Height of structures.* All structures in residential districts, except churches and non-residential agricultural structures, must not exceed 35 feet in height.

(E) *Shoreland alterations.*

(1) *Generally.* Alterations of vegetation and topography will be regulated to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping, and protect fish and wildlife habitat. Best management practices are recommended to guide shoreland alteration activities.

(2) *Vegetation alterations.* Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of roads and parking areas regulated by § 150.255(F) are exempt from the vegetation alteration standards that follow. Removal or alteration of vegetation, except for agricultural uses as regulated in § 150.255(H) is allowed, subject to the following standards.

(a) Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes is not allowed.

(b) In shore and bluff impact zones and on steep slopes, limited clearing of trees and shrubs, and cutting, pruning, and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, picnic areas, access paths, livestock watering areas, beach and watercraft access areas and permitted water-oriented accessory structures or facilities, provided that:

1. The screening of structures, vehicles or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced;

2. Along rivers, existing shading of water surfaces is preserved; and

3. The above provisions are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards.

(3) *Topographic alterations; grading and filling.*

(a) Grading and filling and excavations necessary for the construction of structures, sewage treatment systems, and driveways under validly issued construction permits for these facilities do not require the

issuance of a separate grading and filling permit. The grading and filling standards in §§ 150.250 *et seq.* must be incorporated into the issuance of permits for construction of structures, sewage treatment systems, and driveways.

(b) Public roads and parking areas are regulated by § 150.255(F).

(c) Notwithstanding divisions (E)(3)(a) and (E)(3)(b) above, a grading and filling permit will be required for:

1. The movement of more than 10 cubic yards of material on steep slopes or within shore or bluff impact zones; and

2. The movement of more than 50 cubic yards of material outside of steep slopes and shore and bluff impact zones.

(d) The following considerations and conditions in addition to §§ 150.215 *et seq.* must be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variances, and subdivision approvals.

1. Grading and filling in any Type 2, 3, 4, 5, 6, 7, or 8 wetland must be evaluated to determine how extensively the proposed activity would affect the following functional qualities of the wetland. (This evaluation must also include a determination of whether the wetland alteration being proposed requires permits, reviews, or approvals by other local, state, or federal agencies such as a watershed district, the Minnesota Department of Natural Resources, or the United States Army Corps of Engineers. The applicant will be so advised.)

a. Sediment and pollutant trapping and retention;

b. Storage of surface runoff to prevent or reduce flood damage;

c. Fish and wildlife habitat;

d. Recreational use;

e. Shoreline or bank stabilization; and

f. Noteworthiness, including special qualities such as historic significance, critical habitat for endangered plants and animals, or others.

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 grading is complete.

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. Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued slope stability and must not create finished slopes of 30% or greater.
8. Fill or excavated material must 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. § 103G.245, as it may be amended from time to time.
10. Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties.
11. Placement of natural rock rip-rap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed 3 feet horizontal to 1 foot vertical, the landward extent of the rip-rap is within 10 feet of the ordinary high water level, and the height of the rip-rap above the ordinary high water level does not exceed 3 feet.

(e) Excavations where the intended purpose is connection to a public water, such as boat slips, canals, lagoons, and harbors, must comply with all provisions of §§ 150.250 *et seq.* Permission for excavations may be given only after the Commissioner has approved the proposed connection to public waters.

(F) *Placement and design of roads, driveways, and parking areas.*

(1) Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view of 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, or other applicable technical materials.

(2) Roads, driveways, and parking areas must meet structure setbacks and must not be placed within bluff and shore impact zones, when other reasonable and feasible placement alternatives exist. If the Council, at its discretion, determines that no alternative exists, the structures may be placed within these areas and must be designed to minimize adverse impacts.

(3) Public and private (intended solely for the use of the property owner) watercraft access ramps, approach roads, and access-related parking areas may be placed within shore impact zones, provided the vegetative screening and erosion control conditions of §§ 150.250 *et seq.* are met. For private facilities, the grading and filling provisions of § 150.255(E) must be met.

(G) *Storm water management.* The following general and specific standards shall apply, in addition to all applicable requirements found in § 150.273.

- (1) *General standards.*

(a) Existing natural drainage ways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain storm water runoff before discharge to public waters.

(b) 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 grading is complete and facilities or methods used to retain sediment on the site.

(c) When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle storm water runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds may be used. Preference must be given to designs using surface drainage, vegetation, and infiltration other than buried pipes and man-made materials and facilities.

(d) Use of fertilizers, pesticides, or animal wastes within shorelands must be done in a way as to minimize impact on the shore impact zone or public water by proper application.

(2) *Specific standards.*

(a) Impervious surface coverage of lots must not exceed 6,000 S.F. or 15% of the lot area, whichever is larger.

(b) When constructed facilities are used for storm water management, documentation must be provided by a licensed civil engineer that they are designed and installed consistent with the field office technical guide of the local soil and water conservation districts.

(c) New constructed storm water outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.

(H) *Special provisions for public/semi-public, agricultural, and forestry.*

(1) *Standards for public and semi-public uses.*

(a) Surface water-oriented public or semi-public uses with similar needs to have access to and use of public waters may be located on parcels or lots with frontage on public waters. Those uses with water-oriented needs must meet the following standards.

1. In addition to meeting impervious coverage limits, setbacks, and other zoning standards in §§ 150.250 *et seq.*, the uses must be designed to incorporate topographic and vegetative screening of parking areas and structures.

2. Uses that require short-term watercraft mooring for patrons must centralize these facilities and design them to avoid obstructions of navigation and to be the minimum size necessary to meet the need.

3. No advertising signs or supporting facilities for signs may be placed in or upon public waters. Signs conveying information or safety messages may be placed in or on public waters by a public authority or under a permit issued by the County Sheriff.

4. Other outside lighting may be located within the shore impact zone or over public waters if it is used primarily to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination out across public waters. This does not preclude use of navigational lights.

(b) Use without water-oriented needs must be located on lots or parcels without public waters frontage, or, if located on lots or parcels with public waters frontage, must either be set back double the normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

(2) *Agriculture use standards.*

(a) General cultivation farming, grazing, nurseries, horticulture, truck farming, sod farming, and wild crop harvesting are permitted uses if steep slopes and shore and bluff impact zones are maintained in permanent vegetation or operated under an approved conservation plan (Resource Management System) consistent with the field office technical guides of the local soil and water conservation districts or the United States Soil Conservation Service, as provided by a qualified individual or agency. Best management practices of the Minnesota D.N.R. must be used. 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.

(b) Animal feedlots, as defined by the Minnesota Rules, Chapter 7020.300, as amended from time to time, for compliance with permits, must meet the following standards.

1. New feedlots must not be located in the shoreland of water courses or in bluff impact zones and must meet a minimum setback of 300 feet from the ordinary high water level of all public water basins.

2. Modifications or expansions to existing feedlots that are located within 300 feet of the ordinary high water level or within a bluff impact zone are allowed if they do not further encroach into the existing ordinary high water level setback or encroach on bluff impact zones.

(I) *Water supply and sewage treatment.*

(1) *Water supply.* Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the Minnesota Department of Health and the Minnesota Pollution Control Agency. Private wells must be located, constructed, maintained, and sealed in accordance with or in a more thorough manner than the water well construction code of the Minnesota Department of Health.

(2) *Sewage treatment.* Any premises used for human occupancy must be provided with an adequate method of sewage treatment, as follows.

(a) Publicly-owned sewer systems must be used where available.

(b) All private sewage treatment systems must meet or exceed the standards contained in City Code Chapter 51 or the standards for individual sewage treatment systems contained in Minnesota Rules, Chapter 7080.0060, a copy of which is adopted by reference and declared to be a part of §§ 150.250 *et seq.* In all cases the more restrictive regulation shall apply.

(c) On-site sewage treatment systems must be set back from the ordinary high water level in accordance with the setbacks contained in § 150.255(D)(1).

(d) All proposed sites for individual sewage treatment systems shall be evaluated in accordance with the criteria in this division (I)(2)(d). If the determination of a site's suitability cannot be made with publicly available, existing information, it shall then be the responsibility of the applicant to provide sufficient soil borings and percolation tests from onsite field investigations. Evaluation criteria:

1. Depth to the highest known or calculated ground water table or bedrock;
2. Soil conditions, properties, and permeability;
3. Slope; and
4. The existence of lowlands, local surface depressions, and rock outcrops.

(e) Non-conforming sewage treatment systems shall be regulated and upgraded in accordance with § 150.256(B)(3).

(f) The discharge of non-treated raw sewage effluent into a lake, wetland, or stream is strictly prohibited and the condition will be required to be ceased immediately; and within a reasonable period (not to exceed 30 days) of notice and order to comply by the Zoning Administrator, the property owner shall install a system which complies with Minn. Rules Chapter 7080, as it may be amended from time to time, and Chapter 51 of the city code, whichever is more restrictive.

(g) Gray water, meaning liquid waste from a dwelling produced by bathing, laundry, culinary operations, and floor drains associated with these sources, and specifically excluding toilet waste, must be treated in accordance with Minn. Rules Chapter 7080, as it may be amended from time to time. Discharge of gray water directly into a lake, wetland, or stream is prohibited and the condition shall cease immediately.

(h) Any discharge of chemically-treated water into a lake, wetland, or stream, such as an example only, the drainage of a swimming pool, must not be done without first obtaining all required permits from the Minnesota Pollution Control Agency.

(J) *Conditional uses.*

(1) Conditional uses allowable within shoreland areas shall be subject to the review and approval procedures, and criteria and conditions for review of conditional uses established in the zoning code.

(2) The following additional evaluation criteria and conditions apply within shoreland areas.

(a) *Evaluation criteria.* A thorough evaluation of the water body and 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, both during and after construction;
2. The visibility of structures and other facilities as viewed from public waters is limited;
3. The site is adequate for water supply and on-site sewage treatment; and
4. The types, uses, and numbers of watercraft that the project will generate are compatible in

relation to the ability of public waters to safely accommodate these watercraft.

(b) *Conditions attached to conditional use permits.* The Council, upon consideration of the criteria listed above and the purposes of §§ 150.250 *et seq.*, shall attach the conditions to the issuance of the conditional use permits as it deems necessary to fulfill the purposes of §§ 150.250 *et seq.* The conditions may include, but are not limited to, the following:

1. Increased setbacks from the ordinary high water level;
2. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted; and
3. Special provisions for the location, design, and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.

(1997 Code, § 325.06) (Am. Ord. 08-005, passed 2-4-2008; Am. Ord. 08-024, passed 4-20-2010; Am. Ord. 2012-61, passed 9-4-2012) Penalty, see § 10.99

## **§ 150.256 NON-CONFORMITIES.**

(A) All legally established non-conformities as of the date of §§ 150.250 *et seq.* may continue, but they will be managed according to applicable state statutes and other regulations of the city for the subject of alterations and additions, repair after damage, discontinuance of use, and intensification of use; except that the following standards will also apply to shoreland areas.

(B) (1) *Construction on non-conforming lots of record.*

(a) Lots of record in the office of the County Recorder on the date of enactment of §§ 150.250 *et seq.* that do not meet the requirements of § 150.255(B) may be allowed as building sites without variances from lot size requirements, 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, and sewage treatment and setback requirements of §§ 150.250 *et seq.* are met.

(b) A variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued for a lot. In evaluating the variance, the Board of Adjustment shall consider 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 2 or more contiguous lots under the same ownership, any individual lot does not meet the requirements of § 150.255(B), 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 1 or more contiguous lots so they equal 1 or more parcels of land, each meeting the requirements of § 150.255(B) as much as possible.

(2) *Additions/expansions to non-conforming structures.*

(a) *Additions/expansions.* All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback, height, and other requirements of § 150.255. Any deviation

from these requirements must be authorized by a variance pursuant to § 150.253(B)(2).

(b) *Decks.* Deck additions may be allowed without a variance to a structure not meeting the required setback from the ordinary high water level if all of the following criteria and standards are met.

1. The structure existed on the date the structure setbacks were established.
2. A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure.
3. The deck encroachment toward the ordinary high water level does not exceed 15% of the existing setback of the structure from the ordinary high water level or does not encroach closer than 30 feet, whichever is more restrictive.
4. The deck is constructed primarily of wood and is not roofed or screened.

(3) *Non-conforming sewage treatment systems.*

(a) A sewage treatment system not meeting the requirements of § 150.255(I) must be upgraded, at a minimum, at any time a permit or variance of any type is required for any improvement on, or use of, the property. For the purposes of this provision, a sewage treatment system shall not be considered non-conforming if the only deficiency is the sewage treatment system's improper setback from the ordinary high water level.

(b) The Council of the city has notified the D.N.R. Commissioner of its plan to identify non-conforming sewage treatment systems in shoreland areas. The city will require upgrading or replacement of any non-conforming system identified by this program within a reasonable period of time, which will not exceed 180 days of notice and order to comply by the Zoning Administrator. Sewage systems installed according to all applicable local shoreland management standards adopted under M.S. § 103F.201, as it may be amended from time to time, in effect at the time of installation may be considered as conforming unless they are determined to be failing, except that systems including cesspools, leaching pits, seepage pits, or other deep disposal methods, or systems with less soil treatment area separation above ground water than required by the Minnesota Pollution Control Agency's Chapter 7080, as it may be amended from time to time, for design of off-site sewage treatment systems, shall be considered nonconforming.

(1997 Code, § 325.07) Penalty, see § 10.99

## **§ 150.257 SUBDIVISION/PLATTING PROVISIONS.**

(A) *Land suitability.* 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 city.

(B) *Platting.* All subdivisions shall be in accordance with the city's platting regulations and requirements.

(C) *Consistency with other controls.* Subdivisions must conform to all regulations for the city. A subdivision will not be approved where a later variance from 1 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 § 150.255(D) and (I) can be provided for every lot. Each lot shall meet the minimum lot size and dimensional requirements of § 150.255(B), including at least a minimum contiguous vegetative area, that is free of limiting factors sufficient for the construction of 2 standard sewage treatment systems. Lots that would require use of holding tanks must not be approved.

(D) *Information requirements.* Sufficient information must be submitted by the applicant for the city to make a determination of land suitability. The information may include the following at the discretion of the City Planner or City Engineer:

(1) Topographic contours at 2 foot intervals or less;

(2) The surface water features required in M.S. § 505.02, Subd. 1, as it may be amended from time to time, to be shown on plats obtained from United States Geological Survey quadrangle topographic maps or more accurate sources;

(3) 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;

(4) 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 controlling storm water runoff and erosion, both during and after construction activities;

(5) Location of 100-year flood plain areas and flood way districts from existing adopted maps or data; and

(6) A line or contour representing the ordinary high water level, the "toe" and "top" of bluffs, and the minimum building setback distances from the top of the bluff and the lake or stream.

(E) *Dedications.* When a land or easement dedication is a condition of subdivision approval, the approval must provide easements over natural drainage or ponding areas for management of storm water and significant wetlands.

(F) *Controlled access or recreational lots.* Lots intended as controlled accesses to public waters or for recreational use areas for use by nonriparian lots within a subdivision must meet or exceed the sizing criteria in § 150.255(B) and (C).

(1997 Code, § 325.08) Penalty, see § 10.99

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