

11.36 Shoreland Overlay District

A. Statutory Authorization and Policy

1. **Statutory Authorization.** This shoreland ordinance is adopted pursuant to the authorization and policies contained in *Minnesota Statutes, Chapter 103F, Minnesota Regulations, Parts 6120.2500-6120.3900*, and the planning and zoning enabling legislation of *Minnesota Statutes, Chapter 462*.
2. **Policy.** The uncontrolled use of shorelands of the City of Mahtomedi, MN affects the public health, safety, and general welfare not only by contributing to pollution of public waters, but also impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise subdivision, use and development of shorelands of public waters. The Legislature of Minnesota has delegated responsibility to local governments of the state to regulate the subdivision, use and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of waters and related land resources. This responsibility is hereby recognized by the City of Mahtomedi.

B. General Provisions and Definitions

1. **Jurisdiction.** The provisions of this Subdivision shall apply to the shorelands of the public water bodies as classified in *Subpart D (1)* of this Subdivision. A body of water created by a private user where there was no previous shoreland may, at the discretion of the governing body, be exempted from this Subdivision of the Ordinance.
2. **Abrogation and Greater Restrictions.** It is not intended by this Subdivision to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this *Subdivision* imposes greater restrictions, the provisions of this Subdivision shall prevail.
3. **Definitions.** Unless specifically defined below, words or phrases used in this Subdivision shall be interpreted so as to give the same meaning as they have in common usage and so as to give this Subdivision its most reasonable application.

A

Accessory Structure. Reference *Subdivision 9.6, A* of this Ordinance.

B

Bluff. A topographic feature such as a hill, cliff, or embankment having the following characteristics (an area with an average slope of less than eighteen percent (18%) over a distance of fifty (50) feet or more shall not be considered part of the bluff):

- Part of all of the feature is located in a shoreland area;

- The slope rises at least twenty-five (25) feet above the ordinary high water level of the waterbody;
- The grade of the slope from the toe of the bluff to a point twenty – five (25) feet or more above the ordinary high water level averages twenty –five percent (25%) or greater; and
- The slop must drain toward the waterbody.

Bluff Impact Zone. A bluff and land located within twenty (20) feet from the top of a bluff.

Boathouse. A structure designed and used solely for the storage of boats or boating equipment.

Building Line. A line parallel to a lot line or the ordinary high water level at the required setback beyond which a structure may not extend.

C

Clear Cutting. The removal of an entire stand of trees.

Commercial Planned Unit Developments. Uses that provide transient, short – term lodging spaces, rooms, or parcels and their operations are essentially service – oriented. For example, hotel / motel accommodations, resorts, recreational vehicle, and camping parks, and other primarily service oriented activities.

Commercial Use. The principal use of land or building for the sale, lease, rental, or trade of products, goods and services.

Commissioner. The Commissioner of the Department of Natural Resources.

D

Deck. A horizontal, unenclosed platform with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site and at any point extending more than three (3) feet above ground.

H

Height of Building.

Riparian Lot. For the purpose of determining building height for riparian lots, the height shall be measured as the vertical distance between the highest adjoining ground level at the building, or ten (10) feet above the lowest ground level, whichever is lower, and the highest point of a flat roof, to the deck line of mansard roofs, and to the mean height level between eaves and ridge of gable, hip, and gambrel roofs.

Non – Riparian Lot. For the purpose of determining building height for lots within the Shoreland Overlay District but not on the lake, the vertical distance shall be measured from the average elevation of the finished grade along the front of the building to the highest point of the road surface in a flat roof, to the deck line of mansard roofs, and to the mean height level between eaves and ridge of gable, hip, and gambrel roofs.

I

Intensive Vegetation Clearing. The complete removal of trees or shrubs in a contiguous patch, strip, row, or block.

N

Nonriparian. A lot of record that does not abut a public water.

O

Ordinary High Water Level. The boundary of public waters shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

P

Public Waters. Any waters as defined in *Minnesota Statutes, 103G.005, Subdivision 15.*

R

Residential Planned Unit Development. A use where the nature of residency is nontransient and the major or primary focus of the development is not service – oriented. For example, residential apartments, time – share condominiums, townhouses, cooperatives, and full fee ownership residences would be considered as residential planned unit developments. To qualify as a residential planned unit development, a development must contain at least five (5) dwelling units or sites.

Riparian. A lot of record that abuts a public water that is subject to the City of Mahtomedi’s Shoreland Management regulations.

S

Sewage Treatment System. A septic tank and soil absorption systems or other individual or cluster type sewage treatment system as described and regulated in *Subdivisions 5, G* of this Ordinance.

Sewer System. Pipelines or conduits, pumping stations, and force main, and all other construction, devices, appliances, or appurtenances used for conduction of sewage or industrial waste or other wastes to a point of ultimate disposal.

Shore Impact Zone. Land located between the ordinary high water level of a public water and a line parallel to it at a setback of fifty percent (50%) of the structure setback.

Shoreland. Land located within 1,000 feet from the ordinary high water level of public waters. When approved by the Commissioner, the limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances. For the purposes of this Ordinance, any existing parcel where fifty percent (50%) or more of the parcel by area is contained within the 1,000 foot from ordinary high water level, as determined by the Zoning Administrator or other Authorized Agent, shall be subject to the requirements of this Ordinance.

Steep Slope. Land having average slopes over twelve percent (12%), as measured over horizontal distances of thirty (30) feet or more, that are not bluffs.

T

Toe of the Bluff. The lower point of a thirty (30) foot segment with an average slope exceeding eighteen percent (18%).

Top of the Bluff. The higher point of a thirty (30) foot segment with an average slope exceeding eighteen percent (18%).

V

Variance. Variance means the same as that term is defined or described in *Minnesota Statutes, Chapter 462* and the *Subdivision 8.20: Variance* of this Ordinance.

W

Water Oriented Accessory Structure or Facility. A small, above ground building or other improvements, except stairways, fences, docks, and retaining walls, which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to the public waters than the normal structure setback. Examples of such structures and facilities include boathouses, gazebos, screen houses, fish houses, pump houses and detached decks.

C. Administration

1. Permits Required.

- a. A permit is required for the construction of buildings or building additions (and including such related activities as construction of decks and signs), the installation and / or alteration of sewage treatment systems, and those grading and filling activities not exempted by *Subdivision 10.1, H: Grading, Filling, and / or Excavation* of this Ordinance. Application for a permit shall be made to the City Administrator on the forms provided. The application shall include the necessary information so that the City Administrator or other Authorized Agent can determine the site's suitability for the intended use and that a compliant sewage treatment system will be provided.
- b. A permit authorizing an addition to an existing structure shall stipulate that an identified nonconforming sewage treatment system, as defined by *Provision 5G*, shall be reconstructed or replaced in accordance with the provisions of this Ordinance.

2. Notification to the Department of Natural Resources.

- a. Copies of all notices of any public hearing to consider variances, amendments, or conditional uses under local shoreland management controls shall be sent to the Commissioner or the Commissioner's designated representative and postmarked at least ten (10) days before the hearings. Notices of hearings to consider proposed subdivisions / plats shall include copies of the subdivision / plat.
- b. A copy of approved amendments and subdivisions / plats, and final decisions granting variances or conditional uses under local shoreland management controls shall be sent to the Commissioner or the Commissioner's designated representative and postmarked within ten (10) days of final action.

3. Variances.

- a. Variances may only be granted in accordance with *Minnesota Statutes Chapter 462*. No variance may be granted for prohibited uses.
- 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 *Subpart C* below shall also include the City Council's, acting as the Board of Adjustment and Appeals, summary of the public record / testimony and the findings of facts and conclusions which supported the issuance of the variance.
- c. For existing developments, the application for variance shall clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, shall require reconstruction of a nonconforming sewage treatment system.

D. Lake Classification

1. Shoreland Classification System. The public waters of Mahtomedi have been classified below consistent with the criteria found in *Minnesota Regulations, Part 6120.3300*, and the *Protected Waters Inventory Map for Washington County, Minnesota* and designated on the Official Zoning Map for the City of Mahtomedi.

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| a. | <u>Natural Environment Lakes</u> | <u>DNR #</u> |
| | Weber, Township 30, Range 21, Section 31 | 82-119 |
| b. | <u>Recreational Development Lakes</u> | |
| | Echo, Township 30, Range 21, Section 31 | 82-135 |
| | South Long, Township 30, Range 21, Section 32 | 82-118 |
| | North Long, Township 30, Range 21, Section 20 | 82-130 |
| | Lost, Township 30, Range 21, Section 30/31 | 82-134 |
| c. | <u>General Development Lakes</u> | |
| | Lake Washington, Township 30, Range 21, Section | 82-352 |
| | White Bear, Township 30, Range 21, Section various | 82-167 |

E. Zoning and Water Supply / Sanitary Provisions

1. Lot Area and Width Standards. The lot area (in square feet) and lot width standards (in feet) for single, duplex, triplex, and quad residential lots created after the date of enactment of this Ordinance for the lake and river / stream classification are the following:

Table 11.36 –A: Natural Environment (unsewered)				
	Riparian Lots		Nonriparian Lots	
	Area	Width	Area	Width
Single	80,000	200	80,000	200
Duplex (not permitted)	----	----	----	----
Triplex (not permitted)	----	----	----	----
Quad (not permitted)	----	----	----	----

Table 11.36 - B: Recreational Development (unsewered)

	Riparian Lots		Nonriparian Lots	
	Area	Width	Area	Width
Single	43,560	160	43,560	160
Duplex (not permitted)	----	----	----	----
Triplex (not permitted)	----	----	----	----
Quad (not permitted)	----	----	----	----

Table 11.36 – C: General Development (unsewered)				
	Riparian Lots		Nonriparian Lots	
	Area	Width	Area	Width
Single	43,560	160	43,560	160
Duplex (not permitted)	----	----	----	----
Triplex (not permitted)	----	----	----	----
Quad (not permitted)	----	----	----	----

Table 11.36 – D: Natural Environment (sewered)				
	Riparian Lots		Nonriparian Lots	
	Area	Width	Area	Width
Single	40,000	125	15,000	90
Duplex (not permitted)	70,000	225	35,000	220
Triplex (not permitted)	100,000	325	52,000	315
Quad (not permitted)	130,000	425	65,000	410

Table 11.36 – E: Recreational Development (sewered)				
	Riparian Lots		Nonriparian Lots	
	Area	Width	Area	Width
Single	20,000	80	15,000	80
Duplex (not permitted)	35,000	135	26,000	135
Triplex (not permitted)	50,000	195	38,000	190
Quad (not permitted)	65,000	255	49,000	245

Table 11.36 – F: General Development (sewered)				
	Riparian Lots		Nonriparian Lots	
	Area	Width	Area	Width
Single	15,000	80	10,400	80
Duplex (not permitted)	26,000	135	17,500	135
Triplex (not permitted)	38,000	195	25,000	190
Quad (not permitted)	49,000	255	32,500	245

- a. Additional Special Provisions.

- (1) Within Shoreland Overlay Districts, minimum lot area requirements may be calculated on an average lot area basis, so long as the overall net density requirements of this Shoreland Ordinance are not exceeded. In no event shall an individual lot area be less than the minimum required by the underlying zoning district.
- (2) Only land above the ordinary high water level of public waters can be used to meet lot area standards, and lot width standards shall be met at both the ordinary high water level and at the building line. The sewered lot area dimensions in *Subpart E, 1* can only be used if publicly owned sewer system service is available to the property.
- (3) Subdivisions of duplexes, triplexes, and quads on Natural Environment Lakes shall also meet the following standards:
 - (a) Each building shall be set back at least two hundred (200) feet from the ordinary high water level.
 - (b) Each building shall have common sewage treatment and water systems in one location and serve all dwelling units in the building;
 - (c) Watercraft docking facilities for each lot shall be centralized in one location and serve all dwelling units in the building;
 - (d) No more than twenty-five percent (25%) of a lake's shoreline can be in duplex, triplex, or quad developments.
- (4) Lots intended as controlled accesses to public waters or as recreation areas for use by owners of nonriparian lots within subdivisions are permissible and shall meet or exceed the following standards:
 - (a) They shall meet the width and size requirements for residential lots as zoned, and be suitable for the intended uses of controlled access lots and contain no habitable structures.
 - (b) If docking, mooring, or over – water storage of more than six (6) watercraft is to be allowed at a controlled access lot, then the width of the lot (keeping the same lot depth) shall be increased by the percent of the requirements for riparian residential lots for each watercraft beyond six (6), consistent with the following table:

Table 11.36 – G: Controlled Access Lot Frontage Requirements	
Ratio of lake size to shore length (acres / miles)	Required increase in frontage (percent)
Less than 100	25
100 – 200	20
201 – 300	15
301 – 400	10
Greater than 400	5

- (c) They shall be jointly owned by all purchasers of lots in the subdivision or by all purchasers of nonriparian lots in the subdivision who are provided riparian access rights on the access lot; and

(d) Covenants or other equally effective legal instruments shall be developed that specify which lot owners have authority to use the access lot and what activities are allowed. The activities may include watercraft launching, loading, off season boat storage, beaching, mooring, or docking. They shall also include other outdoor recreational activities that do not significantly conflict with general public use of the public water or the enjoyment of normal property rights by adjacent property owners. Examples of the nonsignificant conflict activities including swimming, sunbathing, or picnicking. The covenants shall limit the total number of vehicles allowed to be parked and the total number of watercraft allowed to be continuously moored, docked, or stored over water, and shall require centralization of all common facilities and activities in the most suitable locations on the lot to minimize topographic and vegetation alterations. They shall also require all parking areas, storage buildings, and other facilities to be screened by vegetation or topography as much as practical from view from the public water, assuming summer, leaf –on conditions.

2. Placement, Design, and Height of Structures.

a. Placement of Structures on Lots. When more than one setback applies to a site structures and facilities shall 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:

(1) Structure and on – site sewage system setbacks (in feet) from ordinary high water level.

Classes of Public Waters	Structures		Sewage Treatment System
	Unsewered	Sewered	
Natural Environment	150	150	150
Recreational Development	100	75	75
General Development	75	75	50

(2) Additional Structure Setback. The following additional structure setbacks apply regardless of the classification of the waterbody.

Setback from:	Setback
top of bluff	30
right of way line of federal state, or county highway	50
right of way line of town road, public	30 (except in P Zoning Districts, in

street or other road or streets not classified	which case it is 45 feet)
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- (3) Bluff Impact Zones. Structures and accessory facilities, except stairways and landings, shall not be placed within bluff impact zones.
 - (4) Commercial Uses Without Water – Oriented Needs. Commercial uses 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, shall be substantially screened from view from the water by vegetation or topography, assuming summer, leaf – on conditions.
- b. Design Criteria for Structures.
- (1) High Water Elevations. The elevation of structures located on riparian lots shall be regulated as follows:
 - (a) The lowest floor including basement shall be placed at least one (1) foot above the 100 year flood level or, if such flood level has not been established, the lowest floor including basement shall be placed three (3) feet above the ordinary high water level; (note: most lakes in Mahtomedi have established 100 year flood levels); and
 - (b) Water – oriented accessory structures may be the lowest floor placed lower than the elevation determined in this item if the structure is constructed of flood – resistant materials to the elevation, electrical and mechanical equipment is placed above the elevation and, if long duration flooding is anticipated, the structure is built to withstand ice action and wind – driven waves and debris.
 - (2) Water – oriented Accessory Structures. Each lot may have one (1) water oriented accessory structure not meeting the normal structure setback in *Subpart E, 2* of this ordinance if this water – oriented accessory structure complies with the following provisions:
 - (a) The structure or facility shall not exceed ten (10) feet in height, exclusive of safety rails, and cannot occupy an area greater than two hundred – fifty (250) square feet. Detached decks shall not exceed eight (8) feet above at any point;
 - (b) The setback of the structure or facility from the ordinary high water level shall be at least ten (10) feet;
 - (c) The structure or facility shall 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;
 - (d) The roof may be used as a deck with safety rails, but shall not be enclosed or have a roof or canopy or used as a storage area;
 - (e) The structure or facility shall not be designed or used for human habitation and shall not contain water supply or sewage treatment facilities; and
 - (f) 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 four hundred (400) square feet

provided the maximum width of the structure is twenty (20) feet as measured parallel to the configuration of the shoreline.

(3) Stairways, Lifts, Walks, Trails 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. All accesses shall meet the following design requirements:

- (a) Stairways, walks, trails, and lifts shall not exceed four (4) feet in width on residential lots. Six (6) foot stairways may be used for commercial properties, public open – space recreational properties, and planned unit development;
- (b) Landings on residential lots shall not exceed thirty –two (32) square feet in area. Landings larger than thirty-two (32) square feet may be used for commercial properties, public open – space recreational properties, and planned unit developments;
- (c) Canopies or roofs are not allowed on stairways, lifts, or landings;
- (d) Stairways, lifts, walks, trails, and landings shall 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; and
- (e) Facilities such as ramps, lifts, or mobility paths for persons with disabilities are also allowed for achieving access to shore area, provided that the dimensional and performance standards of items (1) to (5) above area complied with in addition to the requirements of *Minnesota Regulations, Chapter 1340*.

(4) Steep Slopes. The City Engineer 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 shall 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 waters, assuming summer, leaf – on vegetation.

c. Height of Structures. All structures in residential districts, except churches and nonresidential agricultural structures must not exceed twenty – five (25) feet in height.

3. Shoreland Alterations. Alterations of vegetation and topography shall 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.

a. Vegetation Alterations. Vegetation removal or alteration within shore and bluff impact zones and on steep slopes over eighteen percent (18%) shall be subject to the following standards:

- (1) Clear – cutting trees and shrubs is prohibited.
- (2) Limited clearing, pruning, and trimming of trees and shrubs to provide a view from principal sites and to accommodate the placement of permitted stairways and landings, access paths, beach and watercraft access areas and water – oriented accessory structures or facilities may be permitted provided that:

- (a) Large openings in the overhead forest canopy are not created. The area of post-cutting canopy coverage must be eighty percent (80%) or more of the pre – cutting canopy coverage.
 - (b) The topping of trees is prohibited unless they are under overhead utility lines.
 - (c) The screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf – on conditions, is not substantially reduced.
 - (3) The above provisions are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards.
 - (4) The City may require that a landscape plan be submitted at the time of building permit and / or plat approval to demonstrate compliance with the above standards.
- b. Topographic Alterations / Grading and Filling.
- (1) 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. However, the grading and filling standards in this Subdivision shall be incorporated into the issuance of permits for construction of structures, sewage treatment systems, and driveways. A grading and filling permit shall be required for:
 - (a) The movement of more than ten (10) cubic yards of material.
 - (b) Land filling or grading in excess of one hundred (100) cubic yards shall require a conditional use permit pursuant to *Subdivision 8.21: Conditional Use Permit*.
 - (2) The following considerations and conditions shall be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variance, and subdivision approvals:
 - (a) Alterations shall be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible;
 - (b) Mulches or similar material shall be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover must be established as soon as possible;
 - (c) Methods to minimize soil erosion and to trap sediments before they reach any surface water feature shall be used;
 - (d) Altered areas shall 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;
 - (e) Fill or excavated material shall not be placed in a manner that creates an unstable slope;
 - (f) Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued slope stability and shall not create finished slopes of thirty percent (30%) or greater;
 - (g) Fill or excavated material shall not be placed in bluff impact zones;

- (h) Any alterations below the ordinary high water level of public waters shall first be authorized by the commissioner under *Minnesota State Statutes, Section 103G.005*.
- (i) Alterations of topography will only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties; and
- (j) 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 (3) feet horizontal to one foot vertical, the landward extent of the riprap is within ten (10) feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three (3) feet.
- (k) At the end of excavation or filling operations, the disturbed area shall be restored with topsoil or other approved cover material and shall be reseeded within one growing season with native indigenous vegetation.

4. Placement and Design of Roads, Driveways, and Parking Areas.

- a. Public and private roads and parking areas shall be designed to take advantage of natural vegetation and topography to achieve maximum screening from view and public waters. Documentation shall be provided by a qualified individual that all roads and parking areas are designed and constructed to minimize and control erosion to public water conservation district, or other applicable technical materials.
- b. Roads, driveways, and parking areas shall meet structure setbacks and shall not be placed within bluff and shore impact zones, when other reasonable and feasible placement alternatives exist.
- c. Public and private 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 this Subpart are met. For private facilities, the grading and filling provisions of *Subdivision 10.1, H: Grading, Filling, and / or Excavation* of this Ordinance shall be met.

5. Stormwater Management.

- a. All surface and underground drainage systems shall be installed to adequately remove all natural drainage that accumulates on the developed property. All such systems shall be in conformity to the City drainage plans and all piping shall provide complete removal and permanent solution for the removal of drainage water.
- b. When possible, existing natural drainageways, wetlands, and vegetated soil surfaces shall be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.
- c. Impervious surface coverage. Impervious surface coverage of lots shall not exceed thirty-five percent (35%) of the area of lots existing on the date of adoption of this ordinance, and twenty – five percent (25%) of the area of lots created thereafter. Such maximum coverage may be calculated on an average lot coverage basis within the shoreland of each protected water; but if averaged, impervious surface shall not exceed sixty –five percent (65%) of any one lot.

- 6. Controlled uses.** 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 community – wide.
- a. Evaluation Criteria. Thorough evaluation of the waterbody and the topographic, vegetation, and soils conditions on the site shall 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 if applicable; and
 - (4) The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.
- b. Conditions Attached to Conditional Use Permits. The City Council, upon consideration of the criteria listed above and the purposes of this Ordinance, may attach such conditions to the issuance of the conditional use permits as it deems necessary to fulfill the purposes of this Ordinance and said conditions may be more restrictive than this Ordinance.

7. Water Supply and Sewage Treatment.

- a. Water Supply. Any public or private supply of water for domestic purposes shall meet or exceed standards for water quality of the Minnesota Department of Health and the Minnesota Pollution Control Agency.
- b. Sewage Treatment.
- (1) Publicly – owned sewer systems shall be used where available.
 - (2) All private sewage treatment systems shall meet or exceed the Minnesota Pollution Control Agency’s standards for individual sewage treatment systems contained in the document titled, ‘*Individual Sewage Treatment Systems Standards, Chapter 7080*’, a copy of which is hereby adopted by reference and declared to be a part of this Ordinance.
 - (3) All proposed sites for individual sewage treatment systems shall be evaluated in accordance with the criteria in sub – items a – d below. 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 a percolation test from on –site field investigation.

Evaluation Criteria:

- (a) Depth to the highest known or calculated ground water table or bedrock;
- (b) Soil conditions, properties, and permeability;
- (c) Slope;
- (d) The existence of lowlands, local surface depressions, and rock outcrops.

- F. Nonconformities.** All legally established nonconformities as of the date of this Ordinance may continue, but they will be managed according to applicable state statutes and other

regulations of this community for the subjects of alterations and additions, repair after damage, discontinuance of use, and intensification of use; except that the following standards will also apply in shoreland area:

1. Construction on Nonconforming Lot of Record.

- a. Lots of record in the office of the county recorder on the date of enactment of local shoreland controls that do not meet the requirements of *Subpart E, 1* of this Ordinance may be allowed as building sites without variances from lot size requirements provided the use is permitted in the zoning district and meets the following criteria:
 - (1) All structure and septic system setback distance requirements can be met;
 - (2) A Type 1 sewage system consistent with *Minnesota Rules, Chapter 7080*, can be installed or the lot is connected to a public sewer; and
 - (3) The impervious surface coverage does not exceed twenty- five percent (25%) of the lot.
- b. A variance from setback requirements shall be obtained before any use, sewage treatment system, or building permit is issued for a lot. In evaluating the variance, the City Council acting as the Board of Adjustments and Appeals 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 two or more undeveloped, vacant, and contiguous lots under common ownership, any individual lot does not meet the requirements of *Subpart E, 1* of this Ordinance, the lot shall be considered as a separate parcel of land for the purposes of sale or development if it meets the following requirements:
 - (1) The lot must be at least sixty-six percent (66%) of the dimensional standard for lot width and lot size for the shoreland classification consistent with *Minnesota Rules, Chapter 6120*;
 - (2) The lot must be connected to public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with *Minnesota Rules, Chapter 7080*, and the local government controls;
 - (3) Impervious surface coverage must not exceed twenty-five percent (25%) of each lot; and
 - (4) Development of the lot must be consistent with an adopted comprehensive plan.
- d. A lot subject to paragraph (c) not meeting the requirements of paragraph (c) must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible
- e. Notwithstanding paragraph (c), contiguous nonconforming lots of record in shoreland areas under common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of *Minnesota Statutes Section 115.55 and Minnesota Rules, Chapter 7080*, or connected to a public sewer.

2. Additions / Expansions to Nonconforming Structures.

- a. All additions or expansions to the outside dimensions, including decks, of an existing nonconforming structure shall meet the setback, height, and other requirements of

Subpart E of this Ordinance. Any deviation from these requirements shall be authorized by variance pursuant to *Subpart C, 3*.

- b. Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of this Ordinance, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless:
 - (1) The nonconformity or occupancy is discontinued for a period of more than one (1) year; or
 - (2) Any nonconforming use is destroyed by fire or other peril to the extent of greater than fifty percent (50%) of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within one hundred eighty (180) days of when the property is damaged. When a nonconforming structure in the shoreland district with less than fifty percent (50%) of the required setback from the water is destroyed by fire or other peril to greater than fifty percent (50%) of its estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

3. Nonconforming Sewage Treatment Systems.

- a. A sewage treatment system not meeting the requirements of this Ordinance shall 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 nonconforming if the only deficiency is the sewage treatment system's improper setback from the ordinary high water level.
- b. The governing body of the City of Mahtomedi has by formal resolution notified the Commissioner of its program to identify nonconforming sewage treatment systems. The City of Mahtomedi will require upgrading or replacement of any nonconforming system identified by this program within a reasonable period of time which will not exceed two (2) years. Sewage systems installed according to all applicable local shoreland management standards adopted under *Minnesota Statutes, Section 103F.201*, in effect at the time of installation may be considered as conforming unless they are determined to be failing, except that systems using cesspools, or systems with less oil treatment area separation above groundwater than required by the *Minnesota Pollution Control Agency's Chapter 7080* for design of on – site sewage treatment systems, shall be considered nonconforming.
- c. After initial inspection for conformance, all on – site individual sewage treatment systems shall be inspected annually for property operation. A system shall be determined failing if it shows signs of surface discharge or seepage from a soil treatment system to the ground surface, abandoned wells, bodies of surface water, or into any rock or soil formation on the structure of which is not conducive to purification by filtration or into any well or other excavation in the ground.
- d. All properties that are found to have non – conforming on – site individual sewage treatment systems shall be required to have their wells tested.

G. Planned Unit Developments (PUD's).

1. **Site Suitable Area Evaluation.** Proposed new or expansions to existing planned unit development shall be evaluated using the following procedures and standards to determine the suitable area for the dwelling unit density evaluation in *Subpart G, 2 below*.
 - a. The project parcel shall be divided into tiers by locating one or more lines approximately parallel to a line that identifies the ordinary high water level at the following intervals, proceeding landward:

Table 11.36 – J: Shoreland Tier Dimensions		
	Unsewered (feet)	Sewered (feet)
General Development Lakes First Tier	200	200
General Development Lakes Second and Additional Tiers	267	200
Recreational Development	267	267
Natural Environment	400	320

- b. The suitable area within each tier is next calculated by excluding from the tier area all wetlands, bluffs, or land below the ordinary high water level of public waters. This suitable area and the proposed project area then subjected to either the residential or commercial planned unit development density evaluation steps to arrive at an allowable number of dwelling units.
2. **Residential and Commercial PUD Density Evaluation.** The procedures for determining the ‘base’ density of a PUD and density increase multipliers are as listed below. Allowable densities may be transferred from any tier to any other tier further from the waterbody, but shall not be transferred to any other tier closer.
 - a. Residential PUD ‘Base’ Density Evaluation. The suitable area within each tier is divided by the single residential lot size standard, as zoned, for lakes. Proposed locations and numbers of dwelling units for the residential planned unit developments are then compared with the tier, density, and suitability analyses herein.
 - b. Commercial PUD ‘Base’ Density Evaluation.
 - (1) Determine the average inside living area size of dwelling units within each tier, including both existing and proposed units. Computation of inside living area sizes need not include decks, patios, stoops, steps, garages, or porches and basements, unless they are habitable space.
 - (2) Select the appropriate floor area ratio from the following table:

Table 11.36 – K: Commercial Planned Unit Development Floor Area Ratios*			
*Average unit floor area (sq.ft.)	A	B	C
200	.040	.020	.010
300	.048	.024	.012
400	.056	.028	.014
500	.065	.032	.016
600	.072	.038	.019
700	.082	.042	.021
800	.091	.046	.023
900	.099	.050	.025
1000	.108	.054	.027
1100	.116	.058	.029
1200	.125	.064	.032
1300	.133	.068	.034
1400	.142	.072	.036
1500	.150	.075	.038

A = Sewered general development lakes: first tier on unsewered general development lakes

B = Second and additional tiers on unsewered general development lakes; recreational development lakes

C = Natural environment lakes

* For average unit floor area less than shown, use the floor area ratios listed for 200 sq. ft. For areas greater than shown, use the ratios listed for 1,500 sq. ft.

- (3) Multiply the suitable area within each tier by the floor area ratio to yield total floor area for each tier allowed to be used for dwelling units.
- (4) Divide the total floor area by tier computed in item (3) above by the average inside living area size determined in item (1) above. This yields a base number of dwelling units for each tier.
- (5) Proposed locations and numbers of dwelling units for the commercial planned unit development are then compared with the tier, density and suitability analysis herein.

c. Density Increase Multipliers.

- (1) Increases to the dwelling unit base densities previously determined are allowable if the dimensional standards in *Subpart E* of this *Subdivision* are met or exceeded. The allowable density increases in item (2) below will only be allowed if structure setbacks from the ordinary high water level are increased to at least fifty percent (50%) greater than the minimum setback, or the impact on the waterbody is reduced an equivalent amount through vegetative management, topography, or additional means acceptable to the local unit of government and the setback is at least twenty – five percent (25%) greater than the minimum setback.
- (2) Allowable Dwelling Unit Density Increases for Residential or Commercial Planned Unit Developments:

Table 11.36 – L: Allowable Dwelling Increases for Residential or Commercial Planned Unit Developments	
Density Evaluation Tiers	Maximum Density Increase within Each Tier (%)
First	50
Second	100
Third	200
Fourth	200
Fifth	200

3. **Maintenance and Design Criteria.**

a. Maintenance and Administration Requirements.

- (1) Before final approval of a planned unit development, adequate provisions shall be developed for preservation and maintenance in perpetuity of open spaces and for the continued existence and functioning of the development.
- (2) Uncontrolled beaching of watercraft prohibited.

b. Open Space Requirements.

- (1) At least fifty percent (50%) of the total project area shall be preserved as open space;
- (2) Dwelling units, road rights – of – way, or land covered by road surfaces, parking areas, or structures, except water – oriented accessory structures or facilities, are developed areas and shall not be included in the computation of minimum open space;
- (3) Open space shall include area with physical characteristics unsuitable for development in their natural state.

- (4) Open space may include outdoor recreational facilities for use by owners of dwelling units by guests staying in commercial dwelling units, and by the general public;
 - (5) Open space may include subsurface sewage treatment systems if the use of the space is restricted to avoid adverse impacts on the systems.
 - (6) Open space shall not include commercial facilities or uses, but may contain water – oriented accessory structures or facilities;
 - (7) The appearance of open space areas, including topography, vegetation, and allowable uses, shall be preserved by use of restrictive deed covenants, permanent easements; public dedications and acceptance, or other equally effective permanent means; and
 - (8) The shore impact zone, based on normal structure setbacks, shall be included as open space. For residential PUD's at least fifty percent (50%) of the shore impact zone area of new developments shall be preserved in its natural existing state. For commercial PUD's, at least fifty percent (50%) of the shore impact zone shall be preserved in its natural state.
- c. Erosion Control and Stormwater Management. Erosion control and stormwater management plans shall be developed and the PUD shall be designed and constructed to effectively manage reasonably expected quantities and qualities of stormwater runoff. Impervious surface coverage within any tier shall not exceed twenty –five percent (25%) of the tier area, except that for commercial PUD's thirty – five percent (35%) impervious surface coverage may be allowed in the first tier of general development lakes with an approved stormwater management plan and consistency with *Subpart E (3) of this Subdivision*.